The Ontario Securities Commission

OSC Bulletin

December 6, 2012

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

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

December 6, 2012

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Temporary Change of Location of Ontario Securities Commission Proceedings

All hearings scheduled to be heard between November 22, 2012 and March 15, 2013 will take place at the following location:

ASAP Reporting Services Inc.
Bay Adelaide Centre
333 Bay Street
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Paulette L. Kennedy	—	PLK
Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

December 10-17 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 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 11 and December 14, 2012 9:30 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
December 13, 2012 10;00 a.m.	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT

December 14, 2012 10:00 a.m.	**Frederick Johnathon Nielsen, previously known as Frederick John Gilliland** Subsections 127(1) and 127(10) S. Schumacher in attendance for Staff Panel: JEAT
December 19, 2012 3:30 p.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: VK
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: MGC
December 20, 2012 10:00 a.m.	**New Hudson Television LLC & Dmitry James Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
December 20, 2012 11:00 a.m.	**Knowledge First Financial Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
December 20, 2012 11:30 a.m.	**Heritage Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
January 7, 2013 10:00 a.m.	**Ernst & Young LLP** s. 127 and 127.1 A. Clark 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, 2013 10:00 a.m.	**Roger Carl Schoer** s. 21.7 C. Johnson in attendance for Staff Panel: JEAT
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 9:00 a.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

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 **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: TBA

TBA **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: TBA

TBA **Children's Education Funds Inc.**

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA **Caroline Frayssignes Cotton**

s. 127

C. Price in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 OSC Staff Notice 33-739 – Termination of the Ontario Contingency Trust Fund

ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739
TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

December 6, 2012

Substance and Purpose

The trustee (**Trustee**) of the Ontario Contingency Trust Fund (the **Fund** or **Plan**) has proposed that the Fund be wound up in accordance with advice and direction that the Trustee will seek from the court. The Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up of the Plan.

This Notice outlines why the Trustee has proposed such a wind-up. It also sets out a simplified procedure (with templates) for existing participants in the OCTF that are currently required by Ontario securities law to participate in the Plan to apply for an exemption from this requirement on the terms set out in this Notice and without any application fee.

Background

Subsection 110(1) of Ontario Regulation 1015[1] requires every dealer that is registered under the *Securities Act* (Ontario)(the **Act**), other than an exempt market dealer, to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the c**ompensation fund participation requirement**).

Overview of the OCTF

The OCTF is a contingency trust fund that has been approved by the Commission. It came into being in the early 1970s, and has been the fund for dealers that are not members of a self-regulatory organization.

Twenty-nine registered dealers that are not members of either the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (the **MFDA**) participate in the OCTF to comply with the compensation fund participation requirement.

The terms of the Plan are set out in a form of trust agreement (the **Trust Agreement**) that has been entered into by each participant with the Trustee of the Plan.[2]

The OCTF provides for very limited compensation to clients of a participating dealer in the event the dealer is not able to return funds or securities belonging to a client that were held on behalf of the client at the participating dealer. The Plan has a coverage limit of $5,000 on eligible claims.

Since it was established, the OCTF has been called upon to respond to claims arising as a result of the insolvency of three "securities dealers", including most recently *Buckingham Securities Corporation*.[3] As part of registration reform, "securities dealer" was eliminated as a category of registration; and dealers that were previously registered as "securities dealer" are now required to be registered as an "investment dealer" (and as such, are members of IIROC) to carry out the same trading activities.

Current Status of OCTF

As at September 30, 2012, the capital in the OCTF was approximately $2.5 million.

There are currently 451 participants in the OCTF. Of this number, 422 are no longer required by Ontario securities law to participate in the Plan because they now participate in another approved compensation fund or they are no longer registered.

The Trust Agreement restricts participants from withdrawing from the Plan if there are potential claims against the Plan. Currently, the Trustee is not permitting any participants to withdraw from the Plan because the Trustee has not yet made a final call for claims in respect of Buckingham. The Trustee expects to soon make such a final call, and then be in a position to resume the return of capital to those 422 participants that would be eligible to withdraw from the Plan.[4] This would, however,

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1 R.R.O. 1990, as amended, made under the Act.

2 The form of agreement incorporates terms and conditions that were prescribed in Ontario Regulation 208/70, as amended.

3 The other dealers were *E. A. Manning Limited* (in 1995) and *Marchment & Mackay Limited* (in 1999).

4 Each participant was required to make an initial capital contribution of $10,000.

result in the Plan's remaining capital falling well below the critical mass necessary to sustain its continued operation; and if all of these 422 participants were to withdraw their capital, the remaining capital in the Plan would be essentially depleted.

Wind-up of OCTF

The Trustee has therefore proposed that the OCTF be wound up in accordance with advice and direction that the Trustee will seek from the court.

The Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up of the Plan.

Exemptions from Requirement to Participate in a Compensation Fund

Action will need to be taken by Participants in the OCTF that remain registered and are not members of IIROC or the MFDA to continue to be in compliance with the compensation fund participation requirement. They may wish to apply to the Commission for an exemption from this requirement on the terms set out in Exhibit 1.

Staff will recommend that the Commission issue an exemption on the terms set out in Exhibit 1.

Staff will also recommend that the Director grant an exemption from the requirement to pay the corresponding application fee on the terms set out in Exhibit 1, if the application is received before January 31, 2013.

Simplified Procedure for Obtaining an Exemption

Applications for these exemptions need not be formal in nature and may be made by way of an e-mail from the applicant (or its authorized agent).

The e-mail should refer to "OSC Notice 33-739" and identify the full legal name of the applicant in the subject line of the e-mail, and in the body of the e-mail state that:

- The above-referenced registered dealer hereby applies to be included as a Filer for the exemptions set out in Exhibit 1 to OSC Staff Notice 33-739
- As a Filer, the applicant makes the representations to the Commission and Director which are identified as being made by a Filer, in paragraphs a, b, c , d, e and f of Exhibit 1 under the heading "Representations of each Filer"

The e-mail should identify the individual applying on behalf of the applicant (with their full name, position, e-mail address, and telephone number) and be sent before January 31, 2013 to the following address:

applications@osc.gov.on.ca

Questions

If you have questions regarding this Notice, please direct them to:

Robert F. Kohl,
Senior Legal Counsel
Compliance & Registrant Regulation
Ontario Securities Commission
Tel: 416-593-8233
Fax: 416-593-8283
Email: rkohl@osc.gov.on.ca

Kelly Everest
Senior Forensic Accountant
Compliance & Registrant Regulation
Ontario Securities Commission
Tel : 416-595-8914
Fax: 416-593-8283
Email: keverest@osc.gov.on.ca

If you have any questions regarding the wind-up the OCTF, including the return of capital to existing participants, please direct them to:

Mark Wright
Relationship Manager
Global Corporate Trust
BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, ON M5H 4A6
Tel.: 416-933-8533
Fax.: 416-360-1711
Email: Mark.Wright@bnymellon.com

Exhibit 1

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED (the "Act"),
REGULATION 1015
R.R.O. 1990, AS AMENDED, MADE UNDER THE ACT (the "Regulation")

AND

ONTARIO SECURITIES COMMISSION RULE 13-502 FEES (the "Fee Rule")

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739
TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

AND

CERTAIN REGISTERED DEALERS

COMMISSION ORDER
(Section 147 of the Act)

DIRECTOR EXEMPTION DECISION
(Section 6.1 of the Fee Rule)

Background

1. Subsection 110(1) of the Regulation requires every registered dealer, other than an exempt market dealer as defined in National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**), to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the **compensation fund participation requirement**).

2. The Ontario Contingency Trust Fund (the **OCTF** or **Plan**) is one of three compensation funds or contingency trust funds that have been approved by the Commission for the purposes of subsection 110(1) of the Regulation.

3. The terms of the OCTF are set out in a form of trust agreement (the Trust Agreement) that has been entered into by each participant in the Plan with the trustee (the **Trustee**) of the Plan.

4. Twenty-nine registered dealers (**OCTF Dealers**) that are not members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (**MFDA**) participate in the OCTF, and as such do not participate in the corresponding approved compensation fund for members of these self-regulatory organizations.

5. OCTF Dealers comprise scholarship plan dealers and mutual fund dealers that obtained an exemption from the requirement in Ontario securities law to be a member of the MFDA.

6. As indicated in Ontario Securities Commission Staff Notice 33-739 *Termination of the Ontario Contingency Trust Fund* (the **Notice**), the continued operation of the Plan is not financially sustainable. The Trustee has proposed that the OCTF be wound up in accordance with advice and direction from the court and the Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up.

Applications

Each of the OCTF Dealers (each, a **Filer**) listed in the attached Appendix has applied to the Commission for an order, under section 147 of the Act, exempting the Filer from the compensation fund participation requirement on the terms set out in this Order.

Each Filer has also applied to the Director, under section 6.1 of the Fee Rule, for an exemption from the requirement in section 4.1 to pay a fee for its filing of these exemption applications.

Representations of each Filer

Each Filer has represented to the Commission and the Director that:

a. The Filer is not a member of either IIROC or the MFDA, and the Filer is not required by Ontario securities law to be a member of either of these self-regulatory organizations.

b. The Filer does not now hold for its clients any funds, securities or other property (**Client Assets**).

c. So long as the Filer relies upon the exemption from the compensation fund participation requirement set out in this Order, the Filer will not hold any Client Assets.

d. Before any person or company that is not a client of the Filer on the Effective Date (defined below) becomes a client of the Filer, the Filer will provide to that person or company prominent written notice of the following:

> *The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that the Filer not hold any client assets.*

e. On the Effective Date, the Filer will have provided to any person or company that is an existing client of the Filer prominent written notice of the following:

> *The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that the Filer not hold any client assets.*
>
> *The Filer was a participant in the Ontario Contingency Trust Fund at the time it applied for this exemption. It applied for this exemption in response to the proposed wind-up of that fund, as discussed in Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund.*

f. The Filer will not rely upon the passport provisions of Canadian securities legislation to passport this Ontario Order into any other jurisdiction of Canada without the prior written consent of that other jurisdiction.

Commission Order

In the opinion of the Commission it is not prejudicial to the public interest to make this Order.

It is ordered by the Commission pursuant to section 147 of the Act that:

(i) beginning on the Effective Date (as defined below), each of the Filers is exempt from subsection 110(1) of the Act, but only so long as, in the case of that Filer:

A. the Filer is not required by Ontario securities law to be a member of either IIROC or the MFDA;

B. the Filer does not hold any Client Assets; and

C. the Filer provides the disclosure to its clients referred to in paragraph (d) above and has provided the disclosure to its clients referred to in the paragraph (e) above; and

(ii) this Order shall be effective on the day that is 30 calendar days after the date hereof (the "**Effective Date**").

DATED at Toronto, Ontario this _____ day of _____, 2012.

_____
Commissioner
Ontario Securities Commission

_____
Commissioner
Ontario Securities Commission

Director Exemption Decision

The Director is satisfied that to grant this Exemption would not be prejudicial to the public interest.

It is the decision of the Director, pursuant to section 6.1 of the Fee Rule, that each Filer is exempt from the requirement in section 4.1 of the Fee Rule to pay an activity fee for the filing by the Filer of the above-referenced applications.

DATED at Toronto, Ontario this _____ day of _____, 2012.

_____
Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

Appendix

[to be completed following the submission of applications]

1.2 Notices of Hearing

1.2.1 Ernst & Young LLP – 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
ERNST & YOUNG LLP

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") at the offices of ASAP Reporting Services Inc. located at 333 Bay Street, Suite 900, Toronto, on January 7, 2013 at 10:00 am or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make an order that:

(a) the Respondent be reprimanded pursuant to clause 6 of subsection 127(1) of the Act;

(b) the Respondent pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law pursuant to clause 9 of subsection 127(1) of the Act;

(c) the Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law pursuant to clause 10 of subsection 127(1) of the Act;

(d) the Respondent pay the costs of the Commission's investigation and the costs of or related to any hearing before the Commission pursuant to section 127.1 of the Act; and

(e) to make such other orders as the Commission may deem appropriate.

BY REASON OF the allegations set out in the Statement of Allegations dated December 3, 2012, and such 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 proceeding.

DATED at Toronto this 3rd day of December, 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
ERNST & YOUNG LLP

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated December 3, 2012, Staff of the Ontario Securities Commission ("Staff") make the following allegations:

Overview

1. Ernst & Young LLP ("Ernst & Young") were the auditors of Sino-Forest Corporation ("Sino-Forest") between August 2007 and April 2012. During that time, they audited the annual consolidated financial statements of Sino-Forest and represented to its shareholders that they had performed their audits in accordance with relevant industry standards. Shareholders invested significant sums in Sino-Forest in reliance on these financial statements.

2. Ernst & Young, however, failed to conduct their audits in accordance with relevant industry standards. In particular, as outlined further below, Ernst & Young:

   (a) failed to perform sufficient audit work to verify Sino-Forest's ownership of its most significant assets;

   (b) failed to perform sufficient audit work to verify the existence of Sino-Forest's most significant assets; and

   (c) failed to undertake their audit work on the Sino-Forest engagement with a sufficient level of professional skepticism.

3. As the auditors of a publicly traded company, Ernst & Young were required to conduct their audits of Sino-Forest's financial statements in accordance with Canadian generally accepted auditing standards ("GAAS"). Each of Ernst & Young's failures to comply with GAAS in the course of its audits of these financial statements constitutes a breach of section 78 of the *Securities Ac*t, R.S.O. 1990, c. S.5, as amended (the "Securities Act").

4. In addition, Sino-Forest filed a number of documents with the Ontario Securities Commission (the "Commission") which contained Ernst & Young's representation that they had conducted their audits in accordance with GAAS. Each of these filings constitutes a breach of section 122 of the Securities Act by Ernst & Young.

Background

5. Sino-Forest is a reporting issuer in the province of Ontario as that term is defined in subsection 1(1) of the Securities Act. Sino-Forest represented that it engaged primarily in the purchase and sale of timber located in the People's Republic of China (the "PRC"). Until May 9, 2012, the common shares of Sino-Forest were listed and posted for trading on the Toronto Stock Exchange.

6. Ernst & Young is a firm of chartered accountants with a head office located in Toronto, Ontario. It has offices located across Canada, and it is a member firm of Ernst & Young Global Limited, a global accounting organization.

7. Ernst & Young was appointed as the auditor of Sino-Forest on August 16, 2007. Ernst & Young audited the consolidated financial statements of Sino-Forest as at and for its fiscal years ended December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010 (respectively, the "2007 Financial Statements", the "2008 Financial Statements", the "2009 Financial Statements" and the "2010 Financial Statements" and collectively the "Material Financial Statements").

