The Ontario Securities Commission

OSC Bulletin

November 8, 2012

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

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

November 8, 2012

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

SCHEDULED OSC HEARINGS

November 12, 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
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: EPK
November 15, 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

November 16, 2012 10:00 a.m.	**Roger Carl Schoer** s. 21.7 C. Johnson in attendance for Staff Panel: JEAT
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 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/Y. Chisholm in attendance for Staff Panel: EPK
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 7, 2012 10:00 a.m.	**Caroline Frayssignes Cotton** s.127 C. Price 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 10-11, 2013 10:00 a.m.	**MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for staff Panel: CP
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: CP/SBK/PLK
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 10:00 a.m.	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung** s. 127 H. Craig in attendance for Staff Panel: 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: EPK
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
January 28, 2013 10:00 a.m.	**AMTE Services Inc., Osler Energy Corporation, Ranjit Grewal, Phillip Colbert and Edward Ozga** s. 127 C. Rossi 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: VK
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: EPK
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: EPK
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: EPK
April 15-22, April 25 – May 6 and May 8-10, 2013 10:00 a.m.	**Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.** s. 127 B. Shulman in attendance for Staff Panel: TBA
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
To be held In-Writing	**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 Corp. (aka Liquid Gold International Inc.), and Nanotech Industries Inc.** s. 127 J. Feasby in attendance for Staff Panel: JDC
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 **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 **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 **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 **Bernard Boily**

s. 127 and 127.1

M. Vaillancourt/U. Sheikh in attendance for Staff

Panel: TBA

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

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA **Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)**

s. 127

M. Vaillancourt in attendance for Staff

Panel: VK

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 Investment Funds Practitioner – November 2012

November 2012

OSC

THE INVESTMENT FUNDS PRACTITIONER

From the Investment Funds Branch, Ontario Securities Commission

What is the Investment Funds Practitioner?

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

Request for Feedback

This is the eighth edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under Investment Funds – Related Information.[1] We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to investmentfunds@osc.gov.on.ca.

Prospectuses

Bulleted Placeholders in Prospectuses

We remind filers that the disclosure requirements set out in Form 41-101F2 for long form prospectuses and Forms 81-101F1 and 81-101F2 for simplified prospectuses apply to both the preliminary prospectus and the final prospectus unless otherwise specifically stated. Recently, we have noticed preliminary prospectuses with bulleted placeholders for items that should be disclosed at the time of the preliminary filing, such as the auditor's name in an audit report, the minimum offering amount on the cover page of a long form prospectus, expenses and fees, and the name of the custodian. Generally, staff take the view that this information should be disclosed in the preliminary prospectus rather than presented for the first time in the final prospectus. Otherwise, staff may raise comments at the time of the filing of the final prospectus which may result in a delay in the issuance of the final receipt.

Investment Objectives for a Fund of Funds

We have observed fund-of-fund structures involving conventional mutual funds under common management where only the name of the bottom fund is referenced in the investment objectives of the top fund, along with a statement that the top fund will invest in securities of the bottom fund. These structures have involved a one-to-one relationship between a top and bottom fund. Absent from the investment objectives of the top fund, however, has been disclosure about the specific investment objectives of the bottom fund.

Where there is a one-to-one relationship between conventional mutual funds under common management, staff do not consider it sufficient for the investment objectives of the top fund to only state that the top fund's investment objectives are to invest in a named bottom fund. Disclosure of the bottom fund's investment objectives in the top fund's investment objectives is appropriate in view of the fund-of-fund structure which provides direct exposure to the portfolio of securities held by the bottom fund and is

[1] At http://www.osc.gov.on.ca/en/About_if_index.htm or http://www.osc.gov.on.ca/en/InvestmentFunds_index.htm.

also consistent with disclosure rules.[2] Issuers are reminded to provide this disclosure for conventional funds where there is a one-to-one relationship between top and bottom funds.

Linked Note Pricing Supplements

CSA Staff Notice 44-304 *Linked Notes Distributed Under Shelf Prospectus System* dated July 20, 2007 sets out the process for requesting pre-clearance of linked notes offered under the shelf prospectus system. Some filers have developed the practice of filing, in draft form, subsequent prospectus supplements with the Commission that are based on prospectus supplements that have been previously pre-cleared. Such filings are often marked as 'draft' or as 'preliminary pricing supplements' and are often made to ensure that the Commission has a copy of the supplement the issuer intends to use for marketing purposes.

Filers should be aware that if a cover letter requesting pre-clearance does not accompany the filed draft prospectus supplement, staff will presume that the supplement has not been filed for preclearance, but rather for marketing purposes only. We remind filers that all requests for pre-clearance of prospectus supplements involving linked notes should be accompanied by a cover letter requesting pre-clearance and the appropriate fee.

For draft prospectus supplements filed for marketing purposes only, it would be helpful to staff if the filing indicates that preclearance is not required, but that a final prospectus supplement will follow in due course.

Fixed Administration Fees with Adjustment Payments

Some investment fund managers charge a fixed administration fee to each of their mutual funds. The fixed administration fee is paid by a mutual fund to the investment fund manager in exchange for the investment fund manager bearing most of the operating expenses of the mutual fund. The fee is calculated as a fixed percentage of the NAV of the mutual fund and replaces the cost allocation methodology for charging operating expenses.

In some instances where investment fund managers have introduced a fixed administration fee, they have made it subject to an adjustment payment, which may be payable by a mutual fund in addition to the fixed administration fee, where the assets of the mutual fund fall below a specified threshold.

The introduction of a fixed administration fee, with or without an adjustment payment, triggers the requirement for securityholder approval under Part 5 of NI 81-102. Staff is of the view that an adjustment payment is not consistent with investors' general expectation of the fixed rate administration fee structure. When the adjustment is triggered, the total administration fee that would be payable as a percentage of a fund's net asset value would not be fixed and could potentially increase to a significant amount depending on the magnitude of the decrease in the fund's net asset value.

Where an adjustment payment is part of the fixed administration fee, staff has requested disclosure of the maximum limit on the total adjustment fee payable as a percentage of a fund's NAV. In our view, this disclosure provides investors with greater predictability and clarity of what the administration fee will be under different market conditions, and gives investors better information to inform their decision to approve the fixed administration fee. The management information circular should also provide an illustration, in dollars, of the differences between the proposed fixed administration fee, including the adjustment payment, and the current fee model.

Cover Page Images on Prospectuses

Some filers include graphics, photos, or artwork on the cover page of a fund's prospectus. Usually, this is done to highlight the features of the fund or to make the fund more appealing to the target investor. Recently, we have seen prospectuses where the cover pages included images that were not relevant to the content of the prospectus. In such cases, staff's view was that the images were not useful in conveying the features of the fund product nor how the product should appeal to any specific group of investors.

We remind issuers that any graphics, photos, or artwork included on the prospectus cover page must be relevant to the fund or the distribution of the fund's securities and cannot be misleading[3]. The cover page images should also not detract from the information disclosed in the prospectus. Any image should be provided to staff early on in their review to ensure that delays do not occur late in the filing process.

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2 Instruction 9 to Item 3 – *Investments of the Fund in Form 81-101F3 Contents of Fund Facts Document*.

3 General Instruction (7) – Form 81-101F1 – *Contents of Simplified Prospectus*.

Applications

Managed Accounts

As discussed in the December 2011 edition of the Practitioner, the Commission has previously granted exemptive relief from the prospectus requirements in the Act to accommodate exempt distributions in connection with the provision of portfolio management services to "secondary clients", who are not accredited investors but have a relationship to the "primary client" who qualifies as an accredited investor. Exemptive relief is granted primarily on the basis that the "secondary clients" are an incidental part of the portfolio manager's asset management business, which is primarily focused on accredited investor clients.

Increasingly, we have received exemptive relief applications where secondary clients constitute more than just an incidental part of the portfolio manager's asset management business. The Commission has raised questions about minimum account thresholds that are low, for example, below $500,000. The Commission has also expressed concerns with business models that permit a portfolio manager to waive the minimum account threshold established for its managed accounts at its discretion in order to increase its client base with secondary clients. Such discretion to waive the minimum account threshold raises policy concerns that pooled funds could be distributed primarily to investors that would not otherwise have access to pooled fund securities under NI 45-106. To address the Commission's concerns, a recent decision[4] included a representation from the portfolio manager that the minimum account threshold for its managed accounts will be waived only in rare or limited circumstances.

We have been hesitant to recommend exemptive relief when the portfolio manager is not able to represent that the minimum account threshold for its managed accounts will be waived in rare and limited circumstances.

Sub-Adviser Conflicts of Interest

We recently received an application for relief from subsection 4.1(1) of NI 81-102 to allow mutual funds to invest in a private placement underwritten by an underwriter that is related to the funds' portfolio sub-adviser. Both the sub-adviser and the underwriter are not related to the funds' investment fund manager who also acts as the portfolio adviser. As subsection 4.1(1) of NI 81-102 applies only to dealer managers which are defined in NI 81-102 as portfolio advisers, staff's position is that on a technical reading of subsection 4.1(1) of NI 81-102, the funds' investments in securities underwritten by an underwriter related to a sub-adviser are not prohibited and exemptive relief is not required.

While staff are of the view that subsection 4.1(1) of NI 81-102 is not triggered, the fact that a sub-adviser and an underwriter are related does raise a conflict of interest pursuant to NI 81-107. Such a conflict of interest is contemplated in item 4 in the commentary to section 1.2 of NI 81-107 and in item 1 in the commentary to section 1.3 of NI 81-107. Staff expect the manager of the funds to refer this conflict of interest matter to the funds' Independent Review Committee.

Use of Past Performance Data in the Prospectus

As discussed in the December 2011 edition of the Practitioner, we remind filers that applications requesting to use a fund's past performance data in the simplified prospectus should also contemplate the use of past performance data in the Fund Facts as appropriate. Requests for relief to use past performance data have generally been requested in the past in the context of fund mergers or the conversion of a closed-end fund to a newly established mutual fund.

We further remind filers that such applications should include all aspects of past performance data that will be referenced in the simplified prospectus and Fund Facts. Among other items for example, this may include disclosure of the management expense ratio (MER) in the Fund Facts.

Index Funds

For conventional mutual funds and exchange-traded funds that propose to track specified indices (index funds), we remind fund managers to consider whether a change in a fund's index is a change to the fundamental investment objectives of the fund. Generally, the fundamental investment objectives of a mutual fund are those attributes that define its fundamental nature. Section 2.5(c) of 81-102CP uses index funds as an example of mutual funds that pursue a highly specific investment approach which defines their fundamental nature. Consequently, a change by an index fund to the index it is tracking will likely be viewed as a change to the fund's fundamental investment objective. While many factors may be relevant, the companion policy indicates that the manner in which a mutual fund is marketed may provide further evidence as to its fundamental nature. For example, if an index fund's name or advertising suggests that it is an index fund or provides exposure to a specific index, that may suggest that a change by that fund to the index being tracked is a change to its fundamental investment objective. Such a change requires the prior approval of securityholders unless exemptive relief is obtained.

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[4] *In the Matter of Rae & Lipskie Investment Counsel Inc. et al.* dated August 24, 2011.

Continuous Disclosure

Advertising Review

Investment Funds staff recently commenced a review program for advertising and marketing materials of a sample of investment funds. In addition to the existing adhoc reviews of advertising materials, staff will select 4-6 investment fund managers for review on a quarterly basis. Investment fund managers selected for a review will be asked to provide all advertisements and marketing materials used during the previous quarter and to describe their policies and procedures relating to their marketing activities. The reviews will cover a wide spectrum of fund types including conventional mutual funds, closed-end funds, ETFs, commodity pools and LSIFs. Staff expect to publish observations and guidance arising out of this review by early next year.

Portfolio Disclosure Review

As noted in the April 2012 edition of the Practitioner, Investment Funds staff recently completed a targeted review of a sample of investment funds to evaluate compliance with the portfolio disclosure requirements relating to a fund's statement of investment portfolio, MRFPs and Fund Facts documents. OSC Staff Notice 81-717 *Report on Staff's Continuous Disclosure Review of Portfolio Holdings by Investment Funds* reports the findings from our review and was published in the OSC Bulletin on August 2, 2012.

Independent Review Committees (IRCs)

Changes to IRC Composition

Section 3.3(4) of NI 81-107 specifies that an individual may not serve on an IRC for longer than six years unless the fund manager agrees to the reappointment of the member. In view of this requirement and given that the Rule has been in place for almost six years, we expect that the next year may yield changes to IRC composition.

Fund managers and IRCs are reminded of the requirement in section 3.10(4) of NI 81-107 to provide notification of any changes to IRC composition to the fund's principal regulator and to disclose any changes to IRC composition or membership in the report to securityholders in accordance with section 4.4(1)(d) of NI 81-107.

Process Matters

E-forms for Filing NI 45-106 Reports

An electronic version (the E-form) of Form 45-106F1 *Report of Exempt Distribution* was made available on the OSC website on June 21, 2012. As noted in OSC Staff Notice 45-708 *Introduction of Electronic Report of Exempt Distribution on Form 45-106F1*, issuers and underwriters that are required to prepare and file a report of exempt distribution on Form 45-106F1 (the Report) may now choose to prepare and file the Report using the E-form, instead of in paper format. At this time, filing of the Report electronically is voluntary, although staff anticipate moving towards mandatory electronic filings in the future. While filers may continue to prepare and send in the paper version of the Report, they are encouraged to use the E-form whenever possible. Use of the E-form will provide filers with confirmation of receipt of the filing and should make future filings easier and quicker.

Prospectus Amendments – Historical Information

We have recently observed that the titles of certain amendments to simplified prospectuses, annual information forms, and long form prospectuses (the Amended Documents) do not contain the history of the Amended Documents. For example, instead of stating that the amendment is an amendment to the simplified prospectus and setting out the date of each prior version of the Amended Document, certain amendments have included only the amendment number in their titles, e.g. Amendment No. 2, with the date of the amendment.

Staff's position is that the title of an amendment to an Amended Document should provide the complete history, including all previous amendments made to the Amended Documents.

Public Inquiries

The Definition of an "Investment Fund"

We have recently received inquiries concerning whether certain issuers meet the definition of investment fund set out in the *Securities Act* (Ontario) (the Act).

Consistent with the definition of “non-redeemable investment fund” in the Act and the CSA’s discussion in section 1.2 of Companion Policy 81-106CP, staff continue to regard an investment fund as an issuer that does not seek to exercise control over, or become involved in the management of, investee companies. Generally, staff expect the investment approach undertaken by an investment fund to be passive in nature. Our view is that any degree of control or active involvement in the management of investee companies by an issuer would mean that the issuer is not an investment fund.

In determining whether an issuer proposing to be an investment fund exercises control over, or is involved in the management of, an investee company, staff will generally consider indicators, including: (i) whether the issuer holds securities representing more than 10% of the outstanding equity or voting securities of the investee company; (ii) any right of the issuer to appoint board or board observer seats on the investee company; (iii) restrictions on the management, or approval or veto rights over decisions made by the management, of the investee company by the issuer; or (iv) any right of the issuer to restrict the transfer of securities by other securityholders of the investee company. The presence of one or more of these factors is generally indicative of control.

To the extent that questions arise, filers are encouraged to consult with staff for greater clarity as appropriate.

1.2 Notices of Hearing

1.2.1 Systematech Solutions Inc. et al. – ss. 127, 127(1)

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

AND

IN THE MATTER OF
SYSTEMATECH SOLUTIONS INC.,
APRIL VUONG AND HAO QUACH

NOTICE OF HEARING
(Sections 127 and 127(1))

WHEREAS on December 15, 2011, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that Systematech Solutions Inc. ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively the "Respondents") cease all trading in securities and that all trading cease in the securities of Systematech ("the "Temporary Order");

TAKE NOTICE THAT the Commission will hold a Hearing (the "Hearing") pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on December 11, 2012 at 9:00 a.m. or as soon thereafter as the Hearing can be held to consider whether, in the opinion of the Commission, it is in the public interest for the Commission:

(i) to extend the Temporary Order, pursuant to subsections 127(7) and (8) of the Act, until the conclusion of the Hearing or until such further time as is ordered by the Commission;

(ii) pursuant to sections 127 and 127.1 of the Act to order that:

(a) trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law;

(e) the Respondents be reprimanded;

(f) the individual Respondents resign one or more positions that they hold as a director or officer of any issuer, registrant or investment fund manager;

(g) the individual Respondents be prohibited from becoming or acting as a director or officer of any issuer, registrant and investment fund manager;

(h) the individual Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter;

(i) the Respondents each pay an administrative penalty of not more than $1 million for each failure by that Respondents to comply with Ontario securities law; and

(j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing; and

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

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated October 31, 2012 and such further additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER 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 proceedings.

DATED at Toronto this 31st day of October, 2012

"John Stevenson"
Secretary to the Commission

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

AND

**IN THE MATTER OF
SYSTEMATECH SOLUTIONS INC.,
APRIL VUONG AND HAO QUACH**

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

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

I. OVERVIEW

1. Systematech Solutions Inc. ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively the "Respondents") solicited residents in Ontario and elsewhere to invest at least $12.4 million with Systematech between March 2007 and October 2011 inclusive (the "Material Time"). The Respondents issued approximately $12.4 million in promissory notes in exchange for the principal amounts of clients' investments.

2. Investors were promised an annual return of on or between 12 and 30 percent and advised that their investments were guaranteed and not at risk.

3. Approximately, $12.4 million was raised from investors, $7.7 million was repaid to investors, $3.5 million was lost in trading accounts and $900,000 was paid for personal type payments including credit card payments, payments to retailers and cash withdrawals by Vuong and Quach.

4. During the Material Time, the Respondents acted contrary to the registration and prospectus requirements of the Act and engaged in a course of conduct that they knew or reasonably ought to have known would result in a fraud on persons or companies purchasing securities of Systematech.

II. THE RESPONDENTS

5. Systematech was incorporated in Ontario on June 23, 1999 by Vuong and Quach. Since 2007, Systematech offered an investment opportunity based on various investment options to investors and potential investors.

6. Vuong is the president and a director of Systematech. During the Material Time, Vuong acted as a directing mind of Systematech. Vuong resides in Mississauga, Ontario.

7. Quach is the managing director and a director of Systematech. During the Material Time, Quach acted as a directing mind of Systematech. Quach resides in Mississauga, Ontario.

8. None of the Respondents have ever been registered with the Commission in any capacity.

III. RESPONDENTS' CONDUCT

9. Vuong and Quach solicited residents in Ontario and elsewhere to purchase the securities of Systematech through meetings, telephone calls and emails with investors, discussing the features of the investment options, advising investors that their returns were guaranteed and their investments were not at risk and that the investors would receive promissory notes for their investments.

10. Systematech, under the direction of Vuong and Quach, issued promissory notes to persons and companies in exchange for investments. Investors were typically promised an annual return of on or between 12 and 30 percent.

11. The investment options and the promissory notes offered by Systematech are securities as defined in subsection 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

12. During the Material Time, Systematech raised at least $12.4 million from approximately 39 investors through the sale of securities. Monies for investments were received in both Canadian and U.S. dollars.

13. Investor funds were deposited into bank accounts and brokerage accounts in the names of Vuong, Quach and Systematech (the "Bank Accounts" and the "Brokerage Accounts).

14. The Respondents made numerous misrepresentations to investors both before and after the investments were made, including that:

    (a) Vuong was a lawyer;

    (b) Vuong was formerly a trader employed with a major bank;

    (c) investors had achieved specific rates of return on investment as specified on investors' statements;

    (d) investors' principals were guaranteed and not at risk;

    (e) the values of investors' accounts were increasing;

    (f) Vuong was successful in her trading during the Material Time;

(g) all investor monies accepted by Systematech were being invested; and/or

(h) Systematech had large amounts of money on deposit at financial institutions or had large investors.

15. Contrary to the representations made by the Respondents to investors, the majority of the investor funds received by Systematech were not used for the purposes of trading. Rather, a large portion of the investor funds were used to pay returns and redemption payments to investors.

16. Investors received statements and annual reports from the Respondents which contained misleading and untrue statements concerning growth rates, rates of return and valuations of clients' accounts.

17. Between January 1, 2007 to December 31, 2011 inclusive:

(a) approximately $12.4 million of investor funds was deposited into the Bank Accounts;

(b) approximately $2.3 million from other sources were deposited into the Bank Accounts;

(c) approximately $3.5 million was transferred from the Bank Accounts to Brokerage Accounts and lost through trading. This amount is net of transfers from the Brokerage Accounts back to the Bank Accounts;

(d) approximately $7.7 million was paid to investors from the Bank Accounts to satisfy monthly returns and redemption payments;

(e) approximately $900,000 was paid out of the Bank Accounts for personal type payments by Vuong and Quach, including credit card payments, payments to retailers and cash withdrawals. This amount is net of cash advances and cash deposits made by Vuong and Quach and their relatives; and

(f) approximately $2.6 million in other payments were paid out of the Bank Accounts.

As a result, approximately $4.7 million of investors' monies have not been repaid to investors.

18. During the 60 month period of January 1, 2007 to December 31, 2011, the Respondents' trading activities in the Brokerage Accounts on an accumulated basis resulted in loss positions at month end in 53 of the 60 months. In excess of $3.5 million in trading losses were sustained in the Brokerage Accounts.

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

19. During the Material Time, the Respondents traded in securities or engaged in, or held themselves out as engaging in the business of trading in securities without being registered to do so contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and subsection 25(1) of the Act for the period on and after September 28, 2009.

20. During the Material Time,, the Respondents distributed securities without filing a preliminary prospectus and obtaining a receipt therefore from the Director contrary to subsection 53(1) of the Act.

21. During the Material Time, the Respondents engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on persons or companies purchasing securities contrary to subsection 126.1(b) of the Act.

22. During the Material Time, Vuong and Quach, being officers and directors of Systematech, authorized, permitted or acquiesced in breaches by Systematech of sections 25, 53 and 126.1 contrary to section 129.2 of the Act.

23. The Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

24. Staff reserves the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 31st day of October, 2012.

1.3 News Releases

1.3.1 OSC Announces New Members of Investor Advisory Panel

FOR IMMEDIATE RELEASE
November 2, 2012

OSC ANNOUNCES NEW MEMBERS OF INVESTOR ADVISORY PANEL

TORONTO – The Ontario Securities Commission (OSC) has announced four new members of its Investor Advisory Panel and the Panel's new Chair. The Panel comments on OSC proposals, including rules, policies and the annual Statement of Priorities, brings forward policy issues for consideration and advises on the effectiveness of the OSC's investor protection initiatives.

The new members joining the Panel will each serve a two-year term:

Connie Craddock	Former Vice-President of Public Affairs at the Investment Industry Regulatory Organization of Canada (IIROC).
Alan Goldhar	Chief Investment Officer at the Office of the Public Guardian and Trustee in Ontario's Ministry of the Attorney General.
Ken Kivenko	Long-time investor advocate, President and Owner of Kenmar, which assists investors with dispute resolution.
Cary List	President and CEO of the Financial Planning Standards Council (FPSC). Former Academic Director at George Brown College.

The Panel has been expanded to eight members from seven. The new members join continuing members Nancy Averill, Paul Bates, Stan Buell and Steven Garmaise. Mr. Bates has been appointed Chair of the Panel and will serve a one-year term.

"The Panel has become an important voice for investors in the regulatory process, and the new members have been selected to ensure that the Panel continues to represent a broad range of relevant experience, skills, knowledge and perspectives," said Mary Condon, Vice-Chair of the OSC. "I am pleased that Paul Bates has agreed to extend his term and serve as Chair of the Panel."

As an academic and former senior executive in the financial services industry, Mr. Bates has extensive knowledge of the capital markets and securities regulation. He is Special Advisor to the President and former Dean of Business at the DeGroote School of Business, McMaster University. He is a former Commissioner to the Ontario Securities Commission and is Chair of the Investor Education Fund, a non-profit organization established by the OSC.

Full biographical information on all Panel members, along with details on IAP meetings and other activity is available in the Investor Advisory Panel section of the OSC website.

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1.3.2 OSC Announces New Members to its Executive Management Team

FOR IMMEDIATE RELEASE
November 7, 2012

OSC ANNOUNCES NEW MEMBERS TO ITS EXECUTIVE MANAGEMENT TEAM

TORONTO – The Ontario Securities Commission (OSC) has welcomed new members to its Executive Management Team, which is providing strong leadership in implementing the strategic direction of the OSC as a proactive, agile and vigilant securities regulator.

- Eleanor Farrell has joined the OSC as the Director of its new Office of the Investor, having previously worked at the Canada Pension Plan Investment Board and in private practice at Osler, Hoskin and Harcourt LLP.

- Debra Foubert returns to the OSC as Director, Compliance and Registrant Regulation. Previously, she was Associate Vice President, Compliance, at TD Bank Financial Group. In 2010, Ms. Foubert led the initial development of the OSC Derivatives Branch while on secondment from TD Bank Financial Group.

- H.R. (Harold) Goss has joined the OSC as Director, Corporate Services. Most recently, Mr. Goss served as Chief Financial Officer and Treasurer at the Ontario Realty Corporation.

- Huston Loke has joined the OSC as Director, Corporate Finance. Mr. Loke brings a deep understanding of capital markets, including derivatives and other complex instruments, from his previous experience at DBRS Limited.

In addition, Jill Homenuk was promoted to Director, Communications and Public Affairs, from her previous position as Senior Manager, Communications. Leslie Byberg accepted a new position as Director, Strategy and Risk, to lead the development of internal capacity in risk management and strategic development. She previously served as Director, Corporate Finance.

"Our Executive Management Teams brings a wealth of experience, technical expertise and talent to the OSC as it responds to the challenge of regulating complex, interconnected capital markets in the best interests of investors and market participants," said Maureen Jensen, Executive Director. "The new executives will help build on the strengths of our existing management team as we work together in important areas such as investor engagement, policy development, compliance oversight, risk analysis and the OSC's commitment to being an attractive, modern, high-performing workplace."

An organization chart with the full executive team of the OSC is available on the OSC website.

The OSC administers and enforces securities legislation in the province of Ontario. The OSC's statutory mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

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1.4 Notices from the Office of the Secretary

1.4.1 Vincent Ciccone et al.

FOR IMMEDIATE RELEASE
November 1, 2012

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

AND

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

TORONTO – Following the hearing on September 7 and 13, 2012 in the above noted matter, the Commission issued its Reasons for Decision on Disclosure.

A copy of the Reasons for Decision on Disclosure dated October 31, 2012 is available at **www.osc.gov.on.ca**.

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1.4.2 Sino-Forest Corporation et al.

FOR IMMEDIATE RELEASE
November 1, 2012

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

AND

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

TORONTO – The Commission issued an Order pursuant to section 144 of the *Securities Act* in the above named matter.

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

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1.4.3 Caroline Frayssignes Cotton

FOR IMMEDIATE RELEASE
November 2, 2012

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

AND

IN THE MATTER OF
CAROLINE FRAYSSIGNES COTTON

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to December 7, 2012 at 10:00 a.m.

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

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1.4.4 Amendment and Consolidation of the Rules of Procedure of the OSC as of October 25, 2012

FOR IMMEDIATE RELEASE
November 5, 2012

AMENDMENT AND CONSOLIDATION OF THE RULES OF PROCEDURE OF THE ONTARIO SECURITIES COMMISSION AS OF OCTOBER 25, 2012

TORONTO – The Rules of Procedure of the Ontario Securities Commission (Commission) came into force on April 1, 2009 ((2009), 32 O.S.C.B. 1991), and apply to all proceedings before the Commission commencing on or after that date (Rules).

Amendment of the Rules

On October 25, 2012, the Commission approved a housekeeping amendment to subrule 7.2(3) to remove the requirement that in the case of a withdrawal of a Statement of Allegations or of an application under Rule 2, the Statement of Allegations or the application shall be removed from the Commission's website. The Commission also approved a housekeeping amendment to subrule 7.2(1) to clarify that a person or company that has filed a request for leave to intervene may withdraw the request at any time before a final determination of it by a Panel.

The amendments to the Rules were adopted pursuant to section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (SPPA).

These amendments take effect immediately and apply to all proceedings before the Commission, including proceedings commenced by a Notice of Hearing issued by the Office of the Secretary prior to the adoption of the amended Rules.

Consolidation of the Rules as of October 25, 2012

There have been two previous amendments to the Rules.

On July 20, 2010, the Commission approved the adoption of a new Rule 12 of the Rules concerning Settlement Agreements. The new Rule 12 took effect on that date, and applies to all proceedings before the Commission, including proceedings commenced by a Notice of Hearing issued prior to the adoption of the new Rule ((2010), 33 O.S.C.B. 6653).

On August 31, 2010, the Commission approved amendments to bring the Rules into conformity with amendments to the SPPA which replaced "counsel or an agent" with "representative". The term "representative" is defined in subsection 1(1) of the SPPA to mean "in respect of a proceeding to which this Act applies, a person authorized under the Law Society Act to represent a person in that proceeding" and reflects amendments to the *Law Society Act*, R.S.O. 1980, c. L.8, that gave the Law Society of Upper Canada power to license and regulate non-lawyer agents or "paralegals".

The Commission also approved a housekeeping amendment to subrule 2.5(2) of the Rules, replacing the 2 day deadline for publication of initiating documents in the Ontario Securities Commission Bulletin (Bulletin), which is published weekly, with a requirement for publication in the Bulletin "as soon as possible". There was no change to the requirement that documents "be posted on the Website upon confirmation of service on the parties or, in any event, no later than 2 days following the issuance of the Notice of Hearing".

These amendments took effect immediately and apply to all proceedings before the Commission, including proceedings commenced by a Notice of Hearing issued by the Office of the Secretary prior to the adoption of the amended Rules.

The *Rules of Procedure (Amendment and Consolidation as of August 31, 2010)* were published in the Bulletin ((2010), 33 O.S.C.B. 8017) and are available on the Commission's website.

Publication of the Rules

The *Rules of Procedure (Amendment and Consolidation as of October 25, 2012)* are published in chapter 5 of this issue of the OSC Bulletin and are available on the Commission's website.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

1.4.5 Systematech Solutions Inc. et al.

FOR IMMEDIATE RELEASE
November 5, 2012

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

AND

IN THE MATTER OF
SYSTEMATECH SOLUTIONS INC.,
APRIL VUONG AND HAO QUACH

TORONTO – The Office of the Secretary issued a Notice of Hearing on October 31, 2012 setting the matter down to be heard on December 11, 2012 at 9:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated October 31, 2012 and Statement of Allegations of Staff of the Ontario Securities Commission dated October 31, 2012 are available at **www.osc.gov.on.ca**.

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1.4.6 Bunting & Waddington Inc. et al.

FOR IMMEDIATE RELEASE
November 5, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing of this matter be adjourned to January 18, 2013 at 11:00 a.m. for continuation of the confidential pre-hearing conference to provide the panel with a status update.

The pre-hearing conference will be held *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 Man Investments Canada Corp. and GLG Income Opportunities Fund

Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – relief granted from seed capital requirements for commodity pools in NI 81-104 – manager permitted to redeem seed investment in pool provided pool has received subscriptions from investors totalling at least $5 million and provided the manager maintains working capital as required for investment fund manager under National Instrument 31-103 Registration Requirements and Exemptions – National Instrument 81-104 Commodity Pools.

Applicable Legislative Provisions

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

September 25, 2012

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

AND

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

AND

IN THE MATTER OF
MAN INVESTMENTS CANADA CORP.
(the Manager or the Filer)
AND GLG INCOME OPPORTUNITIES FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Fund, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting exemptive relief (the **Requested Relief**), pursuant to Part 10 of National Instrument 81-104 *Commodity Pools* (NI 81-104), from subsection 3.2(2)(a) of NI 81-104 which requires a commodity pool to have invested in it at all times an amount invested in securities that were issued pursuant to subsection 3.2(1)(a) of NI 81-104 and had an aggregate issue price of $50,000 (the Seed Investment) to permit the Filer to ask the Fund to redeem the Filer's Seed Investment.

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (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 *Canada Business Corporations Act* and is the trustee and manager of the Fund.

2. The Manager's head office is located in Toronto, Ontario.

3. The Manager is registered as an Investment Fund Manager in Ontario, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

4. Concurrently with this application, the Manager filed an application on behalf of the Fund for a decision under the Legislation granting, among other things, an exemption from the requirements in paragraphs 2.5(2)(a) and (c) of NI 81-102 to permit the Fund to gain exposure to securities of GLG Prospect Mountain Ltd. (**GLG Ltd.**).

5. None of the Manager, the Fund or GLG Ltd. is in default of any securities legislation in any of the Jurisdictions.

The Fund

6. The Fund is a mutual fund subject to NI 81-102 and a commodity pool, as such term is defined under NI 81-104, in that the Fund has adopted fundamental investment objectives that permit the Fund to gain exposure to or use or invest in specified derivatives that is not permitted under NI 81-102.

7. The Fund prepared and filed in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) a long form preliminary prospectus dated August 30, 2012 on SEDAR (the **Preliminary Prospectus**) with respect to the proposed offering (the **Offering**) of Class L Units and Class M Units of the Fund (collectively, the **Units**), a receipt for which was issued on August 31, 2012.

8. The Fund will prepare and file a long form final prospectus in accordance with NI 41-101 (the **Final Prospectus**); upon obtaining a receipt therefor, the Units will be qualified for distribution and the Fund will be a reporting issuer in each of the Jurisdictions.

9. As disclosed in the Preliminary Prospectus, the Fund's investment objectives will be to: (i) provide holders of Units (the **Unitholders**) with monthly-tax advantaged distributions; (ii) provide the opportunity for long-term appreciation for the Unitholders; and (iii) profit over the entire credit cycle by generally investing or otherwise gaining exposure across the capital structure of leveraged companies and other issuers often driven by a pending event or catalyst.

10. The Fund will be created to provide exposure to a portfolio comprised primarily of companies with credit, legal, structural or other risks through a broad range of investment instruments which may include high yield bonds, below-par/distressed bank loans, par/near-par bank loans, debtor-in-possession loans, trade claims or receivables, asset-backed securities, convertible and municipal bonds, credit default swaps, credit default indexes, preferred and common stock, warrants and other rights to purchase shares, collateralized debt, bond and loan obligations, futures, options, swaps and other derivative contracts, bridge loans, mezzanine loans, and other types of debt instruments (collectively, the **Portfolio**), to be held by GLG Ltd.

11. The Fund will obtain exposure to economic returns of the Portfolio through one or more forward sale agreements (each a **Forward Agreement**) entered into with one or more Canadian chartered banks and/or their affiliates (each a **Counterparty**).

12. The Fund will invest substantially all of the proceeds of the Offering in a specified portfolio of common shares of Canadian public companies (the **Common Share Portfolio**) that are Canadian securities as defined in subsection 39(6) of the *Income Tax Act* (Canada).

13. Under the terms of the Forward Agreement, the Counterparty will agree to pay to the Fund on the scheduled settlement date of a Forward Agreement (the **Forward Date**), as the purchase price for the Common Share Portfolio, an amount based on the value of the Portfolio on the Forward Date.

14. The return to the Fund, and consequently to the Unitholders, will by virtue of the Forward Agreements depend on the net redemption proceeds that would be received by holders on a redemption of the Canadian dollar denominated redeemable notes, proposed to be issued by GLG Ltd., having an aggregate value equal to the aggregate net asset value of the Portfolio.

15. The Fund does not intend to list the Units on any stock exchange.

GLG Ltd. and the Portfolio

16. GLG Ltd. is an exempted company with limited liability incorporated in the Cayman Islands on August 22, 2012. GLG Ltd. will acquire and maintain the Portfolio.

17. GLG Ore Hill LLC (the **GLG Manager**) will act as manager and investment manager of GLG Ltd. and will actively manage the Portfolio.

18. The GLG Manager, a Delaware limited liability company, is ultimately owned by Man Group plc and is an affiliate of the Manager.

19. GLG Ltd. prepared and filed a long form non-offering preliminary prospectus in accordance with NI 41-101 in Ontario and Québec on September 11, 2012, a receipt for which was issued on September 12, 2012, and intends to file in accordance with NI 41-101 and obtain a receipt for a long form final prospectus, pursuant to which it will become a reporting issuer under the *Securities Act* (Ontario) and *Securities Act* (Québec) and subject to continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). As a result, the financial statements and other reports required to be filed by GLG Ltd. under NI 81-106 will be available to the Unitholders on SEDAR.

20. GLG Ltd. will be a mutual fund because holders of its securities will be entitled to receive on demand, an amount computed by reference to the NAV of the Portfolio. However, GLG Ltd. will not distribute

any securities under its non-offering prospectus and accordingly GLG Ltd. will be a mutual fund to which NI 81-106 applies, but will not be subject to requirements of either NI 81-102 or NI 81-104.

21. Though not subject to NI 81-104, GLG Ltd. will be a commodity pool as such term is defined in NI 81-104 in that GLG Ltd. has adopted fundamental investment objectives that permit it to use specified derivatives in a manner that is not permitted under NI 81-102.

22. GLG Ltd. has adopted the investment restrictions contained in NI 81-102 except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Manager.

Seed Capital Relief

23. Paragraph 3.2(2)(a) of NI 81-104 states that a commodity pool may redeem, repurchase or return any amount invested in securities issued upon the investment in the commodity pool referred to in paragraph 3.2(1)(a) of NI 81-104 only if securities issued under paragraph 3.2(1)(a) of NI 81-104 that had an aggregate issue price of $50,000 remain outstanding and at least $50,000 invested under paragraph 3.2(1)(a) remains in the commodity pool.

24. If the Fund was governed by the provisions of NI 81-102 in this regard, the Fund would be allowed to redeem securities issued upon the seed capital investment in the Fund made by the Filer upon the Fund having received subscriptions totaling not less than $500,000 from persons other than the persons referred to in paragraph 3.1(1)(a) of NI 81-102.

25. The Filer wishes the Fund to redeem the Filer's Seed Investment in the Top Fund subject to the conditions set out in this decision.

26. The Filer understands that the policy rationale behind the permanent seed capital requirement for commodity pools under NI 81-104 is to encourage promoters to ensure that the commodity pool is being properly run for the benefit of the investors by requiring that the promoter of a commodity pool, or a related party, will itself be an investor in the commodity pool at all times.

27. As the trustee and manager of the Fund, the Filer will be obliged in accordance with the terms of the declaration of trust governing the Fund, and in accordance with legislative requirements, to at all times act honestly and in good faith, and in the best interest of the Fund, and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

28. Having regard to the Filer's fiduciary obligation as set out above, not having $50,000 invested in the Fund at all times will not change how the Filer manages the Fund. The Filer will manage the Fund in accordance with the Legislation and its contractual requirements and the Filer's interests will generally be aligned to those of investors in the Fund.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted provided that:

1. the Filer may not ask the Fund to redeem any of the Filer's Seed Investment until $5 million has been received by the Fund from persons and companies other than the persons and companies referred to in paragraph 3.2(1)(a) of the NI 81-104;

2. the Fund will disclose in its Final Prospectus the basis on which the Fund may redeem the Filer's Seed Investment;

3. if, after the Fund has redeemed the Filer's Seed Investment, the value of the Units subscribed for by investors other than the persons and companies referred to in paragraph 3.2(1)(a) of NI 81-104 drops below $5 million for more than 30 consecutive days, the Filer will, unless the Fund is in the process of being dissolved or terminated, reinvest $50,000 in the securities of the Fund and maintain that investment until condition (1) is again satisfied; and

4. the Filer, as investment fund manager, will at all times maintain excess working capital of a minimum of $100,000 or any higher amount that may be required in compliance with NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

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

2.1.2 Premium Income Corporation and Strathbridge Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual fund corporation and its investment fund manager exempted from the dealer registration requirement for certain limited trading activities to be carried out by these parties in connection with a rights offering by the mutual fund corporation – The limited trading activities involve: i) the forwarding of a short form prospectus, and the distribution of rights to acquire securities of the mutual fund corporation, to existing holders of securities of the mutual fund corporation, and ii) the subsequent distribution of securities to holders of these rights, upon the holders' exercise of the rights, through an appropriately registered dealer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).
Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.5.
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 3.1, 3.42.

October 30, 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
PREMIUM INCOME CORPORATION
(the Fund)

AND

STRATHBRIDGE ASSET MANAGEMENT INC.
(the Manager and, together with the Fund, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filers from the dealer registration requirement in the Legislation in respect of certain trades (the **Rights Offering Activities**) to be carried out by the Manager, on behalf of the Fund, in connection with a proposed offering (the **Rights Offering**) of rights (the **Rights** and each, a **Right**) to acquire units (**Units**) of the Fund, such offering to be made in the Jurisdiction and each of the Passport Jurisdictions (as defined below) pursuant to a (final) short form prospectus (the **Rights Prospectus**).

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

Interpretation

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

Representations

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

1. The Fund is a mutual fund corporation incorporated under the laws of the Jurisdiction by articles of incorporation dated August 27, 1996, as amended September 29, 2010. The Fund is a reporting issuer in the Jurisdiction and each of the Passport Jurisdictions.

2. The Manager is amalgamated under the federal laws of Canada by articles of amalgamation dated September 1, 2010, as amended September 14, 2011.

3. The Manager acts as the investment fund manager and portfolio manager for the Fund. The Manager is registered as an investment fund manager, portfolio manager and exempt market dealer under the Legislation.

4. The head office of each of the Filers is located in Toronto, Ontario.

5. The Filers are not in default of any of their obligations under securities legislation in any jurisdiction.

6. The authorized share capital of the Fund consists of an unlimited number of preferred shares (the

Preferred Shares), an unlimited number of class A shares (the **Class A Share**s), an unlimited number of class C shares, class D shares, class E shares, class C preferred shares, class D preferred shares, class E preferred shares and 1,000 class B shares. The Preferred Shares and the Class A Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbols PIC.PR.A and PIC.A, respectively.

7. The investment portfolio of the Fund consists primarily of common shares of: Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank of Canada and The Toronto-Dominion Bank (the **Banks**). The Fund is subject to certain investment restrictions that, among other things, limit the securities it may acquire for its portfolio.

8. The investment objectives of the Fund are: (a) to provide holders of its Preferred Shares with cumulative preferential quarterly cash distributions in the amount of $0.215625 per Preferred Share representing a yield on the original issue price of $15.00 per Preferred Share of 5.75% per annum; (b) to provide holders of its Class A Shares with quarterly cash distributions equal to the amount, if any, by which the net realized capital gains, dividends and option premiums (other than option premiums in respect of options outstanding at year-end) earned on the Fund's portfolio in any year, net of expenses and loss carryforwards, exceed the amount of the distributions paid on the Preferred Shares; and (c) to return the original issue price to holders of both Preferred Shares and Class A Shares at the time of redemption of such shares.

9. On October 30, 1996, the Fund completed its initial public offering of 4,000,000 Preferred Shares and 4,000,000 Class A Shares pursuant to a (final) prospectus dated October 17, 1996. Class A Shares and Preferred Shares are issued only on the basis that an equal number of Class A Shares and Preferred Shares will be issued and outstanding at all times.

10. The Fund may, from time to time, write covered call options in respect of all or part of the common shares in its portfolio. From time to time, the Fund may also hold a portion of its assets in cash equivalents, which may be used to provide cover in respect of the writing of cash-covered put options in respect of securities in which the Fund is permitted to invest. From time to time, the Fund may also hold short-term debt instruments issued by the Government of Canada or a province of Canada or by one or more of the Banks.

11. The Fund does not engage in the continuous distribution of its securities.

12. Under the Rights Offering, each holder of a Class A Share or Preferred Share will be entitled, as at a specific record date, to receive, for no consideration, one Right for each Class A Share held and each Preferred Share held by the holder. Two Rights will entitled the holder to subscribe for one Unit (consisting of one Preferred Share and one Class A Share), under a basic subscription privilege, at a subscription price to be specified in the Rights Prospectus, prior to the expiry of the Rights. Holders of Rights in Canada are permitted to sell or transfer their Rights instead of exercising their Rights to subscribe for Units. Holders of Rights who exercise their Rights under the basic subscription privilege may also subscribe, *pro rata*, for additional Units that are not subscribed for by other holders under the basic subscription privilege, pursuant to the terms of an additional subscription privilege. The term of the Rights is expected to be between 21 and 60 days.

13. The Fund intends to apply to list the Rights to be distributed under the Rights Prospectus on the TSX.

14. The Rights Offering Activities will consist of:

    (a) the distribution of the Rights Prospectus and the issuance of Rights to the holders of Class A Shares and Preferred Shares (as at the record date specified in the Rights Prospectus), after the Rights Prospectus has been filed, and receipts obtained, under the Legislation and the securities legislation of each Passport Jurisdiction; and

    (b) the distribution of Units to holders of the Rights, upon the exercise of Rights by their holders, through a registered dealer that is registered in categories that permit the registered dealer to make such distributions.