8. Between February 2003 and October 2010, Sino-Forest raised approximately US $3.0 billion through the issuance of equity and debt securities to investors. From 2008 onwards, investors relied on the Material Financial Statements in making the decision to purchase Sino-Forest's shares and debt securities in both the primary and secondary markets.

9. Between June 30, 2006 and March 31, 2011, Sino-Forest's share price increased from CDN $5.75 to CDN $25.30, an increase of 340%. By March 31, 2011 Sino-Forest's market capitalization was well over CDN $6.0 billion.

10. On June 2, 2011, the share price of Sino-Forest plummeted after a private analyst made public allegations of fraud against Sino-Forest. On the same day, the Board of Directors of Sino-Forest established an Independent Committee (the "IC") "to independently examine and review the serious and wide-ranging allegations" made in the analyst's report.

11. The IC identified a number of areas of Sino-Forest's business for investigation, including its ownership of trees and the existence of those trees. The IC prepared and released three reports concerning its findings, dated August 10, 2011, November 13, 2011 and January 31, 2012 (the "IC Reports").

12. In the IC Reports, the IC presented its findings regarding the issues of tree ownership and tree existence. The IC Reports concluded that there was uncertainty surrounding the legal certainty of Sino-Forest's claims to a significant proportion of its reported timber assets. In addition, the IC Reports noted significant obstacles to verifying the actual existence of the reported timber assets, including an inability to identify the precise location of the trees which had purportedly been purchased by Sino-Forest.

13. On November 15, 2011, Sino-Forest announced that it would defer the release of its interim filings for the third quarter of 2011. Sino-Forest has not filed these interim filings with the Commission.

14. On January 10, 2012, Sino-Forest took the unusual step of issuing a press release cautioning that its historic financial statements and related audit reports should not be relied upon.

15. Sino-Forest was required to file its consolidated financial statements for the year ended December 31, 2011 (the "2011 Financial Statements") with the Commission by March 30, 2012. On that day, Sino-Forest initiated proceedings in the Ontario Superior Court of Justice requesting protection from its creditors. Sino-Forest has not filed the 2011 Financial Statements with the Commission.

16. On April 4, 2012, Ernst & Young resigned as the auditor of Sino-Forest. In the Change of Auditor Notice dated April 13, 2012, Sino-Forest repeated the caution that its historic financial statements and related audit reports should not be relied upon. The Change of Auditor Notice did not name a successor auditor.

17. On May 22, 2012, Staff issued a Statement of Allegations naming Sino-Forest and six members of its executive management team (the "Sino-Forest SOA"). The Sino-Forest SOA alleged that five of the named members of Sino-Forest's executive management team, including the Chairman and Chief Executive Officer "engaged in a complex fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public disclosure record related to its primary business".

The Purported Business of Sino-Forest

18. The majority of Sino-Forest's reported business involved the purchase and sale of trees which were categorized on its balance sheet as "Timber Holdings" and commonly referred to as "Standing Timber".

19. Standing Timber was purportedly purchased, held and sold by Sino-Forest through two distinct legal structures or models: the British Virgin Islands Model (the "BVI Model") and the Wholly Foreign-Owned Enterprises Model (the "WFOE Model").

20. In the BVI Model, Sino-Forest's purported purchases and sales of Standing Timber were conducted using wholly owned subsidiaries of Sino-Forest incorporated in the British Virgin Islands (the "BVI Subsidiaries"). The BVI Subsidiaries purported to enter into written purchase contracts with suppliers located in the PRC (the "Purchase Contracts") and then purported to enter into written sales contracts with customers called "authorized intermediaries" also located in the PRC (the "Sales Contracts").

21. In the WFOE Model, Sino-Forest used subsidiaries incorporated in the PRC called Wholly Foreign-Owned Enterprises ("WFOEs") to acquire, cultivate and sell the Standing Timber. The Sino-Forest WFOEs also entered into purchase contracts and sales contracts with other parties in the PRC.

22. Sino-Forest purported to conduct the majority of its business through the BVI Model. At December 31, 2010, Sino-Forest reported total Timber Holdings of US $3.1 billion comprising 799,700 hectares. Approximately US $2.5 billion or approximately 80% of the total value of the Timber Holdings were purportedly held in the BVI Model, comprising approximately 467,000 hectares of Standing Timber.

23. Between 2007 and 2010, reported revenue from the BVI Model totalled US $3.35 billion, representing 94% of Sino-Forest's reported Standing Timber revenue and 70% of Sino-Forest's total revenue. The significance of the revenue from the BVI Model is demonstrated in the following table:

	US $ (millions)				
	2007	**2008**	**2009**	**2010**	**Total**
BVI Model Revenue	501.4	644.9	882.1	1,326.0	3,354.4
WFOE Model Revenue	20.1	40.5	72.1	75.2	207.9
Standing Timber Revenue	**521.5**	**685.4**	**954.2**	**1,401.2**	**3,562.3**
Total Revenue	**713.9**	**896.0**	**1,238.2**	**1,923.5**	**4,771.6**
BVI Model as % of Total Revenue	70%	72%	71%	69%	70%

Ernst & Young's Obligations as Auditor

24. As a reporting issuer, Sino-Forest was required by section 78(1) of the Securities Act to file its annual consolidated financial statements with the Commission. Sino-Forest filed its 2007 Financial Statements on March 18, 2008, its 2008 Financial Statements on March 16, 2009, its 2009 Financial Statements on March 16, 2010 and its 2010 Financial Statements on March 15, 2011.

25. As the auditor of a reporting issuer, Ernst & Young was required by section 3 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards*, and by sections 78(2) and 78(3) of the Securities Act to audit the Material Financial Statements in accordance with GAAS and to prepare an auditors' report to accompany the financial statements.

26. Each of the Material Financial Statements was accompanied by an auditors' report, prepared by Ernst & Young, addressed to the shareholders of Sino-Forest (the "Auditors' Report"). In each Auditors' Report, Ernst & Young represented that it had conducted its audits in accordance with GAAS. The Auditors' Reports relating to the Material Financial Statements were dated March 12, 2008, March 13, 2009, March 15, 2010 and March 14, 2011 and were filed with the Commission along with the Material Financial Statements.

27. In addition, Sino-Forest filed two short form prospectuses with the Commission dated June 1, 2009 and December 10, 2009 (the "Short Form Prospectuses"). The Short Form Prospectuses incorporated by reference the 2008 Financial Statements accompanied by the relevant Auditors' Report. In addition, in letters addressed to and filed with the Commission along with the Short Form Prospectuses (the "Prospectus Consent Letters"), Ernst & Young consented to use of their Auditors' Report by Sino-Forest and further stated that they had "no reason to believe that there are any misrepresentations" contained in the relevant Auditors' Report.

Generally Accepted Auditing Standards

28. As set out in GAAS, an auditor's objective is to identify and assess the risks of material misstatement, whether due to fraud or error, in an entity's financial statements. An auditor can achieve this objective by understanding the entity and its environment, including the entity's internal controls. This understanding provides the auditor with a basis for designing and implementing responses to the assessed risks.

(a) Sufficient Audit Evidence Required

29. GAAS requires auditors to obtain reasonable assurance that the entity's financial statements are free from material misstatements. Reasonable assurance is a high level of assurance. It is achieved when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk to a low level and to provide a reasonable basis to support the content of the audit report. The sufficiency of the audit evidence gathered by the auditor is influenced by the level of materiality set for the audit and the level of risk associated with the audit.

30. The sufficiency and the appropriateness of the audit evidence gathered by the auditor are interrelated. Sufficiency is the measure of the quantity of the audit evidence. The quantity of the audit evidence needed is affected by the auditor's assessment of the risks of misstatement. That is, the higher the assessed risks, the more audit evidence is likely to be required. The quantity of audit evidence needed is also affected by the quality of the audit evidence. That is, the higher the quality of the audit evidence, the less audit evidence may be required.

31. Obtaining more audit evidence, however, may not compensate for its poor quality. Appropriateness is the measure of the quality of the audit evidence; that is its relevance and its reliability in providing support for the conclusions on which the auditor's opinion is based. The reliability of the audit evidence is influenced by its source and by its nature, and is dependent on the circumstances in which it is obtained.

(b) Professional Skepticism Required

32. GAAS requires auditors to plan and perform their audits using professional skepticism, recognizing that circumstances may exist that cause the financial statements to be materially misstated. Professional skepticism requires a questioning attitude which is alert to conditions which may indicate possible misstatement due to error or fraud. Professional skepticism requires an auditor to conduct a critical assessment of the audit evidence.

33. Professional skepticism requires the auditor to be alert to, amongst other things:

(a) audit evidence that contradicts other audit evidence obtained;

(b) information that brings into question the reliability of documents and responses to inquiries;

(c) conditions that may indicate possible fraud; and

(d) circumstances that suggest the need for additional audit procedures in addition to those required by minimum written professional standards.

Ernst & Young's Failures to Meet Generally Accepted Auditing Standards

34. Ernst & Young failed to comply with GAAS by failing to obtain reasonable assurance that the Material Financial Statements were not materially misstated.

35. In particular, Ernst & Young failed to obtain sufficient appropriate audit evidence with respect to the ownership and existence of the Standing Timber that Sino-Forest purported to hold through the BVI Model (the "Purported Assets").

36. In addition, Ernst & Young failed to exercise sufficient professional skepticism when conducting the audits of the Material Financial Statements. This contributed to the failure to obtain sufficient appropriate audit evidence with respect to the ownership and existence of the Purported Assets.

A. Failure to Adequately Address Ownership of Timber

37. The audit procedures performed by, and the audit evidence obtained by Ernst & Young with respect to Sino-Forest's ownership of the Purported Assets, were deficient in a number of respects.

(i) Flawed Purchase Contracts

38. One of the audit procedures that Ernst & Young performed relating to the ownership of the Purported Assets was a review of all of the Purchase Contracts entered into by Sino-Forest for each fiscal year that it audited. Ernst & Young understood that all of Sino-Forest's Purchase Contracts had been prepared by Sino-Forest from a common template. The Purchase Contracts, however, had two significant deficiencies.

39. To begin, the Purchase Contracts referred to four appendices, titled Stock Volume Report, Resources-Quality Survey Report (the "Survey Report"), Villagers' Letter of Authorization and Decision (the "Villagers' Letters") and Certificate of Forest Proprietorship (the "Certificates").

40. The Villagers' Letters authorized the seller to sell the timber rights set out in the Purchase Contract. The Certificates reflected the contents of the official PRC government registers concerning ownership of the rights to the relevant timber. Ernst & Young never obtained either the Villagers' Letters or the Certificates.

41. The second deficiency was that the specific location of the Purported Assets was not clearly delineated in either the Purchase Contract or any of its available appendices.

42. Both of these deficiencies should have prompted Ernst & Young to make further inquiries of Sino-Forest management and to perform further audit procedures relating to Sino-Forest's ownership of the Purported Assets. In particular, Ernst & Young failed to make further inquiries concerning the two missing appendices, and failed to take steps to understand the process used by Sino-Forest management to precisely identify the location of the Purported Assets.

43. In addition, Ernst &Young failed to consider that all of the Survey Reports had been prepared by the same survey firm, even though the areas purportedly surveyed were widely scattered throughout the PRC. This unusual circumstance should have prompted Ernst & Young to perform further procedures regarding the source and reliability of the surveys.

(ii) Flawed Legal Opinion

44. Ernst & Young failed to obtain a sufficient understanding of the legal basis of Sino-Forest's claim to the Purported Assets. During the audit of the 2007 Financial Statements, Ernst & Young asked Sino-Forest to obtain a legal opinion prepared by Jingtian & Gongchen Attorneys at Law ("Jingtian"). Jingtian were Sino-Forest's corporate counsel located in the PRC. Jingtian prepared an opinion dated March 10, 2008 addressed to Sino-Forest (the "Jingtian Opinion") which was provided to Ernst & Young for its review.

45. The Jingtian Opinion discussed the legal regime relating to forestry assets located in the PRC and evaluated the nature and status of Sino-Forest's legal claim to ownership of the Purported Assets. Ernst & Young had selected the representative Purchase Contract that was sent to Jingtian for its review in preparing the Jingtian Opinion.

46. Ernst & Young failed to appreciate and respond to the limitations of the Jingtian Opinion. In particular:

(a) Ernst & Young failed to consider the fact that it had never obtained copies of the Villagers' Letters or the Certificates for any Purchase Contract; and

(b) Ernst & Young failed to consider the implications of, or make further inquiries concerning, the disclaimer contained in the Jingtian Opinion that the Villagers' Letters and the Certificates had not been reviewed by Jingtian.

47. The Jingtian Opinion did discuss the status of the Certificates in the PRC legal regime. It noted that the PRC forestry authorities were reporting significant delays and backlogs in the production of the new form of these Certificates. The Jingtian Opinion went on to report, however, that back in 2002 the PRC authorities had predicted that such Certificates would become available beginning in approximately 2004. Ernst & Young failed to follow up on this statement and failed to inquire why the new Certificates were not available by the time the Jingtian Opinion was produced in 2008.

48. Ernst & Young failed to make further inquiries of Sino-Forest management concerning the absence of both the Villagers' Letters and the Certificates from the Purchase Contracts and failed to perform appropriate additional audit procedures relating to Sino-Forest's ownership of the Purported Assets. In particular, and given that Ernst & Young had reviewed copies of Certificates that had been issued for timber acquisitions made through the WFOE Model, Ernst & Young failed to question the absence of Certificates relating to the Purported Assets and failed to obtain independent audit evidence to support the absence of the Certificates.

49. Further, given that the Jingtian Opinion had described anticipated changes in the PRC's legal regime relating to timber assets, Ernst & Young failed to obtain an updated independent legal opinion for the audits of the 2008, 2009 and 2010 Financial Statements specifically addressing Sino-Forest's ownership of the Purported Assets and the current status of the Certificates in the PRC legal system.

B. Failure to Adequately Address Existence of Timber

50. Ernst & Young failed to perform sufficient appropriate audit procedures to verify the existence of the Purported Assets. Ernst & Young recognized that several aspects of Sino-Forest's business resulted in higher inherent risks relating to the existence of the Purported Assets, but they failed to adequately respond to these risks.

51. In particular, Sino-Forest did not make direct cash payments for the acquisition of the Purported Assets. Rather, the payments that Sino-Forest should have received from its customers were immediately applied towards the purported purchase of further timber assets. This increased the risks surrounding the audit of the Purchase Contracts as there were no cash transfers that could be traced and verified.

(i) Limited Site Visits

52. Ernst & Young performed only very limited site visits to inspect the Purported Assets, which were represented to be widely scattered throughout the PRC. The audit procedures that Ernst & Young performed in connection with these site visits were both insufficient and inappropriate to respond to the identified risks relating to the existence of the Purported Assets.

(ii) Inappropriate Reliance on Valuations

53. Sino-Forest engaged Pöyry Forest Industry Ltd. ("Poyry") to prepare periodic valuations of its Timber Holdings. Ernst & Young inappropriately relied on Poyry's valuation work in obtaining assurance of the existence of the Purported Assets.

54. GAAS sets out explicit requirements to be met when an auditor places reliance on work performed by another entity in the course of an audit. Ernst & Young failed to meet these requirements in placing reliance on Poyry's valuation work when assessing the existence of the Purported Assets, as set out below.

55. Ernst & Young was not involved in Poyry's process of selecting the plantations to sample, the determination of the location of the sampled plantations or in the counting or measuring of the trees. Ernst & Young did attend with Poyry staff during a small number of Poyry's plantation site visits. During these visits, Ernst & Young staff observed Poyry staff's activities.

56. Ernst & Young failed, however, to perform any independent audit procedures to ensure that the plantations visited by Poyry were owned by Sino-Forest or that the location and dimensions of the sites visited corresponded with the extent of the Purported Assets reported by Sino-Forest.

57. Further, the valuation reports produced by Poyry contained a clear disclaimer that they should only be relied on by Sino-Forest for its own valuation purposes. Ernst & Young, therefore, placed inappropriate reliance on Poyry's work in its attempt to verify the existence of the Purported Assets.

58. Some of these limitations were acknowledged by Ernst & Young staff in the course of performing their audits of the Material Financial Statements but were never adequately addressed. For example, in an e-mail exchange between the members of Ernst & Young's audit team, one auditor posed the question "[h]ow do we know that the trees that Poyry is inspecting (where we attend) are actually trees owned by the company? E.g. could they show us trees anywhere and we would not know the difference?" Another auditor answered "I believe they could show us trees anywhere and we would not know the difference …".

C. Insufficient Skepticism

59. Finally, Ernst & Young failed to conduct its audits of the Material Financial Statements with a sufficient level of professional skepticism.

60. As outlined above, Ernst & Young failed to adequately respond to a number of unusual facts and findings that came to its attention in the course of conducting the audits of the Material Financial Statements. These facts and findings should have caused Ernst & Young to treat the representations of Sino-Forest management with greater caution and to perform additional audit procedures and to obtain additional evidence from independent sources.

D. Failure to Properly Structure the Audit Team

61. The failures outlined above were facilitated by Ernst & Young's failure to properly structure its Sino-Forest engagement team. Many Sino-Forest source documents were produced only in Chinese, including the Purchase Contracts, the Sales Contracts and the Jingtian Opinion. Ernst & Young, however, failed to have these and other key documents translated into English.

62. Ernst & Young's audit team comprised both Chinese speaking and non-Chinese speaking staff. Several of the senior partners involved in the audits of the Material Financial Statements, however, were unable to read or speak Chinese.

63. Ernst & Young's non-Chinese speaking staff relied on its Chinese speaking staff to provide informal translations of important source documents. As a result, the non-Chinese speaking staff were often not aware that important information was missing from some of Sino-Forest's key documents.

Consequences of Ernst & Young's Failures

64. Ernst & Young's failures to comply with GAAS, as outlined above, led them to overlook or discount significant flaws in Sino-Forest's assertions relating to the ownership and existence of the Purported Assets. The Purported Assets constituted the vast majority of Sino-Forest's assets and produced nearly all of its reported revenue. Ernst & Young's lack of diligence in these areas therefore resulted in significant negative consequences for Sino-Forest's shareholders.

Breaches of Ontario Securities Law

65. Each of Ernst & Young's failures to meet GAAS in the course of its audits of each of the Material Financial Statements constitutes a breach of sections 78(2) and 78(3) of the Securities Act.

66. Each of Ernst & Young's representations contained in each of the Auditors' Reports, which were repeated in each of the Prospectus Consent Letters, that the audits of the Material Financial Statements had been conducted in accordance with GAAS, constitutes a materially misleading a statement contrary to section 122(1)(b) of the Securities Act.

67. In addition, the audit failures of Ernst & Young outlined above were contrary to the public interest.

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

DATED at Toronto, Ontario, this 3rd day of December, 2012.

1.2.2 Nest Acquisitions and Mergers et al. – s. 127 of the Act and Rule 12 of the OSC Rules of Procedure

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC.,
CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ROBERT PATRICK ZUK

NOTICE OF HEARING
(Section 127 of the Act and Rule 12 of
the Commission's Rules of Procedure)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the temporary offices of ASAP Reporting Services, Suite 900, 333 Bay Street, Toronto, Ontario on December 5, 2012 at 3:30 p.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement between Staff of the Commission and Robert Patrick Zuk;

BY REASON OF the allegations set out in the Statement of Allegations dated January 18, 2010, and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 4th day of December 2012.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Adopt Amendments To Improve Issuer Communications with Investors

FOR IMMEDIATE RELEASE
November 29, 2012

CANADIAN SECURITIES REGULATORS ADOPT
AMENDMENTS TO IMPROVE ISSUER COMMUNICATIONS WITH INVESTORS

Toronto – The Canadian Securities Administrators (CSA) announced today the adoption of amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and National Instrument 51-102 *Continuous Disclosure Obligations*, which intend to improve communications between reporting issuers and their shareholders in the proxy voting process.

Specifically, the amendments are designed to improve procedures for reporting issuer communications with investors who hold securities through intermediaries such as dealers, trust companies and banks.

The most significant features of the adopted amendments include:

- Providing reporting issuers with a new notice-and-access mechanism to send proxy-related materials to registered holders and beneficial owners of securities;
- Requiring reporting issuers to provide enhanced disclosure regarding the beneficial owner voting process; and,
- Simplifying the process by which beneficial owners are appointed as proxy holders in order to attend and vote at shareholder meetings.

"These amendments will modernize and enhance communication between reporting issuers and their shareholders by allowing greater use of the Internet for delivering proxy-related materials," said Bill Rice, Chair of the CSA and chairman and chief executive of the Alberta Securities Commission. "The amendments aim to increase the efficiencies of the proxy voting process by reducing the volume of documents sent to shareholders."

The amendments and related materials can be found on CSA members' websites. In some jurisdictions, ministerial approvals are required to implement the amendments. If all such approvals are obtained, the amendments will take effect on February 11, 2013. However, reporting issuers will only be permitted to use notice-and-access for meetings taking place on or after March 1, 2013.

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

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Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

1.3.2 OSC Alleges Breach of Ontario Securities Act Against Ernst & Young LLP

FOR IMMEDIATE RELEASE
December 3, 2012

OSC ALLEGES BREACH OF
ONTARIO SECURITIES ACT AGAINST ERNST & YOUNG LLP

TORONTO – Staff of the Ontario Securities Commission (OSC) today issued allegations against Ernst & Young LLP, former auditors of Sino-Forest Corporation (Sino-Forest).

OSC Staff allege that Ernst & Young breached the Ontario *Securities Act* by failing to conduct their audits in accordance with relevant industry standards. The audits related to the 2007, 2008, 2009 and 2010 consolidated financial statements of Sino-Forest.

"Our investigation into Sino-Forest is a complex international investigation, and a major focus has been on whether gatekeepers such as auditors and other corporate advisors properly performed their role in protecting investors," said Tom Atkinson, Director of Enforcement. "Investors rely on auditors to conduct their audits in accordance with professional standards, particularly when foreign companies are listing on Canadian exchanges. If auditors fail to abide by Canadian auditing standards and securities laws, we will hold them accountable."

In the Statement of Allegations, OSC Staff allege that Ernst & Young failed to perform sufficient audit work to verify the ownership and existence of Sino-Forest's most significant assets. OSC Staff also allege that Ernst & Young failed to undertake their audit work on Sino-Forest with a sufficient level of professional skepticism.

On May 22, 2012, the OSC issued allegations of fraud against Sino-Forest and former senior executives. Those proceedings are ongoing.

The mandate of the OSC is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. As part of its review of emerging market issuers, the OSC recently issued an Issuer Guide for Companies Operating in Emerging Markets that summarizes its expectations for reporting issuers listed on Canadian exchanges with significant business operations in emerging markets.

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1.4 Notices from the Office of the Secretary

1.4.1 David Charles Phillips

FOR IMMEDIATE RELEASE
November 28, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS

TORONTO – Following the hearing held on June 6, 2012, the Commission issued an Endorsement in the above named matter.

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

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1.4.2 Portus Alternative Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
November 30, 2012

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

AND

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

TORONTO – The Commission issued its Reasons and Decision and an Order with respect to Michael Mendelson in the above noted matter.

A copy of the Reasons and Decision and the Order with respect to Michael Mendelson dated November 29, 2012 are available at **www.osc.gov.on.ca**.

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1.4.3 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
November 30, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

TORONTO – The Commission issued its Reasons and Decision on a Motion today in the above named matter.

A copy of the Reasons and Decision on a Motion dated November 30, 2012 is available at **www.osc.gov.on.ca**.

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1.4.4 Ernst & Young LLP

FOR IMMEDIATE RELEASE
December 3, 2012

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

AND

IN THE MATTER OF
ERNST & YOUNG LLP

TORONTO – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on January 7, 2013 at 10:00 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 December 3, 2012 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 3, 2012 are available at **www.osc.gov.on.ca**.

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1.4.5 Moncasa Capital Corporation and John Frederick Collins

FOR IMMEDIATE RELEASE
December 3, 2012

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION AND
JOHN FREDERICK COLLINS

TORONTO – The Commission issued an Order in the above named matter which provides that this matter is adjourned to a confidential pre-hearing conference which shall take place on December 17, 2012 at 9:00 a.m.

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

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

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1.4.6 Global Consulting and Financial ServiceS et al.

FOR IMMEDIATE RELEASE
December 3, 2012

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued a Temporary Order in the above named matter which provides that the Amended Temporary Order is extended to January 18, 2013 and the hearing is adjourned to January 17, 2013 at 9:00 a.m., or such other date and time as set by the Office of the Secretary and agreed to by the parties.

A copy of the Temporary Order dated December 3, 2012 is available at **www.osc.gov.on.ca**.

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1.4.7 Moncasa Capital Corporation and John Frederick Collins

FOR IMMEDIATE RELEASE
December 4, 2012

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION
AND JOHN FREDERICK COLLINS

TORONTO – Staff of the Ontario Securities Commission filed an Amended Statement of Allegations dated December 3, 2012 with the Office of the Secretary in the above noted matter.

A copy of the Amended Statement of Allegations dated December 3, 2012 is available at **www.osc.gov.on.ca**.

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION
AND JOHN FREDERICK COLLINS

AMENDED STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. This proceeding relates to the sale of securities of Moncasa Capital Corporation ("Moncasa") by the Respondents to 54 investors throughout Canada, raising approximately $1,200,000. Between April 1, 2008 and May 16, 2011 (the "Relevant Period"), the Moncasa securities were sold to investors in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") and in a manner that was contrary to the public interest.

II. THE RESPONDENTS

2. Montcasa Corporation was an Ontario corporation incorporated on January 3, 2008. Articles of Amendment of Montcasa Corporation were subsequently filed, and the company's name was changed to Moncasa effective April 10, 2008. Neither Montcasa nor Moncasa have ever been registered with the Commission in any capacity.

3. John Frederick Collins ("Collins") is a resident of Pickering, Ontario and is the sole director of Moncasa (and was the sole director of Montcasa). Collins was not registered in any capacity with the Commission during the Relevant Period, although he was registered as a salesperson with C.J. Elbourne Securities Inc. from February 2, 1994 to November 21, 1997 and with Marchment & Mackay Limited from November 28, 1997 to June 30, 2000.

III. ILLEGAL DISTRIBUTION OF MONCASA SHARES TO THE PUBLIC AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

4. In order to sell Moncasa securities, Collins and several unregistered and commissioned sales persons hired by him, contacted potential investors by telephone. All the investors were "cold called", some from a potential investor list purchased by Moncasa.

5. Moncasa investors were led to believe that their investment would be used to purchase luxury vacation properties in the Caribbean that would be available for rental purposes through a related Moncasa vacation club membership. Moncasa's website, www.moncasacapital.com, solicited investors to invest in Moncasa and created the illusion that Moncasa had multiple vacation properties available for use.

6. Investors were advised that units comprised of one common share of Moncasa and a common share purchase warrant, exercisable into common shares until six months from the closing date of the subscription. Additional funds were raised from new investors pursuant to subscription agreements. The additional subscriptions were purportedly accepted by a special resolution of the Board of Directors of Moncasa, of which Collins is the sole director.

7. After agreeing to invest, subscription agreements were sent to investors setting out the quantity, unit price and total amount of investment. Cheques were made payable and sent to Moncasa at 1 Yonge Street, Suite 1801, Toronto, Ontario, which was an office space rented by Collins. Investors received a share certificate signed by Collins for common shares in Moncasa.

8. Of the approximately $1,200,000 raised from investors,

   (a) less than 6% (USD$69,052.50) was used to purchase a single four-week time share condominium property in a Dominican Republic resort (the "Property");

   (b) at least $318,500 went to Collins to pay for personal expenses, personal credit card payments including interest charges, car payments and cash withdrawals; and

(c) the balance was spent on purported business expenses including salaries, commissions to sales persons, rent, advertising, marketing as well as legal fees relating to, amongst other things, the failed purchase of an exempt market dealer.

9. Requests from investors to return their investment have been ignored and as of May 16, 2011, all but $7,650.00 of funds raised investors had been expended and Moncasa did not own any properties.

10. By engaging in the conduct described above, the Respondents sold shares of Moncasa to Ontario residents and to residents throughout Canada, in circumstances where there were no exemptions available to them under the Act. Through these acts, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1) of the Act and contrary to the public interest.

11. The sales of Moncasa shares were trades in securities not previously issued and were therefore distributions. Contrary to subsection 53(1) of the Act and contrary to the public interest, Moncasa has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of those shares.

IV. FRAUDULENT CONDUCT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST OF MONCASA AND COLLINS

12. Moncasa and Collins engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on potential investors, contrary to section 126.1(b) of the Act and/or contrary to the public interest, as follows:

a) Misrepresentations to investors

13. During the sale of the shares of Moncasa, the Respondents made representations and provided information to potential investors orally, in marketing materials and on its website that were inaccurate and misleading, in an attempt to induce potential investors to purchase Moncasa shares.