15. Because each of the Filers is in the business of trading, the Rights Offering Activities would require each of the Filers to register as a dealer in the appropriate category in the absence of this decision (or another available exemption from the dealer registration requirement).

16. Section 8.5 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provides that, after March 26, 2010, the exemptions from the dealer registration requirements set out in section 3.1 [*Rights offering*] and section 3.42 [*Conversion, exchange, or exercise*] of NI 45-106 no longer apply.

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 Fund, and the Manager acting on behalf of the Fund, are not subject to the dealer registration requirement in respect of the Rights Offering Activities.

"Sarah B. Kavanagh"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

2.1.3 Man Investments Canada Corp. and GLG Income Opportunities Fund

Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – Relief granted to a commodity pool from subsection 2.1(1) and paragraphs 2.5(2)(a) and (c) and section 3.3 of National Instrument 81-102 Mutual Funds to permit the commodity pool to gain exposure to another investment fund in a two-tier structure, subject to certain conditions and to pay the organizational costs of its initial public offering – The bottom fund will observe NI 81-102, except as permitted by NI 81-104 and in accordance with exemptive relief obtained by the top fund including that the bottom fund may engage in short selling – The top fund is not in continuous distribution – National Instrument 81-102 – Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.5(2)(a) and (c), 3.3.

September 26, 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
MAN INVESTMENTS CANADA CORP. (the Manager or the Filer) AND
GLG INCOME OPPORTUNITIES FUND (Fund)

DECISION

Background:

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Fund, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting exemptive relief, pursuant to Part 19 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), from the following provisions of NI 81-102, as further described below:

1. subsection 2.1(1) and paragraphs 2.5(2)(a) and (c) of NI 81-102 to permit the Fund to invest indirectly in securities of GLG Prospect Mountain Ltd (**GLG Ltd.**), which has adopted the investment restrictions contained in NI 81-102 and is managed in accordance with these restrictions, except as otherwise permitted by National Instrument 81-104 *Commodity Pools* (**NI 81-104**), and in accordance with any exemptions therefrom obtained by the Fund including that GLG Ltd. may engage in short selling in accordance with the terms of this decision; and

2. section 3.3 of NI 81-102 to permit the Fund to pay for its organization costs;

(together, the **Requested Relief**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (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 *Canada Business Corporations Act* and is the trustee and manager of the Fund.

2. The Manager's head office is located in Toronto, Ontario.

3. The Manager is registered as an Investment Fund Manager in Ontario, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

4. None of the Manager, the Fund or GLG Ltd. is in default of any securities legislation in any of the Jurisdictions.

The Fund

5. The Fund is a mutual fund subject to NI 81-102 and a commodity pool, as such term is defined under NI 81-104, in that the Fund has adopted fundamental investment objectives that permit the Fund to gain exposure to or use or invest in specified derivatives that is not permitted under NI 81-102.

6. The Fund prepared and filed in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) a long form preliminary prospectus dated August 30, 2012 on SEDAR (the Preliminary Prospectus) with respect to the proposed offering (the **Offering**) of Class L Units and Class M Units of the Fund (collectively, the **Units**), a receipt for which was issued on August 31, 2012.

7. The Fund will prepare and file a long form final prospectus in accordance with NI 41-101 (the **Final Prospectus**); upon obtaining a receipt therefor, the Units will be qualified for distribution and the Fund will be a reporting issuer in each of the Jurisdictions.

8. As disclosed in the Preliminary Prospectus, the Fund's investment objectives are to: (i) provide holders of Units (the **Unitholders**) with monthly-tax advantaged distributions; (ii) provide the opportunity for long-term appreciation for the Unitholders; and (iii) profit over the entire credit cycle by generally investing or otherwise gaining exposure across the capital structure of leveraged companies and other issuers often driven by a pending event or catalyst.

9. The Fund will be created to provide exposure to a portfolio comprised primarily of companies with credit, legal, structural or other risks through a broad range of investment instruments which may include high yield bonds, below-par/distressed bank loans, par/near-par bank loans, debtor-in-possession loans, trade claims or receivables, asset-backed securities, convertible and municipal bonds, credit default swaps, credit default indexes, preferred and common stock, warrants and other rights to purchase shares, collateralized debt, bond and loan obligations, futures, options, swaps and other derivative contracts, bridge loans, mezzanine loans, and other types of debt instruments (collectively, the **Portfolio**), to be held by GLG Ltd.

10. The Fund will obtain exposure to economic returns of the Portfolio through one or more forward sale agreements (each a **Forward Agreement**) entered into with one or more Canadian chartered banks and/or their affiliates (each a **Counterparty**).

11. The Fund will invest substantially all of the proceeds of the Offering in a specified portfolio of common shares of Canadian public companies (the **Common Share Portfolio**) that are Canadian securities as defined in subsection 39(6) of the *Income Tax Act* (Canada).

12. Under the terms of the Forward Agreement, the Counterparty will agree to pay to the Fund on the scheduled settlement date of a Forward Agreement (the **Forward Date**), as the purchase price for the Common Share Portfolio, an amount based on the value of the Portfolio on the Forward Date.

13. The return to the Fund, and consequently to the Unitholders, will by virtue of the Forward Agreements depend on the net redemption proceeds that would be received by holders on a redemption of the Canadian dollar denominated redeemable notes, proposed to be issued by GLG Ltd., having an aggregate value equal to the aggregate net asset value of the Portfolio.

14. The Fund does not intend to list the Units on any stock exchange.

GLG Ltd. and the Portfolio

15. GLG Ltd. is an exempted company with limited liability incorporated in the Cayman Islands on August 22, 2012. GLG Ltd. will acquire and maintain the Portfolio.

16. GLG Ore Hill LLC (the **GLG Manager**) will act as manager and investment manager of GLG Ltd. and will actively manage the Portfolio.

17. The GLG Manager, a Delaware limited liability company, is ultimately owned by Man Group plc and is an affiliate of the Manager.

18. GLG Ltd. prepared and filed a long form non-offering preliminary prospectus in accordance with NI 41-101 in Ontario and Québec on September 11, 2012, a receipt for which was issued on September 12, 2012, and intends to file in accordance with NI 41-101 and obtain a receipt for a long form final prospectus, pursuant to which it will become a reporting issuer under the *Securities Act* (Ontario) and *Securities Act* (Québec) and subject to continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). As a result, the financial statements and other reports required to be filed by GLG Ltd. under NI 81-106 will be available to the Unitholders on SEDAR.

19. GLG Ltd. will be a mutual fund because holders of its securities will be entitled to receive on demand, an amount computed by reference to the net asset value (**NAV**) of the Portfolio. However, GLG Ltd. will not distribute any securities under its non-offering prospectus and accordingly GLG Ltd. will be a mutual fund to which NI 81-106 applies, but will not be subject to requirements of either NI 81-102 or NI 81-104.

20. Though not subject to NI 81-104, GLG Ltd. will be a commodity pool as such term is defined in NI 81-104 in that GLG Ltd. has adopted fundamental investment objectives that permit it to use specified derivatives in a manner that is not permitted under NI 81-102.

21. GLG Ltd. has adopted the investment restrictions contained in NI 81-102 and the Portfolio is managed in accordance with these restrictions, except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Manager including that GLG Ltd. may engage in short selling as more fully described below.

22. The GLG Manager will monitor GLG Ltd.'s compliance with its investment restrictions for the Portfolio.

23. The indirect investment of the Fund in the securities of GLG Ltd. pursuant to the Forward Agreement will constitute more than 10% of the NAV of the Fund.

24. The indirect investment by the Fund in the securities of GLG pursuant to the Forward Agreement will comply with the requirements of section 2.5 of NI 81-102, except that, contrary to subsections 2.5(a) and (c) of NI 81-102, GLG Ltd. is a mutual fund that:

    (a) is not subject to NI 81-102 and will never have offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Distributions*; and

    (b) will not be a reporting issuer in any jurisdiction that the Fund is a reporting issuer in except Ontario and

Fund on Fund Relief

25. The Fund will only invest indirectly in securities of GLG Ltd. in accordance with its investment objectives and investment restrictions.

26. Since GLG Ltd. has adopted the applicable investment restrictions set out in NI 81-102, as modified by NI 81-104 and subject to any exemptions, the Fund would be allowed to invest directly in the Portfolio and therefore the Fund's investment exposure to securities of GLG Ltd. does not pose any additional risk to the Fund. In addition, the investment strategies utilized by GLG Ltd. in respect of the Portfolio are consistent with the Fund's fundamental investment objectives and strategies as set forth in the Preliminary Prospectus.

27. As a reporting issuer under the *Securities Act* (Ontario) and *Securities Act* (Québec), the continuous and timely disclosure required to be made and filed by GLG Ltd. in respect of the Portfolio pursuant to NI 81-106 will be available to Unitholders on SEDAR.

28. The Fund was created to provide exposure to the Portfolio and that is to be the Fund's principal investment.

Short Selling

29. GLG Ltd. wishes to be able to engage in short selling.

30. The GLG Manager will monitor the short positions of GLG Ltd. at least as frequently as daily.

31. Each short sale made by GLG Ltd. will comply with its investment objectives. In order to effect short sales of securities, GLG Ltd. will borrow securities from either its custodian or a dealer (in either case, a **Borrowing Agent**), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

Reimbursement of Organization Costs

32. It is proposed, as disclosed in the Preliminary Prospectus, that some or all of the initial costs of formation and organization of the Fund, including the preparation and filing of the Preliminary Prospectus and the Final Prospectus (the **Organization Costs**), be borne initially by the Fund rather than the promoters or the Manager.

33. The closing of the Offering will not proceed if the minimum offering is not achieved and the only investors in the Fund will be those who acquire securities on the initial closing or any subsequent closings, if any, under the Final Prospectus. All investors purchasing pursuant to the Offering will be subject to their pro-rata share of the expenses of the Offering.

34. The costs are not expected to have a significant impact on the net asset value of the Fund on completion of the Offering, as would generally be the case with conventional mutual funds.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted provided that:

1. the Fund is a commodity pool subject to NI 81-102 and NI 81-104;

2. GLG Ltd. complies with the investment restrictions contained in NI 81-102 and the Portfolio is managed in accordance with those restrictions, except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Fund including that GLG Ltd. may engage in short selling in accordance with the terms of this decision;

3. the Preliminary Prospectus discloses, and the Final Prospectus and any annual information form filed will disclose, that the Fund will obtain exposure to securities of GLG Ltd. and the risks associated with such an investment;

4. no securities of GLG Ltd. are distributed in Canada other than to the Counterparty under the Forward Agreement or otherwise to a counterparty under a forward agreement;

5. the exposure of the Fund to securities of GLG Ltd. is in accordance with the fundamental investment objectives of the Fund;

6. the indirect investment by the Fund in the securities of GLG Ltd. is made in compliance with each provision of NI 81-102, except subsection 2.1(1) and paragraphs 2.5(2)(a) and (c) of NI 81-102 as described in this decision;

7. each short sale made by GLG Ltd. will comply with its investment objectives;

8. the Fund will have disclosed in the Final Prospectus and GLG Ltd. will have disclosed in its prospectus the following information:

    a. a description of short selling, how GLG Ltd. engages in short selling, the risks associated with short selling and, in the investment strategies section, GLG Ltd.'s strategy with respect to short selling;

b. that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

c. who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the GLG Manager or other applicable parties in the risk management process;

d. the trading limits and controls on short selling and who is responsible for authorizing the trading and placing limits or other controls on the trading;

e. whether there are individuals or groups that monitor the risks independent of those who trade; and

f. whether risk measurement procedures or simulations are used to test the Portfolio under stress conditions;

9. GLG Ltd. and the GLG Manager will implement the following controls when conducting short sales of securities:

a. securities will be sold short for cash, with GLG Ltd. assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

b. the short sales will be effected through market facilities through which the securities sold short would normally be bought and sold;

c. GLG Ltd. will receive cash for securities sold short within normal trading settlement periods for the market in which the short sale is effected;

d. the securities sold short will be liquid securities that satisfy either (i) or (ii) below:

i. the securities are listed and posted for trading on a stock exchange; and

A. the issuer of the security has a market capitalization of not less than CDN$300 million, or the equivalent thereof at the time the short sale is effected; or

B. GLG Ltd.'s portfolio advisor has prearranged to borrow the securities for the purpose of such sale; or

ii. the securities are fixed-income securities, bonds, debentures or other evidences of indebtedness of, or guaranteed by, any issuer;

10. the securities sold short will not include any of the following:

a. a security that a mutual fund subject to NI 81-102 is otherwise not permitted by securities legislation to purchase at the time of the short sale transaction;

b. an illiquid asset;

c. a security of an investment fund other than an index participation unit;

11. the aggregate market value of all securities sold short by GLG Ltd. does not exceed 40% of the NAV of GLG Ltd. on a daily marked-to-market basis;

12. the aggregate market value of all securities of a particular issuer sold short by GLG Ltd., whether direct short positions or indirect short positions through specified derivatives, does not exceed 10% of the NAV of GLG Ltd. on a daily marked-to-market basis;

13. GLG Ltd. will deposit its assets with the Borrowing Agent as security in connection with the short sale transaction;

14. except where the Borrowing Agent is GLG Ltd.'s custodian or sub-custodian, when GLG Ltd. deposits portfolio assets with a Borrowing Agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the Borrowing Agent does not, when aggregated with the market value of portfolio assets already held by the Borrowing Agent as security for outstanding short sales of securities by GLG Ltd., exceed 10% of the NAV of GLG Ltd. at the time of deposit;

15. GLG Ltd. holds "cash cover" (as defined in NI 81-102) in an amount, including GLG Ltd.'s assets deposited with Borrowing Agents as security in connection with short sale transaction, that is at least 150% of the aggregate market value of all securities sold short by GLG Ltd. on a daily marked-to-market basis;

16. GLG Ltd. will not use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover;

17. GLG will not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless the dealer is registered dealer in Canada and is a member of Investment Industry Regulatory Organization of Canada;

18. GLG will not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside of Canada unless that dealer:

    a. is a member of a stock exchange and is subject to a regulatory audit; and

    b. has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of $50 million;

19. the security interest provided by GLG Ltd. over any of its assets that is required to enable GLG Ltd. to effect short sale transaction will be made in accordance with industry practice for that type of transaction and relate only to obligations arising under such short sale transactions;

20. GLG Ltd. and the GLG Manager will maintain appropriate internal controls regarding its short sales prior to conducting any short sales, including written policies and procedures, risk management controls and proper books and records; and

21. GLG Ltd. and the GLG Manager will keep proper books and records of short sales and all of its assets deposited with Borrowing Agents as security.

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

2.1.4 Man Investments Canada Corp. and GLG Income Opportunities Fund

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from section 10.3 of NI 81-102 to permit a commodity pool to process redemptions of its units at their NAV per unit determined on a weekly redemption date even though the fund calculated NAV on each business day.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 10.3, 19.1.

September 27, 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
MAN INVESTMENTS CANADA CORP.
(the Manager or the Filer) AND
GLG INCOME OPPORTUNITIES FUND (Fund)

DECISION

Background:

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Fund, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting exemptive relief, pursuant to Part 19 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), from the requirement in section 10.3 of NI 81-102 that the redemption price of a security of a mutual fund to which a redemption order pertains shall be the net asset value of a security of that class, or series of a class, next determined after the receipt by the mutual fund of the order (the **Requested Relief**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (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 *Canada Business Corporations Act* and is the trustee and manager of the Fund.

2. The Manager's head office is located in Toronto, Ontario.

3. The Manager is registered as an Investment Fund Manager in Ontario, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

4. None of the Manager, the Fund or GLG Prospect Mountain Ltd. (**GLG Ltd.**) is in default of any securities legislation in any of the Jurisdictions.

The Fund

5. The Fund is a mutual fund subject to NI 81-102 and a commodity pool, as such term is defined under NI 81-104, in that the Fund has adopted fundamental investment objectives that permit the Fund to gain exposure to or use or invest in specified derivatives that is not permitted under NI 81-102.

6. The Fund prepared and filed in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) a long form preliminary prospectus dated August 30, 2012 on SEDAR (the **Preliminary Prospectus**) with respect to the proposed offering (the **Offering**) of Class L Units and Class M Units of the Fund (collectively, the **Units**), a receipt for which was issued on August 31, 2012.

7. The Fund will prepare and file a long form final prospectus in accordance with NI 41-101 (the **Final Prospectus**); upon obtaining a receipt therefor, the Units will be qualified for distribution and the Fund will be a reporting issuer in each of the Jurisdictions.

8. As disclosed in the Preliminary Prospectus, the Fund's investment objectives are to: (i) provide holders of Units (the **Unitholders**) with monthly-tax advantaged distributions; (ii) provide the

opportunity for long-term appreciation for the Unitholders; and (iii) profit over the entire credit cycle by generally investing or otherwise gaining exposure across the capital structure of leveraged companies and other issuers often driven by a pending event or catalyst.

9. The Fund will be created to provide exposure to a portfolio comprised primarily of companies with credit, legal, structural or other risks through a broad range of investment instruments which may include high yield bonds, below-par/distressed bank loans, par/near-par bank loans, debtor-in-possession loans, trade claims or receivables, asset-backed securities, convertible and municipal bonds, credit default swaps, credit default indexes, preferred and common stock, warrants and other rights to purchase shares, collateralized debt, bond and loan obligations, futures, options, swaps and other derivative contracts, bridge loans, mezzanine loans, and other types of debt instruments (collectively, the **Portfolio**), to be held by GLG Ltd.

10. The Fund will obtain exposure to economic returns of the Portfolio through one or more forward sale agreements (each a Forward Agreement) entered into with one or more Canadian chartered banks and/or their affiliates (each a **Counterparty**).

11. The Fund will invest substantially all of the proceeds of the Offering in a specified portfolio of common shares of Canadian public companies (the **Common Share Portfolio**) that are Canadian securities as defined in subsection 39(6) of the *Income Tax Act* (Canada).

12. Under the terms of the Forward Agreement, the Counterparty will agree to pay to the Fund on the scheduled settlement date of a Forward Agreement (the **Forward Date**), as the purchase price for the Common Share Portfolio, an amount based on the value of the Portfolio on the Forward Date.

13. The return to the Fund, and consequently to the Unitholders, will by virtue of the Forward Agreement depend on the net redemption proceeds that would be received by holders on a redemption of the Canadian dollar denominated redeemable notes, proposed to be issued by GLG Ltd., having an aggregate value equal to the aggregate net asset value of the Portfolio.

14. The Fund does not intend to list the Units on any stock exchange.

GLG Ltd. and the Portfolio

15. GLG Ltd. is an exempted company with limited liability incorporated in the Cayman Islands on August 22, 2012. GLG Ltd. will acquire and maintain the Portfolio.

16. GLG Ore Hill LLC (the GLG Manager) will act as manager and investment manager of GLG Ltd. and will actively manage the Portfolio.

17. The GLG Manager, a Delaware limited liability company, is ultimately owned by Man Group plc and is an affiliate of the Manager.

18. GLG Ltd. prepared and filed a long form non-offering preliminary prospectus in accordance with NI 41-101 in Ontario and Québec on September 11, 2012, a receipt for which was issued on September 12, 2012, and intends to file in accordance with NI 41-101 and obtain a receipt for a long form final prospectus, pursuant to which it will become a reporting issuer under the *Securities Act* (Ontario) and *Securities Act* (Québec) and subject to continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). As a result, the financial statements and other reports required to be filed by GLG Ltd. under NI 81-106 will be available to the Unitholders on SEDAR.

19. The GLG Manager intends to manage the assets of the Portfolio with substantially similar investment objectives and strategies as Man Prospect Mountain Limited (**Man Prospect Mountain**), a fund advised by the GLG Manager since its inception in July 2008.

20. GLG Ltd. will be a mutual fund because holders of its securities will be entitled to receive on demand, an amount computed by reference to the net asset value (**NAV**) of the Portfolio. However, GLG Ltd. will not distribute any securities under its non-offering prospectus and accordingly GLG Ltd. will be a mutual fund to which NI 81-106 applies, but will not be subject to requirements of either NI 81-102 or NI 81-104.

21. Though not subject to NI 81-104, GLG Ltd. will be a commodity pool as such term is defined in NI 81-104 in that GLG Ltd. has adopted fundamental investment objectives that permit it to use specified derivatives in a manner that is not permitted under NI 81-102.

22. GLG Ltd. has adopted the investment restrictions contained in NI 81-102 and the Portfolio is managed in accordance with these restrictions, except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Manager.

23. The GLG Manager will monitor GLG Ltd.'s compliance with its investment restrictions for the Portfolio.

Redemptions

24. As will be disclosed in the Final Prospectus, Units may be redeemed on a weekly basis on each Monday, or if Monday is not a business day, the following business day (the "**Redemption Date**") at a price equal to the NAV per Unit. The description of the redemption process in the Final Prospectus contemplates that the redemption price for the Units will be determined as of the Redemption Date.

25. As requests for redemptions may be made at any time during the week and are subject to a cut-off date (notice of redemption must be received before 4:00 p.m. (Toronto time) on the second last business day immediately preceding a Redemption Date ("the "**Cut-Off Date**") in order to receive the Redemption Price in effect on that Redemption Date), redemptions may not be implemented at a price equal to the NAV next determined after receipt of the redemption request. Requests made on the Cut-Off Date will be redeemed at a redemption price in accordance with section 6.2 of NI 81-104.

26. These redemption mechanics correspond to those of Man Prospect Mountain, a fund with substantially similar investment objectives and strategies and which is advised by the GLG Manager.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted provided that Units may be redeemed on a weekly basis on each Redemption Date.

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

2.1.5 BMO Nesbitt Burns Inc. and BMO Nesbitt Bunrs Ltée/Ltd

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – Derivatives Regulation (Québec) relief from certain filing requirements of NI 33-109 and Derivatives Regulation (Québec) in connection with a bulk transfer of business locations and registered and non-registered individuals under an amalgamation in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
National Instrument 33-109 Registration Information, ss. 2.2, 2.5, 3.2, 4.1, 5.2.

October 31, 2012

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

AND

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

AND

IN THE MATTER OF
THE DERIVATIVES LEGISLATION OF QUÉBEC

AND

IN THE MATTER OF
BMO NESBITT BURNS INC. (BNBI)
BMO NESBITT BUNRS LTÉE/LTD (BNBL)
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Territories (**Decision Maker**) have received an application from the Filers for a decision under the securities legislation of the Territories (the **Legislation**) for relief from sections 2.2, 2.3, 2.5, 2.6, 3.2 and 4.2 pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) to allow the bulk transfer (the **Bulk Transfer**) of all the registered individuals and all the locations of BNBL to BNBI, on or about November 1, 2012, in accordance with section 3.4 of the Companion Policy to NI 33-109 (the **Exemption Sought**).

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

(a) the *Autorité des marchés financiers* is the principal regulator for this application, and

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

The *Autorité des marchés financiers* also received an application from the Filers for a decision under the derivatives legislation of Québec for relief from section 11.1 of *Derivatives Regulation* (Québec) (the **Regulation**) pursuant to section 86 of the *Derivatives Act* (Québec) (the **Derivatives Legislation**) to allow the Bulk Transfer of all registered individuals under the Derivatives Legislation and all of the associated locations of BNBL to BNBI, on or about November 1, 2012, in accordance with section 3.4 of the Companion Policy to NI 33-109 (the **Derivatives Exemption Sought**).

Interpretation

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

Representations

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

1. The Filers are both subsidiaries of Bank of Montreal.

2. BNBI is an Investment Industry Regulatory Organization of Canada (**IIROC**) member registered as an investment dealer in the Jurisdictions. BNBI is also registered as a derivatives dealer in Québec, portfolio manager and futures commission merchant in Ontario, and futures commission merchant in Manitoba. BNBI has applied for registration as a financial planning firm in Québec under the Act respecting the distribution of financial products and services.

3. BNBL is an IIROC member registered in the categories of investment dealer, derivatives dealer, and financial planning firm in Québec

4. The Filers will amalgamate on November 1, 2012 and continue carrying on registrable activities as BMO Nesbitt Burns Inc. (**Amalco**).

5. IIROC has approved the proposed amalgamation of the Filers.

6. The Filers, to the best of their knowledge, are not in default of any requirements of the securities legislation in any Jurisdiction and/or Derivatives Legislation.

7. On or about November 1, 2012, as a result of the amalgamation, all of the current registrable activities of the Filers will become the responsibility of Amalco. Amalco will assume all of the existing registrations and approvals for all of the registered individuals and all of the locations of the Filers.

8. BNBI and BNBL currently function as a single business and therefore business will continue as normal following the amalgamation. There will be no disruption to BNBI's ability to advise and trade on behalf of its clients and BNBL's clients upon the amalgamation. All clients will be notified of the amalgamation.

9. Amalco will carry on the same securities business carried on by BNBI and BNBL prior to the amalgamation. All personnel and business locations will remain the same.

10. Given the significant number of locations and registered individuals of BNBL, it would be extremely difficult and unduly time-consuming to transfer each individual registration to Amalco in accordance with the requirements of 33-109. Moreover, it is important that the transfer of the locations and individuals occur on the same date, in order to ensure that there is no lapse in registration.

11. The Bulk Transfer will not be contrary to the public interest and will have no negative consequence on the ability of the Filers to comply with all applicable regulatory requirements or the ability to satisfy obligations to their clients.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and makes such payment in advance of the Bulk Transfer.

The decision of Autorité des marches financiers under the Derivatives Legislation is that the Derivatives Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and makes such payment in advance of the Bulk Transfer.

"Eric Stevenson"
Acting Superintendent,
Client Services and Distribution

2.1.6 Pure Energy Services Ltd. – s. 1(10)

Headnote

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

Ontario Statutes

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

October 30, 2012

Stikeman Elliott LLP
4300 Bankers Hall West
888 - 3 Street SW
Calgary, AB T2P 5C5

Attention: Kevin Guenther

Dear Sir:

Re: Pure Energy Services Ltd. (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
Alberta Securities Commission

2.1.7 The Royal Canadian Mint

Headnote

NP 11-203 – Relief from requirement to deliver a prospectus in connection with a distribution of exchange-traded receipts with underlying interests in silver – Filer is a Canadian crown corporation – The receipts are listed for trading on the Toronto Stock Exchange – Filer will provide an Information Statement at the time of distribution and maintain additional information on a website – Filer will file certain prescribed disclosure documents on SEDAR – Securities Act, R.S.O. 1990, c. S.5.

Applicable Legislative Provisions

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

October 12, 2012

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "PRINCIPAL JURISDICTION")

AND

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

AND

IN THE MATTER OF
THE ROYAL CANADIAN MINT (THE "FILER")

DECISION

Background

The securities regulatory authority or regulator in the Principal Jurisdiction (the "**Principal Regulator**") has received an application from the Filer for a decision under the securities legislation of the Principal Jurisdiction (the "**Principal Legislation**") of the Principal Regulator for relief (the "**Requested Relief**") pursuant to subsection 74(1) of the *Securities Act* (Ontario) (the "**Act**"), and the equivalent provisions of the securities legislation of each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon, Northwest Territories and Nunavut (collectively, the "**Non-Principal Jurisdictions**"), that the prospectus requirements in subsection 53(1) of the Act, and the equivalent provisions of the securities legislation of each of the Non-Principal Jurisdictions, shall not apply to the Filer in respect of the distribution by the Filer of receipts as described below ("**Receipts**"), including Receipts issuable on the exercise of the right to purchase additional Receipts, to purchasers ("**Purchasers**").

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

(a) the Ontario Securities Commission is the Principal Regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the Non-Principal 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 Canadian Crown corporation pursuant to the *Royal Canadian Mint Act* (Canada) (the "**Mint Act**").

2. The head office of the Filer is in Ottawa, Ontario.

3. The Filer is not in default of securities legislation in the Principal Jurisdiction or in any Non-Principal Jurisdiction.

4. The Filer produces circulation, numismatic (or collectable) and bullion coins for the domestic and international markets. In addition to being responsible for the minting and distribution of Canada's circulation coins, the Filer operates other businesses on a commercial basis, including secure-storage, full-service gold and silver refineries, and services such as assaying.

5. On August 30, 2011 and October 3, 2011, the Filer was granted relief by the Principal Regulator, subject to conditions, from certain securities law requirements (together, the "**Prior Decisions**").

6. The Filer is a reporting issuer in the Principal Jurisdiction and each of the Non-Principal Jurisdictions and has been since November 29, 2011 by virtue of the listing of the Filer's gold exchange-traded receipts on the Toronto Stock Exchange (the "**TSX**").

7. Under the Mint Act, all of the equity and voting shares of the Filer are held by the Minister of Finance (the "**Minister**"), in trust for Her Majesty in right of Canada. The Mint Act does not permit the Filer to issue shares in its own capital to the public or to issue debt obligations that would result in the Filer having total outstanding borrowed money exceeding $75 million.

8. The Filer's external auditor, the Auditor General of Canada, audits the consolidated financial statements of the Filer and reports thereon to the Minister.

9. The securities for which the Requested Relief is sought are Receipts to be issued by the Filer and distributed to Purchasers, each Receipt representing an equal undivided direct legal and beneficial interest in silver bullion to be held in the custody of the Filer (the "**Program**").

10. Each Receipt will also entitle the holder thereof, on the dates that are 12 months and 24 months after the closing of the offering (each a "**Purchase Date**"), to purchase a number of Receipts based on the market price of the underlying silver bullion on such Purchase Date (each a "**Purchase Right**"). The Filer's expenses incurred in connection with each Purchase Right will be borne by the holders of Receipts exercising such right; the Filer will notify Receipt holders of its estimated expenses sufficiently in advance of the applicable Purchase Date for Receipt holders to make an informed decision regarding the exercise of the corresponding Purchase Right. Following each Purchase Date, the corresponding Purchase Right will expire.

11. Pursuant to section 3(2) of the Mint Act, the objects of the Filer are "to mint coins in anticipation of profit and to carry out other related activities." In carrying out its objects, the Filer has the rights, powers and privileges and the capacity of a natural person.

12. The distribution of Receipts by the Filer is consistent with the powers and objects of the Filer. In compliance with its objects, the Filer will not engage in any activity, including any capital markets activity, unless it is related to its core business of minting coins.

13. The Filer will offer the Receipts to Purchasers in each of the provinces and territories of Canada through registered dealers and, possibly, in certain jurisdictions outside of Canada. The Filer may, from time to time, issue additional Receipts under the Program to the public, through registered dealers, and to accredited investors (as that term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions*) either directly or through registered dealers.

14. Subject to obtaining the requisite listing approval, the Receipts will be listed and traded on the TSX.

15. The Filer may, subject to applicable law and the requirements of the TSX or such other stock exchange on which the Receipts are listed for trading, purchase Receipts in the open market from time to time. Receipts purchased by the Filer may be cancelled, held or reissued by the Filer.

16. The Receipts will be priced on the basis of the market price of silver bullion, therefore the value of a Receipt will be unrelated to changes in the business, operations or financial condition of the Filer or the Government of Canada.

17. The net proceeds of the offering of Receipts will be applied on behalf of the Purchasers to the purchase of silver bullion from third party suppliers for delivery to the Filer's storage facilities on the closing date of the offering.

18. The Filer will act as custodian of the silver bullion on behalf of the Purchasers and will hold the silver bullion on an unallocated basis in its facilities. Legal and beneficial ownership of the silver bullion will at all times remain with the Purchasers.

19. The Receipts will be redeemable for silver bullion or cash at the election of the holder.

20. The Filer's obligations under the Receipts are to securely store the underlying silver bullion and, on redemption or termination, to make available for physical delivery the applicable amount of silver bullion upon the request of a holder of a Receipt or to deliver the cash redemption amount. The Filer will at all times maintain in its storage facilities silver bullion in an amount that is equal to or exceeds the amount owned in aggregate by holders of the Receipts. The Filer is not currently engaged in silver lending and has no intention to lend out the unallocated silver bullion underlying the Receipts.

21. The Filer is for all purposes an agent of Her Majesty in right of Canada. The Receipts will constitute direct unconditional obligations of the Filer and as such will constitute direct unconditional obligations of Her Majesty in right of Canada. Accordingly, the Filer's obligations under the Receipts will be backed by the full faith and credit of the Government of Canada. If the Filer fails to deliver silver bullion or cash in connection with a redemption, or cash at the termination of the Program, the holders of the Receipts would be able to enforce their rights against the Government of Canada.

22. The distribution of the Receipts by the Filer will be made pursuant to an information statement (the "**Information Statement**") that contains disclosure of or includes, as the context requires (the "**Information Statement Disclosure**"):

    (a) aspects of the Filer's business that relate to the Receipts, such as its silver bullion storage business;

    (b) the use of the proceeds from the sale of Receipts;

    (c) the terms of the Receipts (including the issue price);

    (d) the terms of the Purchase Rights;

    (e) the plan of distribution of the Receipts;

    (f) the fact that the Receipts will be listed and traded on the TSX, subject to obtaining the requisite listing approval;

    (g) the risks that relate to (i) the Program and the Receipts, (ii) the silver market, and (iii) the Filer;

    (h) material contracts of the Filer insofar as they establish the terms of the Receipts or impose fees upon holders of Receipts;

    (i) historical silver price performance;

    (j) the manner in which notices will be given to holders of Receipts;

    (k) information relating to the transfer agent and registrar;

    (l) tax consequences to holders of Receipts;

    (m) all fees associated with the Receipts, including:

        (i) fees payable to the registered dealers offering Receipts;

        (ii) expenses of the offering;

        (iii) service fees payable by Receipt holders;

        (iv) deductions and fees payable by Receipt holders in connection with cash and physical redemption fee; and

        (v) any other relevant fees and expenses; and

    (n) a certificate signed by a senior officer of the Filer which states "The contents of this Information Statement have been approved by the Board of Directors of the Royal Canadian Mint. This Information Statement

constitutes full, true and plain disclosure of all material facts relating to the [Receipts] and includes the information required by [this decision]."

23. In the event that the terms of the Receipts or the Program differ materially from those described in an Information Statement pre-cleared by the Principal Regulator in connection with the application by the Filer for the Requested Relief, the Filer will not distribute additional Receipts pursuant to this decision unless:

    (a) the revised Information Statement has been delivered to the Principal Regulator in substantially final form; and

    (b) either (i) the Principal Regulator has confirmed its acceptance of the revised Information Statement or (ii) 10 business days have elapsed since the date of delivery of the revised Information Statement to the Principal Regulator and the Principal Regulator has not provided comments on such revised Information Statement.

    For greater certainty, the terms of the Receipts or the Program will differ materially from those in the Information Statement pre-cleared by the Principal Regulator where (i) the attributes of the Receipts differ materially, or (ii) the structure and contractual arrangements underlying the Receipts differ materially.

24. The Filer will maintain, by way of continuous disclosure (the "**Program Website Disclosure**"), a website for the Program on which it will post:

    (a) the Information Statement and a copy of the global certificate representing the Receipts;

    (b) a daily calculation of the per Receipt entitlement to silver, calculated as a fraction of one fine troy ounce of silver on the date of issuance and reduced daily by a management, storage and custodial fee charged by the Filer;

    (c) a daily calculation of the adjusted net asset value of the Receipts;

    (d) the current trading price of the Receipts;

    (e) the historical trading prices of the Receipts;

    (f) the daily London Fix silver price;

    (g) the fees associated with the Receipts for the last three years (or period available) and any changes to such fees, for which there will be not less than ten days' advance notice in the event of a decrease in such fees and not less than 90 days' advance notice in respect of any other change;

    (h) material change reports, being reports of any change in the business, operations or capital of the Filer or, if known by the Filer, the Government of Canada, that would reasonably be expected to have a significant effect of the market price of value of the Receipts ("**Material Change Reports**"); and

    (i) any notice or document that the Filer delivers to holders of Receipts and any other communication to all holders of Receipts, including press releases disseminated by the Filer relating to the Program or the Receipts.

25. The Information Statement, a copy of the global certificate representing the Receipts, Material Change Reports and the documents referred to in paragraph 24(i) will also be available under the Filer's profile on the System for Electronic Document Analysis and Retrieval.

26. Notice of any change to the fees associated with the Receipts will also be delivered to the transfer agent and registrar for the Receipts on behalf of the holders of Receipts.

Decision

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

The decision of the Principal Regulator under the Principal Legislation is that the Requested Relief is granted, provided that the following conditions are satisfied:

    (a) the Filer continues to be a Crown corporation pursuant to the Mint Act;

(b) the Filer provides each Purchaser (other than a Purchaser pursuant to a Purchase Right) with a copy of an Information Statement, prior to or at the time of an agreement of purchase and sale being entered into in respect of the Receipts, that includes the Information Statement Disclosure;

(c) the Filer maintains a website on which it posts the Program Website Disclosure; and

(d) notwithstanding the Prior Decisions, the Filer:

(i) files on SEDAR

(A) the Information Statement concurrently with or prior to the Information Statement being provided to Purchasers;

(B) a copy of the global certificate representing the Receipts, the Information Statement, and the documents referred to in paragraph 24(i) as soon as practicable;

(C) each Material Change Report as soon as practicable, and in any event within 10 days of the date on which a material change of the type described in paragraph 24(h) occurs; and

(D) within 45 days of the end of each financial quarter of the Filer, a report which includes a compilation of the information referred to in paragraphs 24(b) to 24(g), inclusive, as reported in such financial quarter; and

(ii) pays participation fees as determined pursuant to section 2.7 of OSC Rule 13-502 Fees.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"James D. Carnwath"
Commissioner
Ontario Securities Commission

2.1.8 Excel Funds Management Inc. and Excel Income and Growth Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of mutual fund merger – approval required because the merger does not meet the criteria for per-approval – continuing fund has different investment objectives than terminating fund – continuing fund has a different fee structure than terminating fund – merger is not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – securityholders provided with timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.5(3), 5.6, 19.1.

October 26, 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
EXCEL FUNDS MANAGEMENT INC.
(the Filer or Excel)

AND

EXCEL INCOME AND GROWTH FUND
(the Terminating Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the merger (the **Merger**) of the Terminating Fund into Excel EM High Income Fund (the **Continuing Fund**) (together with the Terminating Fund, the **Funds**) under paragraph 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (such exemption, the **Exemption Sought**).

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

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

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

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 Filer

1. Excel is a corporation governed by the laws of Ontario with its head office in Mississauga, Ontario.

2. Excel is registered as an investment fund manager in Ontario.

3. Excel is the manager and promoter of the Funds.

The Funds

4. Each of the Funds is an open-end mutual fund trust established under the laws of the Province of Ontario by a master trust agreement.

5. Units of the Funds are currently offered for sale under a simplified prospectus and annual information form dated September 28, 2012 in all of the provinces and territories of Canada. The Funds are reporting issuers under the applicable securities legislation of each province and territory of Canada. None of Excel or the Funds is in default of securities legislation in any province or territory of Canada.

6. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under the Legislation.

7. The net asset value (**NAV**) for each series of units of each Fund is calculated as at 4:00 p.m. Eastern Time on each day that the Toronto Stock Exchange is open for trading.

The Merger

8. A press release and material change report in respect of the proposed Merger were filed on SEDAR on September 28, 2012. Units of the Terminating Fund ceased to be available for sale on that date.

9. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), Excel presented the terms of the Merger to the Funds' Independent Review Committee (**IRC**) for its review and recommendation. The IRC reviewed the potential conflict of interest matters related to the proposed Merger and has determined that the proposed Merger, if implemented, would achieve a fair and reasonable result for each of the Funds.

10. Unitholders of the Terminating Fund will continue to have the right to redeem or transfer their units of the Terminating Fund at any time up to the close of business on the business day prior to the effective date of the Merger.

11. Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102, namely because: (i) a reasonable person may not consider the fundamental investment objectives of the Terminating Fund and that of the Continuing Fund to be "substantially similar"; (ii) a reasonable person may not consider the fee structure of the Terminating Fund and that of the Continuing Fund to be "substantially similar"; and (iii) the Merger will not be a tax-deferred transaction as described in paragraph 5.6(1)(b) of NI 81-102. Except for these three reasons, the Merger will otherwise comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

12. Excel has determined that it would not be appropriate to effect the Merger as a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **Tax Act**) or as a tax-deferred transaction for the following reasons: (i) the Terminating Fund has sufficient loss carry-forwards to shelter any net capital gains that could arise for it on the taxable disposition of its portfolio assets on the Merger; (ii) substantially all the unitholders in the Terminating Fund have an accrued capital loss on their units and effecting the Merger on a taxable basis will afford them the opportunity to realize that loss and use it against current capital gains or even carry it back as permitted under the Tax Act; (iii) effecting the Merger on a taxable basis would preserve the net losses and loss carry-forwards in the Continuing Fund; and (iv) effecting the Merger on a taxable basis will have no other tax impact on the Continuing Fund.

13. A notice of meeting, management information circular and form of proxy in connection with the Merger were mailed to unitholders of the Terminating Fund on October 12, 2012 and were subsequently filed on SEDAR. The most recently-filed fund facts document of the Continuing Fund was also included in the meeting materials sent to unitholders of the Terminating Fund.

14. The management information circular provides unitholders of the Terminating Fund with information about (i) the investment objectives of the Funds, (ii) the fee structures of the Funds, (iii) the tax consequences of the Merger, and (iv) how unitholders of the Terminating Fund may obtain, at no cost, the most recent simplified prospectus, annual information form, fund facts document, interim and annual financial statements and management reports of fund performance of the Continuing Fund. Accordingly, unitholders of the Terminating Fund will have sufficient information to make an informed decision about the Merger.

15. Excel will pay all costs and reasonable expenses relating to the solicitation of proxies and holding the unitholder meeting in connection with the Merger as well as the costs of implementing the Merger, including any brokerage fees.

16. No sales charges will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.

17. Unitholders of the Terminating Fund will be asked to approve the Merger at a special meeting scheduled to be held on or about November 2, 2012. If the meeting is adjourned, the adjourned meeting will be held on or about November 5, 2012.

18. If the requisite approvals are obtained, it is anticipated that the Merger will be implemented on or about November 7, 2012. If unitholder approval is not obtained, the Terminating Fund will be terminated on or about December 21, 2012.

19. Following the Merger, the Continuing Fund will continue as a publicly offered open-end mutual fund and the Terminating Fund will be wound up as soon as reasonably practicable.

20. Following the Merger, units of the Continuing Fund received by unitholders in the Terminating Fund as a result of the Merger will have the same sales charge option and, for units purchased under the deferred sales charge option or the volume sales charge option, remaining deferred sales charge schedule as their units in the Terminating Fund.

21. The Merger is conditional on the approval of (i) the unitholders of the Terminating Fund; and (ii) the Principal Regulator. If the necessary approvals

are obtained, the following steps will be carried out to effect the Merger, which is proposed to occur on or about November 7, 2012 (the **Merger Date**):

(a) Prior to the Merger Date, if required, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objective and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objective for a brief period of time prior to the Merger Date.

(b) The value of the Terminating Fund's portfolio and other assets will be determined at the close of business on the business date prior to the Merger Date in accordance with the constating documents of the Terminating Fund.

(c) The Continuing Fund will acquire the investment portfolio and other assets of the Terminating Fund in exchange for units of the Continuing Fund.

(d) The Continuing Fund will not assume any liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the Merger Date.

(e) The Terminating Fund will distribute a sufficient amount of its net income and net realized capital gains, if any, to unitholders to ensure that it will not be subject to tax for its current tax year.

(f) The units of the Continuing Fund received by the Terminating Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Fund is acquiring from the Terminating Fund, and the units of the Continuing Fund will be issued at the applicable series net asset value per security as of the close of business on the Merger Date.

(g) Immediately thereafter, units of the Continuing Fund received by the Terminating Fund will be distributed to unitholders of the Terminating Fund in exchange for their units in the Terminating Fund on a dollar-for-dollar and series by series basis, as applicable.

(h) As soon as reasonably possible following the Merger, and in any case within 60 days thereof, the Terminating Fund will be wound up.

22. The Terminating Fund and the Continuing Fund are, and are expected to continue to be at all material times, mutual fund trusts under the Tax Act and, accordingly, units of both Funds are "qualified investments" under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax free savings accounts.

23. Excel believes that the Merger will be beneficial to unitholders of the Funds for the following reasons:

(a) unitholders of the Terminating Fund will benefit from reduced management fees that are charged to both series of units of the Continuing Fund;

(b) unitholders of the Terminating Fund and the Continuing Fund will enjoy increased economies of scale as part of a larger combined Continuing Fund;

(c) following the Merger, the Continuing Fund will have a portfolio of greater value, which may allow for increased portfolio diversification opportunities if desired;

(d) by merging the Terminating Fund instead of terminating it, there will be a savings for the Terminating Fund in brokerage charges associated with the liquidation of the Terminating Fund's portfolio on a wind-up. The unitholders of the Terminating Fund will not be responsible for the costs associated with the Merger;

(e) the Continuing Fund, as a result of its greater size, may benefit from its larger profile in the marketplace.