14. In particular, the Respondents advised investors orally and/or in marketing materials that Moncasa would be investing in and developing vacation properties in the Caribbean, when in fact only USD$69,052.50 of the $1,200,000 raised had been invested in acquiring properties. Investors were also advised that the company had acquired "three unique residences", when in fact Moncasa had only acquired the use of the Property for four (4) one week periods, on an annual basis.

15. The Property was never made available for rent or use to investors or the public and generated no income. The Property subsequently became the subject of an unrelated legal dispute and Moncasa no longer has ownership over the Property or any other properties.

16. Further, in order to induce investors to invest in Moncasa, Collins and Moncasa made representations regarding the future value or price of the Moncasa shares and regarding Moncasa's shares being listed on a stock exchange. Collins has never taken any steps to take Moncasa public.

17. In addition, Moncasa's web site displayed logos of large, international hotel chains (such as The Ritz Carlton, Westin Hotels and Four Seasons) creating the illusion that Moncasa had a business relationship with these companies, when it did not. Further, Moncasa's web site displayed pictures of various resort locations and floor plan layouts creating the illusion that Moncasa owned these properties and they were available for use, when Moncasa did not own such properties and they were not available to be used.

b) Misappropriation of Investor Funds/Failure to Keep Proper Books and Records

18. Moncasa's only source of funds were funds obtained from investors. Once in possession of funds from investors, Collins misappropriated the funds by:

(a) using the funds to pay for personal expenses;

(b) transferring funds to another corporation owned by him that performed no services for Moncasa;

(c) making sizable cash withdrawals from Moncasa's corporate account; and

(d) co-mingling investor funds with his personal funds.

19. By engaging in the conduct described above, Collins failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, contrary to section 19 of the Act and contrary to the public interest.

c) Employment Of Abel Da Silva: Also Known As "Jim Wilson"

20. Collins employed several salespeople to sell Moncasa securities to investors, including Abel Da Silva ("Da Silva"). When acting as a salesperson for Moncasa, Da Silva used the alias "Jim Wilson".

21. Da Silva was never registered in any capacity with the Commission. He is the subject of several cease trade orders imposed by the Commission and has been previously sanctioned by the Commission and by the Ontario Court of Justice for various breaches of securities laws.

22. On February 22, 2012, Da Silva pled guilty, in the Ontario Court of Justice, to using an alias while trading in shares of Moncasa without registration and without a prospectus, and in breach of three separate cease trade orders issued by the Commission against him. Da Silva admitted that, between April 1, 2008 and September 30, 2008, he was employed by Moncasa and paid approximately 20% in cash for sales commissions.

V. COLLINS MISLED STAFF

23. Collins advised Staff that he employed an individual by the name of Jim Wilson. Collins further advised Staff that "Abel" was a nickname used by Jim Wilson, notwithstanding that Collins knew or ought to have known that (a) "Jim Wilson" was Da Silva; and (b) Da Silva sold Moncasa securities using the alias "Jim Wilson".

24. Collins also misled Staff by advising Staff (both in sworn testimony and in his Report of Exempt Distribution (OSC Form 45-106) filed with the Commission) that he did not pay commissions to any of the salespersons employed by Moncasa, notwithstanding that commissions were in fact paid.

25. As a consequence of the foregoing conduct, Collins materially misled Staff in respect of the sale of the shares of Moncasa, contrary to subsection 122(1)(a) of the Act and contrary to the public interest.

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

26. Staff allege that the foregoing conduct engaged in by the Respondents constituted breaches of Ontario securities law and/or was contrary to the public interest. In particular:

(a) The Respondents failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, contrary to section 19 of the Act and contrary to the public interest;

(b) The Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act as that subsection existed at the time the conduct at issue commenced on April 1, 2008, contrary to subsection 25(1) of the Act as subsequently amended on September 28, 2009 and contrary to the public interest;

(c) The Respondents traded in Moncasa shares without the required prospectus receipt or appropriate exemption, contrary to subsection 53(1) of the Act and contrary to the public interest;

(d) Collins knowingly made statements and provided evidence and information to Staff that was materially misleading or untrue and/or failed to state facts which were required to be stated in an effort to hide the violations of Ontario securities laws and breaches of duty, in contravention of subsection 122(1)(a) of the Act and contrary to the public interest;

(e) The Respondents made misleading or fraudulent misrepresentations to investors and misappropriated investors funds knowing or having reasonably ought to have known that they would result in a fraud on a person, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(f) As the sole officer and director of Moncasa, Collins has authorized, permitted or acquiesced in the breaches of sections 19, 25, 53 and 126.1(b) of the Act by Moncasa contrary to section 129.2 of the Act, and in so doing has engaged in conduct contrary to the public interest.

27. The course of conduct engaged in by the Respondents as described herein compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

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

Dated at Toronto this 3rd day of December, 2012.

1.4.8 VIncent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

FOR IMMEDIATE RELEASE
December 4, 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 held on November 29, 2012, the Commission issued an Order in the above named matter with certain provisions. The Merits Hearing will be reconvened on December 19, 2012, at 3:30 p.m. at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, ON.

A copy of the Order dated December 3, 2012 is available at **www.osc.gov.on.ca**.

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1.4.9 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
December 4, 2012

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC.,
CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ROBERT PATRICK ZUK

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Robert Patrick Zuk in the above named matter.

The hearing will be held on December 5, 2012 at 3:30 p.m. at the temporary offices of ASAP Reporting Services, Suite 900, 333 Bay Street, Toronto, in the North Arbitration Room.

A copy of the Notice of Hearing dated December 4, 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 Sprott Asset Management LP and Sprott All Cap Fund

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger – approval required because merger does not meet the criteria for pre-approved re-organizations and transfers in National Instrument 81-102 – terminating fund and continuing fund have different investment objectives – merger not a "qualifying transaction" or a tax-deferred transaction under the Income Tax Act – securityholders of terminating funds provided with timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

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

November 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
SPROTT ASSET MANAGEMENT LP
(the Filer or Sprott)

AND

SPROTT ALL CAP 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 Sprott Canadian Equity Fund (the **Continuing Fund)** (together with the Terminating Fund, the **Funds**) under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

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. Sprott is a limited partnership established under the laws of the Province of Ontario and its head office is located in Toronto, Ontario.

2. Sprott is registered as an adviser in the category of portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador and as an investment fund manager, exempt market dealer and commodity trading manager in Ontario.

3. Sprott 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 May 15, 2012 in all of the provinces and territories of Canada. The Funds are reporting issuers under the applicable securi-

ties legislation of each province and territory of Canada. None of the Funds are 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.

8. NAV per unit for each series of each Fund are calculated using similar methodologies and currencies. Assets and liabilities generally are valued in the same manner.

9. Both Funds have substantially similar management fee structures and other fee arrangements.

The Merger

10. A press release and material change report in respect of the proposed Merger were filed on SEDAR on October 10, 2012. Units of the Terminating Fund ceased to be available for sale on that date.

11. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), Sprott 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.

12. 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. Following the Merger, all pre-authorized chequing plans which were established with respect to the Terminating Fund will be re-established with respect to the Continuing Fund unless unitholders who are affected by the Merger advise Sprott otherwise.

13. Sprott will waive any redemption-related costs such as redemption fees and short-term trading fees for investors who redeem their units of the Terminating Fund between October 10, 2012, the date that the proposed Merger was announced, and the date of the Merger.

14. 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 those of the Continuing Fund to be "substantially similar"; and (ii) the Merger will not be a tax-deferred transaction as described in subsection 5.6(1)(b) of NI 81-102. Except for these two 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.

15. Sprott 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 or hold their units in registered plans, and effecting the Merger on a taxable basis will afford taxable unitholders realization of that loss and the ability to 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.

16. A management information circular in connection with the Merger was mailed to unitholders of the Terminating Fund on November 9, 2012 and subsequently filed on SEDAR. The most recently filed fund facts documents of the Continuing Fund were also included in the meeting materials sent to unitholders of the Terminating Fund.

17. The management information circular provides unitholders of the Terminating Fund with information about the investment objectives of the Funds and tax consequences of the Merger. In particular, the management information circular contains the following information that Sprott considered to be material so that unitholders of the Terminating Fund may consider such information before voting on the Merger: (i) the material differences between the Terminating Fund and the Continuing Fund; (ii) the tax implications of the Merger; (iii) a statement that the units of the Continuing Fund acquired by securityholders upon the Merger are subject to the same redemption charges to which their securities of the Terminating Fund were subject prior to the Merger; and (iv) the fact that unitholders can obtain, at no cost, the annual information form, the most recently

filed fund facts, the most recent interim and annual financial statements, and the most recent management report of fund performance that have been made public by contacting Sprott or by accessing the documents on Sprott's website. Accordingly, unitholders of the Terminating Fund will have an opportunity to consider this information prior to voting on the Merger.

18. All costs and expenses associated with the Merger will be borne by Sprott. These costs consist mainly of brokerage fees, legal, proxy solicitation, printing, mailing and regulatory fees. No sales charge will be payable by any unitholder in connection with the exchange of units of the Terminating Fund into the Continuing Fund.

19. Unitholders of the Terminating Fund will be asked to approve the Merger at a special meeting scheduled to be held on or about December 11, 2012. If the meeting is adjourned, the adjourned meeting will be held on or about December 13, 2012.

20. If the requisite approvals are obtained, it is anticipated that the Merger will be implemented on or about December 14, 2012. If unitholder approval is not obtained, the Terminating Fund will be terminated on or about January 17, 2013.

21. 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.

22. 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 low load option, remaining deferred sales charge schedule as their units in the Terminating Fund.

23. 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 December 14, 2012 (the **Merger Date**):

    (a) Prior to the Merger Date, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objectives 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 objectives for a brief period of time prior to the Merger;

    (b) The value of the Terminating Fund's portfolio and other assets will be determined at the close of business on the business day prior to the Merger Date in accordance with its trust agreement;

    (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 the Terminating Fund's liabilities and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the Merger Date;

    (e) The units of the Continuing Fund received by the Terminating Fund will have an aggregate NAV equal to the value of the Terminating Fund's portfolio assets and other assets that the Continuing Fund is acquiring, which units will be issued at the applicable series NAV per unit as of the close of business on the Merger Date;

    (f) On or shortly before the Merger Date, the Terminating Fund will distribute its net income and net realized capital gains for its current taxation year, to the extent necessary to eliminate its liability for tax;

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

    (h) As soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

24. 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.

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

    (a) Unitholders of the Terminating Fund and the Continuing Fund will enjoy increased economies of scale and lower fund operating expenses (which are borne

indirectly by unitholders) as part of a larger combined Continuing Fund;

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

(c) 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;

(d) The Continuing Fund will have a portfolio of greater value, allowing for increased portfolio diversification opportunities; and

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

and accordingly has recommended to the unitholders of the Terminating Fund that they vote for the resolution that will authorize Sprott 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.

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

2.1.2 WGI Heavy Minerals, Incorporated

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 under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

November 23, 2012

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND, ONTARIO,
PRINCE EDWARD ISLAND, QUÉBEC AND
SASKATCHEWAN
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
WGI HEAVY MINERALS, INCORPORATED
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer (the Exemption Sought).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer is a corporation existing under the *Business Corporations Act* (British Columbia) (the BCBCA);

2. the registered office of the Filer is located in Vancouver, British Columbia, Canada and the head office is located in Coeur D'Alene, Idaho, USA;

3. the Filer is a reporting issuer in each of the Jurisdictions;

4. the Filer's authorized capital consists of 100,000,000 common shares without par value (the WGI Shares) and 10,000,000 preferred shares without par value; the Filer has 23,707,598 WGI Shares issued and outstanding;

5. on July 24, 2012, a take-over bid circular of Opta Minerals (the Circular) was mailed to the holders of WGI Shares and subsequently filed under the Filer's SEDAR profile at www.sedar.com;

6. the Offer expired at 5:00 p.m. (Toronto time) on August 29, 2012 (the Expiry Time); as at the Expiry Time, an aggregate of 22,281,816 WGI Shares, representing approximately 94.0% of the issued and outstanding WGI Shares, were deposited under the Offer and not withdrawn;

7. as of August 29, 2012, all of the WGI Shares deposited under the Offer had been taken up by Opta Minerals in consideration for $13,369,089.60 cash;

8. on September 7, 2012, Opta Minerals commenced a compulsory acquisition of the outstanding WGI Shares not owned by it pursuant to the compulsory acquisition provisions of Section 300 of the BCBCA (the Compulsory Acquisition);

9. on November 9, 2012, Opta Minerals completed the Compulsory Acquisition and became the owner of all of the issued and outstanding WGI Shares; the Filer has no securities outstanding other than the WGI Shares held by Opta Minerals;

10. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer other than its obligation to file and deliver on or before November 14, 2012 (the Filing Deadline) interim financial statements and management's discussion and analysis as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

11. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total worldwide;

12. the WGI Shares were listed and posted for trading on the Toronto Stock Exchange under the symbol "WG" on March 31, 1992; the WGI Shares were delisted from trading on the Toronto Stock Exchange effective as of the close of business on November 13, 2012;

13. no securities of the Filer, 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;

14. the Filer has no current intention to seek public financing by way of an offering of securities;

15. the Filer is applying for a decision that it is not a reporting issuer in all jurisdictions of Canada in which it is currently a reporting issuer;

16. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 Voluntary Surrender of Reporting Issuer Status (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument;

17. the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* in order to apply for the Exemption Sought

because it is a reporting issuer in British Columbia; and

18. the Filer, upon the granting of the Exemption Sought, will no longer be a reporting issuer or the equivalent in any jurisdiction of Canada.

Decision

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

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

"Peter Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.1.3 Open EC Technologies, Inc.