Accordingly, Excel has recommended to the unitholders of the Terminating Fund that they vote for the resolutions that will authorize Excel to effect the Merger.

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.

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

2.1.9 Merrill Lynch Canada Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Hybrid Application – Filer requested relief from the trade confirmation and statement of account requirements in securities laws where acting solely as execution-only broker in the context of "give-up" trades – Relief granted with respect to give-up trades for institutional customers, provided that a give-up trade agreement is executed with institutional customer and clearing broker and that clearing broker agrees to provide the customers with statements which include give-up trade details.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 36(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 14.14.

October 31, 2012

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, ONTARIO AND
NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF
MERRILL LYNCH CANADA INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of Alberta and Ontario (the **Dual Exemption Decision Makers**) has received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up Transactions (as defined below), from the requirement (the **Statement of Account Requirement**) that a dealer must deliver a statement of account to each client at least once every three months, or at the end of a month if the client has requested statements on a monthly basis or if a transaction was effected in the client's account during the month (the **Dual Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan, Ontario and Newfoundland and Labrador (the **Coordinated Exemption Decision Makers**) has received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up Transactions, from the requirement (the **Trade Confirmation Requirement**) that every registered dealer that has acted as principal or agent in connection with a purchase or sale of a security must promptly send by pre-paid mail or deliver to the client a written confirmation of the purchase or sale (the **Coordinated Exemption**).

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

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

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

(c) the decision with respect to the Dual Exemption evidences the decision of the principal regulator and the securities regulatory authority or regulator in Ontario; and

(d) the decision with respect to the Coordinated Exemption evidences the decision of each Coordinated Exemption Decision Maker.

Interpretation

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

Representations

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

1. The Filer is registered as an investment dealer under the securities legislation of Alberta, British Columbia, Manitoba, New Brunswick, the North-west Territories, Nova Scotia, Prince Edward Island, Saskatchewan and Yukon, an investment dealer and a futures commission merchant in Ontario, an investment dealer and a portfolio manager in Newfoundland and Labrador and an investment dealer and derivatives dealer in Québec.

2. The Filer is a participating organization or member of the Toronto Stock Exchange, TSX Venture Exchange and Montréal Exchange and other electronic markets. The Filer is a member of the Canadian Derivatives Clearing Corporation.

3. The head office of the Filer is located in Toronto, Ontario.

4. The Filer acts as an executing and clearing broker for Give-up Transactions (as defined below) that involve the purchase or sale of options on equities or indices that are listed or traded on one or more marketplaces (**Options**).

5. **Give-up Transactions** are purchases or sales of Options by investors, each of whom is an "institutional customer" within the meaning of IIROC Dealer Member Rule 1.1 (each, an **Institutional Customer**), that have an existing relationship as a client with a clearing broker but wish to use the trade execution services of one or more executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**). Under these circumstances, the executing broker will execute the Subject Transactions in accordance with the Institutional Customer's instructions and then "give up" the Subject Transactions to the clearing broker for clearing, settlement and/or custody. The service provided by the executing broker is limited to trade execution only.

6. The clearing broker remains subject to the Trade Confirmation Requirement and Statement of Account Requirement in respect of its Institutional Customers in Give-up Transactions. The clearing broker maintains an account for the Institutional Customer that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the Institutional Customer. For a Give-up Transaction, the Institutional Customer does not sign account documentation with the executing broker, and the executing broker does not receive any money, securities, margin or collateral from the Institutional Customer. The Institutional Customer does, however, enter into an agreement with the executing broker and the clearing broker that governs their Give-up Transaction relationship (a **Give-up Agreement**).

7. Although the Filer is responsible for its own record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not provide Account Services for execution-only customers in Give-up Transactions. Such Account Services remain the responsibility of those clients' clearing brokers.

8. The Filer does, however, record in its own books and records and accounting system all Give-up Transactions that it executes, which generally comprise those Options positions held by it that are not allocated to any of its own client accounts. The Filer communicates these unallocated positions to the relevant clearing brokers who either accept or reject the positions so allocated on behalf of their clients based on existing Give-Up Agreements. If a clearing broker rejects a proposed allocation, the Filer contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.

9. The Filer prepares a monthly or transaction-by-transaction invoice detailing all Give-up Transactions (including the amount of any commission to the Filer for execution thereof) that the Filer conducted during the month for each Institutional Customer under a Give-up Agreement. The Filer delivers such invoice to the clearing broker who then reconciles the Give-up Transactions with its own records.

10. The clearing broker will have the primary relationship with the Institutional Customers and is contractually responsible for trade and risk monitoring as well as reporting trade confirmations and sending out monthly statements.

11. The Filer is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions, and all applicable securities, futures or derivatives legislation in any jurisdiction.

12. Application of the Trade Confirmation Requirement and Statement of Account Requirement to the Filer when it provides only trade execution services in respect of Give-up Transactions would:

    (a) be duplicative and confusing because delivery of the required trade confirmations and statements of account to execution-only Institutional Customers would capture only some, not all, of the information that would be contained in the trade confirmations and statements of account delivered to the same Institutional Customers by their clearing brokers; and

    (b) not be required to establish an audit trail or to facilitate reconciliation of Give-up Transactions as between the Filer and a clearing broker.

Decision

Each Coordinated Exemption Decision Maker is satisfied that the decision meets the test set out in the legislation of the jurisdiction for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemption Decision Makers under the legislation of the Dual Exemption Decision Makers is that the Dual Exemption is granted, and the decision of the Coordinated Exemption Decision Makers under the legislation of the Coordinated Exemption Decision Makers is that the Coordinated Exemption is granted, provided that:

(a) the Filer provides trade execution services in respect of Give-up Transactions only for Institutional Customers;

(b) the Filer enters into a Give-Up Agreement with the clearing broker and the Institutional Customer; and

(c) the clearing broker has agreed to provide each Institutional Customer with written trade confirmations and statements of account that include information for any Subject Transaction.

For the Commission:

"Glenda Campbell, QC"
Vice-Chair

"Stephen Murison"
Vice-Chair

2.1.10 Lucca Energy Ltd. – s. 1(10)

Headnote

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

Ontario Statutes

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

October 22, 2012

Norton Rose Canada LLP
400 - 3rd Avenue SW, Suite 3700
Calgary, AB TWP 4H2

Attention: James O'Sullivan

Dear Sir:

Re: Lucca Energy Ltd. (the Applicant) – Application for a decision under the securities legislation of Alberta and Ontario (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.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.11 Luxfer Canada Limited – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

Citation: Luxfer Canada Limited, Re, 2012 ABASC 469

November 5, 2012

Torys LLP
4600 Eighth Avenue Place East
525 - 8 Avenue SW
Calgary, AB T2P 1G1

Attention: Leah Dickie

Dear Madam:

Re: Luxfer Canada Limited (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

2.1.12 Allied Gold Mining PLC and St Barbara Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by foreign issuer and wholly-owned subsidiary for a decision that they are no longer reporting issuers in the jurisdictions – Following completion of scheme of arrangement under the laws of England and Wales, foreign issuer acquired Canadian reporting issuer – Canadian reporting issuer now a wholly-owned subsidiary – foreign issuer has a *de minimis* market presence in Canada – Residents of Canada do not beneficially own more than 2% of each class or series of outstanding securities of the issuer and do not comprise more than 2% of the total number of securityholders of the issuer – In the preceding 12 months, foreign issuer has not taken any steps that indicate there is a market for its securities in Canada – The issuer's securities are not listed on any stock exchange or traded on a marketplace in Canada – The foreign issuer has no intention of distributing its securities to the public – Canadian securityholders will continue to receive continuous disclosure as required by Australian law – The foreign issuer previously announced that it was applying for a decision that it is not a reporting issuer – Requested relief granted.

Applicable Legislative Provisions

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

November 2, 2012

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO AND NOVA SCOTIA
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
ALLIED GOLD MINING PLC AND ST BARBARA LIMITED
(THE "FILERS")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a "Decision Maker") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filers are not reporting issuers in the Jurisdictions (the "Exemptive Relief Sought").

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

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

(b) this decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

Allied Gold Mining PLC

1. Allied Gold Mining PLC ("Allied Gold") is a Pacific Rim gold producer, developer and exploration company.

2. Allied Gold's principal place of business is located at Building 23, Garden Office Park, 2404 Logan Road, Eight Mile Plains, Queensland, 4113, Australia. Allied Gold's registered office is located at 3 More London Riverside, London, SE1 2AQ, United Kingdom.

3. Prior to June 30, 2011, the assets of Allied Gold were ultimately held by Allied Gold Limited, a corporation incorporated under the *Corporations Act 2001* (Commonwealth of Australia). Allied Gold Limited listed on the Australian Securities Exchange (the "ASX") in December 2003, on the London Stock Exchange's (the "LSE") Alternative Investment Market ("AIM") in 2006 and on the Toronto Stock Exchange (the "TSX") in 2009. Allied Gold Limited became a reporting issuer in certain Canadian jurisdictions in 2004.

4. On June 30, 2011, Allied Gold Limited completed a redomiciling transaction by way of a scheme of arrangement under the laws of Australia whereby shareholders of Allied Gold Limited exchanged their shares in Allied Gold Limited for ordinary shares in Allied Gold, a public limited company registered in England and Wales. Immediately following completion of this redomiciling transaction, Allied Gold's ordinary shares (the "Allied Gold Shares") were admitted to the premium segment of the Official List of the Financial Services Authority (the "FSA") of the United Kingdom and to trading on the LSE's Main Market for listed securities (the "Main Market") (symbol: ALD) and were also listed on the ASX and the TSX. Allied Gold became a reporting issuer in Canada on June 30, 2011.

5. Allied Gold is a reporting issuer in each of the Jurisdictions.

6. Effective on September 7, 2012, St Barbara Limited ("St Barbara") acquired all of the issued and outstanding Allied Gold Shares by way of a court-sanctioned scheme of arrangement under the laws of England and Wales (Part 6 of the Companies Act 2006) (the "Scheme").

7. Other than the Allied Gold Shares, Allied Gold has no other securities, including debt securities, outstanding.

8. As a result of the Scheme, Allied Gold became a wholly-owned subsidiary of St Barbara.

9. The Allied Gold Shares were delisted from the TSX on September 7, 2012, from the LSE's Main Market on September 10, 2012 and from the ASX on September 10, 2012.

10. No securities of Allied Gold, 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.

11. Allied Gold 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.

12. Allied Gold is not in default of any of its obligations under the Legislation as a reporting issuer.

13. Allied Gold has no plans to conduct a public offering or private placement of its securities in Canada.

14. Allied Gold has elected to pursue a coordinated review application to avoid the minimum 10-day waiting period under British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (which is a condition precedent to the other Jurisdictions making a decision under the simplified procedure described in Canadian Securities Administrators' Staff Notice 12-307 *Applications for a Decision that an Issuer is Not a Reporting Issuer* ("CSA Staff Notice 12-307")). But for the fact that Allied Gold is a reporting issuer in British Columbia, Allied Gold meets all of the other criteria set out in CSA Staff Notice 12-307 for use of the simplified procedure.

15. Upon granting of the Exemptive Relief Sought, Allied Gold will no longer be a reporting issuer in any jurisdiction in Canada.

St Barbara Limited

16. St Barbara is a gold production and exploration company with its principal assets located in Western Australia.

17. St Barbara's corporate headquarters is located at Level 10, 432 St Kilda Road, Melbourne, VIC 3004, Australia.

18. St Barbara's ordinary shares (the "St Barbara Shares") are listed on the ASX. St Barbara's American Depositary Receipts ("ADRs"), representing ownership of five St Barbara Shares per ADR, have also been issued through Bank of NY Mellon.

19. Pursuant to the Scheme, holders of Allied Gold Shares became entitled to receive Australian $1.025 and 0.8 of a St Barbara Share (the "Exchange Ratio") for each Allied Gold Share held (subject to the ability to elect to receive the cash portion of the consideration in certain other currencies).

20. The issued share capital of St Barbara as at the close of business on September 12, 2012 (i.e., after closing of the Scheme) was comprised of 488,074,077 St Barbara Shares, all of which were credited as fully paid. As at September 12, 2012, St Barbara had 1,242,714 ADRs outstanding, representing ownership of 6,213,570 of such St Barbara Shares. As at September 12, 2012, options to acquire 1,955,263 St Barbara Shares were granted and outstanding pursuant to St Barbara's employee option plan and performance rights to acquire 3,687,483 St Barbara Shares were granted and outstanding pursuant to St Barbara's Performance Rights Plan.

21. St. Barbara has never issued any securities in Canada other than in connection with the Scheme.

22. Under the securities laws of the Jurisdictions, a "reporting issuer" generally includes an issuer whose existence continues following the exchange of securities of an issuer in connection with an arrangement or similar transaction where one of the issuers participating in the arrangement is a reporting issuer (in the case of Ontario, such an issuer must have been a reporting issuer for at least twelve months).

23. St Barbara became a reporting issuer in the Jurisdictions upon the consummation of the Scheme by virtue of the reporting issuer definitions in the Jurisdictions.

24. St Barbara qualifies as a designated foreign issuer (as defined in National Instrument 71-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers* ("NI 71-102")) in Canada and is subject to the securities laws of Australia and the ASX.

25. St Barbara is not in default of any of its obligations under the securities laws of Australia or the rules of the ASX.

26. No securities of St Barbara have ever been listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operations*.

27. Based on (i) a list of the beneficial holders of St Barbara Shares dated July 20, 2012 prepared by Computershare; (ii) a list of the beneficial holders of Allied Gold Shares dated May 30, 2012 prepared by Thomson Reuters; (iii) the Exchange Ratio; (iv) an analysis of the geographic breakdown of beneficial owners of St Barbara Shares (including through holdings of ADRs) commissioned by St Barbara and prepared by Orient Capital Pty Ltd. as of August 28, 2012; and (v) a report of the issued and outstanding St Barbara Shares prepared by Computershare as of September 12, 2012, there are:

    (a) 5,082,605 St Barbara Shares beneficially held by Canadian residents, representing 1.04% of the issued and outstanding St Barbara Shares; and

    (b) 106 beneficial holders of St Barbara Shares resident in Canada, representing 0.94% of the number of holders of issued and outstanding St Barbara Shares.

28. Based on the foregoing, residents of Canada:

    (a) do not directly or indirectly beneficially own more than 2% of each class or series of issued and outstanding securities of St Barbara worldwide; and

    (b) do not directly or indirectly comprise more than 2% of the total number of holders of issued and outstanding securities of St Barbara worldwide.

29. St Barbara will remain listed on the ASX and be subject to the continuous disclosure requirements of Australian securities law and the ASX. Such disclosure requirements are similar to the requirements under the laws of the Jurisdictions and are, pursuant to Part 5 of NI 71-102, generally acceptable for purposes of a designated foreign issuer complying with the continuous disclosure requirements in the Jurisdictions.

30. Canadian resident holders of St Barbara Shares will have the same rights under Australian securities law and corporate law as Australian resident holders of St Barbara Shares.

31. In the 12 months before the application for this decision was made, St Barbara did not take any steps that indicate there is a market for its securities in Canada and St Barbara has no plans to conduct a public offering or private placement of its securities in Canada.

32. There is currently no market in Canada through which the St Barbara Shares may be sold, and no market is expected to develop.

33. St Barbara disclosed its intention to apply to cease to be a reporting issuer in Canada upon completion of the Scheme in the scheme document containing further information about the Scheme that was prepared in accordance with the laws of England and Wales and (i) sent by Allied Gold to holders of Allied Gold Shares and holders of options to purchase Allied Gold Shares, (ii) filed under Allied Gold's profile on the System for Electronic Document Analysis and Retrieval (SEDAR) and (iii) attached to a press release of St Barbara dated July 19, 2012, which was also made available on St Barbara's website.

34. St Barbara undertakes to concurrently deliver to Canadian resident holders of St Barbara Shares all disclosure that St Barbara is required under Australian securities law or the rules of the ASX to deliver to Australian resident holders of such securities.

35. Upon granting of the Exemptive Relief Sought in respect of St Barbara, St Barbara will no longer be a reporting issuer in any jurisdiction of Canada.

36. St Barbara is not in default of any of its obligations under the Legislation as a reporting issuer, with the exception of (i) filing announcements filed with the ASX relating to the closing of the Scheme and (ii) the requirement to file technical reports upon becoming a reporting issuer pursuant to National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

37. St. Barbara is not subject to the requirement to create an issuer profile supplement on SEDI by reason that it is a "foreign issuer (SEDAR)" as defined in National Instrument 13-101 System for Electronic Document Analysis and Retrieval. St. Barbara has never filed a notice of election to become an electronic filer on the System for Electronic Document Analysis and Retrieval.

38. St Barbara is not eligible for the simplified procedure described in CSA Staff Notice 12-307 because, among other reasons, it has more than 51 securityholders in total worldwide and is in default of the Legislation as described above. St Barbara meets the conditions of CSA Staff Notice 12-307 relating to the modified approach for foreign issuers.

Decision

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

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

"C. Wesley M. Scott"
Ontario Securities Commission

"Vern Krishna"
Ontario Securities Commission

2.2 Orders

2.2.1 Canadian National Railway Company – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 5,800,000 of its common shares from one of its shareholders and/or such shareholder's affiliates – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Securities Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c.S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
CANADIAN NATIONAL RAILWAY COMPANY

ORDER
(clause 104(2)(c))

UPON the application (the "**Application**") of Canadian National Railway Company (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 5,800,000 (collectively, the "**Subject Shares**") of its common shares (the "**Common Shares**") in one or more trades from Canadian Imperial Bank of Commerce (the "**Selling Shareholder**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 10, 22 and 23 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The head office and registered office of the Issuer are at 935 de La Gauchetière Street West, Montréal, Quebec H3B 2M9.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange ("**TSX**") and the New York Stock Exchange under the symbol "CNR" and "CNI", respectively. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which 431,487,673 were issued and outstanding as of October 15, 2012.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

6. The Selling Shareholder has advised the Issuer that it does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 5,800,000 Common Shares and that the Subject Shares were not acquired in anticipation of resale pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority ("**Off-Exchange Block Purchases**").

8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

9. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") submitted to the TSX, the Issuer has announced on October 22, 2012 a normal course issuer bid (its "**Normal Course Issuer Bid**") for up to 18,000,000 Common Shares (subject to a maximum aggregate purchase price of $1.4 billion). The Normal Course Issuer Bid will be conducted through the facilities of the TSX and the New York Stock Exchange or alternative

trading systems, if eligible, or by such other means as may be permitted by the TSX or a securities regulatory authority in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**").

10. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring before the end of March, 2013 (each such purchase, a "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase.

11. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

12. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act, to which the applicable Issuer Bid Requirements would apply.

13. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

14. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

15. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

16. The Notice filed with the TSX by the Issuer contemplates that purchases under the bid may be made by such other means as may be permitted by the TSX, including under automatic trading plans and by private agreements pursuant to an issuer bid exemption order issued by a securities regulatory authority.

17. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

18. Management is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Shares under the bid through the facilities of the TSX and management is of the view that this is an appropriate use of the Issuer's funds.

19. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other securityholders of the Issuer to otherwise sell Common Shares in the open market at the prevailing market price. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

20. To the best of the Issuer's knowledge, as of the date of this application, the "public float" for the Common Shares represented approximately 88% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

21. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

22. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with each Proposed Purchase, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under its Normal Course Issuer Bid for the remainder of the calendar day on which it completes each Proposed Purchase;

(c) the Purchase Price will not be higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to its Normal Course Issuer Bid in accordance with the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including under automatic trading plans and by private agreements under an issuer bid exemption issued by a securities regulatory authority;

(e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) the Issuer will issue a press release in advance of the Proposed Purchases; and

(h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Common Shares the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to, as of the date of this order, the lower of (a) 6,000,000 Common Shares, and (b) that number of Common Shares that the Issuer can purchase with $466,666,666.67.

Dated this 26th day of October, 2012.

“Wes M. Scott”
Commissioner

“Vern Krishna”
Commissioner

2.2.2 Sino-Forest Corporation et al. – s. 144

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

AND

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

**ORDER
(Section 144)**

WHEREAS the securities of Sino-Forest Corporation (the **Issuer**) currently are subject to a temporary cease trade order made by the Ontario Securities Commission (the **Commission**), pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**) on August 26, 2011, and extended until October 29, 2012 pursuant to subsections 127(7) and (8) of the Act that trading in securities of the Issuer cease (the **Temporary Order**);

AND WHEREAS the Issuer has made an application pursuant to section 144 of the Act for an order varying the Temporary Order to allow certain trades and acts in furtherance of trades in respect of a proposed plan of compromise and reorganization pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the **CCAA**) involving the Issuer (the **Application**);

AND WHEREAS the Application includes written representations of the Issuer and the Issuer has provided supplementary materials and oral submissions at a hearing before the Commission on October 26, 2012;

AND UPON the Issuer having represented, among other things, to the Commission as follows:

The Issuer

1. The Issuer is a corporation existing under the *Canada Business Corporations Act* (the **CBCA**) having its registered and principal Canadian office in the Province of Ontario and its principal executive office in Hong Kong.

2. The Issuer is a reporting issuer in default under the Act and the securities legislation of each of the other Provinces of Canada.

3. The authorized capital of the Issuer consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preference shares issuable in series (the **Preferred Shares**).

4. As at the date hereof, there are 246,095,926 issued and outstanding Common Shares, outstanding stock options to purchase 3,042,118 Common Shares (the **Options**) and no issued or outstanding Preferred Shares.

5. As at the date hereof, the Issuer has the following notes outstanding:

   (a) 6.25% guaranteed senior notes due 2017 in the principal amount of U.S. $600 million (the **2017 Notes**);

   (b) 4.25% convertible senior notes due 2016 in the principal amount of U.S. $460 million (the **2016 Notes**);

   (c) 10.25% guaranteed senior notes due 2014 in the principal amount of U.S. $399,517,000 (the **2014 Notes**); and

   (d) 5.00% convertible senior notes due 2013 in the aggregate principal amount of U.S. $345 million (the **2013 Notes** and together with the 2017 Notes, the 2016 Notes and the 2014 Notes, the **Notes**. Holders of the Notes are referred to herein as **Noteholders**).

6. The Issuer has no securities issued and outstanding other than the Common Shares, the Options and the Notes.

7. The Common Shares were previously listed and posted for trading on the Toronto Stock Exchange (the **TSX**). The TSX delisted the Common Shares on May 9, 2012.

8. The Notes are not and have never been listed on any exchange in Canada. All of the Notes were initially sold by way of private placement.

9. As at the date hereof, no securities of the Issuer are traded in Canada on a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**).

Temporary Cease Trade Order

10. On August 26, 2011, the Commission made the Temporary Order, effective for a 15-day period, that the trading in the securities of the Issuer cease.

11. The Temporary Order was extended on September 8, 2011, January 23, 2012, April 13, 2012, July 12, 2012, October 10, 2012 and most recently on October 26, 2012, at which time the Temporary Order was extended to January 21, 2013.

CCAA Proceedings

12. On March 30, 2012, the Issuer and members of an ad hoc committee of Noteholders (the **Initial Consenting Noteholders**) entered into a restruc-

turing support agreement (the **Support Agreement**), which provided for, among other things, the material terms of the restructuring of the Issuer contemplated by the Plan.

13. On March 30, 2012, the Issuer also applied for and obtained an initial order under the CCAA from the Superior Court of Justice (Ontario) (the **CCAA Court**) granting a CCAA stay of proceedings against the Issuer and certain of its subsidiaries (the **CCAA Proceedings**) and appointing FTI Consulting Canada Inc. as the monitor in the CCAA Proceedings (the **Monitor**). The Monitor is an officer of the court, and its role is to oversee the business of the Issuer and be an impartial observer of the restructuring of the Issuer's business pursuant to the CCAA Proceedings.

14. The CCAA stay of proceedings against the Issuer and certain of its subsidiaries was subsequently extended several times, most recently on October 9, 2012 at which time the stay of proceedings was extended to December 3, 2012.

CCAA Meeting

15. On August 31, 2012, the CCAA Court granted an order in the CCAA Proceedings (the **Meeting Order**) relating to the calling of a meeting of the Issuer's creditors (the **Meeting**) to consider a Plan of Compromise and Reorganization under the CCAA and the CBCA (as amended, supplemented or restated from time to time, the **Plan**).

16. On September 18, 2012, the Commission granted an order pursuant to subsection 144(1) of the Act varying the Temporary Order to the extent necessary to allow the Issuer to distribute the CCAA Materials (as defined below) to all potential creditors, including holders of the Issuer's Notes.

17. On or about October 24, 2012, the Issuer and the Monitor mailed various meeting materials to the creditors of the Issuer as contemplated by the Meeting Order, which materials include a Notice of Meeting and Information Statement along with proxy materials and any amendments and supplements thereto (collectively, the **CCAA Materials**).

18. The Issuer intends to hold the Meeting on November 29, 2012.

The CCAA Plan

19. The Plan contemplates, among other things, that:

    (a) a new company (**Newco**) will be incorporated under the laws of the Cayman Islands or another jurisdiction acceptable to the Issuer and the Initial Consenting Noteholders. Upon the implementation of the Plan, the Issuer will transfer substantially all of its assets to Newco, including all of the Issuer's direct and indirect interests in all of the Issuer's subsidiaries;

    (b) shares of Newco (**Newco Shares**) and notes of Newco (**Newco Notes**) will be distributed to certain creditors of the Issuer, being primarily the Noteholders, as consideration for the compromise of the obligations owed to them by the Issuer and its subsidiaries. Accordingly, the Noteholders of the Issuer will hold a very substantial majority of the Newco Shares and Newco Notes on the Plan Implementation Date (as defined below);

    (c) certain litigation claims of the Issuer against third parties will be transferred to a litigation trust established to pursue such claims for the benefit of creditors of the Issuer, including the Noteholders; and

    (d) on the date that is 31 days after the Plan Implementation Date (or such other date as may be agreed to by the Issuer, the Monitor and the Initial Consenting Noteholders) all of the outstanding Common Shares of the Issuer will be cancelled. Following such date, the Issuer will have no outstanding securities other than one Class A Share to be held by a litigation trustee or such other person as may be agreed to by the Monitor and the Initial Consenting Noteholders.

20. The Plan also provides that, at any time prior to the implementation of the Plan, the Issuer may, with the consent of the Initial Consenting Noteholders, complete a sale of all or substantially all of the assets of the Issuer on terms that are acceptable to the Initial Consenting Noteholders (an **Alternative Sale Transaction**), provided that any such Alternative Sale Transaction has been approved by the CCAA Court pursuant to section 36 of the CCAA on notice to the service list.

The Issuer and Newco Following the Plan Implementation Date

21. As a result of the transactions described in paragraph 19 above, under the definition of "reporting issuer" in the securities legislation of certain of the Provinces of Canada, Newco would become a reporting issuer by operation of law and would be subject to the continuous disclosure requirements under the securities legislation of certain of the Provinces of Canada. The Issuer has applied to the securities regulator or regulatory authority in each of the Provinces of Canada for an order that the Issuer will not be a

reporting issuer in each such jurisdiction immediately prior to the effective time on the Plan Implementation Date. As a result, assuming this order is granted, Newco would not become a reporting issuer by operation of law upon the implementation of the Plan, and would not be subject to the continuous disclosure requirements under the securities legislation of certain of the Provinces of Canada. It is a condition precedent to implementation of the Plan that Newco is not a reporting issuer (or equivalent) in any province of Canada or any other jurisdiction.

22. Following the Plan Implementation Date, Newco will have no offices or assets in Canada, few (if any) Canadian directors, officers or employees and an underlying business that will be conducted entirely outside of Canada. In addition, a very substantial majority of Newco's securities will be held by non-Canadians on implementation of the Plan. Given that the Newco Shares and Newco Notes will not be traded on a marketplace as defined in NI 21-101 upon implementation of the Plan, the Issuer believes that the likelihood of any securities of Newco flowing back into Canada following implementation of the Plan to be low given the lack of any substantive connection to Canada.

23. Until such time as the claims of certain creditors with unresolved claims are disallowed or determined to be proven claims pursuant to the CCAA process (which will be after the Plan Implementation Date in many cases), it is not possible to determine all of the securityholders of Newco and their respective percentage holdings of Newco Shares and Newco Notes. Based on searches of beneficial holders of the Notes obtained by the Issuer and assuming no current Unresolved Claims (as defined in the Plan) become Proven Claims (as defined in the Plan) prior to the Plan Implementation Date, on the Plan Implementation Date, to the Issuer's knowledge, Newco will have only approximately 75 resident Canadian securityholders holding less than approximately 2% of the Newco Shares and Newco Notes on the Plan Implementation Date.

24. Immediately following the implementation of the Plan, no securities of Newco will be traded on a marketplace as defined in NI 21-101. The Issuer has been advised by counsel to the Initial Consenting Noteholders that Newco does not currently intend to seek financing by way of a public offering of its securities in Canada or elsewhere.

25. Following implementation of the Plan, the Issuer will have no outstanding securities other than one Class A Share to be held by the litigation trustee or such other person as may be agreed to by the Monitor and the Initial Consenting Noteholders.

26. Following the implementation of the Plan, no securities of the Issuer will be traded on a marketplace as defined in NI 21-101. The Issuer does not intend to seek financing by way of a public offering of its securities in Canada or elsewhere.

Implementation of the Plan

27. The approval and implementation of the Plan involves the following steps:

    (a) obtaining approval of the Plan by the required majorities (pursuant to the CCAA) of creditors at the Meeting;

    (b) obtaining an order of the CCAA Court approving the Plan (the **Sanction Order**); and

    (c) the satisfaction or waiver of all conditions precedent to the implementation of the Plan.

28. In order for the Plan to be approved, a resolution to approve the Plan must be presented at the Meeting, and it must receive an affirmative vote of a majority in number of Affected Creditors (as defined in the Plan) with Proven Claims who are entitled to vote on the Plan in accordance with its terms and two-thirds in value of the Proven Claims held by such Affected Creditors, in each case who vote on the Plan at the Meeting (the **Requisite Creditor Approval**).

29. Once the Requisite Creditor Approval is obtained, the Sanction Order has been granted and the other conditions precedent to Plan implementation have been satisfied or waived, the Monitor will deliver a certificate indicating that Plan implementation has occurred (the date such certificate is delivered being the **Plan Implementation Date**), and the Plan will become binding in accordance with its terms.

30. To implement the Plan, the Issuer is required to effect certain trades and engage in certain acts in furtherance of trades in securities of the Issuer that are necessary for and in connection with the Plan (collectively, the **CCAA Plan Trades**), including, without limitation:

    (a) the assignment, transfer and conveyance of claims by holders of Notes in respect of or in relation to the Notes to Newco in consideration for Newco Shares and Newco Notes;

    (b) the cancellation of the Notes;

    (c) the cancellation of the outstanding Common Shares, Options and other equity interests of the Issuer;

(d) the creation and issuance of a new class of shares of the Issuer; and

(e) the creation and allocation of litigation trust interests.

31. In accordance with the CCAA, the Issuer may not proceed with any Alternative Sale Transaction pursuant to the Plan unless the CCAA Court has approved the particular Alternative Sale Transaction to be completed.

32. It is a condition of implementation of the Plan that the Issuer obtain an order varying the Temporary Order to permit certain transactions contemplated by the Plan which may constitute trades.

AND UPON it being the understanding of the Commission that:

(a) Newco Shares and Newco Notes will be subject to resale restrictions under National Instrument 45-102 *Resale of Securities*;

(b) no aspect of this order will have any effect on existing and/or future enforcement proceedings that have been taken or may be taken against the Issuer or any other parties by Staff of the Commission; and

(c) by granting this order, the Commission is not expressing any opinion or approval as to the terms of the Plan.

AND UPON the Commission, having considered the evidence and submissions before it, being satisfied that the granting of this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 144 of the Act that the Temporary Order be and is hereby varied solely to permit:

(a) the holding of the Meeting (including for greater certainty acts in furtherance of trades in the Issuer's securities in connection with the Meeting), and

(b) the CCAA Plan Trades and all acts in furtherance thereof (other than any CCAA Plan Trades required to give effect to an Alternative Sale Transaction), provided that:

(i) the Issuer obtains the Requisite Creditor Approval;

(ii) the Issuer obtains the Sanction Order;

(iii) the Issuer has complied and is in compliance with the terms of all CCAA Court orders, including the Meeting Order and the Sanction Order; and

(iv) the Temporary Order shall otherwise remain in effect, unamended except as expressly provided in this order.

DATED at Toronto this 26th day of October, 2012.

"Mary G. Condon"

"James E. A. Turner"

"Sinan O. Akdeniz"

2.2.3 Caroline Frayssignes Cotton – s. 127(1)

FOR IMMEDIATE RELEASE
November 2, 2012

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

AND

IN THE MATTER OF
CAROLINE FRAYSSIGNES COTTON

ORDER
(Subsection 127(1) of the Securities Act)

WHEREAS on October 9, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing to Caroline Frayssignes Cotton ("Cotton") for a hearing to be held on November 2, 2012 at 10:00 a.m. in respect of a Statement of Allegations filed by Staff of the Commission ("Staff") dated September 28, 2012;

AND WHEREAS Staff served Cotton with the Notice of Hearing and Staff's Statement of Allegations on October 10, 2012 by sending copies via e-mail to her;

AND WHEREAS the Commission held a Hearing on November 2, 2012, where counsel for Staff attended in person and Cotton did not attend;

AND WHEREAS counsel for Staff provided the Commission with a signed consent to an order adjourning the hearing to a date to be fixed by the Secretary's Office for no later than December 7, 2012;

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

AND UPON considering the consent of the parties;

IT IS HEREBY ORDERED that the hearing is adjourned to December 7, 2012 at 10:00 a.m.

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

"James E. A. Turner"

2.2.4 SEI Investments Canada Company and SEI Investments Management Corporation – s. 74(1)

Headnote

Relief granted from the Dealer Registration Requirement when carrying out "rebalancing" trades in units of the Funds in accordance with the investment decisions made by the Sub-Adviser in managing the portfolios of the Funds as sub-adviser to the Manager in respect of the Funds.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).
National Instrument 31-103 Registration Requirements and Exemptions, s. 8.6.

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

AND

IN THE MATTER OF
SEI INVESTMENTS CANADA COMPANY

AND

SEI INVESTMENTS MANAGEMENT CORPORATION

ORDER
(Subsection 74(1) of the OSA)

UPON the application (the "Application") of SEI Investments Management Corporation (the "Sub-Adviser") and SEI Investments Canada Company (the "Manager") for an order ("Order") of the Commission pursuant to subsection 74(1) of the *Securities Act* (Ontario) (the "OSA") exempting the Sub-Adviser, and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services (as defined below), from the dealer registration requirements of subsection 25(1) of the OSA when carrying out "rebalancing" trades in units of the Funds (as defined below) in accordance with the investment decisions made by the Sub-Adviser in managing the portfolios of the Funds as sub-adviser to the Manager in respect of the Funds;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Manager having represented to the Commission that:

1. The Manager is an unlimited liability company organized under the laws of the Province of Nova Scotia, having its head office in Ontario. The Manager is registered as an adviser in the category of portfolio manager and as a dealer in

the category of exempt market dealer under the securities legislation in all the provinces of Canada and in the Yukon, and is also registered under the OSA as an investment fund manager. The Manager is also registered under the *Commodity Futures Act* (Ontario) (the "CFA") as an adviser in the category of commodity trading manager.

2. The Manager is not in default of the securities legislation of any jurisdiction of Canada.

3. The Manager is the manager of and, as the case may be, provides discretionary portfolio management services in Ontario to (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada, including those mutual funds which are listed in the simplified prospectus for the SEI Funds as seeking to achieve their investment objective by investing in units of other mutual funds that are managed by the Manager and for which the Sub-Adviser provides portfolio management services (the "Asset Allocation Funds"); (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and certain other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions* which seek to achieve their investment objectives by investing in shares of mutual funds established in the United States and managed by the Sub-Adviser (the "Pooled Funds"); and (iii) other Asset Allocation Funds and Pooled Funds that may be established in the future in respect of which the Manager engages the Sub-Adviser to provide portfolio advisory services (the "Future Funds") (each of the Asset Allocation Funds, Pooled Funds and Future Funds being referred to individually as a "Fund" and collectively as the "Funds").

4. Each Fund seeks, or will seek, to achieve its investment objective by investing in the securities of an underlying fund (an "Underlying Fund"). The Manager is the manager of the Underlying Funds in which the Asset Allocation Funds invest. The Sub-Adviser is the manager of the Underlying Funds in which the Pooled Funds invest.

AND UPON the Sub-Adviser having represented to the Commission that:

5. The Sub-Adviser is a company incorporated under the laws of the State of Delaware. The head office of the Sub-Adviser is located at One Freedom Valley Drive, Oaks, Pennsylvania, 19456, U.S.A.

6. The Sub-Adviser and the Manager are affiliates and are each indirect wholly-owned subsidiaries of SEI Investments Company, a Pennsylvania corporation the shares of which are listed on NASDAQ (SEIC).

7. The Sub-Adviser is registered in the United States as an investment adviser with the U.S. Securities and Exchange Commission and is currently exempt from registration as a commodity trading adviser and a commodity pool operator with the U.S. Commodity Futures Trading Commission, subject to pending legislative changes in the United States which may require that the Sub-Adviser register in either one or both such capacities.

8. The Sub-Adviser is not resident in any province or territory of Canada and is not registered in any capacity under the OSA, the CFA or under the securities or derivatives legislation of any other Canadian jurisdiction.

9. The Sub-Adviser provides sub-advisory services to the Manager in connection with the management by the Manager of the Funds in respect of all or a portion of the assets of the investment portfolio of the respective Fund (the "Sub-Advisory Services").

10. The Sub-Adviser is not in default of the securities legislation of any jurisdiction of Canada.

AND UPON the Manager having further represented to the Commission that:

11. The relationship among the Manager, the Sub-Adviser and each Fund satisfies the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* ("Rule 35-502").

12. As required under section 7.3 of Rule 35-502,

    (a) the obligations and duties of the Sub-Adviser in connection with the Sub-Advisory Services are set out in a written agreement with the Manager; and

    (b) the Manager has contractually agreed with the Funds now existing to be responsible for any loss that arises out of the failure of the Sub-Adviser:

        (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Manager and the Fund; or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (this obligation, together with the

obligation in subparagraph (i), the ("Assumed Obligations").

13. The prospectus or similar offering document for each Fund now existing for which the Manager engages the Sub-Adviser to provide the Sub-Advisory Services includes the following disclosure:

    (a) a statement that the Manager is responsible for any Loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

    (b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

14. As part of the Sub-Advisory Services, the Sub-Adviser is responsible for providing discretionary asset allocation services to the Manager in respect of each Asset Allocation Fund by developing asset class weightings for such Fund (the "Strategic Allocations"), selecting the Underlying Funds in which such Fund will invest in accordance with such Strategic Allocations and setting and adjusting the target percentage of the net assets of the Fund invested in each Underlying Fund consistent with the investment strategy of the Fund (the "Target Percentages").

15. The Manager is currently responsible for periodically rebalancing the portfolio of each Asset Allocation Fund by effecting the required purchase and redemption trades in the securities of the Underlying Funds to bring the portfolio back to the Target Percentages and to adjust the portfolio to changes made by the Sub-Adviser to the Strategic Allocations and Target Percentages (the "Rebalancing Activities").

16. As part of the Sub-Advisory Services, the Sub-Adviser is not currently, but may become responsible for providing asset allocation services to the Manager in respect the Pooled Funds.

17. In order to achieve greater efficiency in the management of the Fund portfolios, the Manager is proposing to delegate the performance of the Rebalancing Activities to the Sub-Adviser in order for the Rebalancing Activities to be performed by the Sub-Adviser as a necessary and incidental part of the Sub-Advisory Services provided by the Sub-Adviser.

18. The Funds, or holders of units of the Funds do not pay any commission or fees to the Sub-Adviser. Rather, the Manager pays the Sub-Adviser a sub-advisory fee directly out of the Management fees it receives. There are no commissions or fees paid on a trade of the securities of the Underlying Funds and there is no duplication of management fees of the Funds since no management fees are payable by the Funds to the Underlying Funds.

AND UPON the Sub-Adviser and the Manager having further represented to the Commission that:

19. Subsection 25(1) of the OSA prohibits a person or company from engaging in, or holding himself, herself or itself out as engaging in the business of trading securities unless the person or company is registered under Ontario securities law as a dealer or as a dealing representative of a registered dealer and is acting on behalf of a registered dealer, unless the person or company is exempt under Ontario securities law from the dealer registration requirement.

20. By engaging in the Rebalancing Activities as part of the Sub-Advisory Services, the Sub-Adviser and any individual acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services may be engaging in, or holding himself, herself or itself out as engaging in, the business of trading and, in the absence of being granted the requested relief, would be required to register as an dealer, or as a representative of a dealer, as the case may be, under the OSA.

21. The Sub-Adviser is seeking the relief requested for a purpose similar to the purpose underlying the dealer registration exemption available pursuant to section 8.6 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* [Investment fund trades by adviser to managed account] (the “Managed Account Exemption”). While the Managed Account Exemption would not be available to the Sub-Adviser since, among other reasons, the Sub-Adviser does not act as each Fund’s adviser and investment fund manager, the Sub-Adviser is seeking dealer registration relief in connection with the Rebalancing Activities, by analogy with the Managed Account Exemption, are an incidental part of its discretionary investment management activities as sub-adviser to the Manager in respect of the Funds.

22. The Sub-Adviser would currently not be subject to the broker-dealer registration requirement in the United States to engage in any Rebalancing Activities.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the relief requested.

IT IS ORDERED, pursuant to subsection 74(1) of the OSA, that the Sub-Adviser and any individuals that, as a result of engaging in Rebalancing Activities, may be engaging in, or holding themselves out as engaging in, the

business of trading securities when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services, are exempt from the dealer registration requirement of subsection 25(1) of the OSA when engaging in the Rebalancing Activities, provided that at the relevant time that such activities are engaged in:

(a) the Manager is registered under the OSA as a dealer in the category of exempt market dealer or in any other category of dealer registration that would permit it to carry out "rebalancing" trades in units of the Funds; and

(b) the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services are appropriately registered or licensed, or are entitled to rely on appropriate exemptions from such registrations or licenses, to provide advice for the particular Fund pursuant to the application legislation of their principal jurisdiction.

November 2, 2012.

"Judith Robertson"
Commissioner
Ontario Securities Commission

"Margot Howard"
Commissioner
Ontario Securities Commission

2.2.5 Bunting & Waddington Inc. et al.

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

AND

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

ORDER

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

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

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

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

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

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

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

AND WHEREAS on October 18, 2012, a continuation of the confidential pre-hearing conference was held before the Commission and Staff, Winget and counsel for Brekelmans appeared in person, B&W was represented by Winget, and Sanmugam attended via teleconference;

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

IT IS ORDERED that the hearing of this matter be adjourned to January 18, 2013 at 11:00 a.m. for continuation of the confidential pre-hearing conference to provide the panel with a status update.

DATED at Toronto this 18th day of October, 2012.

"Edward P. Kerwin"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Trinity Wood Securities Ltd. and Peter Browning

IN THE MATTER OF
STAFF'S RECOMMENDATIONS FOR THE REFUSALS OF REGISTRATION OF
TRINITY WOOD SECURITIES LTD. AND PETER BROWNING

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
Section 31 of the Securities Act (Act)

DECISION

1. For the reasons outlined below, my decision is to refuse the registrations of Trinity Wood Securities Ltd. (TWSL) and Peter Browning.

OVERVIEW

2. By letter dated May 22, 2012, Staff recommended that:

   a. TWSL's application for registration as an investment fund manager (IFM) and exempt market dealer (EMD) be refused, and

   b. Browning's application for registration as ultimate designated person (UDP), chief compliance officer (CCO) and dealing representative of TWSL be refused.

   On June 4, 2012, TWSL and Browning (the Applicants) requested an opportunity to be heard.

3. The primary reasons given by Staff for its refusal recommendations were the significant outstanding financial obligations owed by Browning and his related or connected companies, and Browning's failure to disclose these outstanding financial obligations during the time he was previously registered with Trinity Wood Capital Corporation (TWCC).

4. My decision is based on the written submissions by Mark Skuce, Legal Counsel, Compliance and Registrant Regulation Branch of the Ontario Securities Commission for Staff, and by Conrad A. Willemse, counsel to the Applicants.