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 under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

November 23, 2012

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

AND

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

AND

IN THE MATTER OF
OPEN EC TECHNOLOGIES, INC.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is deemed to have ceased to be a reporting issuer in the Jurisdictions (the Exemptive Relief Sought);

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer is a corporation governed by the *Business Corporations Act* (British Columbia) with its head office located at 120 Lonsdale Avenue 3rd Floor, North Vancouver, British Columbia V7M 2E8;

2. the Filer is a reporting issuer in the Jurisdictions;

3. on October 25, 2012, pursuant to a court-approved plan of arrangement (the Plan of Arrangement) under the *Business Corporations Act* (British Columbia), the Filer became a wholly-owned subsidiary of QHR Technologies Inc. (QHR) and the former securityholders of the Filer became entitled to receive either cash or common shares of QHR;

4. pursuant to the Plan of Arrangement, all of the warrants and options of the Filer were exchanged for common shares of QHR;

5. trading in the common shares of the Filer on the TSX Venture Exchange has been halted since September 7, 2012;

6. on October 30, 2012, the Filer was delisted from the TSX Venture Exchange;

7. the outstanding securities of the Filer, 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;

8. no securities of the Filer, 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;

9. the Filer 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;

10. the Filer has no current intention to seek public financing by way of an offering of securities;

11. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because it wanted to avoid the 10-day waiting period under that Instrument;

12. upon granting the Exemptive Relief Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction of Canada;

13. the Filer is not eligible to use the simplified procedure under CSA Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia; and

14. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except for the obligation, that arose after QHR came to be the Filer's sole shareholder pursuant to the Plan of Arrangement, to file its annual financial statements and related management's discussion and analysis for the year ended June 30, 2012, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements and management's discussion and analysis as required under National Instrument 52-109 *Certification of Disclosure in Filers' Annual and Interim Filing*s.

Decision

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

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

"Peter Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.1.4 Creststreet Asset Management Limited et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of mutual funds for the purpose of 5.5(1)(a) – change of manager is not detrimental to investors or the public interest – investors have received timely and adequate disclosure regarding the change of manager.

Applicable Legislative Provisions

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

November 23, 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
CRESTSTREET ASSET MANAGEMENT LIMITED
("Creststreet") AND
CRESTSTREET RESOURCE FUND,
CRESTSTREET ALTERNATIVE ENERGY FUND AND
CRESTSTREET DIVIDEND & INCOME FUND
(collectively, the "Funds")

AND

IN THE MATTER OF
BROMPTON FUNDS LIMITED
("Brompton", together with Creststreet, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") approving, pursuant to section 5.5(1)(a) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**"), the change in the manager of the Funds from Creststreet to Brompton (the "Approval Sought").

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

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

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

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. Except as otherwise stated, all dollar amounts herein are expressed in Canadian dollars.

Representations

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

Creststreet and the Funds

1. Creststreet is:

   (a) a corporation governed by the *Canada Business Corporations Act* (the "**CBCA**"). Its head office is located at 70 University Avenue, Suite 1450, Toronto, Ontario M5J 2M4;

   (b) registered as an adviser in the category of portfolio manager and as an investment fund manager under the *Securities Act* (Ontario) (the "**OSA**");

   (c) an investment management firm that has assets under management of approximately $47 million; and

   (d) the manager of the Funds.

2. Each of the Funds is a class of shares of Creststreet Mutual Funds Limited ("**CMFL**"), a mutual fund corporation incorporated under the CBCA. The Funds comprise three mutual funds that are qualified for distribution in all provinces of Canada pursuant to a simplified prospectus and annual information form that have been prepared and filed in accordance with applicable Canadian securities regulatory requirements. The Funds account for approximately $30 million of the assets under management by Creststreet.

3. Neither Creststreet nor any of the Funds is in default of the securities legislation in any jurisdiction of Canada.

Brompton

4. Brompton is:

   (a) an Ontario business corporation and is a wholly-owned subsidiary of Brompton Corp., an unlisted reporting issuer in all provinces of Canada. Brompton's and Brompton Corp.'s head office is located at 181 Bay Street, Suite 2930, Toronto, Ontario M5J 2T3;

   (b) registered as an adviser in the category of portfolio manager under the Legislation and with the OSC in the categories of commodity trading manager, exempt market dealer and investment fund manager. Brompton is also registered as an exempt market dealer in the provinces of British Columbia, Alberta and Québec; and

   (c) not in default of the securities legislation in any jurisdiction of Canada.

5. Brompton has been a leading provider of TSX-listed investment funds for over a decade. Brompton has offered and currently manages 12 public closed-end and flow-through funds that provide income-oriented, sector-specific and tax advantaged investment solutions on a low cost basis. Currently, Brompton has assets under management in the funds it manages of approximately $1.3 billion.

Change of Manager

6. Pursuant to an agreement (the "**Agreement**") dated August 28, 2012, Creststreet has agreed to transfer the management and administrative agreements (the "**Fund Contracts**") in respect of the Funds to Brompton which will result in a change of portfolio manager and investment fund manager for the Funds on or about November 30, 2012 (the "**Change of Manager Transaction**"). In addition, Brompton has also agreed to acquire all of the voting shares of CMFL from Creststreet under the Agreement. At closing of the Change of Manager Transaction, Brompton will agree to be bound by, assume the liabilities of and provide all services under the Fund Contracts. Brompton and Creststreet are not related parties and the Agreement was negotiated at arm's length.

7. For the purposes of section 5.5 of NI 81-102, the Change of Manager Transaction will result in a change in the manager of the Funds.

8. As required by section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, a press release dated August 29, 2012 disclosing the Change of Manager Transaction has been issued and filed on SEDAR, a material change report of all of the Funds describing the Change of Manager Transaction was filed on SEDAR on September 7, 2012, and amendments to the prospectuses of the Funds disclosing the Change of Manager Transaction were filed on SEDAR on September 7, 2012.

9. Following the completion of the Change of Manager Transaction: (i) the management and administration of the Funds will become part of Brompton's asset management business; (ii) the current directors and officers of Brompton are expected to remain the directors and officers of Brompton; and (iii) the current directors and officers of Brompton are expected to become the directors and officers of CMFL. The current directors and officers of Brompton, and the proposed directors and officers of CMFL, have the integrity and experience contemplated by sub-paragraph 5.7(1)(a)(v) of NI 81-102.

10. After the completion of the Change of Manager Transaction, the portfolios of each of the Funds will be managed by a portfolio manager of Brompton who has experience in managing flow-through funds and resource assets. In addition, a current portfolio manager of Creststreet (the "**Continuing PM**") is expected to join Brompton following completion of the Change of Manager Transaction. The Continuing PM will continue to be a portfolio manager for the Funds, thereby providing continuity and experience to the management of the portfolios of each of the Funds.

11. Brompton has an experienced and well respected independent review committee ("**IRC**") in place for all of its funds and upon closing of the Change of Manager Transaction, the members of the IRC for Brompton's current funds will become the IRC members of the Funds in accordance with applicable law.

12. Brompton possesses all registrations under the OSA and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") to allow it to manage the Funds after closing of the Change of Manager Transaction.

13. Brompton will have the appropriate personnel, policies and procedures and systems in place to assume the management of the Funds on closing of the Change of Manager Transaction.

14. Brompton proposes to continue the service provider contracts currently in place for the Funds following the closing of the Change of Manager Transaction, although Brompton proposes to change the auditor of the Funds and CMFL to its funds' auditor, PricewaterhouseCoopers LLP. The change of auditor will be effected as contemplated by section 5.3.1 of NI 81-102.

15. In addition to continued experienced investment fund management and portfolio management, other benefits of the Change of Manager Transaction to shareholders of the Funds are expected to include:

    (a) lower management expense ratios ("**MERs**"), as following the completion of the Change of Manager Transaction, Brompton expects to utilize economies of scale to provide operating cost efficiencies for the Funds, thereby resulting in lower MERs; and

    (b) improved liquidity, as following the completion of the Change of Manager Transaction, Brompton intends to allow investors to purchase, redeem and switch shares of the Funds on a daily basis starting in 2013. Currently, purchases, redemptions and switches of shares of the Funds are only permitted on a weekly basis.

16. Brompton does not expect its acquisition of the Fund Contracts pursuant to the Change of Manager Transaction to adversely affect the operation and administration of the Funds.

17. Brompton has no current intention to change the fundamental investment objectives of the Funds following closing of the Change of Manager Transaction. Notwithstanding the foregoing, Brompton may implement changes to certain of the Funds following the completion of the Change of Manager Transaction. Any such changes will be implemented in accordance with the prospectus disclosure of the Funds and applicable securities laws. For example, to the extent that any changes made to the Funds following the Change of Manager Transaction would constitute "material changes" within the meaning of NI 81-106, press releases will be issued, material change reports filed and amendments made to the prospectuses of the applicable Funds.

18. The Change of Manager Transaction was disclosed and communicated to shareholders of the Funds as required and, as reflected in the management information circular dated September 26, 2012 relating to the special meeting (the "**Meeting**") of shareholders of the Funds held on November 8, 2012 (the "**Circular**"), the shareholders of each Fund were provided with the opportunity to consider and approve the Change of Manager Transaction.

19. As indicated in the Circular, the IRC for the Funds has reviewed the terms of the Change of Manager Transaction on behalf of each of the Funds and the process to be followed in connection with the transaction, and has advised Creststreet that, in the IRC's opinion having reviewed the transaction as a potential "conflict of interest", following the process proposed, the transaction, and the resulting change of manager of the Funds, achieves a fair and reasonable result for each of the Funds.

20. The shareholders of each of the Funds approved the Change of Manager Transaction at the Meeting. In addition to the Change of Manager Transaction, at the Meeting shareholders of:

    (a) each of the Funds passed a special resolution to approve moving the Funds from weekly to daily valuation; and

    (b) each of Creststreet Alternative Energy Fund ("**CAEF**") and Creststreet Resource Fund ("**CRF**") passed a special resolution to approve the merger of CAEF into CRF (the "Fund Merger").

21. The Fund Merger is anticipated to become effective on or about November 23, 2012 and has been approved by the IRC of CAEF and CRF. The approval of the securities administrators in respect of the Fund Merger is not being sought on the basis that the Fund Merger meets the criteria of the exception contained in section 5.6 of NI 81-102.

22. Brompton has provided a notice to the securities administrators pursuant to section 11.9 of NI 31-103 requesting a non-objection in respect of the Change of Manager Transaction.

23. In conjunction with the closing of the Change of Manager Transaction and to reflect the change in management, CRF, Creststreet Dividend & Income Fund and CMFL will change their names to Brompton Resource Fund, Brompton Dividend & Income Fund and Brompton Mutual Funds Limited, respectively, on or about November 30, 2012.

Decision

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

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

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

2.1.5 Online Energy Inc. – 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: Online Energy Inc., Re, 2012 ABASC 4987

November 27, 2012

Burnet, Duckworth & Palmer LLP
2400, 525 - 8th Avenue SW
Calgary, AB T2P 1G1

Attention: Kerry McGinnis

Dear Madam:

Re: Online Energy Inc. (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba 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

2.1.6 Essex Angel Capital Inc.

Headnote

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

Applicable Legislative Provisions

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

November 29, 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
ESSEX ANGEL CAPITAL INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Applicant for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from:

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

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

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

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

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

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

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

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

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

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

Representations

The Applicant has represented to the Commission that:

1. The Applicant is a corporation governed by the *Canada Business Corporations Act*, with its registered and principal office address located at Suite 516, 720 Ouellette Avenue, Windsor, ON N9A 1C2.

2. The Applicant is a reporting issuer in the Jurisdiction and the Passport Jurisdictions.

3. The Applicant is a private equity investor whose common shares trade on the TSX Venture Exchange under the symbol 'EXC".

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

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

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

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

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

   (b) pre-changeover Canadian GAAP.

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

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

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

   (b) Part 4 contains requirements based on pre-changeover Canadian GAAP and applies to financial statements, financial information, operating statements and pro forma financial statements for periods

relating to financial years beginning before January 1, 2011.

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

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

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

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

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

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

14. The Applicant's interim financial statements for the interim periods ended November 30, 2011, February 29, 2012 and May 31, 2012 (the "**Interim Financial Statements**") were not prepared in accordance with IAS 34 Interim Financial Reporting (**IAS 3**4) pursuant to Part 3 of NI 52-107.

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

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

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

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

Decision

The Ontario Securities Commission is satisfied that the decision meets the test set out in the Legislation. The Exemption Sought is granted provided that:

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

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

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

4. the Applicant complies with the version of NI 51-102 that was in effect on December 31, 2010 (together with any amendments to NI 51-102 that

are not related to IFRS and that come into force after January 1, 2011) for all documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to the Applicant's Deferred Financial Years;

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

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

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

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

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

10. if, notwithstanding this order, the Applicant decides not to rely on the Exemption Sought and files an interim financial report prepared in accordance with IAS 34 for an interim period in a deferred financial year, the Applicant must, at the same time:

    (a) restate, in accordance with IAS 34, any interim financial statements for any previous interim period in the same deferred financial year (each, a "**Previous Interim Perio**d") that were originally prepared in accordance with pre-changeover Canadian GAAP and filed pursuant to this order; and

    (b) file a restated interim financial report prepared in accordance with IAS 34 for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS; and

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

    (a) restate, in accordance with IAS 34, any interim financial statements for any Previous Interim Period that were originally prepared in accordance with pre-changeover Canadian GAAP and filed pursuant to this order; and

    (b) file a restated interim financial report prepared in accordance with IAS 34 for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

2.1.7 Desjardins Financial Security Investments Inc. and MGI Financial Inc

Headnote

NP 11-203 – relief granted from the requirements of Sections 2.2, 2.3, 2.5, 3.2, and 4.2 of NI 33-109 in order to take advantage of the bulk transfer exemption provisions of Policy Statement/Companion Policy 33-109 CP to NI 33-109.

Applicable Legislative Provisions

National Instrument 33-109 Registration Information, ss. 2.2, 2.3, 2.5, 3.2, 4.2.

November 30, 2012

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

AND

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

AND

IN THE MATTER OF
DESJARDINS FINANCIAL SECURITY
INVESTMENTS INC.
(DFSI)

AND

MGI FINANCIAL INC.
(MGIF) (the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions has received an application dated October 22, 2012 from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements of Sections 2.2, 2.3, 2.5, 3.2 and 4.2 of National Instrument 33-109 – *Registration Information* (**NI 33-109**), in order to take advantage of the bulk transfer exemption provisions of Policy Statement/Companion Policy 33-109 CP to NI-33-109 (33-109 CP) (the **Requested Exemptive Relief**).

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

(a) the Autorité des marchés financiers du Québec (the **Autorité**) is the principal regulator for this application;

(b) the Filers have 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, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and

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

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102, National Instrument 31-102 – *National Registration Database* (**NI 31-102**) and NI 33-109 have the same meaning when used in this decision, unless otherwise defined.

Representations

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

1. MGIF is a company continued in 2003 under the *Canada Business Corporations Act* and which will be continued under the *Business Corporations Act* (Québec) before November 30, 2012, whose head office is located at 1150, rue de Claire-Fontaine, Québec, QC G1R 5G4. MGIF is a wholly-owned subsidiary of Desjardins Financial Security Life Assurance Company (DFSLA).