SUITABILITY FOR REGISTRATION AND WHETHER REGISTRATION IS OTHERWISE OBJECTIONABLE

5. Subsection 25(1) of the Act states that no person or company shall engage in the business of trading in securities without being registered under the Act as a dealer or dealing representative. Similarly, subsection 25(4) states that no person or company shall act as an IFM unless they are registered under the Act as an IFM. In the recent case of *Re Sawh and Trkulja* (2012), 35 O.S.C.B. 7431 (*Sawh and Trkulja*) at para. 142, the Commission reaffirmed the long-standing proposition that "[r]egistration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration".

6. Subsection 27(1) of the Act provides that the Director shall register a person applying for registration unless it appears to the Director that the person is not suitable for registration or that the registration is otherwise objectionable.

7. The three criteria for determining suitability for registration - integrity, proficiency and solvency - have been explained in numerous decisions of the Director (see, for example, *Re John Doe* (2010), 33 O.S.C.B. 1371 and *Re Ittihad Securities Inc.* (2010) 33 O.S.C.B. 10458). Integrity relates to the applicant's honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law. Proficiency relates to prescribed proficiency requirements, as well as the applicant's knowledge of the requirements of Ontario securities law. Solvency is an indicator of a firm's capacity to fulfill its obligations, and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

8. In *Sawh and Trkulja*, the Commission discussed the meaning of "otherwise objectionable" in the context of the test for registration:

> In our view, a purposive approach should be taken to the analysis of … whether registration would be "otherwise objectionable" in light of the Commission's mandate, as expressed in section 1.1 of the Act … (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets …
>
> … [S]ection 2.1 of the Act directs the Commission, [i]n pursuing the purposes of the Act, to have regard to a number of principles, such as requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. … [R]egistrants are in a position where they may harm the public, and regulating the conduct of registrants is therefore a matter of public interest…
>
> (*Sawh and Trkulja*, *supra*, at paras. 289 and 290)

9. In considering the public interest, the Director should consider the applicants' past conduct as a predictor of future behaviour. This principle has been set out in numerous Director's decisions, and also in *Sawh and Trkulja* at para. 153.

SUBMISSIONS

Summary of Staff's submissions

10. Staff argues that TWSL and Browning are unsuitable for registration and that their registrations would be objectionable. The primary reasons for Staff's recommendations are the significant level of outstanding debts (approximately $2.6 million in total) owed by Browning and companies related or connected to him in the Trinity Wood corporate family, and Browning's failure to disclose these debts as required. Staff also submits that granting these registration applications would set a troubling precedent that would allow registered firms to become insolvent, lose their registration, and then simply "restart" their operations under a different corporate identity with the same directing minds.

Background

11. Until recently, Browning was the UDP, CCO and dealing representative of TWCC. TWCC was registered as a limited market dealer (then EMD) from 1998 to January 2010, when its registration was suspended for non-payment of fees. In 2012, TWCC's certificate of incorporation was cancelled.

12. TWSL was incorporated in February 2011. TWSL is indirectly owned by a family trust, whose beneficiaries are Browning, Browning's spouse, and their three sons. TWSL proposes to manage its own fund and to raise capital for third party mining companies on a commission basis.

13. The following companies are related or connected to TWSL or Browning:

    a. TWCC. Browning was the UDP, CCO and dealing representative of TWCC. All of the TWCC shares were indirectly owned by Browning and his spouse.

    b. Trinity Wood Strategic Mining 2008-I Inc. (TWSM). TWSM is a wholly-owned subsidiary of TWCC and the general partner of Trinity Wood Mining 2008-I Flow-Through Limited Partnership, which was wound up in 2009. Browning and another individual were the sole officers and directors.

    c. Trinity Wood Asset Management Inc. (TWAMI). TWAMI was incorporated for the sole purpose of developing, launching and managing the Trinity Wood Senior Life Settlement Fund, which was never completed. Browning is the sole officer and director of an entity that is the majority shareholder.

    d. Liquidity Capital Trinity Wood (LCTW). LCTW carries on a factoring business through a franchise agreement with Liquid Capital Corp. Browning and another individual are the sole officers and directors of a holding company for LCTW.

14. According to the registration applications filed by Browning and TWSL, the following financial obligations are outstanding:

    a. Approximately $0.45 million in debt obligations by TWCC, TWAMI, LCTW and Browning, and

    b. Approximately $2.12 million in unsatisfied judgments by TWCC, Browning, TWSM, TWAMI.

The Applicants submit that substantially all of these debts relate to the unsuccessful launches of two financial products and not the conduct of Browning or TWCC. As such, they argue that these debts are not indicative of future events or the incurrence of future debts.

15. Staff further submits that while almost all of the financial obligations were incurred by Browning while he was registered under the Act with TWCC, Browning did not disclose any of them to Staff by filing an updated Form 33-109F4 – *Registration of Individuals and Review of Permitted Individuals* (Form F4).

The Applicants are not suitable for registration

16. Staff's fundamental concerns with the Applicants' suitability for registration stem from the numerous financial obligations owing by Browning and his related or connected companies, and his failure to disclose these obligations.

17. Staff submits that this case presents the classic situation that the solvency criteria for registration is intended to protect against. Browning and his related or connected companies owe almost $2.6 million in outstanding financial obligations (approximately $1 million of which are owed by Browning himself). Staff argues that these very significant obligations create an undue risk that TWSL and Browning will engage in self-interested activities at the expense of clients, for example, by recommending unsuitable trades as a dealer operating on a commission basis. Browning disagrees with this assessment. He submits that the debts are his personal debts, that TWSL has no debts, and that the debts of the other Trinity Wood companies have no legal impact on Browning or TWSL. He also submits that there is no evidence that he has engaged in self-interested activities in the past and, therefore, it is not reasonable to expect that he will do so in the future.

18. Staff submits that Browning is arguing that TWSL has a "clean slate" and is not tainted by any of the obligations owed by its sister companies or by its proposed UDP, CCO and dealing representative. Staff disagrees with this argument. TWSL is a one-man operation, with Browning as its directing mind and sole applicant for individual registration. Staff submits that Browning's considerable financial obligations bear directly on his own suitability for registration, and insofar as Browning and TWSL are, for practical purposes, one and the same, those same considerable financial obligations bear directly on TWSL's suitability for registration. Browning submits that he is applying for registration again so that he can recover the losses he has incurred and earn the money to repay these creditors.

19. Lastly, Staff submits that it is not simply Browning's personal financial obligations that have a bearing on his suitability for registration, but also those of the other companies in the Trinity Wood corporate family. Items 16.2 and 16.4 of Form F4 both specifically require disclosure of financial obligations over $5,000 and court judgments for firms where the individual applicant was a partner, director, officer or major shareholder (as is the case for Browning's relationship with TWCC, TWSM, TWAMI, and LTCW).

20. Browning's past conduct is directly relevant to the current registration application. He incurred substantial debts personally and through his related and connected companies while registered with TWCC. The outstanding financial obligations of Browning and his related or connected companies represent, at least, a very real risk that Browning and TWSL might engage in self-interested activities at the expense of clients.

21. Moreover, the debts were not disclosed as required. All of the financial obligations were incurred while Browning was registered under the Act with TWCC and prior to submitting his application for TWSL, yet none of these obligations were reported to Staff as required. By failing to report these obligations, Browning deprived Staff of the opportunity to consider taking regulatory action (such as terms and conditions or suspension) in respect of his mounting solvency issues. As Staff submits, at best, Browning's failure to make the required reporting has called into serious question whether he has the proficiency to be the UDP and CCO of a registered firm. In my view, he does not.

22. Browning has advised Staff that he failed to report because he was unaware that he was required to do so. He submits that he delegated the filing of registration documents to a highly qualified office manager, who was also not aware of the requirement to report these obligations. However, he also acknowledges that he was ultimately responsible for making these filings. It is a registrant's sole responsibility to comply with his or her registration requirements. Browning failed to do this. If Browning willfully failed to report his financial obligations, it would impugn his integrity for registration.

23. Therefore, in my view, neither Browning or TWSL are suitable for registration.

The Applicants' registrations are objectionable

24. Regardless of the determination as to suitability, the Director has the clear power under the Act to determine that it would be objectionable to approve a registration application on broader public interest grounds. Staff argues that the proposed registrations of Browning and TWSL would be objectionable on public interest grounds. Staff supports this position by asking the following question: Why did Browning not apply to reinstate the registration of TWCC instead of

applying for registration for a new company TWSL? Staff submits that it is fair to infer that Browning did not seek the reinstatement of registration of TWCC because he knew that such an application would have little chance of success, as TWCC owed approximately $0.5 million at the time.

25. Staff submits that little, if anything, has changed from TWCC to TWSL, and most importantly, Browning remains the directing mind. Browning submits that if not for the problem of meeting the minimum capital requirement in the short term, the application to reinstate the registration of TWCC would have been made instead.

26. Browning submits that he has had an impeccable career as a Chartered Accountant and senior partner of a mid-size international accounting firm, as a business man and entrepreneur and as a market participant. He argues that it is more objectionable that after an impeccable business and professional career of 42 years that Staff would seek to deprive him of the ability to earn income in his chosen career. He also submits that there is no basis for suggesting that "such problems will re-occur as a result of Mr. Browning's directing mind".

27. As Staff submits, TWSL is a one-man operation, with Browning as its directing mind and sole applicant for individual registration. Browning's considerable financial obligations bear directly on his suitability for registration insofar as Staff submits (and I agree), Browning and TWSL are, for practical purposes, one and the same. Viewed in its entirety, Browning's past conduct does not provide me with sufficient comfort that he, or TWSL, would be able to achieve the high standards of business conduct required of securities industry professionals. As a result, registering either of Browning or TWSL would not be in the public interest and their registrations are otherwise objectionable.

DECISION

28. My decision is to refuse the registrations of TWSL and Browning. In my view, neither Browning or TWSL are suitable for registration under any of the three pillars (proficiency, solvency or integrity) and the registrations of either of Browning or TWSL would be objectionable.

"Marrianne Bridge", FCA
Deputy Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission

October 31, 2012

3.1.2 Vincent Ciccone et al.

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

AND

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

Hearing:	September 7 and 13, 2012		
Decision:	September 20, 2012		
Reasons:	October 31, 2012		
Panel:	Vern Krishna, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Michelle Vaillancourt	–	For Staff of the Commission
	No one appeared on behalf of Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)		

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REASONS FOR DECISION ON DISCLOSURE

I. OVERVIEW

[1] The primary issue raised by this motion is whether Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") have met their disclosure obligations to the respondent Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation) (collectively, "**Medra**") to disclose all relevant documents in their possession. Medra requested that copies of all relevant documents in Staff's possession be sent to its offices in Mexico. Staff advised Medra that all relevant documents are available for inspection at the offices of the Commission, but Staff refused to send copies of the documents to Medra. For the reasons that follow, I find that by refusing to provide copies of all relevant documents in their possession to Medra, Staff failed to meet their disclosure obligations.

II. HISTORY OF PROCEEDINGS

[2] The merits proceeding in this matter arose out of a Statement of Allegations dated September 30, 2011, as amended by an Amended Statement of Allegations dated May 2, 2012, and a Notice of Hearing dated October 3, 2011, as amended by an Amended Notice of Hearing dated May 3, 2012. The Amended Statement of Allegations and the Amended Notice of Hearing were issued in respect of Vincent Ciccone ("**Ciccone**") and Medra (together, the "**Respondents**").

[3] The hearing on the merits in this matter commenced on September 5, 2012. Neither Ciccone nor Medra appeared, however, Staff informed the Commission that Staff and Ciccone were seeking an adjournment in light of their settlement discussions. I adjourned the hearing on the merits to September 7, 2012. Another panel of the Commission approved a settlement agreement between Staff and Ciccone on September 7, 2012.

[4] When the hearing on the merits resumed on September 7, 2012, I made inquiries about two e-mail messages, dated August 26, 2012 and September 5, 2012, that were filed with the Office of the Secretary by a representative of Medra, Jeffrey Janssen Anuth ("**Anuth**"), who purports to be its President. The e-mail message contains Medra's request that Staff disclose all relevant documents in their possession by sending copies of said documents to Medra at their offices in Mexico. Staff made submissions in response to Medra's request, supported by the Affidavit of Allister Field, sworn September 7, 2012, and further requested that the Panel proceed with the hearing on the merits of the allegations against Medra by means of a hearing in writing pursuant to Rule 11 of the Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***"). Medra did not appear and made no further submissions on this issue.

[5] Having heard oral submissions from Staff, I adjourned the hearing to September 13, 2012, and directed Staff to make written submissions on their disclosure obligations with respect to Medra, including submissions on the law, policy, jurisprudence and their position on this issue, by September 13, 2012.

[6] The hearing on the merits resumed on September 13, 2012. Staff made further oral submissions, supported by written submissions dated September 12, 2012, that were filed in accordance with the procedural direction that I issued on September 7, 2012. Medra did not appear and made no further submissions on this issue. I reserved my decision and further adjourned the hearing on the merits to September 20, 2012.

[7] On September 20, 2012, I gave an oral decision that Staff's disclosure obligations require them to provide copies of the relevant material to Medra, subject to certain conditions which were set out in an Order dated September 20, 2012. These are my reasons for the oral decision given on September 20, 2012.

III. NON-ATTENDANCE OF MEDRA

[8] Medra did not appear on any days of the hearing on the merits. Based on the Affidavit of Allister Field, sworn September 7, 2012, I was satisfied that Medra was given notice of the hearing in accordance with subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "**SPPA**") by e-mail communications with Anuth who is purportedly the President of Medra. Accordingly, I was entitled to proceed in the absence of the company or its representative in accordance with subsection 7(1) of the SPPA.

IV. THE FACTS

A. Disclosure Requests

[9] The facts giving rise to Medra's request are not in dispute. Staff issued an Amended Statement of Allegations in which Staff allege that Medra engaged in conduct contrary to sections 25, 53 and 126.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). In proceeding against Medra, Staff have been in communication with Anuth, who, as discussed above, is purportedly the President of Medra.

[10] By e-mails dated November 4 and 15, 2011, Staff informed Anuth that the first and second tranches of disclosure, comprising of 31 and 18 binders respectively, were available for inspection at the Commission's offices pursuant to Subrule 4.3(2) of the *Rules of Procedure*. According to Staff, the materials that they obtained during their investigation into this matter include documents received from third parties and documents or testimony obtained by way of a section 11 order and subject to the non-disclosure protections of sections 16 and 17 of the Act. Accordingly, Staff advised Anuth in the e-mail messages that (i) disclosure is subject to very strict laws of non-disclosure; (ii) a significant amount of the information contained in the disclosure is subject to section 16 of the Act (the text of which was set out in the e-mail) and should be treated as confidential; (iii) the implied undertaking rule applies to the disclosure, that is, "respondents who receive information further to [Staff's] duty to make disclosure on proceedings commenced under Section 127 of the Securities Act may not, without leave of the Commission, use the information for any purpose collateral or ulterior to the resolution of the issues in that proceeding".

[11] On August 16, 2012, Staff provided Anuth, by e-mail, with a redacted hearing index listing documents that Staff intended to produce or enter as evidence at the hearing on the merits. On August 23, 2012, Staff further provided Anuth with witness summaries by e-mail. References to personal information were redacted from both the redacted hearing index and witness summaries. With respect to both the redacted hearing index and witness summaries, Staff again provided Anuth with the cautionary advice relating to disclosure described in paragraph [10] above. Staff reiterated that the documents were available for inspection at the Commission's offices, but also offered to send the documents referred to in the redacted hearing index to Medra's counsel in Ontario.

[12] Anuth requested by e-mail dated August 26, 2012 that Staff send "complete, unedited, un-redacted documentation" to Medra's legal counsel in Mexico. He suggested that Staff "may ship the documentation to your very own Canadian embassy in Mexico City, for pick up by [Medra's] legal counsel". Anuth took the following position in his e-mail to Staff:

> Your disingenuous requirement for us to come to Canada and view documentation within the confines of your office, or to obtain Canadian legal counsel (at considerable expense), that meets with your approval, in order to merely view evidence that you are using against the company, is highly questionable and inappropriate. Give us the documents.

[13] In response, Staff maintained that disclosure documents were available for inspection at the Commission's offices in accordance with Rule 4.3(2) of the *Rules of Procedure*. Staff further advised that they were prepared to deliver copies of documents referred to in the redacted hearing index to Medra's counsel in Ontario.

B. The Mexican Complaint Filed by Anuth

[14] At the hearing on the merits, Staff presented an e-mail dated September 5, 2012 from Anuth which stated that "[Medra's] Management has found it necessary to initiate a criminal complaint in Mexico, in defense of, in protection of, and preservation of shareholder interests". Attached to the e-mail was a copy of what appears to be an official document filed by Anuth with the Mexican authorities in order to pursue a "criminal compliant" (as well as a "private suit") "against the crime of FRAUD and/or the crimes determined to have been committed … by the individual(s) found responsible" (the "**Mexican Complaint**"). Staff have provided me with an official translation of the Mexican Complaint.

[15] The Mexican Complaint identifies Anuth as the plaintiff and complainant and names Ciccone as one of the parties responsible for the alleged fraud. In the Mexican Complaint, Anuth referred to some of the allegations against Ciccone contained in the Amended Statement of Allegations and requested that the Mexican authorities initiate an investigation into the matters referred to in the complaint.

[16] The Mexican Complaint states:

> According to the information provided by the above-mentioned Canadian authorities, said authorities have various evidentiary documents that allow it to determine the probable responsibility of any individuals performing acts that may have caused financial harm to the undersigned and other shareholders. The Ontario Securities Commission has volumes 1a, 1 B, 1C, 1D 1E, 1E (*sic*), 1F, 1G, 1H, 1I, 1J, 5A, 5B, 5C, 9, 10A, 12A, 12B, 12C, 12D, 13A, 13B, 14, 15, 16, 17, 18, 19A, 19B, 20, 22, 23, 24, 25 and 26, in the file of VINCNET CICCONE and CABO CATOCHE CORP., a.k.a. MEDRA CORP and MEDRA CORPORATION, which certify the damage that may have been committed by Vincent Ciccone against the undersigned and various other shareholders in the above-mentioned corporation. In view of the above, since November 2010, the current corporate officers had requested a copy of said documents from the Canadian authorities in order to file the corresponding suits.

[17] Certain documents appeared to have been attached to the Mexican Complaint, although the copies of the documents that were filed with the Mexican Complaint were not part of evidence:

> DOCUMENTS. Hard copy of the attachments to the e-mail sent by the Ontario Securities Commission of the Government of Canada, consisting of a document listing volumes 1a, 1 B, 1C, 1D, 1E, 1E (*sic*), 1F, 1G, 1H, 1I, 1J, 5A, 5B, 5C, 9, 10A, 12A, 12B, 12C, 12D, 13A, 13B, 14, 15, 16, 17, 18, 19A, 19B, 20, 22, 23, 24, 25 and 26, in the file of VINCENT CICCONE and CABO CATOCHE CORP., a.k.a. MEDRA CORP and MEDRA CORPORATION, made up of 46 pages; 10 pages of which are in English and whose translation into Spanish I will provide.

[18] The affidavit evidence of the Staff investigator is that the redacted hearing index attached to Staff's e-mail to Anuth dated August 16, 2012 is 47 pages in length and includes references to documents and testimony that were compelled by way of section 13 summonses issued pursuant to a section 11 order obtained in this matter, including 4 transcripts of compelled examinations of Ciccone, as well as documents obtained voluntarily from third parties including investors whose last names were redacted.

V. ISSUES

[19] The issue before the Panel in this motion is whether Staff are required to provide copies of the disclosure material to Medra in order to meet their disclosure obligations.

VI. THE POSITION OF THE PARTIES

A. Medra

[20] Medra did not attend the hearing and made no formal legal submissions in respect of this motion. However, in their e-mail to Staff dated September 5, 2012, Medra asks that the Commission "enter this communication, in its entirety, into the official record of any proceedings you may have in this matter…".

[21] Medra's position on the issue of disclosure may be summarized in the following excerpt from the September 5th e-mail:

> Subsequent and current management has repeatedly requested complete information from the Ontario Securities Commission. Such information to include a true, complete and accurate copy of any and all information, documents, statements, financial records, depositions, emails and other records, written or recorded, in the matter of Ciccone Group, Medra Corporation etc. …
>
> ….
>
> Ontario Securities Commission [sic] has continually refused to send us this information. Your disingenuous requirement for us to come to Canada and view documentation within the confines of your office, or to obtain Canadian legal counsel, that meets with your approval, in order to merely view evidence that you are using against the company, is highly questionable and inappropriate.

B. Staff

[22] Staff accept that they have an obligation to disclose to Medra any documents in the possession of Staff that may be relevant to the allegations giving rise to this proceeding, whether those documents are inculpatory or exculpatory. However, it is Staff's position that their disclosure obligation is satisfied when they make all relevant documents available for inspection at the offices of the Commission. Staff submit that their disclosure obligation is set out in Subrules 4.3(1) and 4.3(2) of the *Rules of Procedure* which state:

> **4.3 Disclosure of Documents or Things – (1) Requirement to Disclose** – Each party to a proceeding shall deliver to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case, at least 20 days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.
>
> (2) In the case of a hearing under section 127 of the Act and subject to Rule 4.7, Staff shall make available for inspection by every other party all other documents and things that are in the possession or control of Staff that are relevant to the hearing. Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

[23] Staff submit that they have complied with Subrule 4.3(2) because they have made all relevant documents available for inspection at the offices of the Commission. In Staff's view, they should not be required to send copies of the relevant documents to Medra's offices in Mexico because the documents include information obtained by the Commission through compelled examinations, and as such are protected by the confidentiality requirements of section 16 of the Act. That section reads:

> **16. (1) Non-disclosure** – Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
>
> (a) the nature or content of an order under section 11 or 12; or
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.
>
> **(2) Confidentiality** – If the Commission issues an order under section 11 or 12, all reports provide under section 15, all testimony given under section 13 and all documents and other things obtained

> under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

[24] Staff further submit that the relevant documents in their possession are subject to section 17 of the Act, the relevant subsections of which state:

> **17. (1) Disclosure by Commission** – If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (a) the nature or content of an order under section 11 or 12;
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
>
> (c) all or part of a report provided under section 15.
>
> ….
>
> **(3) Disclosure to police** – Without the written consent of the person from whom the testimony was obtained, no order shall be made under subsection (1) authorizing the disclosure of testimony given under subsection 13(1) to,
>
> (a) a municipal, provincial, federal or other police force or to a member of a police force; or
>
> (b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.
>
> ….
>
> **(6) Disclosure in investigation or proceeding** – A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,
>
> (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or
>
> (b) an examination of a witness, including an examination of a witness under section 13.
>
> **(7) Disclosure to police** – Without the written consent of the person from whom the testimony was obtained, no disclosure shall be made under subsection (6) of testimony given under subsection 13(1) to,
>
> (a) a municipal, provincial, federal or other police force or to a member of a police force; or
>
> (b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

[25] Staff submit that the documents requested by Medra may only be provided by Staff upon receipt of an undertaking not to disclose such documents to any other person, in compliance with sections 16 and 17 of the Act. Staff submit that neither Medra nor its Mexican counsel can give an enforceable undertaking not to disclose the documents. Therefore, Staff take the position that they should not be required to provide Medra copies of the materials

[26] Furthermore, they submit that Medra has already made clear, by deeds and words, that any documents disclosed by Staff will be provided to Mexican authorities in support of the Mexican Complaint. Medra's actions with respect to the Mexican

Complaint, Staff submit, create reasonable grounds for concern that Medra will not comply with sections 16 and 17 of the Act, and justify their position that disclosure must be conducted in the controlled environment of the Commission's offices.

[27] Staff submit that the manner in which they propose to effect disclosure to Medra is consistent with the Supreme Court of Canada's decision in *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713 ("***Deloitte (SCC)***"), where, at paragraph 28, the Court recognizes that when exercising their disclosure obligations, Staff must:

> … search for an approach that provides fair consideration for the respondents in jeopardy and enables them to meet the case against them yet also is sensitive to the third party's privacy interests and expectations.

[28] Staff submit that their position is consistent with practice in the criminal context. Staff rely on the C*rown Policy Manual*, published by the Ministry of the Attorney General, which addresses the situation where an accused is self-represented and the Crown's disclosure material contains information that is subject to privacy concerns. In that situation, the *Crown Policy Manual*, section D-1, para. 9(b) states:

> An unrepresented accused is entitled to the same disclosure as the represented accused. However, if there are reasonable grounds for concern that leaving disclosure material with the unrepresented accused would jeopardize the safety, security, privacy interests, or result in the harassment of any person, Crown counsel may provide the disclosure by means of controlled and supervised, yet adequate and private, access to the disclosure materials. ... Crown counsel shall inform the unrepresented accused in writing of the appropriate uses, and limits upon the use, of the disclosure materials.

[29] Staff submit that the above policy flows from the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (the "**Martin Committee**"). The Martin Committee's Recommendation 12(h) was as follows:

> where reasonably capable of reproduction, and where Crown counsel intends to introduce them into evidence, copies of documents, photographs, audio or video recordings of anything other than a statement by a person, and other materials should normally be supplied to the defence. The defence may be limited to a reasonable opportunity, in private, to view and listen to a copy of any audio or video recording where Crown Counsel has reasonable cause to believe that there exists a reasonable privacy or security interest of the victim(s) or witness(es), or any other reasonable public interest, which cannot be satisfied by an appropriate undertaking from defence counsel.

[30] Staff submit that their proposed method of effecting disclosure has been endorsed by the Ontario courts in *R. v. Blencowe*, [1997] O.J. No. 3619 (Gen. Div.) ("***Blencowe***"), *R. v. Schertzer*, [2004] O.J. No. 5879 (S.C.J) ("***Schertzer***") and *R. v. Radwanski*, [2006] O.J. No. 5250 (S.C.J.) ("***Radwanski***").

[31] In *Blencowe*, Watt J. (as he then was) ruled that disclosure of a video containing alleged child pornography should be provided to the defence upon an undertaking from defence counsel that the copies of the tape will be retained in counsel's offices. The Court also imposed strict and specific limits on who would be permitted to view the tape.

[32] In *Schertzer*, the Court was dealing with the disclosure of information that contained the identity of a confidential informant whose information led to a drug prosecution. In that case, Ewaschuk J. ordered that the Crown is not required to make disclosure to the accused until his counsel enters into an express undertaking not to use the disclosure material or information contained in the material beyond the need to make full answer and defence.

[33] In *Radwanski*, the Crown sought to effect disclosure by providing electronic documentation to the defence. The defence objected to the cost of obtaining the software required to view the documents, and requested the Crown pay for the software. In response, the Crown offered to allow the defendant to view the documents at the offices of the Crown. In that case, the Court accepted that the Crown had properly discharged their disclosure obligations by making the documents available for inspection at the offices of the Crown.

[34] Finally, Staff rely on two decisions of the Commission, *Re Suman* (2009), 32 O.S.C.B. 592 ("***Suman***"), and *Re Carlton Ivanhoe Lewis et al.* (2010), 33 O.S.C.B. 2826 that both, in Staff's view, approved of disclosure in the manner similar to that proposed in the matter herein. In *Suman*, the Commission ordered that an unrepresented party need not be provided a copy of a computer hard drive containing confidential information relating to non-parties to the Commission proceeding. Instead, the Commission ordered that the unrepresented respondent be permitted to view the material at the offices of the Commission or, alternatively, at the offices of counsel for his co-respondent.

VI. ANALYSIS

Have Staff met their disclosure obligations to Medra?

[35] Staff have a broad duty of disclosure akin to the *Stinchcombe* standard established in criminal law (*R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (S.C.C.) ("***Stinchcombe***")). That standard "requires the Crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the Crown, which discretion is reviewable by the Court" (*Re Boock*, (2010), 33 O.S.C.B. 1589 at para. 70 and *Re Biovail Corp.* (2008), 31 O.S.C.B. 7161 at para. 15, cited in *Suman* at para. 38; see also *Deloitte (SCC)*). That disclosure obligation is a matter of fundamental fairness to respondents in Commission proceedings because it allows respondents facing possible sanction by the Commission to make to make full answer and defence.

[36] In this motion, Staff do not dispute their obligation to disclose all relevant evidence in their possession. The dispute giving rise to this motion is with respect to Staff's proposed method of disclosure. Staff submit their disclosure obligation does not require the delivery of all relevant documents, including relevant evidence obtained by Staff by means of a compelled examination, to an unrepresented respondent who resides outside Canada. They are concerned that an extraterritorial respondent may make unauthorized use of the compelled evidence and Staff will have little or no power to enforce the confidentiality provisions in section 16 of the Act.

[37] A fundamental problem with Staff's position is that it draws an unsupportable distinction between respondents living in Canada at the time of disclosure and those living abroad. In answer to questions from the Panel during the hearing, Staff counsel agreed that documents, including compelled evidence, are routinely provided to unrepresented respondents living in Canada. Those respondents are free to leave Canada, taking the compelled evidence with them. In such cases, Staff are equally powerless to stop misuse of the documents upon their removal from Canada. If Staff's concerns about the potential misuse of compelled evidence beyond Canada's borders warrant restrictions on their disclosure obligations, such restrictions would apply equally to all unrepresented respondents, not simply those living outside Canada.

[38] The authorities relied upon by Staff confirm that the Crown's disclosure obligations will, except in rare circumstances, require the Crown to provide a respondent with copies of all relevant evidence in the Crown's possession and control, but for that which is protected by privilege (*Blencowe*, *supra*, at paras. 20 and 21). Staff rely on these authorities to support their argument that concerns about potential misuse of the disclosure material will justify limiting access to disclosure material. However, the cases cited by Staff demonstrate that only in those "rare circumstances" where specific and significant privacy interests are at risk will disclosure by means of controlled inspection of the evidence at the offices of the Crown be justified. The rare circumstances in those cases included instances where the Crown was required to disclose videotapes containing alleged child pornography or where the disclosed documents identify a confidential informant. Staff have not demonstrated similarly significant privacy interests in this case. Indeed, Staff have not identified the specific documents they seek to protect by means of restricted disclosure, other than to say they include information obtained through compelled examinations. In the absence of specific third party privacy interests that would be compromised by sending copies of the material to Mexico, Medra's right to meaningful disclosure for the purpose of making full answer and defence must prevail.

[39] The Act grants Staff broad powers to compel persons to provide evidence in aid of their investigations, and requires that such evidence be kept confidential, to be used solely for the purpose for which it was collected. Staff must act to ensure compelled evidence is not used for any improper purpose. However, when Staff bring allegations against a respondent, and the compelled evidence may be relevant to those allegations, the respondent has a right to *meaningful disclosure* of that evidence in a manner that will permit the respondent to make full answer and defence.

[40] Meaningful disclosure is a subjective concept and may vary depending on the circumstances of each case. Where, as here, a respondent resides in Mexico and has not retained Ontario counsel, *meaningful disclosure* requires Staff to provide copies of the disclosure material to the respondent. In the circumstances of this case, providing copies of the disclosure material is not only required to ensure procedural fairness and natural justice, but also to comply with the Commission *Rules of Procedure*, Subrule 4.3(2) of the which states:

> … Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

Concerns about Medra's use of the disclosure material

[41] When Medra receives copies of the disclosure material, it will be bound by the confidentiality provisions of the Act and will not be permitted to disclose the material to any person other than legal counsel for the purpose of making full answer and defence to the allegations made by Staff in this proceeding. Nothing in this decision alters Medra's obligations under the Act to maintain the confidentiality of the disclosed material.

[42] To ensure Medra understands the limitations on its use of the disclosure material and agrees to those limitations, Staff will not be required to provide copies of the documents to Medra until Medra provides a written undertaking that it will not disclose the documents or use them for any purpose other than making full answer and defence in the Commission proceeding. If Medra fails to provide such an undertaking, Staff are not required to provide copies of the documents. Once given, should Medra fail to comply with the undertaking, they will be in breach of Ontario securities law, and subject to sanctions.

Redaction of personal financial information

[43] Staff requested to redact from the disclosure material any personal information relating to investors. Staff described such information to include addresses, telephone numbers, bank account numbers, Social Insurance Numbers, and any other similarly sensitive personal information. I am satisfied that personal investor information is likely irrelevant to the allegations against Medra, and therefore may be redacted from the disclosure material.

[44] If Medra believes that any of the redacted information is necessary for the purpose of making full answer and defence, Medra may bring a motion for a determination as to whether the redacted information is relevant and therefore should be disclosed.

VII. CONCLUSION

[45] Having found that Staff had not met their disclosure obligations to Medra, the following Order was issued dated September 20, 2012:

(i) Subject to the receipt from Medra of a written undertaking to comply with the terms of this Order as described in subparagraph (iii)(e) below, Staff shall provide copies of all relevant materials in their possession (the "**Material**") to Medra, subject to redaction of personal information relating to third parties;

(ii) If Medra believes that any of the redacted information is necessary for the purpose of making full answer and defence to the allegations made against it in these proceedings, Medra may bring a motion pursuant to Rule 3 of the Commission *Rules of Procedure* for a determination as to whether the redacted information is relevant to said allegations;

(iii) The Material will be provided to Medra on the following conditions:

(a) Medra and its counsel shall not use the Material for any purposes other than for making full answer and defence to the allegations made against it in these proceedings;

(b) any use of the Material other than for the purpose of making full answer and defence to the allegations made against Medra in these proceedings will constitute a violation of this Order;

(c) Medra and its counsel shall maintain custody and control over the Material, so that copies of the Material are not improperly disseminated;

(d) the Material shall not be used for a collateral or ulterior purpose, including for purposes of other proceedings; and

(e) Medra shall sign an undertaking accepting the conditions set out at subparagraphs (a) to (d) above prior to any Material being provided to Medra by Staff, which undertaking shall be signed and returned to Staff within 5 business days of receipt of this Order.

DATED at Toronto this 31st day of October, 2012.

"Vern Krishna"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 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	02 Nov 12	
McVicar Industries Inc.	12 Sept 12	24 Sept 12	24 Sept 12	30 Oct 12	
Boyuan Construction Group, Inc.	02 Oct 12	15 Oct 12	15 Oct 12		

4.2.2 Outstanding Management & Insider Cease Trading Orders

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Chapter 5

Rules and Policies

5.1.1 OSC Rules of Procedure (Amendment and Consolidation as of October 25, 2012)

ONTARIO SECURITIES COMMISSION RULES OF PROCEDURE
(Amendment and Consolidation as of October 25, 2012)

Made under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

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ONTARIO SECURITIES COMMISSION RULES OF PROCEDURE
Made under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended

GENERAL RULES

Rule 1 – General
(See also the SPPA.)

1.1 Interpretation – In these Rules:

"Act" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

"address" includes a valid address for electronic transmission;

"application" includes an application:

(a) by Staff pursuant to section 127 of the Act;

(b) for review of a decision of the Director pursuant to section 8 of the Act;

(c) for review of a decision of a stock exchange, a self-regulatory organization, a quotation and trade reporting system or a clearing agency pursuant to section 21.7 of the Act;

(d) for a further decision pursuant to subsection 9(6) of the Act;

(e) for a revocation or a variation of a decision pursuant to section 144 of the Act;

(f) pursuant to section 104 and/or section 127 of the Act in connection with take-over bids, issuer bids and mergers and acquisitions transactions; and

(g) for an order authorizing disclosure pursuant to section 17 of the Act.

"Bulletin" means the Commission Bulletin;

"Commission" means the Ontario Securities Commission;

"company" means a company as defined in subsection 1(1) of the Act;

"decision" means a decision as defined in subsection 1(1) of the Act;

"Director" means a Director as defined in subsection 1(1) of the Act;

"electronic hearing" means an electronic hearing as defined in subsection 1(1) of the SPPA;

"electronic transmission" means transmission by facsimile or electronic mail (e-mail);

"file" means to file with the Office of the Secretary to the Commission in accordance with Rule 1.5.4;

"holiday" means:

(a) any Saturday or Sunday,

(b) New Year's Day,

(c) Family Day,

(d) Good Friday,

(e) Easter Monday,

(f) Victoria Day,

(g) Canada Day,

(h) Civic Holiday,

(i) Labour Day,

(j) Thanksgiving Day,

(k) Remembrance Day,

(l) Christmas Day,

(m) Boxing Day,

(n) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and

(o) where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

"intervenor" means a person who has applied to intervene pursuant to the Rules and who has been granted intervenor status by order of a Panel;

"oral hearing" means an oral hearing as defined in subsection 1(1) of the SPPA;

"Panel" means a quorum of at least 2 members of the Commission pursuant to subsection 3(11) of the Act or a single member of the Commission authorized by order of the Commission pursuant to subsection 3.5(3) of the Act;

"party" may include:

(a) a person recognized as a party by the Act;

(b) a person entitled by law to be a party to the proceeding;

(c) a person granted party status by order of a Panel; and

(d) Staff;

"person" means a person as defined in subsection 1(1) of the Act, and where applicable, includes a company as defined in subsection 1(1) of the Act;

"representative" means, in respect of a proceeding to which the Rules apply, a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, to represent a person in a proceeding;

"Rules" means the *Ontario Securities Commission Rules of Procedure*;

"Secretary" means the Secretary to the Commission appointed pursuant to section 7 of the Act;

"service" means the delivery of a document to a party in accordance with the Rules;

"SPPA" means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

"Staff" means Staff of the Commission;

"Website" means the Commission's Website; and

"written hearing" means a hearing conducted in writing as defined in subsection 1(1) of the SPPA.

1.2 General Principles – (1) Unless otherwise provided in the Rules, the Rules apply to all proceedings before a Panel where the Commission is authorized under the Act or the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended, or otherwise by law to hold a hearing.

(2) Except where otherwise specifically provided in the SPPA, if there is a conflict between the SPPA and the Rules, the SPPA shall prevail over the Rules.

(3) The Rules shall be construed to secure the most expeditious and least expensive determination of every proceeding before the Commission on its merits, consistent with the requirements of natural justice.

(4) Effect of Irregularity in Form – No proceeding, document or order in

a proceeding is invalid by reason of a defect or other irregularity in form.

1.3 General Powers of a Panel under the Rules – (1) The Commission may, from time to time, issue procedural directions or practice guidelines with respect to the application of the Rules as may be appropriate. The Commission shall give notice of these procedural directions or practice guidelines by issuing a notice from the Office of the Secretary, which shall be posted on the Website and published in the Bulletin.

1.4 Procedural Directions or Orders by a Panel – (1) A Panel may exercise any of its powers under the Rules on its own initiative or at the request of a party.

(2) A Panel may issue procedural directions or orders with respect to the application of the Rules in respect of any proceeding before it, and may impose any conditions in the direction or order as it considers appropriate.

(3) A Panel may waive or vary any of the Rules in respect of any proceeding before it, if it is of the opinion that to do so would be in the public interest or that it would otherwise be advisable to secure the just and expeditious determination of the matters in issue.

(4) In considering a request to waive or vary any of the Rules or to hold a hearing on an expedited basis, a Panel may consider factors including:

(a) the nature of the matters in issue;

(b) whether adherence to the time periods set out in the Rules would be likely to cause undue delay or prejudice to any of the parties;

(c) costs; and

(d) any other factors a Panel considers relevant in the public interest.

(5) When granting a request for an expedited hearing, a Panel may, as a condition, require that the parties file documents electronically.

1.5 Service and Filing

1.5.1 Service of Documents on Parties – (1) All documents required to be served under the Rules shall be served by one of the following methods:

(a) by personal delivery to the party;

(b) by delivery to the representative of the party;

(c) by delivery to an adult person at the premises where the party resides, is employed or carries on business, or where the representative of the party carries on business;

(d) by delivery to a company, by leaving a copy with an officer, director or agent of the company, or a person at any place of business of the company who appears to be in control or management of the place of business;

(e) by regular, registered or certified mail to the last known address of the party or the representative of the party;

(f) electronically to the facsimile number or e-mail address of the party or the representative of the party;

(g) by courier to the last known address of the party or the representative of the party; or

(h) by any other means authorized by a Panel.

(2) Date on Which Service is Effective – Service is deemed to be effective, when delivered:

(a) by personal delivery, on the day of delivery;

(b) by mail, on the fifth day after the day of mailing;

(c) electronically, on the same day;

(d) by courier, on the earlier of the date on the delivery receipt or the second day after it was sent; or

(e) by any other means authorized by a Panel, on the date specified by the Panel.

(3) Service After 4:30 p.m. – Documents served after 4:30 p.m. shall be deemed to have been served on the next day that is not a holiday.

1.5.2 Information on Documents Served or Filed – (1) A person who serves or files a document should include with it the following information:

(a) the person's name, address, telephone number, facsimile number and e-mail address, as applicable; or

(b) if the person is represented by a representative, the name, address, telephone number, facsimile number and e-mail address of the representative, as applicable; and

(c) the name of the proceeding to which the document relates; and

(d) the name of the person or representative being served.

(2) If any information referred to in subrule 1.5.2(1) changes, the person who provided the information shall notify the person to whom the information was provided and the Secretary of the change and any new information.

1.5.3 Inability to Effect Service – (1) If a person required to serve a document is unable to serve it by one of the methods described in Rule 1.5.1, the person may apply to a Panel for an order for substituted, validated or waived service.

(2) Application for an Order for Substituted, Validated or Waived Service – The application shall be filed with an affidavit setting out the efforts already made to serve the person and stating:

(a) why the proposed method of substituted service is likely to be successful; or

(b) why a Panel should validate or waive service on that person.

(3) Substituted, Validated or Waived Service – A Panel may give directions for substituted service or, where necessary, may validate or waive service if it considers it appropriate.

1.5.4 Filing – (1) A document required under the Rules to be filed shall be filed by personal delivery, mail, facsimile transmission or courier to the offices of the Commission, marked to the attention of the Secretary, or, alternatively if the Secretary consents, by e-mail to the Secretary.

(2) The filing of a document with the Secretary pursuant to these Rules does not constitute service of the document on any party to the proceeding, including Staff or any other person.

(3) Unless otherwise specified in the Rules or otherwise directed by the Secretary, when a document is filed, 5 copies shall be filed. The Secretary may require that a greater number of copies be filed.

(4) Filing After 4:30 p.m. – Documents filed after 4:30 p.m. shall be deemed to have been filed on the next day that is not a holiday.

1.5.5 Binding of Documents – (1) A record for a motion and an application should have a light blue backsheet.

(2) A factum or case book filed by an applicant or a moving party should be bound front and back in white covers. A factum or case book of a respondent or responding party should be bound front and back in green covers.

1.5.6 Electronic Transmission – If a document is filed with the Secretary by electronic transmission, the required number of print copies of the document shall be filed forthwith.

1.5.7 Lengthy Facsimile Transmissions – Documents filed by facsimile transmission shall not exceed 25 pages, including the cover sheet, except with the consent of the Secretary.

1.5.8 Requirement to File Electronically – The Secretary may require a party to file an electronic version of any or all documents.

1.6 Time – (1) When computing time under the Rules, except where a contrary intention appears:

(a) if there is a reference to a number of days between 2 events, they are counted by excluding the day on which the first event occurs and including the day on which the second event occurs;

(b) if a period of less than 7 days is prescribed, holidays are not counted; and

(c) if the time for doing an act under the Rules expires on a holiday, the act may be done on the next day that is not a holiday.

(2) Extension or Abridgement – A Panel may extend or abridge any time period prescribed under the Rules, before or after the time period expires and on any conditions that the Panel considers advisable. Prior to the commencement of a hearing, a Panel may authorize the Secretary to extend or abridge any time period under the Rules with respect to a hearing.

1.7 Parties

1.7.1 Appearance and Representation – In any proceeding a party may be self-represented or may be represented by a representative.

1.7.2 Self-Representation – (1) When a party first appears before a Panel in a proceeding, the party shall file or otherwise state on the record, and keep current during the proceeding, the party's address, telephone number, facsimile number and e-mail address, as applicable.

(2) Representation by a Representative – When a person first appears as representative for a party in a proceeding before a Panel, the person shall file or otherwise state on the record, and keep current during the proceeding, the person's address, telephone number, facsimile number and e-mail address, as applicable, and the name and address of the party being represented.

1.7.3 Change in Representation by a Party – (1) A party who is represented by a representative may change the representative by serving on the representative and on every other party, and filing a notice of the change, giving the name, address, telephone number, facsimile number and e-mail address of the new representative, as applicable.

(2) A party who is represented by a representative may elect to act in person by serving on the representative and on every other party and filing a notice of the intention to act in person, giving the party's address, telephone number, facsimile number and e-mail address, as applicable.

1.7.4. Withdrawal by a Representative – (1) A representative for a party in a proceeding may withdraw as representative for the party only with leave of the Panel.

(2) A notice of motion seeking leave to withdraw as representative must be served on the party and filed, and must state all facts material to a determination of the motion, including a statement of the reasons why leave should be given. The notice must not disclose any solicitor client communication in which solicitor client privilege has not been waived.

(3) The notice of motion shall include:

(a) the client's last known address or the address for service, if different; and

(b) the client's telephone number, facsimile number and e-mail address, as applicable, unless the Panel orders otherwise.

1.8 Intervenors

1.8.1 Motion for Leave to Intervene – (1) A motion for leave to intervene in a proceeding shall be made pursuant to Rule 3.

(2) A motion for leave to intervene shall set out:

(a) the title of the proceeding in which the person making the request wishes to intervene;

(b) the name and address of the person making the request;

(c) a concise statement of the scope of the proposed intervention, the issue that directly affects that person and the extent to which that person wishes to intervene; and

(d) the reasons why intervenor status should be granted.

(3) A Panel may grant leave to intervene or refuse the request on any terms and conditions that it deems appropriate.

(4) Factors – In considering a motion for leave to intervene, a Panel may consider factors such as:

(a) the nature of the matter;

(b) the issues;

(c) whether the person or company is directly affected;

(d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;

(e) any delay or prejudice to the parties; and

(f) any other factor the Panel considers relevant.

1.8.2 Application of the Rules – Once a person has been granted intervenor status, the Rules, including those with respect to the service and filing of documents, apply to the intervenor as if it were a party, subject to the order of a Panel.

COMMENCEMENT OF PROCEEDINGS

Rule 2 – Application and Notice of Hearing

2.1 Application by Staff – (1) Subject to Rule 2.4, an application by Staff pursuant to section 127 of the Act shall be made by filing a Statement of Allegations.

(2) Issuance and Service of a Notice of Hearing – Once a Statement of Allegations has been filed by Staff, the Secretary shall issue a Notice of Hearing forthwith.

(3) Staff shall serve the Statement of Allegations and the Notice of Hearing forthwith on all the parties.

2.2 Application for Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency – (1) An application for review of a decision of the Director, a stock exchange, a self-regulatory organization or a clearing agency pursuant to section 8 or 21.7 of the Act shall be made in accordance with Rule 14.

(2) Issuance of a Notice of Hearing – In the case of an application referred to in subrule 2.2(1), the Secretary shall issue a Notice of Hearing only after all the documents required to be filed and served pursuant to Rule 14 have been filed and served.

(3) The Secretary shall issue the Notice of Hearing and the applicant shall serve it on all the parties and on any other persons as the Secretary considers necessary.

2.3 Application for a Further Decision pursuant to Subsection 9(6) of the Act or for a Revocation or Variation of a Decision pursuant to Section 144 of the Act – (1) An application for a further decision pursuant to subsection 9(6) of the Act or an application pursuant to section 144 of the Act for a revocation or a variation of a decision made by a Panel shall be made in accordance with Rule 15.

(2) In the case of an application referred to in subrule 2.3(1), the Secretary shall issue a Notice of Hearing only after all the documents required to be filed and served pursuant to Rule 15 have been filed and served.

(3) The applicant shall serve the Notice of Hearing on all the parties and on any other persons as the Secretary considers necessary.

2.4 Application pursuant to Section 104 and/or Section 127 of the Act – (1) An application made pursuant to section 104 of the Act in connection with a take-over bid or an issuer bid by an interested person as defined in subsection 89(1) of the Act, or an application pursuant to section 127 of the Act in connection with a take-over bid or an issuer bid, shall be made in accordance with Rule 16, with any modifications as the circumstances require.

(2) Issuance of a Notice of Hearing – The Secretary shall issue a Notice of Hearing for an application referred to in subrule 2.4(1) only after all the documents required to be filed and served pursuant to Rule 16 have been filed and served.

(3) The applicant shall serve the Notice of Hearing on all the parties and on any other persons or companies as the Secretary considers necessary.

2.5 Effect of a Notice of Hearing – (1) A proceeding commences upon the issuance of a Notice of Hearing by the Secretary.

(2) Publication on the Website and in the Bulletin – A Notice of Hearing, together with the Statement of Allegations or any other document required to be filed in connection with an application under Rule 2, shall be posted on the Website upon confirmation of service on the parties or, in any event, no later than 2 days following the issuance of the Notice of Hearing, and shall be published as soon as possible in the Bulletin.

2.6 Request for a Written Hearing – Any request to have an application heard by way of a written hearing pursuant to Rule 11 shall be specified in the application.

2.7 Notice of a Constitutional Question – If a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a common law rule, the party shall serve a notice of the constitutional question on the Attorneys General of Canada and Ontario and on the other parties, and file it as soon as the circumstances requiring a notice become known and in any event, at least 15 days before the question is to be argued.

PROCEDURES BEFORE HEARINGS

Rule 3 – Motions

3.1 Time and Date – A person who wishes to make a motion shall contact the Secretary, who may set a time and date for the hearing of the motion by a Panel.

3.2 Notice – (1) A motion shall be made by filing a notice of motion accompanied by a motion record, including any affidavit(s) setting out the facts to be relied upon.

(2) The person making the motion shall serve the motion on each party and file the motion, at least 10 days before the day on which the motion is to be heard.

3.3 Request for a Written Hearing – Any request to have a motion heard by way of a written hearing pursuant to Rule 11 shall be specified in the notice of motion.

3.4 Response – (1) A party served with a notice of motion may serve on the person making the motion and on each other party an affidavit(s) in response, at least 6 days before the day on which the motion is to be heard.

(2) The party serving any affidavit(s) in response shall file the affidavit(s) in response, within the period set out in subrule 3.4(1).

3.5 Reply – (1) A party served with any affidavit(s) in response to a motion may serve on the person making the response and on each other party an affidavit(s) in reply, at least 4 days before the day on which the motion is to be heard.

(2) The party serving any affidavit(s) in reply shall file the affidavit(s) in reply, within the period set out in subrule 3.5(1).

3.6 Memorandum of Fact and Law – (1) The party making the motion shall serve a memorandum of fact and law on each party and file it, at least 4 days before the day on which the motion is to be heard.

(2) A party served with a notice of motion and affidavit(s) shall serve a memorandum of fact and law on each party and file it, at least 2 days before the day on which the motion is to be heard.

3.7 Affidavit(s) – (1) Subject to subrule 3.7(2), evidence on a motion may be made by affidavit(s).

(2) Where a party files an affidavit in respect of a motion, the party shall make the deponent reasonably available for cross-examination by any adverse party.

(3) If the circumstances require, the Panel may, before the hearing, grant leave on any terms and conditions that it deems appropriate for:

(a) oral testimony in relation to an issue raised in the notice of motion; and

(b) the cross-examination of a deponent to an affidavit.

3.8 Where No Notice Required – The Panel may permit a party to make a motion without notice if:

(a) the nature of the motion or the circumstances render service of a notice of motion impractical or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

3.9 Filing Motion Materials – If the party bringing a motion fails to comply with the time limits for the filing of motion materials set out in the Rules or directed by the Secretary, the Panel may dispose of the motion as it considers appropriate.

Rule 4 – Disclosure
(See also sections 5.4 and 8 of the SPPA and Part VI of the Act.)

4.1 Interpretation – (1) In Rule 4, "document" includes a sound recording, video-tape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

(2) "Particulars" includes:

(a) the grounds upon which any remedy or order is being sought or opposed in the proceeding; and

(b) a general statement of the alleged material facts upon which the party relies in the proceeding.

4.2 Disclosure Order – At any stage in a proceeding, the Panel may order that a party:

(a) provide to another party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of the subject of the proceeding; and

(b) make any other disclosure required by this Rule, within the time limits and on any conditions that the Panel may specify.

4.3 Disclosure of Documents or Things – (1) Requirement to Disclose – Each party to a proceeding shall deliver to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case, at least 20 days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.

(2) In the case of a hearing under section 127 of the Act and subject to Rule 4.7, Staff shall make available for inspection by every other party all other documents and things that are in the possession or control of Staff that are relevant to the hearing. Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

(3) Non-disclosure of a Document or Thing – A party who does not disclose a document or thing in compliance with subrule 4.3(1) may not refer to the document or thing or introduce it in evidence at the hearing without leave of the Panel, which may be on any conditions that the Panel considers just.

4.4 Disclosure Where Section 8 of the SPPA Applies – Subject to Rule 4.7, if the good character, propriety of conduct or competence of a party is an issue in a proceeding, Staff shall provide particulars of the allegations and disclose to the party against whom the allegations are made all documents and things in Staff's possession or control relevant to the allegations, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing on the merits.

4.5 Witness Lists and Summaries – (1) Provision of a Witness List – A party to a proceeding shall serve every other party and file with the Secretary a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 10 days before the commencement of the hearing.

(2) Provision of Witness Summaries – If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing, at least 10 days before the commencement of the hearing.

(3) Content of the Witness Summary – A witness summary shall contain:

(a) the substance of the evidence of the witness;

(b) reference to any documents that the witness will refer to; and

(c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

(4) Failure to Provide a Witness List or a Summary – A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with subrules 4.5(1), 4.5(2) and 4.5(3), may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

(5) Incomplete Witness Summary – A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

4.6 Expert Witness – (1) Intent to Call an Expert – A party who intends to call an expert to give evidence at a hearing shall inform the other parties of the intent to call the expert and state the issue on which the expert will be giving evidence, at least 90 days before the commencement of the hearing.

(2) Provision of an Expert's Affidavit or an Expert's Report – A party who intends to introduce evidence of an expert witness at the hearing shall either:

(a) serve the expert's report on each other party at least 60 days before the commencement of the hearing; or

(b) if granted leave by a Panel, serve an affidavit of the expert witness on each other party, at least 60 days before the commencement of the hearing. Where an affidavit of an expert witness is used, and the deponent is cross-examined prior to the hearing, the Panel reserves the right to call the expert to testify at the hearing if necessary.

(3) Provision of an Expert's Affidavit or an Expert's Report in Response – A party on whom an expert's affidavit or expert's report referred to in subrule 4.6(2) has been served and who wishes to respond with expert evidence to a matter set out in the affidavit or report, shall serve an expert's affidavit or expert's report in response on each other party, at least 30 days before the commencement of the hearing.

(4) Provision of an Expert's Affidavit or an Expert's Report in Reply – A party on whom a responding expert's affidavit or responding expert's report has been served and who wishes to reply with expert evidence to a matter set out in that affidavit or report, shall serve an expert's affidavit or expert's report in reply on each other party, at least 15 days before the commencement of the hearing.

(5) An affidavit or report referred to in subrules 4.6(2), 4.6(3) and 4.6(4) shall include:

(a) the name, address and qualifications of the expert;

(b) the substance of the expert's evidence; and

(c) a list of any documents that the expert will refer to.

(6) Failure to Advise of Intent to Call an Expert – A party who fails to comply with subrule 4.6(1) may not call the expert as a witness without leave of the Panel, which may be on any conditions that the Panel considers just.

(7) Failure to Provide an Expert's Affidavit or Expert's Report – A party who fails to comply with subrules 4.6(2), 4.6(3) and 4.6(4) may not file the expert's affidavit or report without leave of the Panel, which may be on any conditions that the Panel considers just.

4.7 Request to Issue a Summons – (1) At the request of a party, a summons to a witness may be issued pursuant to section 12 of the SPPA.

(2) The issuance of or a refusal to issue a summons may be reviewed by a Panel by motion filed in accordance with Rule 3.

(3) Once a summons is served, it is effective for the duration of the hearing as long as the witness is advised of the adjourned dates.

Rule 5 – Public Access to Documents

5.1 Public Documents – Subject to Rule 5.2 and subrule 10.9(3), documents required to be filed or received in evidence in proceedings shall be available to the public.

5.2. Request Regarding Confidentiality – (1) At the request of a party or person, the Panel may order that any document filed with the Secretary or any document received in evidence or transcript of the proceeding be kept confidential pursuant to section 9 of the SPPA.

(2) A party or person who makes a request pursuant to subrule 5.2(1) shall advise the Panel of the reasons for the request.

(3) The Panel may, if it is of the opinion that there are valid reasons for restricting access to a document, declare the document confidential and make such other orders as it deems appropriate.

Rule 6 – Pre-Hearing Conferences
(See also section 5.3 of the SPPA.)

6.1 Requesting a Pre-Hearing Conference – (1) A Panel may direct the parties in a proceeding to participate in a pre-hearing conference at any stage of the proceeding.

(2) Any party may request a pre-hearing conference by filing a request.

6.2 Issues at a Pre-Hearing Conference – At a pre-hearing conference, a Panel may:

(a) create a timetable for the scheduling of the hearing;

(b) amend an existing timetable;

(c) schedule any preliminary motions;

(d) give consideration to the simplification or clarification of issues in the proceeding;

(e) on consent of all of the parties, make an order resolving any matter, including matters relating to:

(i) facts or evidence agreed upon;

(ii) order the disclosure of documents; and

(iii) the resolution of any or all of the issues in the proceeding.

6.3 Notice – (1) The Secretary shall give notice of a pre-hearing conference to the parties and to any other persons as the Panel directs.

(2) The notice shall include:

(a) the date, time, place and purpose of the pre-hearing conference;

(b) any direction of the Panel regarding the exchange or filing of documents or pre-hearing submissions as prescribed by Rule 6.4 and, if so, the issues to be addressed and the date or dates on or before which the documents or pre-hearing submissions must be exchanged and filed;

(c) a direction as to whether parties are required to attend in person and,

(i) if so, that they may be accompanied by a representative; or

(ii) if not, that they may be represented by a representative who has the authority to make agreements and undertakings on their behalf;

(d) a statement that if a party does not attend (in person or by a representative, as required) at the pre-hearing conference, the Panel may proceed in the absence of that party; and

(e) a statement that any order made by the Panel at the pre-hearing conference will be binding on all the parties.

6.4 Filing and Exchange of Documents for a Pre-Hearing Conference – The parties shall serve and file a pre-hearing conference form (see Appendix A of the Rules). All documents intended to be used at the pre-hearing conference that may be of assistance shall be exchanged among the parties and be made available to the Panel.

6.5 Oral or Electronic – A pre-hearing conference may be held in person or by way of an electronic hearing, as the Panel may direct.

6.6 Public Access – (1) In order to encourage a full and frank exchange of views, a pre-hearing conference shall be confidential and conducted in private.

(2) Any pre-hearing submissions referred to in Rule 6.4 shall not be made available to the public.

6.7 Orders, Agreements, Undertakings – (1) After giving the parties an opportunity to make submissions, the Panel presiding at a pre-hearing conference may make orders permitted by this Rule. These orders shall be binding on all parties to the proceeding and become part of the record.

(2) All agreements and undertakings made or given at a pre-hearing conference shall be recorded in a memorandum prepared under the direction of the Panel and circulated in draft to the parties or their representatives for corrections, if any, and then signed by the Panel.

(3) Orders, agreements and undertakings made at the pre-hearing conference govern the conduct of the proceeding and are binding upon the parties to the proceeding, unless otherwise ordered by a pre-hearing Panel, and shall be available to the Panel hearing the matter on the merits.

(4) No Communication to Hearing Panel – Notwithstanding subrule 6.7(3), no communication shall be made to the Panel hearing the matter on the merits of any statement made at a pre-hearing conference or in a pre-hearing submission referred to in Rule 6.4, except as disclosed in an order made under subrule 6.7(1) or the memorandum made under subrule 6.7(2).

HEARINGS

Rule 7 – Failure to Participate at the Hearing and Withdrawal
(See also sections 6 and 7 of the SPPA.)

7.1 Failure to Participate – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

7.2 Withdrawal – (1) A person or company that has filed an application under Rule 2 or a request for leave to intervene under Rule 1.8.1 may withdraw the application or request at any time before a final determination of the application or request by a Panel.

(2) The person or company referred to in subrule 7.2(1) shall serve a notice of withdrawal on each party and on each intervenor and file the notice.

(3) In the case of a withdrawal of a Statement of Allegations or of an application under Rule 2, the notice of withdrawal shall be posted on the Website and published in the Bulletin.

7.3 Discontinuance of Intervention – (1) An intervenor may discontinue the intervention at any time before a final determination of the application by the Panel on any terms that the Panel deems appropriate.

(2) The intervenor referred to in subrule 7.3(1) shall serve a notice of discontinuance on each party and on each intervenor and file the notice.

Rule 8 – Public Access to Hearings

8.1 Open to the Public Except under Certain Conditions – Subject to Rule 8.2, a hearing shall be open to the public, except when having regard to the circumstances, the Panel is of the opinion that intimate financial, personal or other matters may be disclosed at the hearing and that the desirability of avoiding that disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public pursuant to section 9 of the SPPA.

8.2 In Camera Hearing – If a party wishes to have a hearing held in camera, the party shall make a request at the commencement of the hearing before the Panel pursuant to section 9 of the SPPA. The Panel will make a decision on whether or not to hold the hearing or a portion of the hearing in camera, based on the facts and circumstances of each case.

8.3 Request to Make a Visual or Audio Recording – (1) Any request to make a visual or audio recording of a hearing should be made in writing to the Secretary at least 5 days before the day of the hearing on which the audio or visual recording is to be made.

(2) Media personnel or any person permitted to make a visual or audio recording under subrule 8.3(1) will be subject to the direction of the chair of the Panel.

(3) Media personnel shall not engage in any activity at the hearing that may disrupt the hearing. Disruptive activities include:

(a) interviewing persons in the hearing room at any time or in the vicinity of the hearing room;

(b) television lights, cables and other equipment which, when in use, could distract the persons in the hearing room;

(c) electronic flash for still photography;

(d) movement of persons or equipment while the hearing is in session; and

(e) any other behaviour that disrupts or detracts from the process of the hearing.

Rule 9 – Adjournments

9.1 How and When to Request an Adjournment – (1) As soon as a party decides to request an adjournment, the party shall advise the other parties and the Secretary.

(2) With Consent – If the other parties consent to the adjournment and the requesting party files a written request certifying that it is made on consent, the Panel may:

(a) refuse the request;

(b) reschedule the hearing without a hearing on the request; or

(c) require a hearing on the request.

(3) Without Consent – If the parties do not consent to a request for adjournment, the requesting party shall serve and file a notice of motion on the other parties as soon as possible. The notice of motion shall set out:

(a) the reasons for the adjournment;

(b) the length of time requested for the adjournment; and

(c) the earliest available dates for that party to make submissions on the motion.

(4) If the parties do not consent, the requesting party and/or the party's representative shall appear before the Panel to request the adjournment orally and shall be prepared to proceed if the adjournment is denied.

(5) After considering the submissions of the parties, the Panel may grant or deny the adjournment on any terms that it considers appropriate.

9.2 Factors Considered – In deciding whether to grant an adjournment, the Panel shall consider all relevant factors, including, but not restricted to, the following:

(a) whether an adjournment would be in the public interest;

(b) whether all parties consent to the request;

(c) whether granting or denying the adjournment would prejudice any party;

(d) the amount of notice of the hearing date that the requesting party received;

(e) the number of any previous adjournment requests made and by whom;

(f) the reasons provided to support the adjournment request;

(g) the cost to the Commission and to the other parties for rescheduling the hearing;

(h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and

(i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

Rule 10 – Conduct of Oral Hearings
(See also the *French Language Services Act* and sections 5.2 and 15 of the SPPA.)

10.1 Oral Hearings – An oral hearing shall be conducted in accordance with the provisions set out in the SPPA.

10.2 Electronic Hearings – A hearing may be conducted by way of an electronic hearing, unless a party objects as provided by subsection 5.2(2) of the SPPA.

10.3 Video-Conferencing – A hearing may be conducted by video-conferencing or by other similar means approved by the Secretary.

10.4 Hearings Conducted in French and in English – (1) A hearing may be conducted in English or in French, or partly in English or in French.

(2) A party who wishes all or part of the proceeding to be conducted in French must, at least 30 days prior to the hearing, notify the Secretary who will inform the other parties.

(3) If an English or French speaking party or witness requires an interpreter, the party shall notify the Secretary as soon as possible.

(4) The Secretary will arrange for an interpreter at the Commission's expense.

10.5 Interpreters for Other Languages – If a party requires an interpreter for a language other than English or French, the party shall notify the Secretary as soon as possible, and in any event, at least 30 days before the hearing, and the Secretary will arrange for an interpreter at the requesting party's expense.

10.6 Special Needs of Parties or Witnesses – Parties should notify the Secretary as soon as possible, and in any event at least 30 days before the hearing, of any special needs of parties or their witnesses for the hearing.

10.7 Affirmation of a Witness – Oral examination of witnesses shall be conducted under affirmation or oath that their evidence will be true.

10.8 Transcripts of Proceedings – Official transcripts of proceedings are prepared by a court reporting services agency retained by the Commission. Parties who wish to obtain a copy of the transcripts may do so directly from the court reporting services agency at their own expense.

10.9 Final Arguments and Submissions – (1) Except in the case of a written hearing where parties shall file final written submissions pursuant to Rule 11.6, a party may file and serve on every other party a factum consisting of a concise argument stating the facts and law relied upon by the party.

(2) Final submissions may include:

(a) facts or quotations from the oral evidence, referenced to the transcript volume and page number if a transcript is available; or

(b) facts or quotations from documentation filed as exhibits, referenced to the exhibit and page number; and

(c) a concise summary of the law.

(3) Final arguments and submissions shall not be made public until the commencement of the hearing of the submissions.

(4) A party referring to any court decision, legal article or authority shall provide a copy for each member of the Panel and each party.

(5) Parties may include in their argument the details of the specific order that they request.

(6) Any party may file a draft order within the time permitted by the Panel, but shall do so only if they serve a copy on all other parties.

Rule 11– Written Hearings
(See also subsections 5.1(1), 6(4), 7(2) and 9(1.1) of the SPPA.)

11.1 Application – (1) This Rule does not apply to the admissibility, at an oral hearing, of written evidence admissible under section 15 of the SPPA.

(2) Nothing in this Rule precludes a Panel from directing that further submissions be filed in respect of a matter arising in a hearing. If the Panel so directs, the parties may also be given an opportunity to make oral submissions on a matter, which may be time-limited by the Panel.

11.2 Filing – Where this Rule requires that documentation be filed with the Secretary, 5 copies shall be filed, except in the case of a notice of an objection to a written hearing which shall be filed in duplicate.

11.3 Definition of an Applicant – In this Rule, "applicant" means the party who instituted the proceeding or the person or company who is bringing a motion.

11.4 When to Hold a Written Hearing – (1) A Panel may conduct any proceeding or part of a proceeding, including motions, by means of a written hearing.

(2) Written hearings may be held in the following circumstances unless a party objects, as provided by subsection 5.1(2) of the SPPA:

(a) motions relating to procedural issues;

(b) hearings on agreed facts; and

(c) any other motions or applications that the Panel considers are appropriate for a written hearing.

11.5 Converting From or to a Written Hearing – (1) A Panel may:

(a) continue a written hearing as an oral hearing;

(b) subject to subsection 5.2(2) of the SPPA, continue a written hearing as an electronic hearing; or

(c) subject to subsection 5.1(2) of the SPPA, continue an oral hearing or an electronic hearing as a written hearing.

(2) If a Panel decides to continue a written hearing as an oral or electronic hearing or an oral or electronic hearing as a written hearing, it shall notify the parties of its decision and may provide directions as to the holding of that hearing. Any procedures set down in the Rules for such a hearing shall apply.

11.6 Submissions and Supporting Documents – (1) Within 10 days after receiving notice that a hearing will be in writing, the applicant shall serve on all other parties and file written submissions setting out:

(a) the grounds on which the request for the remedy or order is made;

(b) a statement of the facts and evidence relied on in support of the remedy or order requested; and

(c) any law relied on in support of the remedy or order requested.

(2) A Panel may require the applicant to provide further information, which the applicant shall serve on every other party.

11.7 Objection to a Written Hearing – (1) A party who objects to a hearing being held as a written hearing shall file and serve a notice of objection setting out the reasons for the objection, within 5 days after receiving notice of the written hearing.

(2) A notice of objection shall set out the reasons for the objection in the submissions relating to the matter and be accompanied by a statement of the facts, any evidence and any law relied on in support of the objection.

11.8 Response to an Objection – (1) If a party wishes to respond, the party shall do so by serving the written response on every other party and filing it within 7 days after the notice of objection has been served on the party.

(2) The response shall set out the party's submissions and be accompanied by a statement of the facts, any evidence and any law relied on in support of the response.

11.9 Decision – (1) Upon consideration of the written record, the Panel may render a decision as to whether the matter shall be heard at an oral or a written hearing.

Rule 12 – Settlement Agreements

12.1 Purpose of Settlement Conference – (1) The purpose of a settlement conference is to provide the parties with the opportunity, prior to proceeding to a hearing under this Rule to approve a settlement agreement, to make confidential submissions on a proposed settlement to a Panel in order to obtain guidance on whether the terms of the proposed settlement would, in the view of the Panel, be in the public interest.

(2) At least one settlement conference shall be held before a hearing to approve the settlement agreement.

12.2 Application for a Settlement Conference – (1) An application for a settlement conference shall be filed jointly by the parties to the proposed settlement no later than 5 days before the settlement conference.

(2) The application shall be accompanied by:

(a) the consent in writing of the parties to participate in the settlement conference;

(b) an agreement concerning the confidentiality of the settlement discussions and any document or thing presented at the settlement conference; and

(c) a draft of the proposed settlement agreement or a joint memorandum setting out the terms of the proposed settlement between the parties.

12.3 Notice of Settlement Conference – (1) The Secretary shall issue a Notice of Settlement Conference for an application referred to in subrule 12.2(1) only after all the documents required to be filed pursuant to subrule 12.2(2) have been filed.

(2) The Notice of Settlement Conference shall be issued only to the parties to the settlement conference and shall not be published or otherwise made available to the public.

12.4 Oral or Electronic – A settlement conference may be held in person or by way of electronic hearing, as the Panel may direct.

12.5 In Camera Proceeding – (1) The settlement conference shall be held in camera and no transcript or other record of the proceeding shall be made unless the parties to the settlement request otherwise, except that the Panel may make such record of the conference as it deems necessary for its own record and use.

(2) Rule 5.1 shall not apply to any document or thing filed under Rule 12.1 or presented at a settlement conference or any record made by the Panel pursuant to subrule 12.5(1), and any such document or thing shall be kept confidential pursuant to Rule 9 of the SPPA and shall not be made available to the public.

12.6 No Communication to Panel Hearing the Merits – In the event that the matter subject to the settlement conference proceeds to a hearing on the merits, the Panel presiding at the settlement conference shall not participate in the hearing on the merits and no communication made at the settlement conference shall be disclosed to the Panel hearing the matter on the merits.

12.7 Application for a Hearing to Approve the Settlement – (1) An application for a hearing to approve a settlement shall be filed jointly by the parties to the settlement no later than 2 days before the hearing.

(2) The application shall be accompanied by:

(a) a draft order;

(b) the respondent's consent to the order; and

(c) the settlement agreement signed by the settling parties.

12.8 Notice of Settlement Hearing – The Secretary shall issue a Notice of Hearing for an application referred to in subrule 12.7(1) only after all the documents required to be filed pursuant to subrule 12.7(2) have been filed.

12.9 Settlement Hearing Panel – The Panel presiding at the hearing to approve the settlement shall be one or more of the members of the Panel that presided at the settlement conference.

12.10 Public Settlement Hearing – (1) A hearing to approve an application under subrule 12.7(1) shall be open to the public.

(2) The Panel may issue oral or written reasons if it deems it appropriate to do so.

12.11 Publication of Settlement Agreement When Approved – The order approving the settlement agreement, the settlement agreement, and the Panel's reasons, if any, shall be posted on the Commission's website and in the Bulletin forthwith following approval of the settlement agreement by the Panel, unless otherwise ordered by the Panel.

Rule 13 – Simultaneous Hearing with Other Securities Administrators
(See also subsection 2(5) of the Act.)

13.1 Request for Simultaneous Hearing – (1) At the request of a party to a proceeding or on the Commission's own initiative, the Commission may hold a hearing in or outside Ontario in conjunction with any other body empowered by statute to administer or regulate trading in securities.

(2) A request for a simultaneous hearing shall be made in writing and state the reasons for a simultaneous hearing.

(3) Invitation to Federal Corporations Branch – If the issue that is the subject of the simultaneous hearing is also of interest to the Director, Corporations Branch, of the Federal Department of Consumer and Corporate Affairs in administering the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended, the applicant may also request that the federal officer be invited to join the hearing.

(4) Factors in Deciding Whether to Hold a Simultaneous Hearing – When deciding whether to hold a simultaneous hearing, the Commission may take into account any circumstances it considers relevant, which may include whether:

(a) the issues raised through the application and the evidence and arguments to be presented are likely to be substantially the same, notwithstanding any apparent difference in the form of the several applications or the specific legislation in each jurisdiction;

(b) there is an urgent business reason for holding one simultaneous hearing rather than multiple hearings; or

(c) the matter in issue is a novel one and it is in the public interest that securities administrators strive to achieve consistency in their decision-making on the matter.

(5) Factors in Deciding Where to Hold a Simultaneous Hearing – When deciding where to hold a simultaneous hearing, the Commission may take into account any circumstances it considers relevant, which may include:

(a) the preponderance of convenience to the majority of interested parties, taking into account where the majority of the parties reside or have their principal places of business and where witnesses reside; and

(b) where it can be determined that it is in the public interest to do so.

13.2 Payment of Expenses – (1) If a party requests that a simultaneous hearing be held outside Ontario, the Commission may, despite any general public interest perceived in the holding of a simultaneous hearing, before and as a condition precedent to its granting the request, require that party to undertake to pay the additional costs incurred by the Commission.

(2) These costs include travel and related expenses incurred by the Panel, Staff, witness fees and expenses.

Rule 14 – Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency
(See also sections 8 and 21.7 of the Act.)

14.1 Application – In Rule 14, "decision" means any direction, decision, order, ruling or other requirement made by the Director, a stock exchange, a self-regulatory organization or a clearing agency.

14.2 Application for a Hearing and Review – (1) An application for a hearing and review of a decision pursuant to section 8 or 21.7 of the Act shall:

(a) identify the decision in respect of which the hearing and review is being sought;

(b) state the interest in the decision of the party filing the request;

(c) state in summary form the alleged errors in the decision and the reasons for requesting the hearing and review; and

(d) state the desired outcome.

14.3 Record – (1) The party requesting a hearing and review of a decision shall obtain from the Director, stock exchange, self-regulatory organization or clearing agency a record of the subject proceeding and file it.

(2) The record of the proceeding shall include:

(a) the application or other document by which the proceeding was commenced;

(b) the Notice of Hearing;

(c) any interim orders made in the proceeding;

(d) any documentary evidence filed in the proceeding, subject to any limitation expressly imposed by any statute, regulation or rules on the extent to which, or the purpose for which, any such documents may be used in any proceeding;

(e) a copy of any other documents relevant in the proceeding that are referred to in the party's statement of fact and law;

(f) any transcript of the oral evidence given at the hearing; and

(g) the decision that is the subject of the request for a hearing and review and the reasons therefore, if reasons were given.

(3) Omission of Documents from Record – Despite subrule 14.3(1), any of the documents may be omitted from the record if all parties consent, and the Panel agrees or the Panel otherwise directs.

(4) Where Record Unavailable – In the circumstance where no record is available, the parties shall advise the Panel.

14.4 Service and Filing – (1) An application for a hearing and review of a decision shall be served by the applicant on every other party to the original proceeding and filed.

(2) The party requesting a hearing and review shall provide a copy of the record of the proceeding to any other party that requests a copy of the record.

(3) The party requesting a hearing and review shall perfect the application by complying with Rule 14.3 and subrules 14.4(1) and 14.4(2):

(a) if no transcript of evidence is required for the review, within 30 days after filing the request; or

(b) if a transcript of evidence is required for the review, within 60 days after receiving notice that the evidence has been transcribed.

(4) If the party requesting a hearing and review has not complied with subrule 14.4(3), the Secretary may serve a notice on the requester that the request may be dismissed for delay unless it is perfected within 10 days after service of the notice.

(5) Dismissal Where Default not Cured – If the party requesting a hearing and review does not cure the default within 10 days after the service of the notice under subrule 14.4(4), or within a longer period allowed by a Panel, a Panel may make an order dismissing the request and serve the order on the requester.

(6) Record in Response – A party served with an application for a hearing and review and record may serve a record in response on the person making the application and on each other party, at least 15 days before the day on which the application is to be heard.

(7) Record in Reply – A party served with a record in response to an application for hearing and review may serve a record in reply on the person making the response and on each other party an affidavit(s) in reply, at least 5 days before the day on which the application is to be heard.

14.5 New Evidence – If a party proposes to introduce new evidence at the hearing and review, that party shall, at least 10 days before the hearing and review, advise every other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the hearing and review.

14.6 Order Dispensing with Transcripts – The Panel may direct that a transcript of the oral evidence be dispensed with, if the Panel is of the opinion that a transcript of the oral evidence taken at the original hearing is unnecessary to deal effectively with the hearing and review, or for any reason the Panel considers appropriate.

14.7 Stay of a Decision – (1) Before the hearing and review, the party requesting the hearing and review may apply to the Panel for an order staying the original decision until the hearing and review is concluded.

(2) The party shall make the application in writing on notice to all the parties and the application shall state the reasons why a stay is required.

14.8 Setting Down for a Hearing – Once the record of the proceeding is perfected in accordance with subrule 14.4(3), the Secretary shall give notice of the time and place for the hearing and review.

14.9 Statement of Fact and Law in an Oral Hearing – (1) The party requesting a hearing and review shall, if an oral hearing is to be held, serve on every other party and file the memorandum of fact and law being relied upon, at least 30 days before the date of the hearing and review.

(2) Each other party to the hearing and review shall serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 15 days before the date of the hearing and review.

Rule 15 – Further Decision pursuant to Subsection 9(6) of the Act or Revocation or Variation of a Decision pursuant to Section 144 of the Act

15.1 Application – (1) An application for a further decision pursuant to subsection 9(6) of the Act or an application pursuant to section 144 of the Act for a revocation or a variation of a decision made by a Panel shall:

(a) identify the decision in respect of which the request is being made;

(b) state the interest in the decision of the party filing the request;

(c) state the factual and legal grounds for the request; and

(d) state the desired outcome.

(2) An application for a further decision or an application for a revocation or variation of a decision made by a Panel shall be served by the applicant on every other party to the original proceeding and filed.

15.2 New Evidence – If a party proposes to introduce new evidence at the hearing of the application for a further decision or for a revocation or variation of a decision, the party shall, at least 10 days before the hearing, advise every other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the hearing.

15.3 Whether or Not to Hold an Oral Hearing – (1) Upon reviewing the application, a Panel may, on the basis of the written record:

(a) decide to grant the application;

(b) refuse to grant the application; or

(c) decide to hold an oral hearing to consider the application.

15.4 Statement of Fact and Law in an Oral Hearing – (1) The party requesting a further decision or a revocation or a variation of a decision made by a Panel shall, if an oral hearing is to be held, serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 10 days before the date of the hearing.

(2) Each other party to a hearing shall, if an oral hearing is to be held, serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 5 days before the date of the hearing.

15.5 Written Hearing – If the parties consent to a further decision, revocation or variation of a decision made by a Panel, the matter may be heard in writing.

Rule 16 – Application pursuant to Section 104 and/or Section 127 of the Act

16.1 Application – (1) An application made pursuant to section 104 of the Act in connection with a take-over bid or an issuer bid by an interested person as defined in subsection 89(1) of the Act, or an application made pursuant to section 127 of the Act in connection with a take-over bid or an issuer bid, shall be made by serving it on every other party and on the Manager of Take-Over Bids, Issuer Bids and Mergers and Acquisitions Transactions and filing it.

(2) An application shall be accompanied by a memorandum of fact and law and any affidavit(s) as appropriate setting out the facts to be relied upon.

16.2 Setting Down for a Hearing – Once all the documents for the application have been filed in accordance with Rule 16.1, the Secretary shall establish the schedule for the filing of a response and a reply and give notice of the time and place for the hearing of the application.

16.3 Response – A party served with an application may serve on the person making the application and on each other party a memorandum of fact and law and any affidavit(s), and file them in accordance with the schedule established by the Secretary.

16.4 Reply – A party served with a memorandum of fact and law and any affidavit(s) in response to an application may serve on the person making the response and on each other party a memorandum of fact and law and any affidavit(s) in reply, and file them in accordance with the schedule established by the Secretary.

16.5 Request for Leave to Intervene – A request for leave to intervene in an application relating to a take-over bid or an issuer bid shall be made by serving it on each of the parties and filing it in accordance with Rule 1.8.1.

DECISIONS

Rule 17 – Oral and Written Decisions
(See also section 17 of the SPPA.)

17.1 Issuance of Decisions – (1) A Panel may reserve its decision or may give its decision orally at the end of the hearing.

(2) Written Final Decisions – A Panel shall issue a final written decision, which shall be the official decision.

(3) Discrepancy – If there is a discrepancy between an oral decision rendered at the hearing and the written decision, the written decision shall prevail.

17.2 Service of Decisions and Reasons – (1) The Secretary shall send to all parties to the proceeding a copy of the Panel's final decision, including any reasons that have been given.

(2) Publication – A decision shall be published on the Website and in the Bulletin, unless a Panel orders that it shall remain confidential.

17.3 Sanctions Hearing – (1) Unless the parties to a proceeding agree to the contrary, a separate hearing shall be held to determine the matter of sanctions and costs.

(2) Following the issuance of the reasons for the decision on the merits, the Secretary shall set a date for the sanctions hearing if such a hearing is necessary.

(3) Submissions by Staff – Staff shall file submissions regarding the matter of sanctions and costs at least 10 days before the sanctions hearing, unless the Panel provides otherwise.

(4) Responding Submissions – A respondent shall file submissions regarding the matter of sanctions and costs at least 5 days before the sanctions hearing, unless the Panel provides otherwise.

(5) Reply Submissions – Staff shall file any reply submissions regarding the matter of sanctions and costs at least 2 days before the sanctions hearing, unless the Panel provides otherwise.

COSTS AWARDS

Rule 18 – Costs
(See also section 127.1 of the Act.)

18.1 Request for an Award of Costs – (1) A Panel may award costs against a respondent at the request of Staff after having considered any submissions from the parties.

(2) Content of a Request for an Award of Costs – A request for costs by Staff shall be made in a written motion and served on the respondent and it shall contain the following information:

(a) an explanation of the basis of the claim;

(b) a summary statement of hours and fees for each lawyer and each professional that worked on the file, supported by time dockets setting out the hourly wage for the individual and a description of the work performed;

(c) a summary statement of disbursements for each lawyer or professional, supported by corresponding invoices and receipts. If invoices or receipts are not obtainable, the Commission may accept a written record of disbursements and associated dates; and

(d) an affidavit declaring that all the information contained in the dockets and the summary statement of disbursements are true and accurate, and all disbursements were incurred directly and necessarily as a result of the investigation or proceeding.

(3) Time Limit for Making a Request for an Award of Costs – A request for an award of costs on a motion or on the main proceeding shall be served by Staff on the respondent no later than 30 days after the issuance of a final order or decision of a Panel on the main proceeding.

(4) Response – The respondent served with a request for an award of costs may serve on Staff a response setting out any objections to the request, within 15 days of the request.

(5) Reply – After receiving a response, Staff may serve a reply to the respondent's objections within 5 days of receiving the response.

(6) General Principle – A Panel has the discretion to shorten or extend any of these time limits, and may consider the timeliness of any request for costs in determining the amount to be awarded.

18.2 Factors Considered When Awarding Costs – In exercising its discretion under section 127.1 of the Act to award costs against a person or company, a Panel may consider the following factors:

(a) whether the respondent failed to comply with a procedural order or direction of the Panel;

(b) the complexity of the proceeding;

(c) the importance of the issues;

(d) the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;

(e) whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;

(f) whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;

(g) whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it;

(h) whether the respondent participated in a responsible, informed and well-prepared manner;

(i) whether the respondent co-operated with Staff and disclosed all relevant information;

(j) whether the respondent denied or refused to admit anything that should have been admitted; or

(k) any other factors the Panel considers relevant.

18.3 Payment of Investigation Costs – (1) If the Panel orders under subsection 127.1(1) of the Act that the costs of the investigation be paid by a person or company whose affairs were the subject of an investigation, the costs awarded may include the following:

(a) the costs of Staff involved in the investigation, based on the time spent on the investigation by each member of Staff and the applicable hourly rate as prescribed by subrule 18.3(3);

(b) the actual amount of the fees and disbursements paid to a person appointed or engaged under sections 5, 11 or 12 of the Act;

(c) the actual amount of the witness examination costs;

(d) the actual amount of the court reporter's fees;

(e) the actual cost of the transcripts of examinations of individuals during the course of the investigation;

(f) the actual costs of experts;

(g) the disbursements and the incidental costs incurred in respect of the investigation; and

(h) any other costs the Panel considers relevant.

(2) Payment of Hearing Costs – If the Panel orders under subsection 127.1(2) of the Act that the costs of, or related to, a hearing be paid by a person or company whose affairs were the subject of a hearing, the costs awarded may include the following:

(a) the costs of Staff involved in the hearing, based on the time spent on the hearing by each member of Staff and the applicable hourly rate as prescribed by subrule 18.3(3);

(b) the actual amount of the fees and disbursements paid to a person appointed or engaged under sections 5, 11 or 12 of the Act;

(c) the reasonable costs of witnesses, other than a witness referred to in sub-paragraph (b) required to attend at the hearing;

(d) the reasonable costs for the services of a lawyer acting as counsel with or for Staff;

(e) the costs to the Commission to administer the hearing, including fees paid to the court reporter, fees for transcripts, and disbursements required to conduct a hearing;

(f) the reasonable costs incurred for each expert or person engaged by Staff; and

(g) any other costs the Panel considers relevant.

(3) Publication of Costs in Staff Notice – The specific hourly rates for the costs categories, which can be determined a priori, set out in subrules 18.3(1) and 18.3(2) shall be published from time to time as a Staff Notice and will be posted on the Website and published in the Bulletin.

Appendix A – Pre-Hearing Conference Form

The parties may submit this form pursuant to Rule 6.4. In the alternative, the parties may submit such other written submissions as they deem appropriate.

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

AND

IN THE MATTER OF
{INSERT STYLE OF CAUSE}

DATE OF PRE-HEARING:

PRE-HEARING CONFERENCE SUBMISSIONS OF:

(insert name of Party)

REPRESENTATIVE:

I. INTRODUCTORY MATTERS

A. Procedural History

1. Notice of Hearing and Statement of Allegations - Date of Issue:

2. Date(s) of Alleged Conduct:

3. Date of Hearing:

4. Interim Orders:

   a) Temporary Cease Trade Order: (Date of Order)

      Provide Details:

   b) Freeze Order: (Date of Order)

      Provide Details:

B. Settlement Discussions

   a) Have the parties discussed settlement?

      Provide Details:

   b) Is there a reasonable prospect of this matter settling?

      Provide Details:

C. Disclosure (Rule 4)

1. Has Staff made disclosure to the Respondent?

      Provide Details:

2. Has the Respondent made disclosure to Staff?

Provide Details:

3. Is further disclosure requested?

Provide Details:

4. Are there any issues in respect of a third party and disclosure?

Provide Details:

II. PRE-HEARING MATTERS

A. Severance

1. Do you expect to bring a motion to sever the hearing of certain Respondents?

Provide Details:

B. Disclosure

1. Do you expect to bring a motion respecting disclosure?

Provide Details:

C. Other

1. Do you expect to bring any other motions?

Provide Details:

III. THE HEARING

A. Procedure on Hearing

1. Will you be requesting that the hearing, or any part of the hearing, be conducted electronically? (Rule 10.2)

Provide Details:

2. Will you be requesting that the hearing, or any part of the hearing, be conducted in writing? (Rule 11)

Provide Details:

B. Hearing Brief re: Documents

1. Have you prepared or will you be preparing a Hearing Brief?

Provide Details:

The Hearing Brief has been delivered to the other parties:

Provide Details:

OR

The Hearing Brief will be delivered by: _____

Provide Details:

IV. EVIDENTIARY MATTERS

A. Expert Evidence

1. Will you be tendering the opinion evidence of a duly qualified expert for admission?

   By Staff:

   By the Respondent:

2. Upon what issue(s) will you be tendering such evidence?

   Provide Details:

3. Will you be challenging the qualification of the expert?

   Provide Details:

4. Will you be filing an expert's report? When?

   Provide Details:

5. Will you be challenging the admissibility of the report?

   Provide Details:

B. Privilege

1. Will you be asserting any claim of privilege in respect of any evidence proposed for introduction:

   Provide Details:

C. Procedural Issues

1. Will you be asking the Commission to rule on any procedural matters?

   Provide Details:

2. Are you making any admissions?

   Provide Details:

D. Documents

1. Has Staff prepared a brief of documents?

   Provide Details:

2. Does the Respondent object to the admissibility of any of the documents?

   Provide Details:

3. Has the Respondent prepared a brief of documents?

   Provide Details:

4. Does Staff object to the admissibility of any of the documents?

   Provide Details:

V. LENGTH AND SCHEDULING OF PROCEEDINGS

1. Length of Hearing and Scheduling of Proceeding

   Has the hearing been scheduled? If so, when?