2. MGIF is a mutual fund dealer duly registered with the Autorité and is also registered as such in the following provinces: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador. MGIF is an exempt market dealer duly registered with the AMF and in the province of Ontario. MGIF is a member of the Mutual Fund Dealers Association of Canada (**MFDA**).

3. The following information also relates to MGIF:

   Business number: 104515515RC0002
   NRD #: 4270
   Number of business locations: 106

4. None of MGIF's representatives will be relocated during the upcoming bulk transfer.

5. DFSI is a company incorporated in 1991 under the *Companies Act* (Québec), Part IA, whose head office is located at 1150, rue de Claire-Fontaine, Québec, QC G1R 5G4. DFSI is also a wholly-owned subsidiary of DFSLA.

6. DFSI is a mutual fund dealer and exempt market dealer duly registered with the Autorité and is also registered as such in the following provinces: British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador. DFSI is also a mutual dealer in the province of Manitoba. It is also a member of the MFDA.

7. The following information also relates to DFSI:

   Business number: 1141106519
   NRD #: 23430
   Number of business locations: 127

8. None of DFSI's representatives will be relocated during the upcoming bulk transfer.

9. The amalgamation transaction proposed to be undertaken by the Filers (the **Amalgamation**) will result in the transfer, effective on November 30, 2012 at 11:59 pm, of all of the current activities of MGIF and DFSI, which require registration, to the amalgamated entity (**Amalco**). Amalco will assume all of the existing registrations, approvals, rights and obligations for all of MGIF's and DFSI's registered representatives, permitted individuals and other employees as well as all of the business locations of MGIF and DFSI.

10. Amalco will have the following information associated with it:

    Name: Desjardins Financial Security Investments Inc.
    ("Desjardins Sécurité Financière Investissements Inc." in French)
    Business number: 1141106519
    NRD #: 23430 (DFSI's current NRD number)
    Number of business locations: 233.

11. It is not anticipated that there will be any business process interruptions or disruption in the ability of MGIF and/or DFSI to trade on behalf of their respective clients as a result of the Amalgamation and that Amalco should be able to trade for its clients immediately after the completion of the Amalgamation.

12. Amalco will continue to be registered in the same categories of registration as MGIF and DFSI across Canada and will continue to be a member of the MFDA and will be subject to, and will comply with, all applicable securities legislation and the rules of the MFDA. Amalco will carry on the same securities business of MGIF and DFSI in substantially the same manner as those two entities and with the same personnel as MGIF and DFSI.

13. By letter dated October 12, 2012, the MFDA gave its approval to the Amalgamation.

14. The Filers are not in default of the securities legislation in any Jurisdiction.

15. Given the significant number of locations and number of registered individuals of MGIF and DFSI to be transferred to Amalco, it would be unduly time-consuming to transfer each to Amalco in accordance with the requirements of NI 33-109. Moreover, it is imperative that the transfer of the locations and individuals occur on the same date, in order to ensure that there is no break in registration.

16. The Requested Exemptive Relief will not be contrary to the public interest and will have no negative consequences on the ability of the Filers and Amalco to comply with all applicable regulatory requirements or the ability to satisfy any obligations to the clients of the Filers.

Decision

The principal regulator is satisfied that the exemptive relief application 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 Exemptive Relief is to be granted, provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the bulk transfer, and make such arrangement in advance of the bulk transfer.

“Eric Stevenson”
Superintendent, Client services and distribution
Autorité des Marchés Financiers

2.1.8 Global Growth Assets Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to scholarship plan and mutual fund for extension of prospectus lapse date to January 15, 2013 – additional time needed for consideration of consultant's report required pursuant to temporary order issued against the investment fund manager – extension of lapse date will not impact currency of disclosure relating to the funds.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S 5, as am., s. 62(5).

November 30, 2012

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

AND

IN THE MATTER OF
GLOBAL GROWTH ASSETS INC.
(the Manager)

AND

GLOBAL EDUCATIONAL TRUST PLAN
(the Plan)

AND

CAPITAL PRESERVATION FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the manager for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Plan and the Fund be extended as if the lapse date of the Plan's prospectus dated August 26, 2011 and the Fund's prospectus dated November 30, 2011 (together, the "**Current Prospectus**") is January 15, 2013 (the **Exemption Sought**).

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

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

(b) the Manager has provided notice that section 4.7(1) of Multilateral Instrument 11-102 **Passport System** (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Nova Scotia (together with the Jurisdiction, 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 Manager:

1. The Manager is the investment fund manager of each of the Plan and the Fund.

2. The Plan is an "Education Savings Plan" under s. 146.1 of the Income Tax Act (Canada).

3. The Fund is a mutual fund established by a declaration of trust in Ontario.

4. Units of the Plan are currently qualified for distribution in each of the Jurisdictions under a prospectus dated August 26, 2011 and the Plan is a reporting issuer in each of the Jurisdictions.

5. Given the anticipated timing of a report (the **Consultant's Repor**t) requested by OSC Staff from the Manager, on September 5, 2012 OSC Staff granted a lapse date extension to the Plan to November 30, 2012.

6. Units of the Fund are currently qualified for distribution in each of the Jurisdictions under a prospectus dated November 30, 2011 and the Fund is a reporting issuer in each of the Jurisdictions.

7. None of the Plan, the Fund, or the Manager, is in default of securities legislation in any of the Jurisdictions.

8. The lapse date (the **Current Lapse Date**) of each Current Prospectus is November 30, 2012. Under the Legislation the distribution of each of the Plan's and the Fund's units would have to cease on the Current Lapse Date unless (a) a pro forma prospectus for the Plan was filed at least 30 days prior to the Current Lapse Date, (b) the final prospectus is filed no later than 10 days after the Current Lapse Date and (c) a receipt for the final prospectus is obtained within 20 days of the Current Lapse Date.

9. A pro forma prospectus for the Plan was filed on July 26, 2012 and an extension was granted moving the lapse date to November 30, 2012. This means that absent the Exemption Sought,

the final prospectus would have to be filed by December 10, 2012, and a receipt must be obtained by December 20, 2012, in order for the distribution of units of the Plan to continue without interruption.

10. A pro forma prospectus for the Fund was filed on May 16, 2012. This means that absent the Exemption Sought, the final prospectus would have to be filed by December 10, 2012, and a receipt must be obtained by December 20, 2012, in order for the distribution of units of the Plan to continue without interruption.

11. Since September 5, 2012, an initial Consultant's Report was submitted to OSC staff. Upon review, OSC staff has determined that additional revisions to the Consultant's Report are necessary. OSC staff is currently awaiting revisions to the Consultant's Report which will enable OSC staff to further determine the acceptability of the Consultant's Report.

12. Given the anticipated timing of revisions to the Consultant's Report the Manager will be providing to OSC staff, OSC staff have indicated to the Manager that they will not be able to complete their review of the pro forma prospectus and issue a receipt for the final prospectus within the required time period. The Exemption Sought is requested in order to allow OSC staff sufficient time to complete its review and consideration of the acceptability of the revised Consultant's Report without resulting in the Plan or the Fund being forced to cease distribution of its units because each Current Prospectus has lapsed.

13. Since the date of the Current Prospectuses, there has been no undisclosed material change in the Plan or the Fund, as appropriate. Accordingly, each Current Prospectus continues to provide accurate information regarding the Plan or the Fund, as appropriate.

14. Should any material changes be proposed in the interim, the prospectus of the Plan or the Fund, as appropriate, will be amended accordingly. Therefore, the Exemption Sought will not affect the currency or accuracy of the information contained in either Current Prospectus, and therefore will not be prejudicial to the public interest.

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.

"Vera Nunes"
Manager, Investment Funds Branch

2.1.9 Pro-Financial Asset Management Inc. and the Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus for 47 days – additional time needed for renewal of a prospectus due to ongoing review – extension of lapse date will not impact currency of disclosure relating to the mutual funds.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5 as am., s. 62(5).

November 28, 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
PRO-FINANCIAL ASSET MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
THE FUNDS LISTED IN SCHEDULE A
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (**Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Funds be extended as if the lapse date of the simplified prospectus and annual information form of the Funds dated November 18, 2011 (the **Current Prospectus**) is January 4, 2013 (the **Requested Relief**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and National Instrument 81-101 – *Mutual Funds Prospectus Disclosure* (**NI 81-10**1) have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

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

1. The Filer is the manager of the Funds listed in Schedule A hereto.

2. The Filer is a corporation existing under the laws of the Province of Ontario and is registered with the OSC as a portfolio manager and exempt market dealer. The OSC has imposed terms and conditions on their registration, which are set out on the OSC's website at www.osc.gov.on.ca. To the best of its knowledge, information and belief, the Filer is in compliance with, and will continue to comply with, the terms and conditions imposed on its registrations by the OSC.

3. On November 1, 2010, the Filer applied to be registered as an investment fund manager in accordance with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. The Filer is working diligently to address all of the outstanding inquiries from the OSC to obtain an investment fund manager registration.

4. Units of the Funds are currently qualified for distribution in each of the Jurisdictions under the current simplified prospectus of the Funds dated November 18, 2011 (the **Current Prospectu**s) and the Funds are reporting issuer in each of the Jurisdictions.

5. Neither the Funds, nor the Filer, is in default of securities legislation in any of the Jurisdictions.

6. Pursuant to the Legislation, the lapse date for the Current Prospectus is November 18, 2012 (the **Current Lapse Date**). Accordingly, under the Legislation, the distribution of units of the Funds would have to cease on the Current Lapse Date unless (i) the Funds file a pro-forma prospectus for the Funds at least 30 days prior to the Current Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after the Current Lapse Date i.e. by November 28, 2012; and (iii) a receipt for the final simplified prospectus is obtained within 20 days of the Current Lapse Date.

7. On October 18, 2012, a pro forma simplified prospectus and a pro forma annual information form for the Funds (the **Pro Forma Prospectus**) were filed with the OSC. In order to comply with the requirements of the Legislation, the final simplified prospectus and annual information form for the Funds (the "**Final Renewal Prospectus**") must be filed on or before November 28, 2012 and a receipt must be obtained by December 8, 2012 in order for the distribution of units of the Funds to continue without interruption.

8. Given the ongoing review of the Pro Forma Prospectus and subsequent comments by the OSC, the most recent of which was received on November 23, 2012, the Manager is requesting additional time by means of an extension of the Current Lapse Date to January 4, 2013, to permit the Manager to respond to the OSC's comment letter(s), and file the Final Renewal Prospectus for the Funds which satisfactorily addresses all of the comments without resulting in the Funds being forced to cease distribution of units because the Current Prospectus has lapsed.

9. There have been no material changes in the affairs of the Funds since the date of the Current Prospectus. Accordingly, the Current Prospectus represents current information regarding each Fund.

10. The Requested Relief will not materially affect the currency or accuracy of the information contained in the Current Prospectus and therefore will not be prejudicial to the public interest.

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.

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

SCHEDULE A

Pro FTSE RAFI Canadian Index Fund
Pro FTSE RAFI US Index Fund
Pro FTSE RAFI Global Index Fund
Pro FTSE RAFI Hong Kong China Index Fund
Pro FTSE RAFI Emerging Markets Index Fund
Pro FTSE NA Dividend Index Fund
Pro Fundamental Bond Index Fund
Pro Fundamental Balanced Index Fund
Pro Money Market Fund

(collectively, the Funds)

2.1.10 Provisus Wealth Management Limited et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the mutual fund self-dealing restrictions in the Securities Act (Ontario) and the conflicts of interest provisions in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to allow pooled funds to invest in securities of underlying funds under common management – relief subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(3), and 113.
National Instrument 31–103 Registration Requirements, Exemptions, and Ongoing Registrant Obligations, ss. 13.5(2)(a), 15.1.

September 10, 2012

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

AND

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

AND

IN THE MATTER OF
PROVISUS WEALTH MANAGEMENT LIMITED
(the Filer)

AND

PROVISUS NORTH AMERICAN EQUITY CORPORATE CLASS
PROVISUS GLOBAL EQUITY CORPORATE CLASS
PROVISUS TOTAL EQUITY CORPORATE CLASS
PROVISUS BALANCED CORPORATE CLASS
(the Initial Top Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on its behalf and on behalf of the Initial Top Funds and any other investment fund which is not a reporting issued under the *Securities Act* (Ontario) (the **Act**) established, advised or managed by the Filer after the date hereof (the **Future Top Funds** and, together with the Initial Top Funds, the **Top Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption (the **Exemption Sought**) from:

1. the restriction contained in paragraphs 111(2)(b) and subsection 111(3) of the Act which prohibit the following:

   (i) a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, and

   (ii) a mutual fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) above; and

   (the **Related Issuer Restriction Relie**f)

2. the restriction in

   (i) sub-clause 13.5(2)(a)(ii) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase securities of an issuer in which a responsible person or an associate of the responsible person is a partner, officer or director unless the fact is disclosed to the client and written consent of the client to the purchase is obtained before the purchase (the **31-103 Relief**).

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 is intended to be relied upon in Alberta, British Columbia, Manitoba, Nova Scotia, Quebec and Saskatchewan (the **Non-Principal Passport Jurisdictions**).

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Ontario) with its head office located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in Ontario and as an adviser in the category of portfolio manager in the Provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan.

3. The Filer is, or will be, responsible for managing the assets of the Top Funds and the Underlying Funds (defined below) (together the **Funds**), has complete discretion to invest and reinvest the Funds' assets, and is responsible for executing all portfolio transactions.

4. The Filer is, or will be, the investment fund manager of each Top Fund and of each Underlying Fund (as defined below).

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

6. The Funds are available only to persons who are clients of, and have a discretionary separately managed account which is managed by, the Filer.

7. Other than as set forth in paragraphs 25 and 26 below, the Filer is not in default of securities legislation in any jurisdiction of Canada.

Top Funds

8. The Top Funds are, or will be, sold pursuant to prospectus exemptions through registered dealers in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**), and are not and will not be reporting issuers in any jurisdiction of Canada.

9. Each Initial Top Fund is a class of shares of Provisus Fund Services Corporation (**PFSC**), a corporation subsisting under the laws of Canada.

10. Each of the Top Funds is, or will be, a "mutual fund" as defined in securities legislation of the jurisdictions in which the Top Funds are distributed.

11. None of the Top Funds is, or will be, a reporting issuer in any jurisdiction of Canada.

12. Pursuant to management and advisory agreements, the Filer is responsible for managing the day-to-day undertaking and business of each of the Initial Top Funds as well as the investment activities of each of the Initial Top Funds.