   If not, what is the anticipated length of time needed to deal with pre-hearing matters?

   For Staff:

   For the Respondent:

2. Witnesses

   Please list the witnesses you will be calling:

Witness Name	Estimated Time for Examination-in-Chief	Estimated Time for Cross-Examination (to be completed at pre-hearing)

_____

Dated: At Toronto this _____ day of _____, 2009

Chapter 6

Request for Comments

6.1.1 CSA Staff Consultation Paper 21-401 – Real-Time Market Data Fees

CSA STAFF CONSULTATION PAPER 21-401
REAL-TIME MARKET DATA FEES

Executive Summary

Real-time market data is an important input into trading decisions in Canada's equity markets and fair access to data is critical in a competitive environment. However, the costs of acquiring real-time market data have been escalating in recent years due to an increasing number of marketplaces entering the market and charging for their market data. In addition, there is a concern that the current market structure and regulatory environment may be contributing to these increasing costs. Too high or excessive costs are a form of friction in the market. We would be concerned that such an outcome would be inconsistent with our mandate to foster fair and efficient capital markets. By not addressing these issues, we risk negatively impacting confidence in the Canadian capital markets.

This Consultation Paper presents our understanding of the real-time market data environment in Canada, discusses issues related to the cost of real-time market data and seeks stakeholder input on options proposed to address these issues.

Our review of real-time market data fees has led us to consider whether further steps should be taken to address the fees charged for market data on an individual marketplace and aggregate basis. This is based on the following findings:

- TSX and TSXV market data fees do not appear unreasonable in relation to their share of trading activity;
- Marketplaces with a smaller market share are charging fees that are high in relation to their share of trading activity; while we have not been provided with cost information, it is possible that the higher "per-volume" fees charged by smaller marketplaces may reflect the fact that these marketplaces' cost of providing data for each user may be higher. Smaller marketplaces may have similar infrastructure costs as large marketplaces and the higher "per-volume" fees may reflect the fact that they need to recover those costs; and
- The cost of consolidated data in Canada is higher than it is in the United States relative to trading activity. We acknowledge the view held by marketplace participants in Canada that the data fees charged by Canadian and U.S. marketplaces should ideally be closer. However, differences in the regulatory environment, industry structure, scale and size of the two markets may explain the cost differential and arguably make such an outcome unrealistic.

This paper identifies a number of options to address potential concerns regarding market data fees going forward. These include greater transparency of fee changes, capping fees and the potential creation of a utility model distributor to provide consolidated data.

We are seeking comments on each of these options proposed in Part VII of this Consultation Paper. We are not advocating or taking a position on any of the options presented for discussion. Any regulatory proposals resulting from this Consultation Paper will be published for comment in the normal course.

I. INTRODUCTION

Real-time market data plays a key role in today's equity markets as it provides vital information about the market for securities, including information relating to prices, liquidity and trading activity. The equity markets have evolved over time, from a structure in which trading in a particular security was concentrated on a single listing exchange to one in which multiple marketplaces compete for trading in the same securities. This has meant that having access to real-time data from multiple marketplaces is a necessity to both trade effectively and service clients appropriately.

Regulators in countries with multiple, competing marketplaces have struggled to address issues related to fair access to real-time market data, fair fees for data and transparency of these fees to data consumers and their clients. These issues are relevant to the objectives of securities regulators, namely fostering fair and efficient capital markets and confidence in those markets.

Like many other jurisdictions, equity trading in Canada has become more competitive as the number of marketplaces (exchanges and alternative trading systems (ATSs)) has increased over the past few years. As a result, issues associated with market data fees have become apparent.

CSA Staff (we) acknowledged early on that access to real-time consolidated information from all marketplaces is critical in our competitive trading environment. To this end, we required marketplaces to provide order and trade information to an Information Processor (IP) in real time, which is then required to consolidate and disseminate this information. Each marketplace charges a fee for its data and when that data is sold through the IP, these fees are passed through to subscribers.

While the existence of the IP makes it simpler to access data and consolidated information from multiple marketplaces, the IP's pass-through fee model[1] means that market participants must still pay the full fee charged by each individual marketplace. This is also true for data and consolidated information purchased through a third-party data vendor. As the number of marketplaces increases, so do the costs of accessing real-time data either directly or through third-party data vendors, including the IP.

We are aware that concerns have been raised about market data fees. We note that in 2009, the CSA indicated its intention to review these fees.[2] To facilitate our review, we obtained information on fees and talked to marketplace participants about their market data fee issues. This consultation paper (Consultation Paper) presents the issues we have identified and those raised by marketplace participants and outlines our analysis of those issues. In addition, this Consultation Paper seeks feedback from stakeholders on the potential options that could be pursued to manage these issues. We also describe the interim steps we have taken to address market data fee issues described in detail in Part VI – Regulatory Actions Taken to Date.

We emphasize that this Consultation Paper is not a position paper. We are not advocating or taking a position on any of the options presented for discussion. We are interested in hearing industry feedback on the feasibility and effectiveness of the proposed options. Any regulatory proposals would be published for comment.

II. THE PURPOSE, SCOPE AND STRUCTURE OF THE CONSULTATION PAPER

The purpose of this Consultation Paper is to present our understanding of the real-time market data environment in Canada, to discuss issues related to the cost of real-time market data and to seek stakeholder input on the options proposed to address these issues. This Consultation Paper does not address issues related to fees charged for access, trading, routing or co-location fees. The paper also does not address any potential issues associated with differences in how real-time market data is distributed[3] by the various marketplaces.

This Consultation Paper is focused on data fees charged to professional users. We did review and analyze the fees charged to non-professional users by marketplaces in Canada. However, since their needs and uses of market data are significantly different,[4] we felt that we would be unable to adequately address concerns raised by both types of market data users within one paper. We will examine issues relating to market data fees for non-professional users at a later date.

This paper is organized as follows:

Part III: Real-Time Market Data Environment
Part IV: Issues Relating to the Cost of Real-time Market Data
Part V: Analysis of Market Data Fees
Part VI: Regulatory Actions Taken to Date
Part VII: Options to Address Market Data Fee Issues
Part VIII: Request for Comments

This Consultation Paper also contains a number of appendices that provide additional information on the content of the paper and our review of market data fees.

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1 The IP charges its customers an administration fee and each marketplace charges its regular subscriber fee for the data included in the IP's feeds.

2 CSA Staff Notice 21-309, Subsection 4.c.

3 The distribution of data is subject to the fair access requirements in sections 7.1 and 7.2 of National Instrument 21-101 – Marketplace Operation (NI 21-101). In addition, in complying with sections 7.1 and 7.2 of NI 21-101, a marketplace should not make any real-time market data available on a more timely basis than it makes the same data available to the IP or an information vendor.

4 Currently, only a small percentage of retail investors are active traders. According to Investor Economics, 76.2% of retail accounts never carry out a single trade in a quarter. Additionally, only 1.6% of retail brokerage accounts carry out more than 30 trades per quarter. Non-professional users do not pay directly for data, and the type of data they receive depends on their trading activity. For example, we understand that the typical retail client is offered the ability to request individual quotes, which are paid for by the dealer on a per-quote basis. Retail clients that trade frequently may have access to trading tools that incorporate real-time streaming data, which might be provided for a fee or at no additional charge if certain trading thresholds are met.

III. REAL-TIME MARKET DATA ENVIRONMENT

Real-time market data plays a key role in the price discovery process and provides vital information on the trading activity on a marketplace. Canada's multiple marketplace structure and the regulatory framework governing it means that fair access to real-time market data has become both a business and regulatory compliance necessity.

This part of the Consultation Paper sets out our definition of real-time market data, provides an overview of the parties that produce, sell, distribute and buy market data, the types of market data available to buyers and the pricing of those products. It also describes the current regulatory environment in Canada as it pertains to the dissemination and use of real-time market data.

1. Definition of Real-time Market Data

Real-time market data consists of pre- and post-trade data that is distributed immediately after an order has been entered, amended or cancelled or a trade has been executed. It is used by marketplace participants to make trading and order routing decisions. Pre-trade data provides details of orders entered on a marketplace and identifies the price and volume associated with each order. Post-trade data provides details of executed trades in a security. Throughout this Consultation Paper, all references to market data refer to real-time market data unless noted otherwise.

2. Producers of Market Data

Marketplaces are the sole producers of market data for their own markets. The data consists of order information sent by marketplace participants to marketplaces as well as information about trades that occur when those orders are executed on the marketplace. Because each marketplace is the only source of order and trade information sent to and transacted on its facility, each controls the production and initial distribution of its own market data.

3. Sellers of Market Data

Market data is sold to marketplace participants and other entities directly by the marketplaces and through third-party vendors, including the IP.

Data purchased from a third-party vendor rather than directly from a marketplace provides a single point of access to data from multiple marketplaces. In addition, third-party vendors often provide analytical tools that are a value added to their customers. However, data bought through a third-party vendor will typically have additional latency compared to direct feeds from marketplaces.

Marketplace participants who buy their data directly from marketplaces are usually highly latency sensitive, not only for their own trading, but also because they often offer specific services to their customers that require low-latency data, such as smart order routers[5] (SOR) and direct electronic access[6] (DEA). Generally, receiving low-latency data directly from marketplaces is more costly due to the need to establish dedicated, high-speed telecommunication connections to each marketplace.

Canadian market data can also be purchased from the IP.[7] The IP supplies both individual feeds from each marketplace and consolidated order and trade data from all marketplaces through a single point of access.

4. Buyers of Market Data and the Use of Data

A variety of market participants purchase real-time market data. The largest group of customers are dealers, who buy the data for use in their systems and for use by their employees and clients (such as high frequency traders or DEA clients). The most important use of real-time data from a dealer's perspective is to inform trading and order routing decisions for the firm's proprietary and agency trading. Dealers also purchase data for regulatory compliance - such as the Order Protection Rule

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5 An SOR is a technological tool that scans multiple marketplaces for the best displayed price and routes orders to that marketplace for execution. This helps traders comply with OPR and achieve better-priced executions, as well as save time and effort trying to manually locate the most appropriate execution venue.

6 In proposed National Instrument 23-103, direct electronic access is proposed to mean 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's or company's marketplace participant identifier, (a) through the person's or company's systems for automatic onward transmission to a marketplace; or (b) directly to the marketplace without being electronically transmitted through the person's or company's systems.

7 Marketplaces are required under NI 21-101 to provide accurate and timely order and trade information to an information processor, as required by the information processor. Companion Policy to NI 21-101(NI21-101CP) interprets requirements regarding the timeliness as including that a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.

(OPR) and best execution requirements - and risk management, but on a limited basis since only a small portion of these activities require access to real-time data from all marketplaces.

Another group of customers are institutional investors, such as pension funds. Institutional clients' cost of market data is often absorbed by the dealers as part of soft-dollar agreements; however, there are institutional clients who buy their own real-time feeds to use in proprietary trading algorithms, for trading as DEA clients and for compliance and risk management purposes.

Third-party vendors also purchase real-time data directly from marketplaces. They mostly re-distribute this data to their clients in real-time, but also use it for other purposes (e.g., to create reference databases) as a value added service offered for their clients.

Deciding where to purchase real-time data depends on several factors, some of which are directly related to the marketplace participant's activities, while others are related to the regulatory environment. For example, as discussed above, dealers engaged in trading strategies that are highly latency sensitive will purchase data directly from the marketplaces and do their own consolidation of data, while dealers and other marketplace participants that are less driven by execution speed will generally purchase their data through third-party vendors or from the IP. Marketplace participants often purchase data from a variety of sources, both as a back-up in case of a system failure and as a means of verifying their own in-house consolidated feed to ensure data integrity.

5. Pricing of Market Data

With one exception,[8] all marketplaces charge market data fees. One marketplace charges different fees for TSX- and TSXV-listed securities that are traded on its facilities.[9] Other marketplaces charge a single fee for both sets of data.[10] Marketplaces generally charge a prescribed fee for each "use" of their data. While each marketplace has its own definition of a "single use" of data, typically it will include a data feed to a single screen or to a trading algorithm or SOR. Some marketplaces charge different fees based on the type of use, with non-professional users typically charged a lower fee per use than professional users. In addition, prior to July 2012, one marketplace offered enterprise agreements to large data consumers. This type of agreement allowed these users to receive discounts on market data fees when compared with the fees calculated on a per user basis.

Market data fees per user are set based on a number of factors, including: the amount of data, the type of user and the intended use of the data.

- Amount of data - Marketplaces generally offer at least two levels of data – top-of-book and depth-of-book. Top-of-book data (TOB) consists of information on the last sale of a security, the best bid and offer, and the aggregate volume available for purchase and sale at those prices. Depth-of-book data (DOB) consists of information on all visible orders in the marketplace (price and volume) and all trades. DOB data is usually more expensive than TOB data, but some marketplaces offer both TOB and DOB data for one fee.[11]

- Type of user – As mentioned above, marketplaces may further differentiate their fees based on whether the product will be used by a professional or non-professional user. These user fees are known as subscriber fees. Professional users are individuals or organizations that use market data for business purposes (for example, dealers and their employees). Non-professional users are individuals that use market data for personal use. There is also a third category of usage-based users, who may either be professional or non-professional, who pay for data on a per-quote basis.[12]

- Use of data - Marketplace participants may purchase data for use within their firm (internal distributors) or to re-distribute to their customers (external distributors) or for both internal and external distribution. Some marketplaces charge a *distribution fee* for the internal and external distribution of data. Marketplaces may also charge a *licence fee* for data that is not displayed to users, but is instead fed directly into trading applications such as those used for algorithmic trading.

In addition, the fees paid for market data are also dependent on the source of the data.

- When data is purchased directly from a marketplace, the marketplace participant pays several fees. While the method of charging fees varies by marketplace, the data fees charged may include fees to receive a feed, subscriber fees

8 TMX Select does not charge any market data fees.

9 Alpha Exchange charges different market data fees for TSX- and TSXV-listed securities.

10 Chi-X, Omega and Pure charge one data fee for both TSX- and TSXV-listed securities.

11 Omega charges one fee for its TOB and DOB data for both TSX- and TSXV-listed securities.

12 See Appendix B for a complete view of marketplace fees.

charged per user or per device and distribution fees where the purchaser redistributes the data internally or externally to third parties.

- There are two elements to the fees charged by third-party vendors: (i) vendor fees and (ii) marketplace subscriber fees, which may be paid directly to the marketplace or indirectly through the vendor. When the fees are paid through the vendor, the vendor may charge a mark-up for this service. In addition, the third-party data vendor pays a distribution fee to the marketplace for its own use of the marketplace's data.

- When data is purchased through the IP, the marketplace participant pays an administration fee to the IP and the professional subscriber fees to each marketplace.

The pricing model that is used by third-party vendors and the IP is called a pass-through pricing model. Under this model, the marketplace subscriber fee is paid by the end user regardless of which entity the end user buys the data from.

Marketplaces have told us they consider one or more of the following factors in setting their fees:[13]

- the fees charged by competitors and peer marketplaces,

- its market share,

- the development and operating costs associated with market data, and

- the views of clients and data vendors.

6. The Regulatory Framework

The regulatory framework in Canada impacts the manner in which marketplaces conduct their business and set fees, and how marketplace participants buy and use real-time data. This framework includes rules relating to the provision of data, the regulation of data fees and order handling requirements, including best execution and order protection obligations.

Two National Instruments, National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (NI 23-101) set out the regulatory framework for marketplace trading. NI 21-101 sets out the rules governing the operations of marketplaces, the provision and dissemination of market data and market data fees. NI 23-101 provides the framework that marketplaces and marketplace participants must comply with when carrying out their trading activities. Together, these two National Instruments are referred to as the Marketplace Rules. The specific requirements of these rules are discussed in detail below.

(a) Rules Governing Market Data

Part 7 of NI 21-101 sets out the information transparency requirements for marketplaces trading exchange-traded securities.[14] These requirements ensure transparency of trading and mitigate the effects of a competitive environment for trading over multiple marketplaces by requiring the transmission of data from each marketplace to a central entity (e.g. the IP) for consolidation and public dissemination.

Under Part 7, transparent marketplaces are required to provide details of all orders and trades to the IP for exchange-traded securities and to an information vendor for foreign exchange-traded securities.[15] Dark marketplaces[16] must provide details of executed trades to the IP (for Canadian exchange-traded securities, other than options) or an information vendor (for foreign-exchange listed securities).

NI 21-101 requires the IP to consolidate and disseminate order information from all transparent marketplaces and trade information from all marketplaces. The TMX IP[17] acts as the IP for all exchange-traded securities other than options, and is

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13 In addition, marketplaces likely consider the maximization of their revenue from market data when setting their data fees; however, this was not mentioned in the responses to our request for information.

14 An "exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of NI 21-101 and NI 23-101.

15 A "foreign exchange-traded security" means a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada.

16 Dark marketplaces are marketplaces that do not provide pre-trade transparency of orders.

17 The TMX IP was recognized under the Quebec *Securities Act* and is subject to various undertakings in other CSA jurisdictions.

subject to certain requirements under Part 14 of NI 21-101. These requirements include provisions relating to the manner in which real-time data is collected, processed, distributed and published. In addition, the IP is required to provide prompt and accurate order and trade information and cannot unreasonably restrict fair access to such information.

While the requirements create a regulatory structure for the IP, they do not preclude other entities from creating and disseminating consolidated data feeds. This allows for others to compete with the IP's product offering.

(b) Regulatory Requirements Governing Market Data Fees

The initial and ongoing information reporting requirements for marketplaces are found in section 3.1 and 3.2 of NI 21-101.[18] Under Section 3.1, exchanges and ATSs are required to disclose the fees charged for their services, including their market data fees. Currently, market data fees are reviewed by some jurisdictions[19] when initially filed. In addition, all subsequent fee amendments are required to be filed with the appropriate CSA jurisdiction(s) for review and approval. Market data fee amendments are not currently published for comment.

When setting and varying their fees, marketplaces must comply with the "fair access rule" in subsection 5.1(1) of NI 21-101 which requires that marketplaces not unreasonably prohibit, condition or limit access to their services. This requirement applies to all services offered by marketplaces, including execution, routing and data services.

One of the factors, amongst others, that is considered by marketplaces in setting their fees and by staff of the Ontario Securities Commission (OSC) when evaluating these fees is the size of the fee relative to a marketplace's market share of trading activity.[20]

(c) Order Protection Rule (OPR)

Contained in Part 6 of NI 23-101, the OPR requires that a marketplace establish, maintain and comply with policies and procedures reasonably designed to prevent the execution of an order at a price that is inferior to better-priced orders displayed on any Canadian marketplace. This is a policies and procedures obligation that is not enforced on a trade-by-trade basis. Compliance with this rule necessitates that policies and procedures contemplate the consideration of prices across all transparent marketplaces.

OPR puts the onus for compliance on marketplaces. However, many dealers, particularly those that are latency sensitive, use directed action orders (DAOs) to direct their order flow.[21] These orders are often sent via a SOR that reads the data from all marketplaces and sends tradeable orders to the marketplace showing the best price at the time the SOR receives the order. Dealers may use a proprietary SOR, an SOR provided by the marketplace or one provided by a third-party vendor. The OPR requires dealers using DAOs to have policies and procedures reasonably designed to prevent trade-throughs.[22]

(d) Best Execution

The dealer's obligation to obtain best execution for its clients' orders is derived from agency law.[23] In Canada, NI 23-101 and the Investment Industry Regulatory Organization of Canada's (IIROC) Universal Market Integrity Rules (UMIR) codify this obligation. These rules[24] require that dealers (other than dealers carrying on business as an ATS) must make reasonable efforts to achieve best execution[25] when acting for a client. Dealers must regularly assess order and trade information from all relevant marketplaces in deciding how to manage client orders. Like OPR, best execution is not assessed on a trade-by-trade basis but in the context of the dealer's overall policies and procedures. Subsection 4.1(5) of Companion Policy 23-101CP states:

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18 The information is contained in Form 21-101F1(Form F1) for an exchange and Form 21-101F2 (Form F2) for an ATS.

19 The OSC reviews all exchange and ATS filings, including all fee amendments as described in Part VI.1.

20 Subsection 7.1(5) of the Companion Policy to NI 21-101 (NI 21-101CP) outlines the minimum factors that marketplaces should consider to ensure fair access to their services, including to their market data services.

21 A DAO signals to the marketplace that the dealer has assumed responsibility for compliance with the OPR and the marketplace should execute an order notwithstanding any apparent trade-through. The dealer using a DAO order will also send an order to any marketplace displaying a better price to prevent a trade-through.

22 A requirement to have compliance policies and procedures is also contained in Part 6 of NI 23-101.

23 *See* J. Macey & M. O'Hara, *The Law and Economics of Best Execution*, 6 J. of Fin. Intermediaries 188 (1997).

24 Part 4 of NI 23-101, Universal Market Integrity Rules (UMIR) 5.1 and 7.1. Dealers who are subject to and comply with UMIR are exempt from NI 23-101.

25 Because best execution is for the benefit of the client, it can be waived by the client, unlike OPR, which protects better-priced orders.

In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all appropriate marketplaces (not just marketplaces where the dealer is a participant). This does not mean that a dealer must have access to real-time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

Similarly, Part 2 of UMIR Policy 5.1 states that dealers "should consider orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order," but does not necessarily require access to real-time data feeds from each marketplace.

IV. ISSUES RELATING TO THE COST OF REAL-TIME MARKET DATA

We have grouped the issues relating to data fees into three themes. The first relates to concerns that data fees charged by marketplaces are too high, either individually or in aggregate. The second relates to the view that marketplace participants are required to purchase data because of regulatory requirements and are therefore captive to the fees charged. The third relates to the transparency of fee proposals and changes to fee models. This part of the Consultation Paper describes these three themes.

1. Market Data Fees Are Too High

Marketplace participants have raised the issue of increasing market data costs and high market data fees. Concerns have been expressed that the cost of obtaining data for Canadian equity markets has increased substantially. They argue that the fees charged by marketplaces are too high individually and in the aggregate (i.e., the fees collectively charged by all marketplaces in Canada) particularly when compared to the aggregate fees (i.e., consolidated fees) charged by all marketplaces in the United States (U.S.).

On an individual marketplace basis, many marketplace participants feel that the fees charged by the smaller marketplaces are high in relation to their share of trading activity. Market data from the smaller marketplaces is, in the words of some marketplace participants, of "little to no value" in terms of price or liquidity discovery, because of the marketplace's small share of the total trading activity. In addition, for dealers, the marketplace practice of charging for each use of the same data feed in different trading and order management systems contributes to additional costs.

While dealers are concerned about the level of fees charged by marketplaces, they are willing to pay for data if:

- the data they receive enables them to successfully execute trades, and
- the trading profit they make from trading using the data exceeds the cost of buying that data.

While not widespread, a few marketplace participants viewed market data fees as just "the cost of doing business."

2. Participants Are a "Captive Market"

Marketplace participants have noted two factors that have contributed to high data fees. First, they noted that marketplaces control the production and pricing of their own market data products both on an individual marketplace basis and collectively for all marketplaces. The second factor noted relates to the regulatory environment which, many dealers believe, requires them to have access to data from all transparent marketplaces. Dealers indicate that in complying with the OPR from a practical perspective, they need real-time DOB data from all marketplaces for every trade. Some dealers feel that marketplaces are taking advantage of this situation by charging fees above a level that would exist if marketplaces were subject to competitive forces in the production and pricing of their market data products.

3. Transparency of Fee Proposals and Changes to Fee Models

Some data consumers have raised questions regarding the regulatory review of data fees charged by marketplaces. They have also questioned whether the review process itself should be more transparent and whether the fee models and proposals should be published for comment.

V. ANALYSIS OF MARKET DATA FEES

As noted in the previous Part, concerns about data fees were grouped into three themes: (i) market data fees are too high, (ii) dealers are a captive market due to the regulatory requirements for market data, and (iii) there should be greater transparency of fee proposals and changes to fee models.

This Part of the Consultation Paper presents the analysis of the fees charged by marketplaces in Canada and how these fees compare to those charged by exchanges[26] in the U.S. and other international jurisdictions.[27]

The second theme captures the fact that some of the issues associated with market data fees are related to the realities of complying with best execution obligations and the OPR in a multiple marketplace environment. In our view, these rules are the foundation of trading in the Canadian capital market. However, recognizing the consequences of these rules in the context of competitive markets, we commit to examining the guidance surrounding these rules and the purchase of market data. We have not done so in this paper because in our view, the importance of these rules necessitates a separate and thorough review.

The third theme will be addressed through one of the proposed options in Part VII of the Consultation Paper.

1. Comparison of Fees Amongst Canadian Transparent Marketplaces

(a) Method of Analysis

Our approach in analyzing market data fees in Canada is based on the regulatory framework governing market data fees. Specifically, the fair access rule requires marketplaces to not unreasonably prohibit, condition or limit access to the fees charged for their services, including market data fees. The guidance provided for this rule states that one of the factors, amongst others, considered by staff when evaluating these fees is the size of the fee relative to a marketplace's share of trading activity.

Our review was limited to the professional subscriber fees[28] that each transparent marketplace charged for TOB and DOB data in 2011. We analyzed each marketplace's fees, in absolute and relative dollars, against its trading activity in 2011, to ensure an unbiased and consistent approach in analyzing the fees. Generally, the analysis was completed using the per subscriber fee charged by each marketplace for the data covering trading in all listed securities on that marketplace. In cases where different fees are charged depending on the listing venue, as is the case for TMX and Alpha Exchange, we also considered those fees in our analysis. The trading activity metrics used in our analysis were per million shares traded, per $100 million in trade value and per 10,000 trades. Appendix A presents our methodology for calculating TOB and DOB market data fees for each transparent Canadian marketplace.

When viewed in isolation, each measure of trading activity can under- or over- report a marketplace's fees relative to its peers.[29] Nonetheless, we focused on the volume metric, i.e., per million shares traded, because this metric reflects and is consistent with industry's measurement of trading activity. However, to provide readers with a complete picture of how each marketplace's fees rank for all three trading metrics, we have presented our full analysis in Appendix B.

(b) Findings

There is a wide range in the fees charged by marketplaces for TOB and DOB data (see Table 1).

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26 The analysis was restricted to major exchanges as we were not able to obtain sufficient information on data fees charged by smaller foreign exchanges, electronic communication networks and ATSs from the public sources available to staff.

27 When we compared TSX's fees with those charged by its peers, whether in the U.S or E.U., we did not assess whether or not the fees charged by these peers were fair and reasonable in relation to their domestic market share. We simply compared the data fees charged in absolute and relative dollar value. We acknowledge that, more recently, market participants in E.U, have become more vocal about the cost of market data in Europe.

28 Marketplace participants do not employ a uniform definition of market data costs. Some marketplace participants have a narrow definition of market data costs, which is limited to subscriber fees, while others employ a broader definition that takes into account fees related to connectivity, co-location and vendor costs. We limited our analysis to professional subscriber fees since this is a type of fee incurred by all marketplace participants and subscriber fees account for a significant share of marketplace participants total market data costs.

29 For instance, if a marketplace has a high volume of shares traded, but trades in relatively low-priced shares, it will show a lower relative fee when the volume metric is used and a higher relative fee when the value metric is used. Similarly, if a marketplace has a high number of trades, but a low average trade size, then it will show a lower relative fee when the number of trades metric is used but a higher relative fee when the total volume metric is used. The dollar value traded, on the other hand, has the advantage of taking only the value of the transactions into account, which tends to avoid the biases present in the volume and trade metrics.

Table 1 – Fees Charged by Each Transparent Marketplace, 2011

Fee Per Subscriber	TSX	TSXV	CNSX	Alpha (TSX)	Alpha (TSXV)	Chi-X	Omega	Pure
TOB	$38/$32[30]	$25	$9.00	$15.00	$7.50	$12.00	$2.85	$11.00
TOB & DOB	$88/$82	$51	$9.00	$48.00	$24.50	$30.00	$2.85	$16.50

Source: Information provided by marketplaces and marketplaces websites.

For TOB data, the fees range from $2.85 to $38 and for DOB data the fees range from $2.85 to $88.[31] Overall, the TSX is the most expensive marketplace for both TOB and DOB data, Omega is the least expensive and the remaining marketplaces fall within these two extremes. TOB data from the TSX costs between 1.5 and 13 times more than the other marketplaces.[32] For DOB data, the TSX's fees are between 1.7 and 31 times more than the other marketplaces.[33]

When we examine each marketplace's fee in relation to its trading activity,[34] the picture of which marketplace has the highest or lowest fee changes significantly. With two exceptions, the TSX had the lowest fee for each of the trading activity metrics we examined for TOB data. Conversely, CNSX had the highest fees. CNSX's relative TOB fees were approximately 30 to 2,000 times greater than those of the TSX. This observation holds true for DOB data fees as well, although the magnitude of the difference is not as great (see Table 2 and Appendix B).

Table 2 – Scaled Comparison of Relative Fees for Each Transparent Marketplace, 2011

	TSX	TSXV	CNSX	Alpha (TSX)	Alpha (TSXV)	Chi-X	Omega	Pure
Scaled comparison of fee per million shares traded (scaled to TSX fee)								
TOB	1.0	1.1	29.8	1.1	1.6	2.2	1.8	3.5
DOB	1.0	0.9	12.6	1.5	2.3	2.3	0.7	2.2
Scaled comparison of fee per $100 million traded (scaled to TSX fee)								
TOB	1.0	23.9	2,018.0	1.5	36.3	2.0	2.3	5.9
DOB	1.0	19.9	939.6	2.2	55.3	2.4	1.1	4.1
Scaled comparison of fee per 10,000 trades (scaled to TSX fee)								
TOB	1.0	10.8	1,144.4	1.2	9.6	1.0	1.9	4.5
DOB	1.0	9.0	531.6	1.8	14.6	1.2	0.9	3.1

Data sources: IIROC Marketshare by Marketplace Report, information provided by marketplaces, marketplaces websites, OSC calculations.

Our findings were expected given the significantly higher trading volume on the TSX compared to the other marketplaces. To some degree the TSX's lower relative fees may reflect lower production costs that arise due to economies of scale in the TSX's operations. When we remove the highest and lowest relative fees charged by marketplaces (i.e., CNSX, Alpha (TSXV) and TSXV), we find that the fees that the other marketplaces charge are in many cases equal to or slightly higher than the TSX's. In other cases, smaller marketplaces are charging, at most, 6 times more than the TSX for TOB data and, at most, approximately 4

30 The first fee shown, i.e. $38 was the effective fee from January to September 2011 and the second fee shown, i.e., $32 was the effective fee at the start of October 2011.

31 Please refer to Appendix A for a full explanation of our fee calculation methodology.

32 Analysis is based on the TSX's $38 fee.

33 Analysis is based on the TSX's $88 fee.

34 For marketplaces that charge different market data fees for TSX- and TSXV-listed securities, we separately assessed their relative TSX and TSXV fees based on their trading activity in TSX- and TSXV-listed securities. For marketplaces that charge one market data fee for both TSX- and TSXV-listed securities, we assessed their relative fee based on their total trading activity, regardless of whether they traded TSX- or TSXV-listed securities.

times greater than the TSX for DOB data. All these marketplaces have a smaller share of the total trading activity than the TSX (see Table 3).

Table 3 – Market Share of Trading Activity on Transparent Marketplaces, 2011

	TSX	TSXV	TMX Select	CNSX	Alpha	Chi-X	Omega	Pure
Volume	41.5%	26.0%	0.5%	0.3%	20.1%	6.2%	1.8%	3.6%
Value	63.9%	1.8%	0.5%	0.0%	17.9%	10.4%	2.2%	3.3%
Number of Trades	53.9%	3.4%	0.7%	0.0%	18.5%	17.7%	2.2%	3.6%

Data sources: IIROC Marketshare by Marketplace Report, OSC calculations.

One marketplace charges a separate fee to access data based on the listing markets. Specifically, Alpha Exchange charges a separate fee to access data for TSX and TSXV-listed securities. To evaluate marketplace participants' view that the TSXV fees charged by the TMX Group are too high relative to the trading activity for TSXV securities, we analyzed the fees that both marketplaces charge for TSXV data[35] relative to their trading activity in TSXV securities. For TOB data, we found Alpha's relative TSXV fee to be 1.5 times greater than those of the TSXV. For DOB data, we found Alpha's relative fee to be 2.4 times greater than those of the TSXV. In 2011, the TSXV dominated trading in TSXV securities, accounting for 80% of trading volume. In contrast, Alpha had a 16% share in trading of TSXV-listed securities.

2. Comparison of Consolidated Fees in U.S. and Canada

This section examines the claim that the cost of consolidated data is lower in the U.S. than it is in Canada by comparing the cost of buying consolidated data in both countries.

A detailed discussion of the U.S. market structure and regulatory framework for market data is set out in Appendix C, however, the following differences are of note.

- Trading in the U.S. is subject to a best execution obligation that is similar to that in Canada. U.S. trading is also subject to an OPR, but unlike Canada's depth of book obligation, the U.S. requirement only applies to TOB orders.

- Although U.S. exchanges are required to provide their data to a consolidator (called a "securities information processor" or "SIP") similar to the IP, they only have to provide TOB data and the consolidated data feed does not show the full depth of the market.

- There are two SIPs, one for NYSE and NYSE MKT (Amex-listed securities) and one for NASDAQ-listed securities. In Canada, the IP consolidates data for all exchange-listed securities other than options.

- The Consolidated Tape Association (CTA) and UTP SIP Plan, which oversee the SIPs, do not use a pass-through pricing model for the consolidated data distributed by the SIPs. They establish their own price for this data and compensate the participating marketplaces by sharing the SIP's revenues on a prescribed basis.[36]

- The total subscriber fees for Network B (NYSE MKT) and the NASDAQ UTP (NASDAQ-listed securities) are lower than the cost of purchasing data from each individual marketplace. Furthermore, Network A (NYSE-listed securities) uses a sliding scale for subscriber fees that declines rapidly after the first user.[37] We estimate that the Network A fee for a single subscriber is actually higher than the cost of purchasing the data from individual marketplaces.

- The U.S. ATSs are not required to provide data to a SIP until they reach a certain market share threshold, but many choose to do so in order to participate in sharing the SIP's revenues, by sending their data to an exchange that is a CTA participant.

- None of the current U.S. ATSs charges users for data obtained directly from the ATS. However, this is a business decision rather than a regulatory requirement.

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35 We have not analysed other marketplaces trading in TSXV-listed securities because they do not charge marketplace participants a separate fee for accessing TSXV data on their markets.

36 The formula for the revenue sharing model is set by the Securities and Exchange Commission (SEC).

37 The rate for a single user is $127.50 per month per subscriber whereas a firm with three users would pay $58.25 per month per subscriber.

(a) Method of Analysis

To compare the cost of consolidated TOB data in Canada to the cost of consolidated TOB data in the U.S., we calculated the total cost of accessing real-time TOB market data from all marketplaces trading TSX-, TSXV- and CNSX-listed securities in Canada, and all CTA and UTP participants in the U.S. To allow for an equivalent comparison of DOB consolidated data costs, we examined the market data fees charged for accessing both TOB and DOB data in the U.S. and Canada. A complete description of our methodology and calculations can be found in Appendices D and E.

(b) Findings

The total cost of accessing TOB data in Canada directly from the marketplaces or through the IP is $118.85 CAD per month. In the U.S., the total SIPs's fee is $173.99 CAD[38] per month. In absolute dollar terms, consolidated TOB data is less expensive in Canada; however, when scaled for trading volume, Canadian TOB data is approximately seven times more expensive than equivalent U.S. consolidated data.

Table 4 – Absolute and Relative TOB Fee for Consolidated Data in Canada and the U.S., 2011

	Consolidated Canadian Marketplaces	**Consolidated U.S. Marketplaces**
Professional TOB - Monthly Fee	*$118.85*	*$173.99*
Per 1 Million Shares	$0.0201	$0.0027

Data sources: IIROC Market Share by Marketplace Report, World Federation of Exchanges, information provided by marketplaces, marketplace websites, OSC calculations.

The total cost of accessing DOB data in Canada, whether in consolidated form or individually from each marketplace is $268.35 CAD per month. The aggregate cost of accessing DOB data for the U.S. marketplaces that are CTA and UTP participants, is $285.17 CAD per month. When scaled for the trading volume, the relative fees for DOB market data in Canada are approximately 10 times more expensive than equivalent data in the U.S.

Table 5 – Absolute and Relative DOB Fee for Consolidated Data in Canada and the U.S., 2011

	Consolidated Canadian Marketplaces	**Consolidated U.S. Marketplaces**
Professional DOB - Monthly Fee	*$268.35*	*$285.17*
Per 1 Million Shares	$0.0454	$0.0044

Data sources: IIROC Market Share by Marketplace Report, World Federation of Exchanges, information provided by marketplaces, marketplace websites, OSC calculations.

These findings are expected, given the greater scale of trading and number of professional data users in the U.S. The total transparent consolidated trading volume in the U.S. is approximately seven times greater than the total transparent trading volume in Canada.[39] Additionally, the U.S. has 10 times more professional data subscribers.[40] The greater size of the U.S. market allows for greater economies of scale, and the associated cost savings may be passed to marketplace participants. In addition, the higher volumes generate more trading revenue and may make an exchange more attractive to companies seeking to list, which will positively impact listing revenue and this means that U.S. marketplaces are less reliant on data fee revenue to sustain their operations.

Another reason for lower consolidated fees in the U.S. relates to the framework governing the setting of consolidated data fees and the SIP revenue sharing model. In the U.S., the CTA establishes the fee for the consolidated TOB data and the marketplaces are compensated by sharing in the SIP's revenue. Each marketplace's share of the SIPs revenue is calculated based on a formula developed and approved by the SEC. This formula is also included in the CTA plan. Any change to a CTA's plan, including fees changes, requires a change to the plan agreements by participating marketplaces, and also an agreement by all the participants in the plan and approval by the Securities Exchange Commission (SEC). Agreement to change this structure is difficult. Inertia is arguably a key factor in keeping the fees for consolidated data in the U.S. relatively low. For

[38] $ 1USD = $ 0.9971CAD as of February 1, 2012.

[39] OSC Calculations based on data obtained from Thomson Reuters and IIROC's Marketshare by Marketplace Report. The total transparent trading volume is calculated as the sum of trading volume on all transparent marketplaces.

[40] OSC Calculations based on information provided by marketplaces and publicly available from NYSE Euronext's website.

instance, the fees for consolidated data for Networks A and B have remained unchanged since 1994 and for the UTP Plan since 1998.

3. Comparison of TSX Fees with International Peers

This section assesses how TSX fees compare to the fees charged by its international peers, in relative and absolute dollar value.

A discussion of the E.U. market structure and regulatory framework for market data is set out in Appendix F. We note that there is no mandated consolidated tape in Europe. In addition, European markets are not subject to an OPR and best execution obligations are interpreted differently than they are in Canada. Appendix G gives a brief overview of the Hong Kong and Brazil markets.

(a) Method of Analysis

We compared the TSX's TOB and DOB data fees to comparable international peers. To make this comparison we selected a number of comparable exchanges to the TSX, including NYSE Euronext (U.S.), NYSE Euronext (Europe), NASDAQ OMX, NASDAQ OMX Nordic, London Stock Exchange (LSE), Australian Stock Exchange (ASX), Hong Kong Stock Exchange (HKSE) and Brazilian Stock Exchange (BM&FBOVESPA). The trading activity metrics used in our analysis were per million shares traded, per $100 million in trade value and per 10,000 trades.

As mentioned in our analysis of the Canadian marketplaces' fees, when viewed in isolation each measure of trading activity can under- or over-report a marketplace's fees relative to its peers. As with our analysis of domestic marketplaces we focused on the volume metric, i.e., per million shares traded.

(b) Findings

Table 6 – Summary of Absolute and Relative Fees Per 1 Million Shares Traded for The TSX and Its International Peers, 2011

Monthly Average	TSX	LSE	ASX	NYSE Euronext (Europe)	NASDAQ Nordic	NYSE Euronext (U.S.)	NASDAQ (U.S.)	BM&FBOVESPA	HKSE
Trade Volume (billion)	9	72	51	10	6	48	76	73	246
Professional TOB									
Monthly Fee Per Subscriber[41]	$38/$32[42]	$65.19	$54.16[43]	$94.27	$53.15	$154.95[44]	$20.06	n/a	$15.43
Per 1 Million Shares	$0.0042	$0.0009	$0.0011	$0.0094	$0.0082	$0.0032	$0.0003	n/a	$0.0001
Professional DOB									
Monthly Fee Per Subscriber	$88/$82[45]	$268.78[46]	$54.16	$130.38[47]	$132.38[48]	$150.44[49]	$136.39[50]	$54.10[51]	$51.44[52]
Per 1 Million Shares	$0.0100	$0.0037	$0.0011	$0.0130	$0.0205	$0.0031	$0.0018	$0.0007	$0.0002

41 Fees were converted into Canadian dollars using the following exchange rates: $1USD = $0.9971 CAD, $1 EUR = $1.3164 CAD, $1 AUD = $ 1.0698 CAD, $1BRL = $0.5755 CAD, $1 HKD = $0.1286 CAD.

42 The first fee shown was the effective fee from January to September 2011 and the second fee shown was the effective fee as of October 2011. TSX fees have been weighted in our calculations to account for fee changes that took place on October 2011.

43 ASX fees include both TOB and DOB data.

44 The NYSE Euronext (US) TOB fee includes the fees for data from Network A (priced for 1 user) and Network B (Last Sale and Bid/Ask).

45 This is the TSX's effective DOB fee. See Appendix B for the TSX's listed DOB fee calculation.

46 Fee for LSE Level 2 product.

47 Fee for NYSE Euronext (Europe) Cash Full Order Book.

48 Fee for NASDAQ OMX Nordic Equity TotalView.

49 Fee for NYSE Euronext (US) NYSE OpenBook, NYSE Market OpenBook, NYSE ArcaBook

50 Fee for NASDAQ Total View (for NASDAQ issues), NASDAQ BX Total View, NASDAQ PSX Total View.

51 Fee priced for access via terminal, internet and extranet.

52 Fee for Full Book product.

The TSX's TOB fees are comparable to those charged by a number of European exchanges, both in dollar terms and when scaled by the volume traded. In contrast, European exchanges tend to charge more for DOB data than TOB data on an absolute dollar basis. Relative to the volume of trading activity, the TSX falls within the middle range of fees charged by European exchanges.

As indicated above, when compared to the U.S. exchanges, TSX TOB fees are in line with those charged by NYSE and NASDAQ in absolute dollar value. Relative to the volume of trading activity, both TOB and DOB data from the two U.S. exchanges is considerably less expensive than that from any of the other exchanges examined.

The ASX does not charge separately for TOB and DOB data. Relative to trading activity, the combined TOB and DOB data from ASX is slightly less costly than equivalent data from the TSX and the TSX and TSXV combined.[53] While the Australian market is similar in structure to the Canadian market,[54] we note that the comparison between the TSX and ASX relative fees may be distorted. Securities listed on the ASX are more diluted than securities listed on the TSX[55] and, as a result, the trading volume on ASX is significantly higher than the trading volume on the TSX. The difference accounts for the ASX's lower relative fee.

BM&FBOVESPA and HKSE have lower absolute and relative fees compared to those of TSX. The relative fee comparison is made difficult by the structure of the markets in which these exchanges operate. Canadian markets are competitive and securities listed on TSX are traded on multiple marketplaces. BM&FBOVESPA and HKSE are monopolies and their securities can only be traded on their markets. As a result a direct comparison is not meaningful.

4. Conclusions - Canadian Market Data Fees

Based on our analysis, we have concluded the following:

a. There is no conclusive evidence that the fees charged by the TSX and the TSXV are unreasonable.

- While the TSX and TSXV market data fees are the most expensive in Canada, in absolute terms, we could not find any conclusive evidence that these marketplaces were abusing their dominant position by charging fees that are high in relation to their market share of trading.
- The TSX's data fees were comparable to those charged by many of its European peers, but higher than its U.S. peers. This seems to support the view that TSX fees are not unreasonable, as they fall between the fees charged in Europe and those charged in the U.S.

b. There is evidence to support the view that in Canada, marketplaces with a smaller market share are, in some cases, charging fees that are high in relation to their market share of trading activity.

- This finding does not necessarily mean that these marketplaces are charging fees that violate the fair access provisions of NI 21-101 and represent an unreasonable condition or limit on accessing their data services.
- While we have not been provided with cost information, it is possible that the higher "per volume" fees charged by smaller marketplaces may reflect the fact that these marketplaces' cost of providing data for each user may be higher. Smaller marketplaces may have similar infrastructure costs as large marketplaces and the higher "per-volume" fees may reflect the fact that they need to recover those costs. In addition, higher "per-volume" fees may reflect the fact that these markets are in a start-up phase of operation and have not yet reached their expected outcomes.

c. There is some evidence that the cost of consolidated data in Canada is relatively higher than in the U.S.

- The U.S. SIP program has resulted in consolidated data fees that, based on trading volumes, are much lower than those in Canada.
- We acknowledge the view held by marketplace participants in Canada that the data fees charged by Canadian and U.S. marketplaces should ideally be closer. However, differences in the regulatory environment, industry structure, scale and size of the two markets may explain the cost differential and arguably make such an outcome unrealistic.

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53 The weighted combined TSX and TSXV TOB and DOB fees are $0.009 and $0.0197 per million shares.

54 ASX-listed securities are traded on a competing marketplace, i.e., Chi-X Australia.

55 On the ASX, the average number of outstanding shares for listed issuers with a market capitalization of at least $1B was 991 million. On the TSX, the average number of outstanding shares for listed issuers with a market capitalization of at least $1B was 287 million. Calculations based on data obtained from Capital IQ.

As a result of our initial analysis, it is our view that while the amount of some of the data fees charged is not unreasonable, the quantum of some fees may result in a high fee for consolidated data. A high fee for consolidated data may introduce inefficiencies and hamper the ability of market participants to fulfill their regulatory obligations. As a result, we believe that further steps should be considered to address the fees charged for market data on an individual marketplace and/or aggregate basis.

VI. REGULATORY ACTIONS TAKEN TO DATE

This Part of the Consultation Paper describes the steps various CSA jurisdictions have taken to examine and manage issues relating to market data fees.

1. Review of Fees Charged by Canadian Marketplaces

Issues about market data fees first arose during the selection of an IP in 2009. CSA staff Notice 21-309 *Information Processor for Exchange-Traded Securities other than Options* acknowledged issues raised at the time and CSA staff made a commitment to review these issues at a future date, including:

- reviewing the regulatory requirements for data fees collectively charged by all Canadian marketplaces,
- looking at fee models used by data consolidators, vendors and marketplaces, and
- understanding what actions securities regulators in other jurisdictions have taken to ensure the costs and benefits of market data are balanced, and what options are available to mitigate and correct potential abuses of market data fees.

As part of the current review, CSA staff requested fee information from all transparent marketplaces and reviewed and analyzed this information. From this review, it was determined that market data fees warranted further research and analysis, which we have presented in this Consultation Paper.

Over the past few years both OSC and British Columbia Securities Commission (BCSC) staff have been reviewing proposed fee changes[56] by marketplaces with greater scrutiny, as part of their on-going oversight of marketplaces. Details are discussed below.

(a) OSC Staff Review

For the last few years OSC staff have placed greater emphasis on the review of proposed amendments to fees set out under Form F1 and Form F2 regarding fees, including data fees. When submitting proposed fee changes, marketplaces are asked to provide justification for their proposed changes, including an analysis of how the proposed fees comply with the fair access requirements. The information provided is used to assess whether the proposed fee changes would constitute a barrier to access to a marketplace's services. OSC staff's review of the proposed fees has relied mostly on post-trade statistics, provided either by the marketplaces or by IIROC.[57]The approach taken by OSC staff to review data fees to date is rooted in the fair access rule and the guidance provided in NI 21-101CP to the fair access requirements.

(b) BCSC Staff Review

BCSC staff have also placed a greater emphasis on the review of proposed amendments regarding fees, including data fees, in recent years. BCSC also requests that marketplaces submitting proposed fee changes provide a business case justifying their proposed changes and an analysis of the proposed fees and how the fees comply with the fair access requirements and, in the case of the TSXV, comply with provisions in that exchange's recognition order requiring fees to:

- be allocated on an equitable basis,
- not have the effect of creating barriers to access,
- be balanced with its need to have sufficient revenues to satisfy its responsibilities and,
- be fair, reasonable and appropriate.

56 OSC staff review all fee changes filed by the TSX, CNSX, Alpha and ATSs and BCSC staff review fee changes filed by the TSXV.

57 http://www.iiroc.ca/news/Documents/MarketplaceStatisticsReportHistorical_en.pdf

2. Transparency of Enterprise Agreements Offered by Marketplaces

One issue raised in the past by the Investment Industry Association of Canada (IIAC) was the lack of transparency surrounding enterprise agreements for large data consumers. The CSA considered the issue of bringing transparency to enterprise agreements to help buyers of market data understand the criteria they would have to meet in order to be considered a candidate for an enterprise agreement. Amendments to NI 21-101 implemented on July 1, 2012 now require transparency of these agreements[58] and the basis on which fee discounts or rebates are set.

3. Further Research and Analysis of Market Data Fees

As part of the information gathering stage of this consultation, CSA staff conducted a series of interviews[59] with a representative cross-section of marketplace participants to further explore their market data fee concerns. The discussions with marketplace participants were focused on understanding the types of market data used and for what purpose, as well as the cost management and procurement controls they have in place to manage data costs. We also solicited feedback on potential solutions we could pursue in addressing their issues with market data fees.

We also researched and analyzed the regulatory frameworks governing market data fees in the United States and the European Union (EU), market data pricing, pricing theory and profitability analysis of the securities dealer industry. Appendix H presents a list of the literature we reviewed as part of our research and analysis activities.

4. Seek Industry Input on Proposed Approach to Data Fee Issues

The next phase of our work was the development and publication of this Consultation Paper. After we receive industry input for our proposed approach, we will determine whether further actions are appropriate or necessary.

VII. OPTIONS TO ADDRESS MARKET DATA FEES ISSUES

This Part of the Consultation Paper describes possible approaches to managing the issues associated with the cost of market data. We grouped these options into two categories based on the issues we are trying to address: high market data fees and transparency of proposed fees and changes to fee models. These options are described below.

1. Options to Address High Market Data Fees

The options in this category, if implemented, would regulate data fees through a number of means. Specifically, the approaches include: (i) capping fees for "core data", (ii) capping fees for marketplaces, (iii) capping fees for data sold through the IP, (iv) regulating consolidated data fees charged by the IP and/or, (v) mandating a data utility to operate on a cost-recovery basis. These options are described below.

Option 1: Cap fees for "core data"

This option would consist of defining a set of data, known as core data that would be necessary to comply with regulatory requirements. The regulatory authority would then regulate the distribution of the fees applicable to this core data, whether distributed through the IP or through the marketplaces. Since core data would not necessarily need to include all data elements that are currently in market data feeds, it could be available at a lower price.

Marketplaces would be free to set fees for non-core real-time data products, subject to the normal fee review and approval process. To prevent marketplaces from bundling core data with other data as a way to circumvent the pricing restrictions, marketplaces would be required to offer core data as a stand-alone product.

Question 1: ***Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 2: ***What are the competitive and business impacts of the proposed option?***

Question 3: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with an additional option? If yes, which one(s)?***

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58 Section 10.1 of NI 21-101 and section 12.1 of NI21-101CP.

59 OSC and Alberta Securities Commission (ASC) staff conducted interviews and BCSC staff discussed market data fee concerns with local investment dealers.

Question 4: ***What elements should be included in core data? Why?***

Question 5: ***How should the cap be set? Please provide as much detail as possible.***

Question 6: ***Should there similarly be caps applied to non-core data? If so, how should the caps be set? Alternatively, what should staff consider when assessing the fees to be charged for non-core data?***

Option 2: Cap data fees charged by a marketplace until it meets a *de minimis* threshold

This option would impose a cap on the fees that a marketplace could charge for its market data until it reaches a *de minimis* threshold for a period of time. This threshold could be based on market share or market share combined with some other metric. The cap could be set at zero or at a nominal amount until the threshold is met. If a marketplace falls below the *de minimis* threshold for a certain period of time, its market data fees would be subject to the cap until the marketplace moves above the *de minimis* threshold again.

The cap would not apply to marketplaces that are above the *de minimis* threshold. Marketplaces in this situation would be able to set fees, subject to the approval process in place.

Question 7: ***Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 8: ***What are the competition and business impacts of the proposed option?***

Question 9: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 10: ***What factors could be considered in establishing the de minimis threshold? What could be the appropriate measure and measurement period? Please provide as much detail as possible.***

Question 11: ***What factors could be considered in setting the cap? Please provide as much detail as possible.***

Option 3: Cap all data fees for all marketplaces starting at a de minimis threshold and gradually increasing the threshold and the applicable caps

This option would limit the level of market data fees individually charged by all marketplaces. Similar to the previous option, the *de minimis* threshold could be based on market share or market share combined with some other metric. We have not decided what the *de minimis* threshold metric could be; however, to facilitate an understanding of this option we will use market share as the *de minimis* metric. Whereas option 2 only contemplates a single market share threshold and fee cap, this option would create a matrix with a cap level for each threshold interval.

The cap for the *de minimis* threshold could be set at zero or at a nominal amount until the *de minimis* threshold is met. The cap would increase when a marketplace moves beyond the *de minimis* market share threshold and into a higher market share threshold. Conversely, the cap would decrease to a lower level if a marketplace regresses back to a lower market share threshold. Similar to option 2, a marketplace must remain above a set threshold for a certain period of time before it can increase its fee up to a level that corresponds to the threshold tier it is in.

This option would prevent any marketplace from charging fees that are not reflective of its market share. Additionally, the tier fee caps and market share thresholds structure would keep fee increases in check by tying them to a marketplace's market share.

Question 12: ***Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 13: ***What are the competition and business impacts of the proposed option?***

Question 14: ***Would the proposed option be effective in market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 15: ***What factors could be considered in establishing the de minimis threshold and the successively higher thresholds? What could be the appropriate measure and measurement period?***

Question 16: ***What factors could be considered in setting the gradually increasing caps? What could be an appropriate approach in setting these caps? Please provide as much details as possible.***

Question 17: ***Should the caps for fees be waived when a certain threshold is met? Please provide as much detail as possible.***

Option 4: Cap fees for data sold through the IP

This option would cap the fees that marketplaces charge buyers who purchase their data from the IP. All marketplaces would be subject to a cap, although not necessarily the same one (as in option 3). This model preserves the pass-through model but caps the costs that could be passed through. The cap could be set by the regulators and implemented through a rule. The marketplaces would still be free to set fees for direct subscribers and vendors, subject to the normal fee review and approval process. This option would create a lower-cost consolidated data feed from the IP. As many users do not need to purchase data directly from marketplaces (e.g., users that are not latency sensitive) this option could address their concerns. Users whose business models require them to purchase data directly from the marketplace or from third party vendors would not necessarily see a direct benefit in terms of lower costs, but the existence of a lower-cost alternative may impose some market discipline on data prices generally.

Question 18: ***Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 19: ***What are the competition and business impacts of the proposed option?***

Question 20: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 21: ***What factors could be considered in establishing the caps?***

Option 5: Regulate consolidated market data fees charged by the IP

This option is similar to option 4, except that it would directly regulate the fees charged by the IP for consolidated data rather than the fees charged by marketplaces. Unlike option 4, this model would eliminate the pass-through model but would necessitate creating a different fee and compensation model for the data fees. Like option 4, this option would not regulate fees for data sold directly by marketplaces.

In this option, the IP and not the marketplaces would set the fee for its consolidated data, subject to approval by the regulatory authority. The fee could be determined by a rule of the regulatory authority, the IP independently or co-operatively by the marketplaces, as is done with consolidated data in the United States. Marketplaces would share in the IP's revenue on a pre-determined basis, either by agreement or rule or as approved by the regulatory authority. Under this option, marketplaces would be free to set fees for direct subscribers and vendors, subject to the fee review and approval process.

This approach is similar to the approach taken in the United States, where the revenue from the consolidated data distributed by the SIPs is allocated by a set formula.

This option requires legislative amendments to the securities regulatory authorities jurisdiction to specifically regulate the operations of the IP and the fees charged for its products.

Question 22: ***Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 23: ***What are the competitive and business impacts of the proposed option?***

Question 24: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 25: ***How should the fee be set and by whom?***

Option 6 – Cap consolidated data fees sold by marketplaces to all data vendors, not just to the IP

This option is also similar to option 4, however, instead of capping the fees that marketplaces charge buyers who purchase their data directly from the IP, the fees that marketplaces charge buyers of consolidated data from all data vendors would be capped. Marketplaces would be free to charge whatever fees they determine appropriate for non-consolidated data whether distributed by vendors or by the marketplaces directly. This will allow all data vendors to distribute the consolidated data at the same lower, capped rate to marketplace participants as the IP.

Question 26: ***Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes benefit more than others?***

Question 27: ***How does this option compare with option 4? What costs and benefits arise from offering regulated fee consolidated data through competitive data vendors rather than a single regulated IP?***

Question 28: ***What advantages, if any, would result from being able to receive consolidated data from a number of data vendors?***

Question 29: ***How should the fee be set and by whom?***

Question 30: ***Should data vendors distributing aggregated data under this model be subject to regulation by the CSA?***

Option 7: Mandate a data utility to operate on a cost-recovery basis

Concerns about the costs of market data have lead some marketplace participants to suggest the creation of a "public utility" source of consolidated market data in Canada.

A mandated data utility could be funded by marketplaces and/or data customers and would operate on a cost-recovery basis. Any revenue generated from the selling of the consolidated data would be divided amongst the utility participants based on a revenue sharing model agreed upon by all parties involved. The amount of revenue that each participant receives would be proportionate to their contribution to price discovery and liquidity. This utility would have to be overseen by the regulatory authority as it would be providing a service critically important to the capital markets.

This option is similar to Option 5, except that it would be developed by the industry rather than imposed by the regulatory authority. Legislative amendments and an overhaul of the transparency requirements would be needed if a public data utility was created.

Question 31: ***Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?***

Question 32: ***What are the competitive and business impacts of the proposed option?***

Question 33: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 34: ***Is it sufficient to create a utility, or must its prices also be regulated?***

Question 35: ***Should there be any restrictions on the data to be provided by marketplaces to this utility – e.g., should this data be limited to core data?***

2. Option to Address Transparency of Fee Proposals and Changes to Fee Models

Option 8: Publish amendments to market data fees and fee models for comments

This option would require a marketplace to publish for comment any amendments to its market data fee schedule. We could require marketplaces to also publish the rationale for amending the fees and a pre-implementation impact analysis at the time their proposed fee changes are filed with the regulatory authority for approval. This would impose some discipline as marketplaces would have to publicly justify any changes to fees and/or fee models.

Question 36: ***Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued?***

Question 37: ***What are the competition and business impacts of the proposed option?***

Question 38: ***Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?***

Question 39: ***Would the rationale and the pre-implementation impact analysis be sufficient in assessing whether the proposed fees do not constitute an unreasonable condition on accessing a marketplaces data services? If no, what other requirements should be considered?***

VIII. REQUEST FOR COMMENTS

We seek comments on all issues raised in this CP, including the options identified, as well as the specific questions posed within it.

You must submit your comments in writing by February 8, 2013. If you are sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft word).

Please address your comments to the CSA member commissions as follows:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Autorité des marché financiers
New Brunswick Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Department of Justice, Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Ontario Securities Commission
Registrar of Securities, Prince Edward Island
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon Territories

Please send your comments [only] to the address(es) below. Your comments will be forwarded to the remaining CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

and

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation [in certain provinces] requires publication of a summary of all the written comments received during the comment period. We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy making process.

Questions

Please refer your questions to any of the following:

Alina Bazavan
Ontario Securities Commission
416-593-8082

Myha Truong
Ontario Securities Commission
416-593-8157

Tracey Stern
Ontario Securities Commission
416-593-8167

Paul Redman
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403-355-3890

Mark Wang
British Columbia Securities Commission
604-899-6658

Appendix A

Methodology for Calculating TOB And DOB Market Data Fees for Each Transparent Canadian Marketplace, 2011

A. Calculations of Relative Fees For All Marketplaces

The fee of each marketplace was divided by that marketplace's respective trading activity, as measured by volume, value and number of trades. The result was then scaled by an appropriate multiplier; and, these were one million shares traded, $100 million in traded value and 10,000 trades. The example below illustrates our calculation methodology for each trading activity metric.

(Fee for Marketplace ÷ Monthly Average Volume in 2011) × 1,000,000

(Fee for Marketplace ÷ Monthly Average Traded Value in 2011) × $100,000,000

(Fee for Marketplace ÷ Monthly Average Number of Trades in 2011) × 10,000

Trading activity data were obtained from IIROC and Thomson Reuters' Equity Market Share Reporter.

B. Calculation of TOB data fees

We used the listed fee for TOB data in our analysis, with the exception of the TSX's and CNSX's fee. The TSX had a fee change for TOB data in October 2011. We weighted the TSX's TOB data fee to capture this change. CNSX bundles its TOB and DOB data as a single product and a single fee is charged to access both levels of data. Our analysis used this bundled fee.

C. Calculation of DOB data fees

TSX

Users are required to purchase TOB data in order to buy DOB data. To reflect the true cost of purchasing DOB data, we used an aggregate fee for DOB data, by adding together the fee for TOB and DOB data. The TOB data fee was weighted to reflect a fee change that took place in October 2011.

TSXV

Users are required to purchase TOB data in order to buy DOB data. To reflect the true cost of purchasing DOB data, we used an aggregate fee for DOB data, by adding together the fee for TOB and DOB data.

TMX Select

TMX Select did not charge a fee to access its market data, in 2011. We used $0 in our analysis. Where it made sense to do so in our presentation of the analysis, we have omitted the results for TMX Select, since all the results are $0.

Alpha

TOB data is free with the purchase of DOB data. The listed fee for DOB data was the fee we used in our fee analysis.

CNSX

TOB and DOB data are bundled as a single product and a single fee is charged to access both levels of data. In our analysis, the same fee was used for TOB and DOB data. CNSX uses a suggested pricing schedule. We used a mid-point price that was between the suggested retail price and the dollar amount that a re-distributor must remit back to CNSX. This method controlled for the over or under-representation of fees that would occur were the lowest/highest price method were used.

Pure

TOB data is free with the purchase of DOB data. The listed fee for DOB data is the figure that is used in our analysis. Pure uses a suggested pricing schedule. We used a mid-point price that was between the suggested retail price and the dollar amount that a re-distributor must remit back to Pure. This method controlled for the over or under-representation of fees that would occur were a lowest/highest price method were used.

Omega

Omega currently has a fee holiday for DOB data. In order to access DOB data, users are required to buy TOB data. The price for DOB data is listed as $0 in our tables. We, however, used the TOB fee in our analysis to capture the true cost of accessing DOB data.

Chi-X

TOB data is free with the purchase of DOB data. The listed fee for DOB data is the figure that was used in our analysis.

Appendix B

Summary of Absolute and Relative Fees by Trading Activity, 2011

2011 Monthly Average	TSX	TSXV	TMX Select	CNSX	Alpha (TSX)	Alpha (TSX-V)	Chi-X	Omega	Pure
Volume (billion)	8.6	5.4	0.2	0.1	4.2	1.1	1.3	0.4	0.7
Value ($ billion)	123.3	3.5	1.9	0.0	34.6	0.7	20.0	4.2	6.3
Number of Trades (million)	17.5	1.1	0.4	0.0	6.0	0.4	5.7	0.7	1.2
Professional TOB									
Monthly Fee Per Subscriber	*$38/$32*	*$25.00*	*$0.00*	*$9.00*	*$15.00*	*$7.50*	*$12.00*	*$2.85*	*$11.00*
Per million share traded	$0.004	$0.005	$0.000	$0.126	$0.005	$0.007	$0.009	$0.007	$0.015
Per $100 million in total traded value	$0.030	$0.708	$0.000	$59.706	$0.043	$1.075	$0.060	$0.068	$0.175
Per 10,000 trades	$0.021	$0.225	$0.000	$23.884	$0.025	$0.201	$0.021	$0.040	$0.094
Professional DOB									
Monthly Fee Per Subscriber	*$88/82*	*$51.00*	*$0.00*	*$9.00*	*$48.00*	*$24.50*	*$30.00*	*$0.00*	*$16.50*
Per million share traded	$0.010	$0.009	$0.000	$0.126	$0.015	$0.023	$0.023	$0.007	$0.022
Per $100 million in total traded value	$0.064	$1.263	$0.000	$59.706	$0.139	$3.513	$0.150	$0.068	$0.262
Per 10,000 trades	$0.045	$0.404	$0.000	$23.884	$0.080	$0.658	$0.052	$0.040	$0.141

NB: The TSX's fee calculations take into account the TSX fee changes in October 2011. Appendix A provides details of how to determine the listed vs. the effective DOB fee for each marketplace.
Data sources: IIROC Marketshare by Marketplace Report, information provided by marketplaces, marketplaces websites, OSC calculations

Appendix C

Market Structure and Regulatory Framework for Market Data in the United States

a. Market structure

In 1999, United States SEC adopted Regulation ATS to govern operations of ATSs. In the U.S, Regulation ATS, under the Securities Exchange Act of 1934 (1934 Act) imposes requirements such as fair access and transparency on marketplaces[60], but they only apply to an ATS once it reaches a certain market share threshold. Like Canada, marketplaces offer dark and transparent facilities. ATSs have been very successful in capturing market share from stock exchanges.

b. Rules governing availability of market data

In the U.S., the applicable rules governing exchanges are primarily in the 1934 Act and related SEC rules, while rules governing ATSs are primarily in the SEC's Regulation ATS.

For exchanges, a consolidated data model has been in place for some time. In 1975, the U.S. Congress amended the 1934 Act to facilitate the creation of a "national market system" (NMS) for securities, with the objectives of fostering competition in exchange-traded securities while maintaining stable and orderly markets and centralizing access to buying and selling interest so that each investor would have the opportunity for best execution of their order, regardless of where it was entered. Communications systems for market data were the backbone of this system as the display of bids and offers on a consolidated basis would allow for the best price to be determined.

In order to provide maximum flexibility, Congress did not mandate how the NMS would operate but instead allowed the SEC and the securities industry to establish the details.

The SEC in turn adopted a series of rules mandating the display of bids, offers and last sales in NMS securities (any security for which transaction reports are collected, processed and made available through a National Market System Plan (Plan) approved by the SEC). SEC rules require that exchanges make their data available to information processors on terms that are fair and reasonable, and require them jointly to ensure that consolidated information is available through the CTA Plans.

Exchanges and ATSs that are required or choose to display order information in NMS securities send details of their best bid, best offer and aggregate size on the bid and offer to one of the two SIPs, which then consolidates the data for dissemination to vendors and end-users. Trade information is provided on a consolidated tape system and bid and offer information is provided on a consolidated quote system ("consolidated tapes") pursuant to Plans. The Plans also govern the fees that are charged for market data and the sharing of fee revenue amongst participating marketplaces.

Two SIPs sell data for equity securities in the U.S. CTA Network A processes data from all marketplaces for securities listed on the New York Stock Exchange. CTA Network B does the same for securities listed on NYSE MKT and securities listed on regional exchanges that meet NYSE MKT listing standards. The NASDAQ UTP Plan processes data for securities listed on NASDAQ. Network A is administered by NYSE, Network B by NYSE MKT and NASDAQ UTP by NASDAQ.

c. Marketplace filing requirements

An exchange that wishes to register as a "national securities exchange" under the 1934 Act must file a Form 1 with the SEC. The Form requires the applicant to publicly disclose fees charged. An ATS wishing to commence operations must file a Form ATS, which does not require public disclosure of fees.

Under section 19(b) of the 1934 Act, exchanges are required to file and obtain SEC approval for rule changes. Although the term "rule" is not defined to specifically include fees, section 19(b)(3)(A) provides that rule changes "establishing or changing a due, fee, or other charge imposed by the [exchange] on any person, whether or not the person is a member of the [exchange]" become effective immediately upon filing with the SEC.

Fees are published for notice and comment, but they can be implemented immediately, on filing. The SEC can suspend the fee change any time within 60 days after filing if the SEC considers it necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the 1934 Act, pending a hearing to determine whether the fee change should be approved or disapproved.

[60] With respect to display of order information, U.S. ATSs are not required to display details of orders until they have had an average daily trading volume of 5 per cent or more for four of the preceding six months. A similar threshold applies to the requirement to provide fair access to the market.

d. Order Protection Rule

Like the Canadian rule, SEC Rule 611 requires a marketplace to have reasonable policies and procedures to prevent trade-throughs. The rule also contains an exemption if the dealer sending the order uses a DAO, which the SEC rule calls an "inter-market sweep order."

The difference between the US and the Canadian rules are that the U.S. rule only covers the top-of-book for each marketplace, while the Canadian rule covers trade-throughs at any price level.

e. Best execution rule

The SEC has not defined best execution, so the common law agency standard applies to dealers. The SEC has enacted rules to assist clients in determining whether they received best execution. Marketplaces are required to publicly provide detailed statistics concerning order execution on a monthly basis. Dealers in turn are required to publicly disclose their order routing practices on a quarterly basis. The intent of the two rules is that clients will have the information they need to determine whether their dealer routes orders to the marketplace that provides best execution based on the factors the client considers important (e.g., speed of execution, execution at a better price than the posted bid or offer, etc).

Appendix D

Methodology For Calculating Consolidated Fees in Canada and the U.S.

Methodology for Canada

The Canadian consolidated fee was calculated for all transparent marketplaces. The calculated fee takes into account the TSX fee change in October 2011.

Top-of-book and depth-of-book fees were calculated by:

1. summing the effective fee from January to September 2011, for all transparent marketplaces, and multiplying this by 9 months,

2. summing the effective fee from October to December 2011, for all transparent marketplaces, and multiplying this by 3 months,

3. summing the totals from calculations 1 and 2 and dividing it by 12 months to find the average monthly fee in 2011.

We used weighted monthly averages of trading activity (i.e., number of trades, value of trades, and volume) to calculate the fees, since a simple average would under-report these trading activity measures and result in an over-reporting of each marketplace's relative fee.

Methodology for U.S.

The consolidated U.S. fee includes data from Networks A, B (Last Sale and Bid/Ask) and NASDAQ UTP.

For comparison purposes we calculated a fee for DOB data in the U.S. DOB fees were calculated for all CTA participants in the U.S., based on the costs for the following DOB products: NYSE ArcaBook, NYSE OpenBook, NYSE MKT OpenBook, NASDAQ TotalView (for NASDAQ listed securities), NASDAQ BX TotalView and NASDAQ PSX Total View. NYSE fee is priced for a single user because the single participant fee better reflects the incremental cost for each new marketplace participant.

We used an exchange rate where $1 USD is equivalent to $0.9971 CAD. This was the effective exchange rate on February 1, 2012.

Appendix E

Summary of Absolute and Relative Consolidated Fees by Trading Activity in Canada and the United States, 2011

	Consolidated Canadian Marketplaces	Consolidated U.S. Marketplaces
Professional TOB - Monthly Fee	*$118.85*	*$173.99*
Per 10,000 Trades	$0.1026	$0.0081
Per $100 Million in Trades	$0.1365	$0.0184
Per 1 Million Shares	$0.0201	$0.0027
Professional DOB - Monthly Fee	*$268.35*	*$285.17*
Per 10,000 Trades	$0.2317	$0.0132
Per $100 Million in Trades	$0.3082	$0.0137
Per 1 Million Shares	$0.0454	$0.0044

NB: Canadian consolidated fee calculated for all transparent marketplaces. The fee calculated takes into account the TSX fee changes in 2011.Consolidated US fees are for Networks A, B (Last Sale and Bid Ask) and NASDAQ UTP. DOB fees were calculated for exchanges that charge a fee for their DOB products. Products included in our calculations were: NYSE ArcaBook, NYSE OpenBook, NYSE MKT OpenBook, NASDAQ TotalView, NASDAQ BX TotalView(for NASDAQ-listed securities) and NASDAQ PSX Total View. Weighted monthly averages were used in calculating the fees. Exchange rate was $1 USD = $0.9971 CAD as of Feb. 1, 2012.

Data sources: IIROC Marketshare by Marketplace Report, World Federation of Exchange, information provided by marketplaces, marketplaces websites, OSC calculations

Appendix F

Market Structure and Regulatory Framework for Market Data in the European Union

a. Market structure

Prior to 2007, traditional exchanges in Europe (called "regulated markets" in MiFID) controlled the trading of their own listed securities. To keep pace with technological development and to foster competition in the provision of services to investors and between trading venues, the EU adopted the Markets in Financial Instruments Directive (MiFID) that became effective in all EU member states in November 2007. The new set of rules opened traditional markets to competition from new types of trading venues, most importantly multilateral trading facilities (MTF) which are similar to ATSs, systematic internalizers and crossing networks.

MiFID relies on three pillars: market access, transparency and best execution. MiFID abolished the option of a so-called 'concentration rule', meaning that retail orders had to be executed on a traditional exchange. Today, regulated markets (i.e. traditional exchanges), MTFs, and investment firms can offer their services across borders. MTFs have successfully captured a significant fraction of trading volume from traditional exchanges.

b. Rules governing the availability of market data

Transparency obligations require regulated markets and MTFs to publish order book information and executions on a timely basis.

c. *Order Protection Rule*

MiFID does not prohibit trade-throughs. In addition, European regulation does not establish a single data consolidator[61] to provide comprehensive consolidated market information to investors.

d. *Best execution rule*

The best execution rule in the EU is similar to those in Canada and the United States. Under MiFID, best execution relies on factors such as cost, speed, likelihood of execution and settlement, and order size. Intermediaries (e.g. investment firms and brokers) that execute orders on behalf of their clients have to establish a best execution policy and their best execution policies and procedures have to be reviewed at least annually. However, the application of best execution with respect to multiple marketplaces differs in Europe in that dealers may ignore better prices on a non-regulated market provided this fact is disclosed to their clients.

[61] Proposed amendments to MiFID (MiFID II) contemplate the creation of a post-trade consolidated tape to provide consolidated market data to investors.

Appendix G

Market Structure in Hong Kong and Brazil

Hong Kong

Capital markets in Hong Kong are regulated by the Securities and Futures Commission (SFC) established in 1989 as the frontline regulator of the securities and futures markets in Hong Kong. SFC derives its powers from the Securities and Futures Ordinance (SFO implemented in April 2003) and some subsidiary legislation. Under the SFO, Hong Kong Exchange (HKEx) is the sole recognized exchange controller in Hong Kong that owns and operates the only equities (HKSE) and futures exchange in Hong Kong and its related clearing houses. Trades conducted over automated trading services (ATSs) are only for foreign-listed securities. ATS trading accounts for less than 3%[62] of trading volume in Hong Kong.

SFC regulates the fees charged by the exchange operator.[63] In deciding whether or not to approve a fee, SFC considers: (a) the domestic level of competition (if any) for the matter of which the fee is to be imposed; and, (b) the level of the fee (if any) charged by a similar body for the same or similar matter to which the fee relates to.

Brazil

The Brazilian capital markets and financial systems are regulated and monitored by the National Monetary Council, the Brazilian Central Bank and the Brazilian Securities and Exchanges Commission (CVM).

CVM was created by Law No. 6,385 of December 1976 and has nationwide jurisdiction over the securities markets. Subject to CVM's oversight is BM&FBOVESPA that was created in 2008, through the integration between the São Paulo Stock Exchange and the Brazilian Mercantile & Futures Exchange. It is the only securities, commodities and futures exchange in Brazil. Shares of companies listed on the BM&FBOVESPA cannot be traded simultaneously on the Brazilian OTC market. BM&FBOVESPA disseminates all trading data (pre- and post-trade) in real-time. The order book is organized and executed according to best price/time priority. The market data associated with these trades is made available through BM&FBOVESPA's market data feed facility to data vendors.

62 Source: Celent, Evolution of ATS, PTS and Crossing Networks Market Share in the Asia-Pacific Region.

63 SFO, Cap 571 s.76 Fees to be approved by the Commission.

Appendix H

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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
09/26/2012	41	Aeroports de Montreal - Bonds	250,000,000.00	250,000,000.00
07/26/2012	1	Ambit Biosciences (Canada) Corporation - Notes	578,138.22	1.00
09/19/2012	3	Amex Exploration Inc. - Common Shares	400,000.00	1,640,000.00
10/15/2012	2	Avison Young Apartment Co-Investment Fund, LP - Limited Partnership Interest	300,000.00	300,000.00
07/03/2012 to 08/15/2012	5	Bennett Jones Services Trust - Trust Units	1,126,720.00	1,126,720.00
09/20/2012	19	Benzu Gold Limited - Common Shares	2,987,400.00	4,596,000.00
09/17/2012 to 09/21/2012	15	Bison Income Trust II - Trust Units	7,988,131.93	792,813.19
09/24/2012 to 10/01/2012	6	Bison Income Trust II - Trust Units	710,172.13	71,017.21
10/10/2012	5	Blackberry Partners Fund II L.P. - Limited Partnership Units	6,948,770.00	7,100.00
09/21/2012	24	Bonterra Resources Inc. - Flow-Through Units	611,050.00	5,555,000.00
09/21/2012	6	Bonterra Resources Inc. - Units	85,000.00	1,000,000.00
10/09/2012	4	B&G Foods Inc. - Common Shares	16,302,000.00	550,000.00
09/25/2012	10	Canadian First Financial Holdings Limited - Units	395,000.00	391,089.00
10/11/2012	7	Canadian Horizons First MIC Fund Inc. - Preferred Shares	197,312.00	N/A
10/11/2012	17	CareVest Blended MIC Fund Inc. - Preferred Shares	937,140.00	N/A
09/20/2012	4	Claire's Stores, Inc. - Notes	7,738,173.54	7,724,000.00
09/12/2012	19	Daimler Canada Finance Inc. - Notes	200,000,000.00	200,000,000.00
09/28/2012	1	Diversified Convertibles Fund - Trust Units	15,751,130.65	1,806,260.18
10/16/2012	1	Edgen Murray Corporation - Notes	2,970,000.00	3,000,000.00
09/07/2012	10	EP Finance LP - Limited Partnership Units	1,150,000.00	1,150.00
10/04/2011 to 03/01/2012	1	Excel Blue Chip Emerging Markets Fund - Units	550,295.20	99,127.61
10/04/2011 to 12/21/2011	1	Excel Blue Chip Emerging Markets Fund - Units	150,221.40	30,041.02

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/04/2011 to 12/21/2011	1	Excel Blue Chip Emerging Markets Fund - Units	500,738.00	100,136.00
10/03/2011 to 03/01/2012	1	Excel Capital Income Fund - Units	28,404.36	5,585.17
03/26/2012 to 03/27/2012	1	Excel China Fund - Units	400,000.00	24,760.71
09/25/2012	1	Excel China Fund - Units	135,000.00	8,800.75
11/01/2011 to 09/04/2012	1	Excel EM Capital Income Fund - Units	118,202.41	24,069.00
10/03/2011 to 03/01/2012	1	Excel EM Capital Income Fund - Units	187,204.60	38,767.40
09/25/2012	1	Excel Emerging Europe Fund - Units	270,000.00	47,965.89
03/26/2012 to 09/07/2012	1	Excel Emerging Market Fund - Units	600,000.00	104,543.99
11/01/2011 to 09/04/2012	1	Excel Income & Growth Fund - Units	375,077.48	51,539.30
10/03/2011 to 03/01/2012	1	Excel Income & Growth Fund - Units	12,526.18	1,798.88
09/07/2012	1	Excel India Fund - Units	75,000.00	5,007.58
09/07/2012	1	Excel India Fund - Units	150,000.00	10,015.16
12/21/2011 to 01/23/2012	1	Excel Latin America Fund - Units	1,321,159.75	198,037.27
12/21/2011	1	Excel Latin America Fund - Units	14,310.62	2,329.09
12/21/2011	1	Excel Latin America Fund - Units	15,398.83	2,506.20
12/21/2011	1	Excel Latin America Fund - Units	30,797.67	5,012.40
12/15/2011 to 09/11/2012	1	Excel Money Market Fund - Units	1,971,964.61	197,196.46
12/15/2011 to 02/01/2012	1	Excel Money Market Fund - Units	400,217.24	40,021.72
12/15/2011 to 02/01/2012	1	Excel Money Market Fund - Units	200,108.61	20,010.86
10/03/2011 to 05/30/2012	1	Excel Money Market Fund - Units	29,457,443.68	2,945,744.37
09/26/2012	25	Ferro Iron Ore Corp. - Units	850,000.00	17,000,000.00
10/04/2012	1	Fleetmatics Group PLC - Special Shares	16,697.40	1,000.00
10/03/2011 to 09/28/2012	3	GE Institutional Core Value Equity Fund Investment Class - Units	5,577,250.38	558,552.18
10/03/2011 to 09/27/2012	2	GE Institutional International Equity Fund-Investments Class - Units	9,157,989.11	932,974.26
07/31/2012	2	Genwealth Ventures L.P. - Limited Partnership Units	170,000.00	170.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
09/12/2012	1	Halcon Resources Corporation - Common Shares	68,299.00	10,000.00
08/31/2012	71	Highstreet King's Landing Limited Partnership - Units	7,116,000.00	712.00
09/13/2012	2	inContact, Inc. - Common Shares	3,169,725.00	650,000.00
09/21/2012	82	Indico Resources Ltd. - Units	2,978,720.00	24,822,667.00
10/15/2012	1	Innovation Works Development Fund II. L.P. - Limited Partnership Interest	14,676,000.00	N/A
10/15/2012	10	Kensington Limited Partnership - Units	390,000.00	390.00
10/17/2012	2	Kinder Morgan, Inc - Common Shares	4,616,560.92	138,000.00
10/16/2012	2	Kythera Biopharmaceuticals, Inc. - Common Shares	3,548,250.00	225,000.00
10/01/2012 to 10/05/2012	10	League IGW Real Estate Investment Trust - Units	186,865.19	5,208.33
09/17/2012 to 09/21/2012	2	League IGW Real Estate Investment Trust - Units	93,133.96	115,336.17
09/17/2012 to 09/21/2012	7	League IGW Real Estate Investment Trust - Units	877,000.00	112,000.00
07/01/2012 to 09/28/2012	1	Legg Mason Accufund - Units	194,760.28	8,829.19
07/01/2012 to 09/28/2012	1	Legg Mason Batterymarch Canadian Small Cap Fund - Units	150,217.81	6,886.00
07/01/2012 to 09/28/2012	1	Legg Mason Batterymarch North American Equity Fund - Units	106,693.85	495.00
07/01/2012 to 09/28/2012	1	Legg Mason GC Global Equity Fund - Units	18,555.37	2,811.00
10/15/2012	1	Logi-Serve, LLC - Units	98,000.00	100.00
10/09/2012	1	Luxdwe Holdings PLC - Common Shares	49,000.00	5,000.00
09/17/2012	1	Markham District Energy Inc. - Debentures	1,500,000.00	1,500,000.00
09/28/2012	10	Marksmen Energy Inc. - Units	84,900.00	849,000.00
06/22/2012 to 09/20/2012	20	MARPORT DEEP SEA TECHNOLOGIES INC. - Debentures	1,233,044.39	1,893,912.00
09/28/2012	1	Marquest Asset Management Inc. - Common Shares	250,000.00	447.00
08/31/2012	1	Marquest Asset Management Inc. - Debentures	250,000.00	N/A
10/17/2012	1	Morgan Stanley Bank of America Merrill Lynch Trust 2012-C6 - Certificates	22,196,293.93	N/A
09/28/2012	13	Morrison Laurier Mortgage Corporation - Preferred Shares	332,000.00	N/A
09/24/2012	1	Nationstar Mortgage LLC/Nationstar Capital Corporation - Notes	980,000.00	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
09/17/2012	4	NCR Corporation - Notes	4,132,275.00	4,250,000.00
10/08/2012 to 10/18/2012	3	Newport Balanced Fund - Trust Units	16,000.00	N/A
10/09/2012 to 10/18/2012	9	Newport Canadian Equity Fund - Trust Units	423,493.23	N/A
10/09/2012 to 10/18/2012	8	Newport Fixed Income Fund - Trust Units	356,638.84	N/A
10/08/2012 to 10/18/2012	4	Newport Global Equity Fund - Trust Units	170,000.00	N/A
08/31/2012	1	Newstart Financial Inc. - Notes	10,000.00	1.00
10/02/2012	1	Nielsen Finance LLC - Notes	2,457,250.00	2,500,000.00
07/01/2012	13	Norrep Credit Opportunities Fund II, L.P. - Units	73,750,000.00	N/A
09/19/2012	30	Northern Tiger Resources Inc. - Units	1,855,800.00	15,765,000.00
10/12/2012	2	Norvestor VI, L.P. - Limited Partnership Interest	3,733,000.00	N/A
09/07/2012	166	N.A. Power Generation Trust - Units	1,813,250.00	1,813,250.00
10/05/2012	8	Ovid Capital Ventures Inc. - Common Shares	135,000.00	2,700,000.00
09/10/2012	25	Premium Exploration Inc. - Units	340,000.00	2,720,000.00
08/24/2012	62	Pretium Resources Inc. - Flow-Through Shares	20,700,000.00	1,150,000.00
10/11/2012 to 10/18/2012	12	Redstone Investment Corporation - Notes	1,145,000.00	N/A
10/04/2012	1	Redstone Investment Corporation - Notes	50,000.00	N/A
09/12/2012	2	Return on Innovation Advisors Ltd. - Units	2,736,264.00	2,736,264.00
09/19/2012	2	Return On Innovation Advisors Ltd. - Units	197,875.00	0.00
09/21/2012 to 09/24/2012	16	Rio Silver Inc. - Flow-Through Shares	600,000.00	5,000,000.00
09/24/2012	1	ROI Capital - Units	137,561.33	137,561.33
09/05/2012	2	Sally Holdings LLC and Sally Capital Inc. - Notes	2,104,180.00	1,980,400.00
09/10/2012	75	Seven Generations Energy Ltd. - Common Shares	43,450,000.00	3,950,000.00
09/06/2012	20	Silver Sun Resource Corp. - Units	213,040.32	1,775,336.00
10/01/2012	85	Skyline Commercial Real Estate Investment Trust - Units	9,318,910.00	931,891.00
09/26/2012	1	Souche Holding Inc. - Common Shares	50,000.00	100,000.00
09/28/2012	6	SPIRE Real Estate Limited Partnership - Units	3,707,500.00	33,251.12
10/02/2012	1	SSF Trust - Units	52,074,500.00	-1.00
10/15/2012	1	SSF Trust - Units	5,869,440.00	588,432.73

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/01/2012	1	Tenet Healthcare Corporation - Notes	5,896,200.00	5,896,200.00
05/08/2012	7	The Carlyle Group L.P. - Units	11,984,550.00	N/A
10/09/2012 to 10/18/2012	14	The Newport Yield Fund - Trust Units	852,786.00	N/A
09/11/2012	9	TheraVitae Inc. - Units	193,234.00	19,233,400.00
10/11/2012	1	Thunderbolt Resources Inc. - Common Shares	250,000.00	1,000,000.00
08/10/2012	23	Totally Green, Inc. - Preferred Shares	4,958,000.00	100,000.00
10/01/2012 to 10/05/2012	22	UBS AG, Jersey Branch - Certificates	7,524,066.12	N/A
09/17/2012 to 09/21/2012	11	UBS AG, Jersey Branch - Certificates	7,473,248.50	0.00
09/18/2012 to 09/21/2012	4	UBS AG, Zurich - Certificates	1,640,305.72	N/A
10/04/2012	3	Valeant Pharmaceuticals International - Notes	7,366,500.00	7,366,500.00
10/09/2012	49	Vanguard Natural Resources , LLC. - Notes	195,760,000.00	200,000,000.00
09/20/2012	1	Vertichem Corporation - Units	200,000.00	400,000.00
10/11/2012	1	ViXS Systems Inc. - Preferred Shares	431,999.54	429,423.00
10/04/2012	3	VPI Escrow Corp. - Notes	19,152,900.00	19,500,000.00
09/13/2012	6	Walgreen Co. - Notes	26,123,051.35	26,815,000.00
09/27/2012	15	Walton GA Yargo Township LP - Units	753,060.00	77,000.00
09/20/2012	16	Walton NC Concord Investment Corporation - Common Shares	417,090.00	41,709.00
09/20/2012	156	Walton Suburban DC Land Investment Corporation - Common Shares	3,843,930.00	384,393.00
09/20/2012	32	Walton Suburban DC Land LP - Limited Partnership Units	4,625,117.60	473,885.00
10/18/2012	4	Walton Westphalia Development Corp. & Walton NC Concord LP - Units	742,630.00	74,263.00
05/31/2012	47	Westboro Mortgage Investment Corp. - Preferred Shares	15,722,100.00	N/A
10/09/2012	2	Wolverine World Wide, Inc. - Notes	587,280.00	600,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Ainsworth Lumber Co. Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
$175,000,000.00 - Offering of Rights to Subscribe for Common Shares
Price of $1.25 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1976563