13. The offering memorandum in respect of the Initial Top Funds (the **Initial Top Fund Offering Memorandum**) describes, and the offering memoranda in respect of any Future Top Funds (together, with the Initial Top Fund Offering

Memorandum, the **Offering Memorandum**) will describe, the investment objectives and investment restrictions applicable to the Top Fund and also describes the fees, compensation and expenses payable by a Top Fund, the calculation of net asset value, distributions, the powers and duties of the Filer and all other matters material to each Top Fund, including the fact that in pursuing its investment objectives, the Top Fund may invest all, or a certain portion, of their assets in other investment funds established and managed by the Filer, or an affiliate of the Filer (the **Underlying Funds**) as an investment strategy. The Offering Memorandum provides, and will provide, similar information in respect of each of the Underlying Funds.

14. The offering memoranda of the Underlying Funds is and will be incorporated into the Offering Memorandum.

15. Other than as set forth in paragraphs 25 and 26 below, the Top Funds are not in default of securities legislation in any jurisdiction of Canada.

Underlying Funds

16. Each of the Underlying Funds is a class of shares of PFSC, a corporation subsisting under the laws of Canada.

17. Each of the Underlying Funds has, or will have, separate investment objectives, strategies and/or restrictions.

18. The Underlying Funds will invest primarily in publicly traded equity securities, fixed income securities or cash equivalent securities, as applicable pursuant to their investment objectives, strategies and/or restrictions.

19. Securities of the Underlying Funds are, or will be, issued pursuant to prospectus exemptions through registered dealers in accordance with NI 45-106.

20. Each of the Underlying Funds is, or will be, a "mutual fund" as defined in securities legislation of the jurisdictions in which the Top Funds are distributed.

21. None of the Underlying Funds is, or will be, a reporting issuer in any jurisdiction of Canada.

22. Other than as set forth in paragraphs 25 and 26 below, the Underlying Funds are not in default of securities legislation in any jurisdiction of Canada.

Fund on Fund Structure

23. The Top Funds allow investors in the Top Funds to obtain exposure to the investment portfolios of the Underlying Funds and their investment strategies through, primarily, direct investments by the Top Funds in securities of the Underlying Funds (the "**Fund-on-Fund Structure**").

24. Securities of an Underlying Fund are, or will be, acquired by a Top Fund under an exemption from the prospectus requirement in accordance with NI 45-106.

25. Through inadvertence, certain of the Initial Top Funds currently are, alone or together with the other Initial Top Funds, substantial security holders of one or more Underlying Funds contrary to the provisions of the Act referred to above.

26. Through inadvertence, certain Top Funds are currently investing in Underlying Funds contrary to sub-clause 13.5(2)(a)(ii) of NI 31-103 since certain officers of the Filer (considered a responsible person within the meaning of the applicable provisions of NI -103) are also officers and/or directors of the Underlying Funds.

27. The Filer believes that the Fund-on-Fund Structure provides an efficient and cost-effective manner of pursuing portfolio diversification on behalf of the Top Funds, rather than through the direct purchase of securities.

28. The Fund-on-Fund Structure will allow investors with smaller investments to have access to a larger variety of investments than would otherwise be available.

29. Investments by the Top Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios to the benefit of all their investors. The larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount, and economies of scale through greater administrative efficiency.

30. The investments held by the Underlying Funds are considered to be liquid.

31. The Top Funds and the Underlying Funds have matching valuation dates and are valued weekly.

32. Securities of both the Top Funds and the Underlying Funds can be redeemed on any valuation date.

33. Each of the Top Funds has and will prepare annual audited financial statements and interim unaudited financial statements in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and will otherwise comply with the requirements of NI 81-106 applicable to them. Each of the Underlying Funds will prepare annual audited financial statements and interim unaudited financial statements in accordance with NI 81-106. The holdings by a Top Fund of securities of an Underlying Fund will be disclosed in the financial statements of the Top Fund.

34. The Top Funds are, or will be, related mutual funds by virtue of common management by the Filer.

35. For the purpose of implementing the Fund-on-Fund Structure, the Filer shall ensure that:

    (a) the arrangements between or in respect of each Top Fund and an Underlying Fund are such as to avoid the duplication of management fees and incentive fees;

    (b) no sales fees or redemption fees are payable by a Top Fund in relation to its acquisitions, dispositions or redemptions of securities of an Underlying Fund;

    (c) each client of the Filer that invests in any of the Top Funds enters into an agreement under which the client pays a fee to the Filer directly in respect of all assets of the client under management by the Filer;

    (d) the Filer will not vote the securities of an Underlying Fund held by a Top Fund at any meeting of holders of such securities, unless the Top Fund is the sole owner of the securities of the Underlying Fund at the time of the meeting or the effective date of the resolution, in which case the Filer will arrange for all the securities the Top Fund holds of the Underlying Fund to be voted by the beneficial holders thereof, being the holders of securities of the Top Fund; and

    (e) security holders of a Top Fund will receive, on request, a copy of the offering memorandum, the audited annual financial statements and interim unaudited financial statements of any Underlying Fund in which it invests.

36. The actual weightings of the investment by a Top Fund in an Underlying Fund will be reviewed and adjusted by the Filer to ensure that the investment weighting continues to be appropriate for the Top Fund's investment objectives.

37. Any investment made by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund.

38. A Top Fund's investments in the Underlying Funds represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Funds and the Underlying Funds.

39. Prior to the time of purchase of securities of a Top Fund, a purchaser will be provided with a copy of the Offering Memorandum as well as disclosure about the relationships and potential conflicts of interest between the Top Fund and the Underlying Funds.

40. The Offering Memorandum sets out and will set out:

    (a) the intent of the Top Funds to invest their assets in securities of one or more Underlying Funds;

    (b) that the Underlying Funds are managed by the Filer;

    (c) the approximate percentage of net assets of the Top Fund that the Top Fund intends to invest in securities of the Underlying Funds; and

(d) the process or criteria used to select the Underlying Funds.

41. In the absence of the Related Issuer Restriction Relief, the Top Funds would be precluded from implementing the Fund-on-Fund Structure due to certain investment restrictions in the Legislation. Since the Top Funds do not offer their securities under a simplified prospectus, they are not subject to National Instrument 81-102 and therefore the Top Funds are unable to rely upon the exemption codified under sub-section 2.5(7) of National Instrument 81-102.

42. In the absence of the 31-103 Relief, each Top Fund would be precluded from investing in an Underlying Fund since the Filer or an officer and/or director of the Filer (considered a responsible person with the meaning of the applicable provisions of NI 31-103) may also be an officer and/or director of, or may be a person with a similar function for or occupy a similar position with the Underlying Fund.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) securities of the Top Funds are distributed in Canada only under an exemption from the prospectus requirements in NI 45-106;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental objectives of the Top Fund;

(c) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund for the same service;

(d) no sales or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of the securities of the Underlying Funds;

(e) A Top Fund will not purchase or hold securities of an Underlying Fund unless:

(i) at the time of the purchase of securities of the Underlying Fund, the Underlying Fund holds no more than 10% of the market value of its net assets in securities of other mutual funds, or

(ii) the Underlying Fund:

(A) links its performance to the performance of one other mutual fund, i.e. a clone fund,

(B) purchases or holds securities of a “money market fund” as defined by NI 81-102, or

(C) purchases or holds securities that are “index participation units” as defined by NI 81-102 and issued by a mutual fund;

(f) the Filer does not vote any securities of a Top Fund in an Underlying Fund, but the Filer may, if it chooses, arrange for all of the securities of the Underlying Funds held by the Top Funds to be voted by the beneficial owners thereof, being the beneficial owners of units of the Top Funds;

(g) the Offering Memorandum will disclose:

(i) the intent of the Top Fund to invest its assets in securities of one or more of the Underlying Funds;

(ii) that the Underlying Funds are managed by the Filer or an affiliate of the Filer;

(iii) the approximate percentage of net assets of the Top Fund that the Top Fund intends to invest in securities of the Underlying Funds; and

(iv) the process or criteria used to select the Underlying Funds.

“Vera Nunes”
Manager, Investment Funds Branch
Ontario Securities Commission

“Edward P. Kerwin”
Commissioner
Ontario Securities Commission

“Sarah B. Kavanagh”
CommissionerOntario Securities Commission

2.2 Orders

2.2.1 Portus Alternative Asset Management Inc. et al. – s. 127

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

AND

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

ORDER with respect to MICHAEL MENDELSON
(Section 127 of the Act)

WHEREAS on October 5, 2005, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in relation to a Statement of Allegations issued by Staff of the Commission ("**Staff**") on the same day in respect of Portus Alternative Asset Management Inc. ("**PAAM**"), Portus Asset Management Inc. ("**PAM**"), Boaz Manor ("**Manor**"), Michael Mendelson ("**Mendelson**"), Michael Labanowich ("**Labanowich**") and John Ogg ("**Ogg**") (collectively, the "**Respondents**");

AND WHEREAS on November 22, 2011, the Commission ordered, among other things, that the hearing on the merits commence on September 4, 2012;

AND WHEREAS on August 27, 2012, the Commission approved settlement agreements between Staff and each of Manor, Labanowich and Ogg (*Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8128 (settlement with respect to Manor); *Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8119 (settlement with respect to Labanowich); and *Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8136 (settlement with respect to Ogg));

AND WHEREAS on September 4, 2012, the Commission ordered, on consent of the parties, that a sanctions hearing for Mendelson commence on October 2, 2012;

AND WHEREAS on October 2, 2012, the sanctions hearing for Mendelson was adjourned to October 16, 2012;

AND WHEREAS Staff and Mendelson jointly filed an Agreed Statement of Facts, dated October 16, 2012, in which Mendelson admitted certain acts in contravention of Ontario securities law;

AND WHEREAS on October 16, 2012, the Commission was satisfied that Mendelson did not comply with Ontario securities law and acted contrary to the public interest and a sanctions hearing was held;

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

IT IS ORDERED THAT:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in securities by Mendelson cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Mendelson is prohibited permanently from the acquisition of any securities with the exception that he is permitted to acquire securities in mutual funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mendelson permanently;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mendelson is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mendelson resign any and all positions that he holds as a director or officer of a reporting issuer;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) pursuant to clause 10 of subsection 127(1) of the Act, Mendelson disgorge to the Commission the amount of $320,000 obtained as a result of his non-compliance with Ontario securities law, which is designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

DATED at Toronto this 29th day of November, 2012.

"Edward P. Kerwin"

2.2.2 Moncasa Capital Corporation and John Frederick Collins – s. 127

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION
and JOHN FREDERICK COLLINS

ORDER
(Section 127)

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

AND WHEREAS at the first appearance on April 4, 2012, Staff of the Commission ("Staff") and counsel for the Respondents agreed to attend a confidential pre-hearing conference on May 28, 2012 at 10:00 a.m.;

AND WHEREAS at the confidential pre-hearing conference on May, 28, 2012, Staff and counsel for the Respondents consented to an order that the hearing on the merits be scheduled for January 21, 2013 to February 1, 2013 (other than January 29, 2013) and that a confidential pre-hearing conference be held on August 9, 2012;

AND WHEREAS a confidential pre-hearing conference was held on August 9, 2012, at which Staff and counsel for the Respondents attended;

AND WHEREAS on August 9, 2012, the confidential pre-hearing conference was adjourned to September 27, 2012;

AND WHEREAS on August 22, 2012, counsel for the Respondents, Wardle Daley Bernstein LLP, was granted leave to withdraw as counsel for the Respondents;

AND WHEREAS Staff attended at the confidential pre-hearing conference on September 27, 2012, and no one appeared on behalf of the Respondents and the Commission was satisfied that the Respondents were served with Staff's Pre-hearing Conference Submissions;

AND WHEREAS on September 27, 2012, the confidential pre-hearing conference was adjourned to November 28, 2012;

AND WHEREAS Staff attended at the confidential pre-hearing conference on November 28, 2012, and no one appeared on behalf of the Respondents and the Commission is satisfied that the Respondents were served with Staff's Pre-hearing Conference Submissions;

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

IT IS HEREBY ORDERED that this matter is adjourned to a confidential pre-hearing conference which shall take place on December 17, 2012 at 9:00 a.m.

DATED at Toronto this 28th day of November, 2012.

"Edward P. Kerwin"

2.2.3 Global Consulting and Financial Services et al. – ss. 127(1), 127(3)

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

AND

**IN THE MATTER OF
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**

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

WHEREAS on November 4, 2010, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that Global Consulting and Financial Services ("Global"), Crown Capital Management Corporation ("Crown"), Canadian Private Audit Service ("CPAS"), Executive Asset Management ("EAM"), Jan Chomica, Michael Chomica, Peter Kuti ("Kuti"), and Lorne Banks ("Banks") (collectively, the "Respondents"), cease trading in all securities (the "Temporary Order");

AND WHEREAS on November 4, 2010, the Commission ordered pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on November 4, 2010, the Commission ordered that the Temporary Order shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on November 9, 2010, the Commission issued a direction under subsection 126(1) of the Act freezing assets in a bank account in the name of Crown (the "Freeze Direction");

AND WHEREAS on November 4, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on November 17, 2010 at 3:00 p.m. (the "Notice of Hearing");

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

AND WHEREAS Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order and the Notice of Hearing, and served Crown with the Freeze Direction as evidenced by the Affidavit of Charlene Rochman, sworn on November 17, 2010, and filed with the Commission;

AND WHEREAS on November 17, 2010, Staff and counsel for Banks appeared before the Commission, and whereas Global, Crown, CPAS, EAM, and Kuti did not appear before the Commission to oppose Staff's request for the extension of the Temporary Order;

AND WHEREAS Staff had received a Direction from Jan Chomica dated November 11, 2010, in which she consented to extending the Temporary Order for at least two months;

AND WHEREAS counsel for Michael Chomica did not attend the hearing, but had advised Staff that Michael Chomica consented to (or did not oppose) an extension of the Temporary Order for at least two months;

AND WHEREAS on November 17, 2010, counsel for Banks advised the Commission that Banks consented to an extension of the Temporary Order;

AND WHEREAS the Panel considered the evidence and submissions before it;

AND WHEREAS pursuant to subsection 127(8) of the Act, the Commission ordered that the Temporary Order be extended to January 27, 2011;

AND WHEREAS the Commission further ordered that the hearing in this matter be adjourned to January 26, 2011 at 11:00 a.m., and that the parties make efforts to advise the Commission by January 3, 2011 whether they were in agreement that the hearing set for January 26, 2011 be held in writing;