Issuer Name:
AltaLink, L.P.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated October 31, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
$2,500,000,000.00 - Medium-Term Notes (secured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Casgrain & Company Limited
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1975604

Issuer Name:
Atrium Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 26, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
$ * - * Common Shares
Price: $ * per Offered Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Ltd.
National Bank Financial Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Industrial Alliance Securities Inc.
M Partners Inc.
Promoter(s):
-
Project #1974044

Issuer Name:
Aureus Mining Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 1, 2012
Offering Price and Description:
$* - * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
RBC DOMINION SECURITIES INC.
CLARUS SECURITIES INC.
Promoter(s):
-
Project #1975813

Issuer Name:
Aureus Mining Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated November 2, 2012 to Preliminary Short Form Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
$12,000,000.00 - 15,000,000 Units
Price: $0.80 per Unit
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
RBC DOMINION SECURITIES INC.
CLARUS SECURITIES INC.
Promoter(s):
-
Project #1975813

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Amendment dated October 31, 2012 to Final Shelf Prospectus dated March 18, 2011
NP 11-202 Receipt dated November 1, 2012
Offering Price and Description:
$2,000,000,000.00 - Medium Term Notes (Principal At Risk Notes)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #1709451

Issuer Name:
Cairns Mining Australia Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
$2,000,000.00 - 3,800,000 Units and 4,200,000 Units issuable upon the exercise or deemed exercise of 4,200,000 previously issued Special Warrants; Price: C$0.25 Per Unit and Per Special Warrant
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
AL S. B. MARTON
Project #1976641

Issuer Name:
CanBanc 8 Income Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 30, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
Maximum: $* - * Shares
Price: $10.00 per Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Macquarie Private Wealth Inc.
Manulife Securities Incorporated
Promoter(s):
First Asset Investment Management Inc.
Project #1975084

Issuer Name:
CMX Gold & Silver Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
MINIMUM $3,000,000.00 - 20,000,000 UNITS
MAXIMUM $4,200,000.00 - 28,000,000 UNITS
PRICE: $0.15 PER UNIT
Underwriter(s) or Distributor(s):
WOLVERTON SECURITIES LTD
Promoter(s):
Jan Alston
Project #1976571

Issuer Name:
Coastal Contacts Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 30, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
U.S.$100,000,000.00 - * Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1974823

Issuer Name:
Corporate Catalyst Acquisition Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
Minimum Offering: $400,000.00 - 2,000,000 Common Shares
Maximum Offering: $600,000.00 - 3,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
Paul Kelly
Project #1976284

Issuer Name:
Enbridge Income Fund Holdings Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 31, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
$222,170,550.00 - 9,597,000 SUBSCRIPTION RECEIPTS each representing the right to receive one Common Share
PRICE: $23.15 PER SUBSCRIPTION RECEIPT
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBI World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1975643

Issuer Name:
FN Mortgage Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
First National Asset Management Inc.
Project #1976543

Issuer Name:
Hudson's Bay Company
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 1, 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:
MDPIM Strategic Opportunities Pool
MDPIM Strategic Yield Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
Series A Units
Underwriter(s) or Distributor(s):
MD Management Limited
MD Management Limited
Promoter(s):
-
Project #1976564

Issuer Name:
Morro Bay Capital Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
MINIMUM OFFERING: $3,000,000.00 - 30,000,000 COMMON SHARES
MAXIMUM OFFERING: $4,000,000.00 - 40,000,000 COMMON SHARES
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc
Promoter(s):
-
Project #1975628

Issuer Name:
Renegade Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
$70,745,105 .00 - 30,104,300 Subscription Receipts each representing the right to receive one Common Share
Price: $2.35 per Subscription Receipt
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
Dundee Securities Ltd.
Macquarie Capital Markets Canada Ltd.
FirstEnergy Capital Corp.
Paradigm Capital Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Sprott Private Wealth Lp
AltaCorp Capital Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1976605

Issuer Name:
Russell Focused Canadian Equity Class
Russell Focused Canadian Equity Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
Series A, B, E, F and O Units
Series B, E, F and O Shares
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1976406

Issuer Name:
Sprott Flatiron Canadian Convertible Strategies Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated November 5, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
Maximum $ * (Maximum * Class A Units and/or Class F Units)
Price: $10.00 per Unit
Minimum Purchase: 200 Class A Units or Class F Units
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
GMP Securities L.P.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Scotia Capital Inc.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
Sprott Asset Management L.P.
Project #1973526

Issuer Name:
Top 20 Europe Dividend Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 30, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
Maximum: $ * - * Units
Minimum Purchase: $2000.00 (200 Units)
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
GMP Securities L.P.
Raymond James Ltd.
Bergeonvest Bick Securities Limited
Dundee Securities Ltd.
Mackie Research Capital Corporation
Macquarie Private Wealth Inc.
Manulife Securities Incorporated
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1974628

Issuer Name:
TTE Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated October 30, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1974636

Issuer Name:
Algonquin Power & Utilities Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
$120,000,000.00 - 4,800,000 Cumulative Rate Reset Preferred Shares, Series A
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD
CORMARK SECURITIES INC.
Promoter(s):
-
Project #1973367

Issuer Name:
Artek Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 30, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
$13,001,700.00 - 4,562,000 Common Shares $2.85 per Common Share;
$11,002,050.00 - 3,189,000 Flow Through Shares Price: $3.45 per Flow Through Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Cormark Securities Inc.
Peters & Co. Limited
FirstEnergy Capital Corp.
Stifel Nicolaus Canada Inc.
Promoter(s):
-
Project #1971978

Issuer Name:
Brompton Split Banc Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 29, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
$26,875,000.00 (Maximum)
Up to 1,250,000 Preferred Shares and 1,250,000 Class A Shares
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:
Brookfield Residential Properties Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 1, 2012
Offering Price and Description:
US$500,000,000.00 - Common Shares, Preferred Shares, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1971953

Issuer Name:
Central Fund of Canada Limited
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
U.S.$1,000,000,000.00 - Class A non-voting, fully participating shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1970803

Issuer Name:
Cluny Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
MINIMUM OFFERING: $200,000.00 or 1,000,000 Common Shares
MAXIMUM OFFERING: $1,000,000.00 or 5,000,000 Common Shares
PRICE: $0.20 per Common Share
Agent's Option (as defined herein)
Incentive Stock Options (as defined herein)
Underwriter(s) or Distributor(s):
Hampton Securities Limited
Promoter(s):
Simon Yakubowicz
Project #1963139

Issuer Name:
Counsel All Equity Portfolio
Counsel Balanced Portfolio
Counsel Canadian Dividend
Counsel Canadian Growth
Counsel Canadian Value
Counsel Conservative Portfolio
Counsel Fixed Income
Counsel Global Dividend
Counsel Global Real Estate
Counsel Global Small Cap
Counsel Growth Portfolio
Counsel High Yield Fixed Income
Counsel Income Managed Portfolio
Counsel International Growth
Counsel International Value
Counsel Managed High Yield Portfolio
Counsel Managed Portfolio
Counsel Managed Yield Portfolio
Counsel Money Market
Counsel Regular Pay Portfolio
Counsel Short Term Bond
Counsel U.S. Growth
Counsel U.S. Value
Counsel World Managed Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated October 26, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
Series A, C, D, E, F, I P, T and ET Untis @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
COUNSEL PORTFOLIO SERVICES INC.
Project #1962195

Issuer Name:
Crius Energy Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
C$100,000,000.00 - 10,000,000 Units
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
UBS SECURITIES CANADA INC.
NATIONAL BANK FINANCIAL INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
Promoter(s):
Crius Energy, LLC
Project #1963640

Issuer Name:
DELPHI ENERGY CORP.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
$33,000,300.00 - 17,241,500 Common Shares at $1.45 Per Common Share
4,571,500 Flow-Through Common Shares at $1.75 Per Flow-Through Common Share
Underwriter(s) or Distributor(s):
Stifel Nicolaus Canada Inc.
Peters & Co. Limited
National Bank Financial Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1972385

Issuer Name:
Edgefront Realty Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated October 29, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
Minimum of 2,000,000 common shares and up to a Maximum of 4,000,000 common shares PRICE: $0.10 PER COMMON SHARE (Minimum of $200,000.00 and up to a Maximum of $400,000.00)
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
Promoter(s):
Kelly C. Hanczyk
Project #1965090

Issuer Name:
iShares MSCI World Index Fund
iShares S&P 500 Index Fund (CAD-Hedged)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 24, 2012 to Final Long Form Prospectus dated April 16, 2012
NP 11-202 Receipt dated November 1, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
BlackRock Asset Management Canada Limited
Promoter(s):
-
Project #1867565

Issuer Name:
Labrador Iron Mines Holdings Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 29, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
$30,000,000.00 - 30,000,000 Common Shares
PRICE: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #1967390

Issuer Name:
NEI Northwest Short Term Corporate Class (formerly Northwest Short Term Corporate Class)
NEI Northwest Canadian Dividend Corporate Class (formerly Northwest Canadian Dividend Corporate Class)
NEI Northwest Macro Canadian Equity Corporate Class (formerly Northwest Macro Canadian Equity Corporate Class)
NEI Northwest Canadian Equity Corporate Class (formerly Northwest Canadian Equity Corporate Class)
NEI Northwest U.S. Equity Corporate Class (formerly Northwest U.S. Equity Corporate Class)
NEI Northwest EAFE Corporate Class (formerly Northwest EAFE Corporate Class)
NEI Northwest Global Equity Corporate Class (formerly Northwest Global Equity Corporate Class)
NEI Northwest Specialty Equity Corporate Class (formerly Northwest Specialty Equity Corporate Class)
NEI Select Canadian Growth Corporate Class Portfolio (formerly Northwest Select Canadian Growth Corporate Class
NEI Select Global Growth Corporate Class Portfolio (formerly Northwest Select Global Growth Corporate Class Portfolio)
NEI Select Global Maximum Growth Corporate Class Portfolio (formerly Northwest Select Global Maximum Growth
NEI Income Corporate Class
NEI Northwest Tactical Yield Corporate Class (formerly Northwest Tactical Yield Corporate Class)
NEI Northwest Specialty Global High Yield Bond Corporate Class (formerly Northwest Specialty Global High Yield Bond
NEI Northwest Macro Canadian Asset Allocation Corporate Class
NEI Northwest Growth and Income Corporate Class (formerly Northwest Growth and Income Corporate Class)
NEI Select Conservative Corporate Class Portfolio (formerly Northwest Select Conservative Corporate Class Portfolio)
NEI Select Canadian Balanced Corporate Class Portfolio (formerly Northwest Select Canadian Balanced Corporate Class)
NEI Select Global Balanced Corporate Class Portfolio (formerly Northwest Select Global Balanced Corporate Class Portfolio)
Corporate C)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
Series A, F and T Shares
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Credential Asset Management Inc.
-
Promoter(s):
Northwest & Ethical Investments L.P.
Project #1965610

Issuer Name:
O'Leary Global Infrastructure Yield Fund
Principal Regulator - Quebec
Type and Date:
Amendment #2 dated October 9, 2012 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated June 18, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
Series A, F, H, I, M, X and Y units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
O'Leary Funds Management LP
Project #1903575

Issuer Name:
Pathway Multi Series Fund Inc. - Resource Flex Series Fund
Pathway Multi Series Fund Inc. - Canadian Flex Series Fund
Pathway Multi Series Fund Inc. - Energy Series Fund
Pathway Multi Series Fund Inc. - Explorer Series Fund
Pathway Multi Series Fund Inc. - Flex Dividend and Income Growth Series Fund
Principal Regulator - Ontario
Type and Date:
Amendment dated October 22, 2012 to Final Simplified Prospectus dated December 22, 2011
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
MINERALFIELDS FUND MANAGEMENT INC.
Project #1824976

Issuer Name:
Premium Income Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 1, 2012
NP 11-202 Receipt dated November 2, 2012
Offering Price and Description:
Rights to Subscribe for up to 9,517,553 Units (each Unit consisting of one Class A Share and one Preferred Share) at a Subscription Price of $20.88
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1971181

Issuer Name:
Raven Rock Strategic Income Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated October 29, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
$100,000,000.00 (10,000,000 Units) Maximum
$10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Macquarie Private Wealth Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Promoter(s):
Arrow Capital Management Inc.
Project #1963415

Issuer Name:
RCP Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated October 31, 2012
NP 11-202 Receipt dated November 1, 2012
Offering Price and Description:
$250,000.00 - 2,500,000 COMMON SHARES - PRICE: $0.10 PER COMMON SHARE
Underwriter(s) or Distributor(s):
Jordan Capital Markets Inc.
Promoter(s):
Sokhie Puar
Project #1964724

Issuer Name:
Retrocom Mid-Market Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 31, 2012
NP 11-202 Receipt dated October 31, 2012
Offering Price and Description:
$40,040,000.00 - 7,150,000 Trust Units
Price: $5.60 Per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Macquarie Capital Markets Canada Ltd.
Desjardins Securities Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd.
Promoter(s):
-
Project #1972248

Issuer Name:
RRF Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated October 29, 2012
NP 11-202 Receipt dated October 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Arrow Capital Management Inc.
Project #1965375

Issuer Name:
Springrock Capital Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated November 2, 2012
NP 11-202 Receipt dated November 5, 2012
Offering Price and Description:
$200,000.00 (1,000,000 COMMON SHARES) - Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
SPRINGROCK MANAGEMENT INC.
Project #1966954

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Bellotti Goodman Capital Inc. To: Bellotti Capital Partners Inc.	Exempt Market Dealer	October 29, 2012
Voluntary Surrender	FRM Americas LLC	Exempt Market Dealer	October 30, 2012
Consent to Suspension (Pending Surrender)	Wellington West Asset Management Inc.	Portfolio Manager	October 31, 2012
New Business	Morbank Fund Management Inc.	Exempt Market Dealer	October 31, 2012
Change in Registration Category	Diversified Global Asset Management Corporation	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	November 1, 2012
Voluntary Surrender of Registration	Alchemy Capital Inc.	Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	November 2, 2012
Name Change	From: New Star Institutional Managers Limited To: NS Partners Ltd	Portfolio Manager	November 5, 2012
Name Change	From: New Star Canada Inc. To: NS Partners Canada Ltd.	Investment Fund Manager Portfolio Manager	November 5, 2012
Change in Registration Category	Placements IA Clarington Inc./ IA Clarington Investments Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	November 5, 2012

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Fit Private Investment Counsel Inc.	From: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager To: Exempt Market Dealer and Portfolio Manager	November 6, 2012

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 CX2 Canada ATS – Notice of Initial Operations Report and Request for Feedback

CX2 CANADA ATS
NOTICE OF INITIAL OPERATIONS REPORT AND REQUEST FOR FEEDBACK

Chi-X Canada ATS Limited (Chi-X) has announced its plans as an alternative trading system to begin operating its second Canadian trading facility CX2 Canada ATS (CX2). This Notice of Initial Operations Report is being published in accordance with the process set out in OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*. Pursuant to OSC Staff Notice 21-706, market participants are invited to provide the Commission with feedback on the information provided in this Notice.

Staff request for specific comment

As part of the manner in which orders will match for execution within CX2, Chi-X has proposed that all orders will be eligible for broker preferencing by default, with the ability for subscribers to elect to opt-out of broker preferencing on an order-by-order basis. The option to participate in broker preferencing will also be extended to orders marked as anonymous whereby matching will be based on the underlying Broker ID. OSC staff (Staff) are not aware of any other visible equity marketplace in Canada that allows anonymous orders to benefit from participation in broker preferencing. Staff are seeking specific comment as to whether CX2 should be permitted to extend broker preferencing to apply to those orders that are marked anonymous and whether this practice raises public interest concerns.

Submission of feedback

Feedback on the Initial Operations Notice should be in writing and submitted by **Monday, December 10, 2012** to:

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax (416) 595-8940
Email: marketregulation@osc.gov.on.ca

And to:

Matthew Thompson
Chief Compliance Officer
Chi-X Canada ATS Limited
130 King St. W, Suite 2105
Toronto, ON M5X 1E3
Email: matthew.thompson@chi-x.com

Comments received will be made public on the OSC website. Upon completion of the review by Staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Staff's review and to outline the intended start date for the operation of CX2. Chi-X has previously announced its intention to commence operations of CX2 in the first quarter of 2013, pending regulatory approval.

CX2 CANADA ATS ("CX2")

NOTICE OF INITIAL OPERATIONS REPORT AND REQUEST FOR FEEBACK

Overview

Chi-X Canada ATS Limited will begin operating its second Canadian trading facility, CX2, that will offer a continuous auction market offering on-marketplace internalization opportunities through broker-preferencing for all order types including anonymous

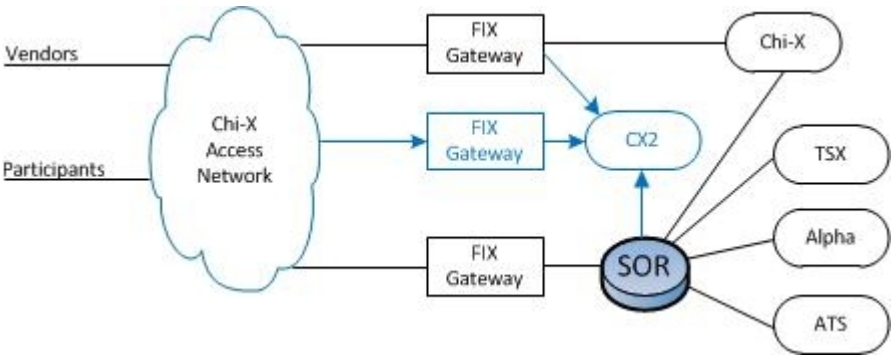
orders. Given the approval of the Maple transaction, we believe it is important to have a viable competitor in the market offering unique market structure and pricing schedule. CX2 will provide existing Chi-X Canada ("CXC") subscribers with the opportunity to benefit from broker-preferencing while not forfeiting the use of Chi-X Canada technology, order types and features.

Becoming a CX2 Subscriber

The platform will be made available to registered Investment Dealers which are members of IIROC in good standing.

To facilitate the subscription process, current CXC subscribers may sign a representation to maintain the existing terms and conditions of their current CXC subscriber agreement with respect to their access to CX2. New CX2 subscribers that are not currently CXC subscribers must sign the CX2 subscriber agreement in accordance with National Instrument 21-101.

Access to CX2 ATS



CX2 and CXC operate independently of one another. As shown in the diagram above, CX2 subscribers may select to establish a direct connection to CX2 or, as a CXC subscriber, can access CX2 through their existing CXC FIX Sessions or through the Chi-X Canada's Smart Order Router. CXC subscribers that become CX2 subscribers can access the facility using their existing connection. There is no requirement for CX2 subscribers to also become subscribers of CXC.

CX2 uses the Financial Information eXchange ("FIX") protocol. All orders are entered via FIX into the Core Matching Engine that supports all UMIR required fields.

Order Matching and Trade Execution

CX2 accepts buy, sell, short sale and short-marking exempt orders from subscribers that are matched in real-time based on price/broker/time priority. Orders entered in CX2 that are not immediately matched are "posted" on the platform's Intelligent Order Book™ (IOB) which is dynamically updated in real-time with limit orders that are visible to market data customers. Quotations for orders posted in the CX2 book are attributed by default. However, Subscribers may also elect to have their orders be entered without attribution by selecting the anonymous order marker. All orders are eligible for broker-preferencing by default. However, subscribers may elect to opt-out of broker-preferencing on an order-by-order basis. When an order is elected to be ineligible for broker-preferencing it will neither seek the cross as an active order or be sought out to cross with by an active order eligible for broker-preferencing. Broker matching for anonymous orders is accomplished by using the underlying broker number. In this way, Subscribers can weigh the possibility of on marketplace internalization with the potential for a certain amount of information leakage. Jitney orders will not be eligible for broker-preferencing.

Trading Hours

Subscribers can trade in a continuous auction market between the hours of 8:30 a.m. and 5:00 p.m. (Eastern Time) on business days.

Securities Traded

CX2 will support trading in all Canadian equity securities initially offering trading in TSX and TSX Venture listed securities.

Market Data and Trade Reporting

CX2 disseminates order and trade information electronically in real-time using the same protocol as CXC. Level 1 and Level 2 market data feeds will be made available. CX2 market data feeds are provided independently of CXC data feeds. Initially customers may choose to receive either CX2's unicast or multicast market data feeds. Over time CX2's unicast market data feed will be fully migrated to CX2's multicast market data feed.

Order and trade information is also reported directly to the TMX Information Processor in compliance with National Instrument 21-101 and to IIROC for regulatory monitoring.

Order Types and Features

CX2 Traditional Order Types

Market Order – An order to buy or sell a security at the best available price on CX2 but will not trade at a price outside the NBBO.

Limit Order – An order to buy or sell a security at a price equal to, or better than, the specified limit price.

Short Sell Order – An order to sell a security that the seller does not own (either directly or through an agent or trustee) at the time of the order.

Short-marking Exempt Order – An order by an account to buy or sell a security that meets the definition of a short-marking exempt as defined by UMIR.

CX2 Advanced Order Types

Intentional Cross – The simultaneous entry of both an order to buy and sell the same amount of a security at the same price entered by the same Subscriber. Intentional crosses are not eligible for broker-preferencing so that no cross interference occurs. In accordance with IIROC guidance on rules for dark liquidity, CX2 will accept better priced intentional crosses including those entered with a price of a half trading increment.

Internal Cross – An intentional cross between two accounts that are managed by a single firm acting as a portfolio manager with discretionary authority in managing the investment portfolio.

Basis Cross – A cross of at least 80% of the component share weighting of the basket of securities, index participation unit, or derivative instrument that is the subject of the basis trade. In accordance with UMIR, prior to execution, the subscriber shall report details of the transaction to IIROC.

VWAP Cross – A VWAP cross is a cross of a security at the volume weighted average price of multiple trades on a marketplace or on a combination of marketplaces over a specified time period. The volume weighted average price is the ratio of value traded to total volume. In accordance with UMIR, where applicable, prior to execution, the subscriber shall report details of the transaction to IIROC.

Contingent Cross – A cross resulting from a paired order placed by a Participant on behalf of a client to execute an order on a security that is contingent on the execution of a second order placed by the same client for an offsetting volume of a related security as defined in UMIR.

Bypass Order – A Bypass order marker indicates that the user does not want the order to interact with undisplayed orders or undisplayed portions of iceberg or X-berg orders on the CX2 market. Orders marked with the Bypass marker are treated as IOC.

CX2 Sweep Order™ (CSO) – The CSO order marker indicates that the user has already checked the quotes of all other markets before routing the order to CX2. CSO orders are not re-priced by CX2's IOB. CSO orders will trade with the best priced contra-side order(s) without consideration of prices on other marketplaces. The CSO is designated as a Direct Action Order for OPR purposes as it permits a subscriber to opt out of CX2's OPR solution and take on direct responsibility for preventing trade throughs.

Post-Only Order – An order that will post in the CX2 order book intended to provide liquidity. If the order upon entry would result in a trade, the order will be re-priced one tick increment more passively and booked. This order will not interact with hidden liquidity. Post-only orders may be combined with any other order type including non-displayed orders. Two contra side post-only non-displayed orders eligible to match will not execute. Instead, both orders will maintain their price until executing against an active order.

Iceberg/Reserve Order – An order where a customer determines the number of shares to be displayed while the remainder is hidden in reserve. When the visible portion is fully executed, a new visible displayed size is refreshed, drawing from the amount of the reserve. New displayed sizes will refresh until the amount of the reserve is less than the displayed amount. At that point, the remaining reserve quantity will be displayed.

The X-berg – An order that is similar to an Iceberg order. However, instead of the displayed size being the same every time the order is refreshed, the displayed quantity is chosen at random by the system within a pre-specified range set by the customer. A customer sets the amount of shares to be displayed and the amount of shares to held in reserve when first entering the order.

CX2 Non-displayed Orders

Minimum Quantity – A Minimum Quantity order, such as All-or-None (AON), is an order that will only execute if there is sufficient demand or supply for the entire order. These orders are not displayed in the CX2 book.

Hidden Order – A non-displayed limit order that adheres to the same execution priority conditions as other non-displayed order types.

Mid Peg Order – The CX2 Mid Peg Order is a non-displayed order that floats at the mid point of the NBBO which is calculated and updated in real time by CX2's Intelligent Order Book. Mid peg orders also provide subscribers the option to enter a limit price with the order. Unique to this order type, when the NBBO spread is an odd increment, Mid Point Orders will execute at half penny prices. The Mid Peg Order is an ideal tool for Subscribers to reduce market impact and to be offered price improvement opportunities.

Execution priority – Non-displayed orders will always execute after lit orders at the same price and then follow price/broker/time priority. Price priority for a re-priced non-displayed order is not affected by an underlying limit price. Time priority for a non-displayed order that re-prices is determined by the time that each re-pricing occurs. When re-pricing multiple non-displayed orders to the same price level, the time sequence for the re-pricing will be determined by each order's original timestamp or by the timestamp associated with the last re-pricing.

CX2 Peg Order Types

Primary – A "Primary Peg" buy/sell order will peg to the passive side of the consolidated best bid/ask.

- Primary Peg orders can be entered as either displayed or non-displayed in the CX2 book, and subscribers will also have the option of entering a limit price with the order.

Mid – "Mid Peg" orders are described above under "CX2 Non-displayed Orders".

Market – A "Market Peg" buy/sell order will peg to the active side of the consolidated best ask/bid adjusted by a trading increment as defined by UMIR.

- Market Peg orders can be entered as either displayed or non-displayed in the CX2 book, and subscribers will also have the option of entering a limit price with the order.

- In order to prevent locked markets, Market Peg orders will book at the active side of the consolidated best ask/bid adjusted by a penny for securities priced equal to or greater than $.50 and by a half-penny ($.005) for securities priced less than $.50.

Peg Offset – An increment/ decrement offset of the peg price that allows a pegged order to become more passive/aggressive than the quote to which it is pegged.

Example: a Primary Peg with a +$0.01 offset will peg to the consolidated bid price plus one cent.

Execution priority: Execution priority for non-displayed pegged orders follows the same execution priority that was described above for "CX2 Non-displayed Orders". Execution of any non-displayed pegged order or Hidden Order at the NBBO must also be in conformance with UMIR requirements that would allow for such executions. Execution priority for displayed pegged orders continues to follow price/broker/time priority with its price and time priority being affected by re-pricings in the same manner as described below for dynamically re-priced orders.

Pegged Order Handling

Between 8:30 a.m. and 9:30 a.m. Pegged orders will be accepted but will be held by the system until 9:30 a.m. Any pegged order entered before 9:30 a.m. will be "booked" in the market and become eligible for trading at 9:30 a.m.

From 4:00 p.m. to 5:00 p.m. All pegged orders entered after 4:00 p.m. will be rejected. Any pegged order that has been entered in the book before 4:00 p.m. will be cancelled at 4:00 p.m.

Chi-Controls™

Customer Command Center

The Customer Command Center is a web based application that provides CX2 subscribers with a risk management tool enabling them to monitor and disable order flow originating from clients that are directly accessing the market. The Customer Control Center includes the following features:

- Displays the number of open orders resting on CX2, sorted by trader ID;
- It allows the user to halt trading for an individual trader ID;
- It allows the user to halt trading for all registered trader ID's of a designated client;
- It allows the user to re-start trading for any individual trader ID or combination of trader ID's.

Cancel on Disconnect

Subscribers have the option to have all open orders cancelled upon disconnection to CX2 ATS.

No-Self Cross

Subscribers may elect to not permit orders entered to execute against orders entered with the same firm trader ID. Orders that would otherwise result in a “wash trade” are cancelled.

Subscribers can choose one of the following implementations:

- Cancel the Active order
- Cancel the Passive order
- If the orders are different in share quantity, reduce the larger order and cancel the other one.

Customer Control Center

CX2 offers subscribers the following pre-trade risk management tools to monitor order flow:

- ***Price limit*** – provides subscribers the ability to set price parameters for incoming orders. Price limits can be determined by either specifying a percentage band calculated from the last sale price (i.e. 10 percent above or below the last sale price) and/or by specifying fixed price levels for a security (ex. For a security trading at $6.00; a price ceiling of $9.00, and a price floor of $4.00). When an order is entered with a price that would violate a price parameter, the order will be rejected and sent back to the subscriber.
- ***Share limit*** – provides subscribers the ability to set a maximum number of shares permitted per order per security. When an order is entered with a share amount that exceeds this limit, the order will be rejected and sent back to the subscriber.
- ***Capitalization limit*** – provides subscribers the ability to set the maximum notional value per order per security. The notional value of a trade is calculated by the number of shares multiplied by the price of the security. When an order is entered with a notional value above this set limit, the order will be rejected and sent back to the subscriber.

Time in Force Conditions

IOC – An “Immediate or Cancel” (IOC) order is one in which any portion of the order that is not filled immediately is cancelled.

FOK – A “Fill or Kill” order must execute as a complete order as soon as it becomes available on the market, otherwise the order is cancelled.

DAY – A Day order will remain live on the CX2 book for the duration of the trading day or until cancelled by the Subscriber. At the end of the CX2 trading day (5:00 pm Eastern Time) all outstanding, unfilled Day orders will be cancelled.

GTD – A "Good 'Till Date" (GTD) order expires at the earlier of a specified Expire Time or the end of the trading day. At the end of the trading day (5:00 pm Eastern Time) all outstanding, unfilled GTD orders will be cancelled.

GTC – "Good 'Till Cancelled" (GTC) orders will be cancelled at the end of the trading day.

Order Protection Rule (OPR) Features:

The following features are supported by CX2 to comply with the Order Protection Rule obligation.

Dynamic Order Re-pricing

Orders that are entered on CX2 that cross the National Best Bid Offer ("NBBO") and would either trade-through or quote-through a better priced protected order will be automatically re-priced to prevent a trade-through or crossed market from occurring. In addition, orders that are entered at the NBBO that would lock the market will also be re-priced. When an order is re-priced, its price priority after each re-pricing is determined by the price level to which it has been re-priced, while its time priority is determined by the time each re-pricing occurs. When re-pricing multiple orders to the same price level, the time sequence for the re-pricing will be determined by each order's original timestamp or by the timestamp associated with the last re-pricing.

Dynamic order re-pricing is available between 9:30 a.m. to 4:00 p.m. (Eastern Standard Time). Before 9:30 a.m. and after 4:00 p.m. (Eastern Standard Time), orders will be re-priced once and then have their price remain static. When an order has been re-priced outside of normal market hours, the order must be modified or cancelled and replaced in order to change the price of the order again.

Directed Action Order (DAO)

A Directed Action Order (DAO) informs CX2 that it can be immediately executed or posted without delay or regard to any other better-priced orders displayed on another marketplace. The order marker communicates that a check has been completed by the sender and that the obligation to execute against all better-priced orders will be assumed by the sender. CX2 designates the CSO order type as DAO for the purposes of the Order Protection Rule.

Clearly Erroneous Trade and Trade Amendment Policy

CX2 reserves the right to initiate a review of a clearly erroneous trade, regardless of whether or not a Subscriber request has been submitted, if it determines in its sole discretion that circumstances warrant such a review.

In such instances CX2 will notify the relevant Subscriber trading contacts, as provided by the Subscriber, via electronic mail or telephone as conditions warrant, that a trade will be reviewed pursuant to this policy. Market participants that are not relevant parties will not be notified that a trade is under review.

CX2 designated principals, with the consent of IIROC will exercise their sole discretion under this policy to cancel or amend a trade, where needed, that is the result of a CX2 system error or malfunction. Furthermore, CX2 will follow direction from IIROC to cancel, vary or correct a trade when IIROc instructs it to do so. In addition, CX2 will facilitate the cancellation or amendment of a trade when both counterparties to the trade agree to the trade cancellation or amendment. In this circumstance, notification will be made to IIROC. Decisions will be made in a timely fashion and in all cases a decision will be made no later than the close of business on the trading day of the occurrence which led to the review being initiated.

CX2 will promptly notify the relevant parties and IIROC via electronic mail, and telephone as conditions warrant, of its decision to cancel a trade or trades.

After CX2 processes the cancellation or amendment of any clearly erroneous trade, the trade is null and void.

Clearing and Settlement

All transactions executed are reported to CDS at day end for clearing. The CDS Participant Rules govern the operation of CDS clearing and settlement services.

All trades matched on CX2 will settle by default on a T+3 basis. In the case of a special direction for clearing and settlement, CX2 will make the appropriate adjustments to indicate the special clearing to CDS.

13.2.2 Notice of Commission Approval – Alpha Exchange Inc. – Withdrawal of Listing Rules

ALPHA EXCHANGE INC.

WITHDRAWAL OF LISTING RULES AND RELATED FORMS

NOTICE OF APPROVAL

On November 1, 2012, the Commission approved the withdrawal of the listing rules and related forms for the Alpha Main and Alpha Venture Plus listing markets on Alpha Exchange Inc.

Pursuant to the proposed arrangements for the operation of Alpha Exchange Inc. by TMX Group Ltd., approved by the Commission on October 23, 2012, Alpha Exchange Inc. will continue to be recognized as an exchange but will not carry out any listing activity. Consequently, the Commission determined that it is in the public interest to approve the withdrawal of the current listing rules and related forms for the Alpha Main and Alpha Venture Plus listing markets on Alpha Exchange Inc.

In the event that Alpha Exchange Inc. proposes to carry on listing activity in the future, Alpha Exchange Inc. will need to submit new listing rules for Commission approval. The Commission will also be considering the need to revise the terms and conditions of its order recognising Alpha Exchange Inc. to reflect the cessation of any listing activity on Alpha Exchange Inc.

13.2.3 Notice of Commission Approval – TMX Group Ltd. – Integration of the Operations of Alpha Exchange Inc.

TMX GROUP LTD.

INTEGRATION OF THE OPERATIONS OF ALPHA EXCHANGE INC.

NOTICE OF APPROVAL

On October 23, 2012, the Commission approved proposed arrangements for the operation of Alpha Exchange Inc. by TMX Group Ltd., pursuant to paragraph 10(a) of Schedule 2 and paragraph 55(a) of Schedule 7 to the Commission's order recognizing Maple Group Acquisition Corporation, TMX Group Inc., TSX Inc., and Alpha Exchange Inc. as exchanges.

On October 24, 2012, TMX Group Ltd. issued a Notice to Participating Organizations providing further information related to its plans for the operation of the Alpha Exchange Inc. trading platform.

13.2.4 Liquidnet Canada – Notice of Proposed Changes and Request for Comment

LIQUIDNET CANADA

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Liquidnet Canada has announced plans to implement the changes described below on or about December 17, 2012. Liquidnet Canada is publishing this Notice of Proposed Changes in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto". Market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by December10, 2012 to

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax 416 595 8940
marketregulation@osc.gov.on.ca

and

Sophia Lee
General Counsel
Liquidnet Canada Inc.
498 Seventh Avenue
New York, NY 10018
SLee@liquidnet.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Liquidnet Canada has announced plans to implement the changes described below on or about December 17, 2012 unless otherwise noted.

Any questions regarding the information below should be addressed to Robert Young, Chief Executive Officer; ryoung@liquidnet.com 416-594-2450.

Liquidnet Canada will introduce the following changes:

- **Auto-negotiation Counter Reset.** Starting on or about December 17, 2012, the Liquidnet Canada ATS will begin accepting firm agency ("client") orders from IIROC participants who become marketplace subscribers ("streaming liquidity partners" or "SLPs"), including Immediate or Cancel Orders (IOC or "Stream" Orders). This functionality may also require that auto-negotiation to be reset after the system stops sending invites to the manual contra to avoid frustration.

- **Blocking Interaction with SLPs**. Starting on or about December 17, 2012, the Liquidnet Canada ATS will begin accepting client orders from SLPS. Liquidnet will provide Members a list of SLPs upon request. Members can choose to block interaction with specific SLPs that are affiliated entities for a legal/ regulatory/compliance restriction on trading or block interaction with all SLPs, by notifying their Liquidnet Relationship Manager.

- **Interactions with IOC order.** Starting on or about December 17, 2012, the Liquidnet Canada ATS will begin accepting client orders from SLPs, including IOC Orders. This functionality will allow subscribers, on an order by order basis, to choose whether or not to interact with these IOC orders, which are typically of smaller size.

1. Introduction of Auto-Negotiation Counter Reset.

A significant change subject to public comment.

Starting on or about December 17, 2012, the Liquidnet Canada ATS proposes to begin accepting firm agency ("client") orders from IIROC participants who become marketplace subscribers ("streaming liquidity partners" or "SLPs"), including Immediate or Cancel Orders (IOC or "Stream" Orders). This functionality may also require that auto-negotiation to be reset after the system stops sending invites to the manual contra to avoid frustration to the manual contra.

A. Description

Additional detail on auto-negotiation; ability of RMs to reset the auto-negotiation counter. When an institutional investor subscriber with Liquidnet's front end software ("Member") or trading desk customer creates an order, depending on the strategy, all or a portion of the order can be submitted to match for potential negotiation with a manually negotiating contra. If the manual contra is active, the Liquidnet system can send an invite to the manual contra and automatically negotiate on behalf of the Member or trading desk customer that created the order. Liquidnet will send an invite in an attempt to engage the manual contra. In certain scenarios, after a failed attempt, the system will stop sending invites to the manual contra. Failed attempts could result from the manual contra declining or missing the invite or the limit on the order moving out outside of the NBBO before the manual contra responds to the invite. If a Liquidnet representative thinks the manual contra is interested, by observing that the manual contra is still active after a failed attempt by the Liquidnet system to engage that contra via the Sales Dashboard internal software, then through Sales Dashboard, a Liquidnet representative can choose to reset the auto-negotiation functionality. This results in the Liquidnet system sending an additional invite to the manual contra, provided that the manual contra is still active and the order is still within the parameters (limit and quantity) to send an invite. The Liquidnet representative physically resets the auto negotiation functionality via Sales Dashboard by right clicking on the match row and selecting "Force LPC invitation." The Liquidnet representative has no ability to modify the parameters of the order.

B. The Expected Date of Implementation

On or about December 17, 2012

C. The Expected Impact of the proposed Significant Change on Market structure, subscribers, investors and capital markets.

Liquidnet believes that the impact of the proposed changes would be minor, as Members can determine whether or not to use this functionality.

D. Expected impact of the Significant Change on Liquidnet compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market

We foresee no negative impact on Liquidnet's compliance with Ontario securities law or the to the fair access requirements; the trades will occur at the same trading fees as other similar trades on the Liquidnet platform.

E. Introduction of a fee model or feature that currently exists in other markets or jurisdictions

The proposed functionality introduces a feature that currently does not exist in Canada because Liquidnet is the only regulated negotiated ATS in Canadian equities. This feature does currently exist in the Liquidnet Negotiation ATS in the U.S.

2. Blocking interaction with SLPs.

A Significant Change Subject to Public Comment

Starting on or about December 17, 2012, the Liquidnet Canada ATS will begin accepting client orders from SLPS. Liquidnet will provide Members a list of SLPs upon request. Members can choose to block interaction with specific SLPs that are affiliated entities for a legal/regulatory/compliance restriction on trading or block interaction with all SLPs, by notifying their Liquidnet Relationship Manager.

A. Description

Eligible counterparties. A institutional investor Member can choose to block interaction with specific SLPs that are affiliated entities for a legal/regulatory/compliance restriction on trading or block interaction with all SLPs w, by notifying their Liquidnet Relationship Manager.

B. The Expected Date of Implementation

On or about December 17, 2012

C. The Expected Impact of the proposed Significant Change on market structure, subscribers, investors and capital markets

Liquidnet believes that the impact of the proposed changes would be minor, as Member instances of restrictions between related asset managers and IIROC registrants are possible but rare.

D. Expected impact of the Significant Change on Liquidnet compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market

We foresee no impact on Liquidnet's compliance with Ontario securities law or the requirements of fair access. There will be no negative impact to fair access because the institutional investor Member will only block a specific SLP if it needs to due to a legal/regulatory/compliance restriction on trading with its affiliate.

E. Introduction of a fee model or feature that currently exists in other markets or jurisdictions

The proposed functionality introduces a feature that currently does not exist in Canada because Liquidnet is the only regulated negotiated ATS in Canadian equities. This feature does currently exist in the Liquidnet Negotiation ATS in the U.S.

3. Interactions with IOC Orders.

A significant change subject to public comment.

Starting on or about December 17, 2012, the Liquidnet Canada ATS will begin accepting client orders from SLPs, including IOC Orders. This functionality will allow Members, on an order by order basis, to choose whether or not to interact with these IOC orders from SLPs.

A. Description

Blocking interaction with IOC Orders. When creating a Supernatural order for Canadian equities, a Member can select on an order-by-order basis whether or not to interact with IOC orders from SLPs.

B. The Expected Date of Implementation

On or about December 17, 2012

C. The Expected Impact of the proposed Significant Change on market structure, subscribers, investors and capital markets

Liquidnet believes that the impact of the proposed changes would be minor, as Members determine whether or not to use this functionality. This will not pose any change to market structure because similar functionality is already provided by others in the marketplace today. For example, if a subscriber wishes to interact with a certain type of liquidity, e.g. order flow from brokers, they would simply route their orders to the marketplaces that have such orders. Our proposed change would simply provide a convenience to the subscribers of our marketplace, to enable them to utilize this similar functionality in Liquidnet, without having to route their orders to a second marketplace in order to avail themselves of the opportunity to interact with a specific type of liquidity.

D. Expected impact of the Significant Change on Liquidnet compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market

We foresee no impact on Liquidnet's compliance with Ontario securities law or the requirements of fair access. There will be no negative impact to fair access because the trades will occur at the same trading fees

as other similar trades on the Liquidnet platform. This further does not pose any fair access concerns because each subscriber has a fiduciary duty to protect its customer's order and should have the ability to decide on an order by order basis how to handle that order and who it wishes to interact with for that order. This functionality is fair because it allows the customer, and not the marketplace, to decide how to handle their orders. This functionality furthermore does not discriminate between brokers (SLPs). Liquidnet provides equal access because when a customer opts in to interact with SLPs for an order, that order is equally available to all broker IOC orders on an equal and non-discriminatory basis.

E. Introduction of a fee model or feature that currently exists in other markets or jurisdictions

The proposed functionality introduces a feature that currently does not exist in Canada because Liquidnet is the only regulated negotiated ATS in Canadian equities. This feature does currently exist in the Liquidnet Negotiation ATS in the U.S.

13.3 Clearing Agencies

13.3.1 Notice of Commission Approval – TMX Group Ltd. – Integration of Certain Aspects of the Operations of The Canadian Depository for Securities Limited

TMX GROUP LTD.

INTEGRATION OF CERTAIN ASPECTS OF THE OPERATIONS OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED (CDS LTD.)

NOTICE OF ONTARIO SECURITES COMMISSION (COMMISSION) APPROVAL

On October 23, 2012, the Commission approved the integration of certain aspects of the operations of CDS Ltd. and its subsidiaries with TMX Group Ltd., pursuant to paragraph 12.1 of Schedule B to the Commission's order recognizing CDS Ltd. and CDS Clearing and Depository Services Inc. (CDS Clearing) as clearing agencies and pursuant to paragraph 10(a) of Schedule 2 to the Commission's order recognizing Maple Group Acquisition Corporation, TMX Group Inc., TSX Inc., and Alpha Exchange Inc. as exchanges.

The integration approved by the Commission primarily deals with corporate services and systems and areas that are duplicative. The core clearing, settlement and depository operations of CDS Clearing will not be affected by the integration.

13.3.2 Notice of Commission Approval – CDS – Amendments to CDS' Outsourcing Agreement

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED (CDS LTD.)

AMENDMENTS TO CDS' OUTSOURCING AGREEMENT

NOTICE OF ONTARIO SECURITES COMMISSION (COMMISSION) APPROVAL

Pursuant to s. 11.1 of the Commission's order recognizing CDS Ltd. and CDS Clearing and Depository Services Inc. (CDS Clearing) as clearing agencies, CDS Ltd. and CDS Clearing are required to obtain prior Commission approval before entering into, or amending, any outsourcing arrangement related to, any of its key services or systems with a service provider.

On September 27, 2012, CDS Ltd. applied to the Commission for approval of amendments to its current Master Services Agreement (MSA), which is an outsourcing agreement with Tata Consultancy Services Canada Inc. (Tata). The amendments to the MSA (i) extend the expiry of the MSA for a period of two years from November 1, 2012 to October 31, 2014 and (ii) update the terms of the MSA as a result of the evolution of CDS Ltd.'s and Tata's commitments and responsibilities (collectively, the Amendments).

The Commission approved the Amendments on October 23, 2012.

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