AND WHEREAS by Notice of Motion dated December 16, 2010 (the "Notice of Motion"), Staff sought to amend the Temporary Order to include Peter Siklos ("Siklos") as the person using the alias "Peter Kuti", thereby making Siklos subject to the Temporary Order, and to abridge, under Rule 1.6(2) of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules"), the notice requirements for the filing and service of motion materials under Rule 3.2 of the Rules and the requirement for a Memorandum of Fact and Law under Rule 3.6 of the Rules (the "Motion");

AND WHEREAS in support of the Motion, Staff filed the Affidavit of Wayne Vanderlaan ("Vanderlaan"), sworn December 15, 2010 (the "Vanderlaan Affidavit"), in which Vanderlaan stated that there is a real Peter Kuti who, based on the information currently available to Staff, is not the "Peter Kuti" who is an alias for Siklos;

AND WHEREAS the Motion was heard on Monday, December 20, 2010, at 10:00 a.m., before a panel of the Commission (the "Motion Hearing");

AND WHEREAS the Commission, after considering the Affidavit of Service of Charlene Rochman, sworn December 17, 2010, was satisfied that Staff had served the Notice of Motion, the December 16, 2010 covering letter from Carlo Rossi, Litigation Counsel with Staff, and the Vanderlaan Affidavit on the Respondents;

AND WHEREAS counsel for Banks advised Staff that he would not be attending on the Motion and that Banks took no position with respect to it;

AND WHEREAS on December 20, 2010, Staff and counsel for Siklos attended before the Commission, and counsel for Siklos advised that Siklos consented to the Motion;

AND WHEREAS the Commission considered the Notice of Motion and the Vanderlaan Affidavit and the submissions made by Staff and counsel for Siklos at the Motion Hearing;

AND WHEREAS the Commission ordered that:

(i) pursuant to clause 2 of subsection 127(1) of the Act, Peter Siklos (also known as Peter Kuti) shall cease trading in all securities;

(ii) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Peter Siklos (also known as Peter Kuti);

(iii) the title of the proceeding shall be amended accordingly;

(iv) for clarity, the Temporary Order as Amended (the "Amended Temporary Order") be extended to January 27, 2011; and

(v) for clarity, the hearing to consider the extension of the Amended Temporary Order be held on January 26, 2011, at 11:00 a.m., and the parties shall make efforts to advise the Commission by January 3, 2011 whether they are in agreement that the hearing set for January 26, 2011 be held in writing;

AND WHEREAS by way of letter dated January 25, 2011, Staff advised the Commission that it had obtained the consent of Michael Chomica, Jan Chomica, Siklos and Banks (collectively, the "Individual Respondents"), Crown and Global to extend the Amended Temporary Order;

AND WHEREAS Staff provided the Commission with the Affidavit of Charlene Rochman sworn January 24, 2011, outlining service of the Amended Temporary Order on the Respondents and the consent of the Individual Respondents, Crown and Global to the extension of the Amended Temporary Order;

AND WHEREAS the Commission ordered that the Amended Temporary Order be extended to March 9, 2011 and that the hearing be adjourned to March 8, 2011 at 10:00 a.m.;

AND WHEREAS on March 8, 2011, Staff attended before the Commission and no one attended on behalf of the Respondents;

AND WHEREAS the Commission was satisfied that Staff had undertaken reasonable efforts to serve the Respondents with notice of the hearing;

AND WHEREAS on March 8, 2011, Staff advised the Panel that Staff had been in contact with Jan Chomica and counsel representing Michael Chomica, Banks and Siklos and that Jan Chomica, Michael Chomica, Banks and Siklos were not opposing the extension of the Amended Temporary Order;

AND WHEREAS the Commission ordered that the Amended Temporary Order be extended to May 17, 2011 and that the hearing be adjourned to May 16, 2011 at 10:00 a.m.;

AND WHEREAS on May 16, 2011, Staff appeared before the Commission and no one appeared on behalf of any of the Respondents;

AND WHEREAS on May 16, 2011, Staff advised the Panel that Staff had been in contact with counsel representing Michael Chomica, Banks and Siklos and that Michael Chomica, Banks and Siklos were not opposing the extension of the Amended Temporary Order;

AND WHEREAS Staff further advised that Jan Chomica had provided her consent to the extension of the Amended Temporary Order by way of writing;

AND WHEREAS Staff provided the Commission with the Affidavit of Charlene Rochman sworn May 13, 2011 outlining Staff's efforts to serve the Respondents and the consent of the Individual Respondents, Crown and Global to the extension of the Amended Temporary Order;

AND WHEREAS the Commission ordered that the Amended Temporary Order be extended to July 18, 2011 and the hearing be adjourned to July 15, 2011 at 11:00 a.m.;

AND WHEREAS on July 15, 2011, Staff appeared before the Commission and no one appeared on behalf of any of the Respondents;

AND WHEREAS on July 15, 2011, Staff advised the Panel that Staff had been in contact with counsel representing Michael Chomica and Banks and that Michael Chomica consented to an extension of the Amended Temporary Order for 90 days and Banks was not opposing the extension;

AND WHEREAS Staff further advised that Jan Chomica had provided her consent to the extension of the Amended Temporary Order by way of writing;

AND WHEREAS Staff provided the Commission with the Affidavit of Charlene Rochman sworn July 13, 2011, outlining service on the Respondents;

AND WHEREAS the Commission ordered that the Amended Temporary Order be extended to October 12, 2011 and the hearing be adjourned to October 11, 2011 at 2:30 p.m.;

AND WHEREAS on October 11, 2011, Staff appeared before the Commission to request that the Amended Temporary Order be extended for an additional 90 days;

AND WHEREAS no one appeared on behalf of any of the Respondents;

AND WHEREAS Staff advised the Panel that Staff had been in contact with counsel representing Siklos and Banks and that Siklos consented to an extension of the Amended Temporary Order for 90 days and Banks was not opposing the extension;

AND WHEREAS Staff provided the Commission with the Affidavit of Charlene Rochman sworn October 7, 2011 outlining service on the Respondents;

AND WHEREAS the Commission ordered that the Amended Temporary Order be extended to January 12, 2012 and the hearing be adjourned to January 11, 2012 at 10:00 a.m.;

AND WHEREAS on January 11, 2012, Staff appeared before the Commission to request that the Amended Temporary Order be extended for an additional 90 days;

AND WHEREAS no one appeared on behalf of any of the Respondents other than counsel for Siklos;

AND WHEREAS Michael Chomica and Jan Chomica advised Staff in writing that they consented to an extension of the Amended Temporary Order for 90 days;

AND WHEREAS counsel for Banks advised Staff that Banks did not oppose a further extension of the Amended Temporary Order for 90 days;

AND WHEREAS counsel for Siklos advised the Panel that he consented to an extension of the Amended Temporary Order for 90 days;

AND WHEREAS Staff provided the Commission with the Affidavit of Charlene Rochman affirmed January 10, 2012 outlining Staff's efforts to serve the Respondents;

AND WHEREAS on January 11, 2012, the Commission ordered that the Amended Temporary Order be extended to April 12, 2012 and the hearing be adjourned to April 11, 2012 at 10:00 a.m.;

AND WHEREAS on April 11, 2012, Staff appeared before the Commission to request that the Amended Temporary Order be extended and no one appeared on behalf of any of the Respondents;

AND WHEREAS Staff provided the Commission with the Affidavit of Peaches Barnaby sworn April 11, 2012 outlining Staff's efforts to serve the Respondents;

AND WHEREAS on April 11, 2012, the Commission ordered that the Amended Temporary Order be extended to June 12, 2012 and the hearing be adjourned to June 11, 2012 at 9:00 a.m.;

AND WHEREAS on June 11, 2012, Staff appeared before the Commission to request that the Amended Temporary Order be extended and no one appeared on behalf of any of the Respondents;

AND WHEREAS Staff provided the Commission with the Affidavit of Peaches Barnaby sworn June 5, 2012 outlining Staff's efforts to serve the Respondents;

AND WHEREAS quasi-criminal proceedings have been commenced in the Ontario Court of Justice pursuant to section 122(1)(c) of the Act against, *inter alia*, Michael Chomica, Jan Chomica and Siklos (the "Section 122 Proceedings");

AND WHEREAS on June 11, 2012, Staff advised the Commission that counsel for Banks consented to a further extension of the Amended Temporary Order for six months;

AND WHEREAS on June 11, 2012, the Commission ordered that the Amended Temporary Order be extended to December 5, 2012 and the hearing be adjourned to December 4, 2012 at 3:30 p.m;

AND WHEREAS by way of letter dated November 30, 2012, Staff advised the Commission that a judicial pre-trial is scheduled for December 17, 2012 in connection with the Section 122 Proceedings and that the Individual Respondents consent to an extension of the Amended Temporary Order to the middle of January 2013;

AND WHEREAS Staff provided the Commission with the Affidavit of Nancy Poyhonen sworn November 30, 2012, outlining Staff's attempts to serve the Amended Temporary Order on the Respondents and the consent of the Individual Respondents to the extension of the Amended Temporary Order;

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

IT IS ORDERED that the Amended Temporary Order is extended to January 18, 2013 and the hearing is adjourned to January 17, 2013 at 9:00 a.m., or such other

date and time as set by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 3rd day of December, 2012.

"Christopher Portner"

2.2.4 VIncent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

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

AND

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

ORDER

WHEREAS on October 3, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on September 30, 2011, with respect to Vincent Ciccone ("Ciccone") and Medra Corp.;

AND WHEREAS on May 3, 2012, the Commission issued an Amended Notice of Hearing in connection with an Amended Statement of Allegations filed by Staff on May 2, 2012, to amend the title of proceedings by replacing the name "Medra Corp." with "Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation)" (collectively, "Medra");

AND WHEREAS on September 7, 2012, the Commission approved a Settlement Agreement between Staff and Ciccone;

AND WHEREAS the Office of the Secretary received an e-mail dated September 5, 2012, from a representative of Medra requesting Staff disclose all relevant documents in their possession by sending copies of said documents to Medra at its offices in Mexico:

AND WHEREAS the Panel convened the hearing on the merits of the allegations against Medra (the "Merits Hearing") and, as a preliminary matter, heard submissions from Staff on September 7 and 13, 2012, on the issue of Staff's disclosure obligations with respect to Medra, including submissions on the law, policy, jurisprudence and its position on this issue, no one appearing on behalf of Medra despite proper notice having been given;

AND WHEREAS on September 20, 2012, the Panel reconvened the Merits Hearing for the purposes of giving the Panel's ruling on the disclosure issue, at which Staff appeared but no one appeared on behalf of Medra;

AND WHEREAS on September 20, 2012, the Panel ruled that Staff had not met its disclosure obligations to Medra, such obligations requiring Staff to provide copies of the disclosure material to Medra in accordance with its written request for copies of the material;

AND WHEREAS the Panel issued an Order dated September 20, 2012, that stated:

(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.

AND WHEREAS on September 28, 2012, the Panel ordered that the Merits Hearing be reconvened on October 9, 2012, for the purpose of Staff providing the Panel with a status update;

AND WHEREAS on October 9, 2012, Staff appeared before the Panel with no one appearing for Medra, at which time Staff submitted an affidavit of Allister Field sworn October 9, 2012, as evidence that the Panel's Order of September 20, 2012, had been sent to Medra on September 28, 2012, and Medra had not returned a signed undertaking in accordance with the Order;

AND WHEREAS the Panel is satisfied that Staff has met its disclosure obligations to Medra and the Merits Hearing may proceed;

AND WHEREAS on October 9, 2012, Staff requested that the Panel convert the Merits Hearing to a written hearing pursuant to Rule 11 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules") and proposed a schedule for the filing of materials in support of their request;

AND WHEREAS on October 17, 2012, Staff advised the Commission that it would like to amend the schedule for the filing of materials in support of their request;

AND WHEREAS on October 19, 2012, Staff appeared before the Commission by teleconference in accordance with Rule 10.2 of the Rules and no one appeared on behalf of Medra;

AND WHEREAS the Panel issued an order dated October 19, 2012, which stated:

(i) Staff shall serve and file written submissions in support of their request to convert the Merits Hearing to a written hearing no later than October 23, 2012, such submissions to include copies of any affidavits Staff intend to rely on in the proposed written hearing;

(ii) If Medra objects to converting the Merits Hearing to a written hearing, it shall file with the Office of the Secretary, and serve upon Staff, written submissions setting out the reasons for their objection no later than November 7, 2012;

(iii) The Merits Hearing shall be reconvened on November 8, 2012, at 3:00 p.m. at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, Ontario, for the purpose of the Panel giving its ruling on the request to convert to a written hearing and, if the request is granted, to set a schedule for the receipt of submissions in the written hearing

AND WHEREAS on October 23, 2012, Staff filed written submissions in support of their request to convert the Merits Hearing to a written hearing, including copies of the affidavits Staff intend to rely on in the proposed written hearing, which written submissions and affidavits were served on Medra on October 19 and 22, 2012 as set out in the Affidavit of Service of Michelle Spain sworn on October 23, 2012 and filed with the Commission;

AND WHEREAS Staff sought, in their written submissions, that the Merits Hearing be continued as a written hearing upon the earlier of the date when Ciccone has completed his testimony in this matter or the date when Staff files an affidavit of Ciccone;

AND WHEREAS on November 8, 2012, Staff appeared before the Panel with no one appearing for Medra, at which time Staff requested that a date be set for the continuation of the Merits Hearing for the purpose of hearing oral evidence from Ciccone;

AND WHEREAS the Panel issued an order dated November 8, 2012, which stated:

1) the Merits Hearing is adjourned to November 29, 2012, commencing at 9:30 a.m., for the purpose of hearing oral evidence from Ciccone, after which the Panel will provide its ruling on the request to convert the remainder of the Merits Hearing to a written hearing; and

2) the Merits Hearing shall, if necessary, continue on November 30, 2012, commencing at 9:30 a.m.

AND WHEREAS on November 29, 2012, Staff appeared before the Panel with no one appearing for Medra, at which time the Panel heard oral testimony from Ciccone, and Staff advised that they may wish to make a minor amendment to the Affidavit of Allister Field which was previously served on Medra and filed with the Commission;

AND WHEREAS the Panel adjourned the Merits Hearing and reserved its decision on Staff's request to convert the Merits Hearing to a written hearing in accordance with Rule 11;

AND WHEREAS the Commission is of the opinion that it is in the public interest to convert the Merits Hearing to a written hearing for the purpose of taking evidence from Staff witnesses by affidavit, provided that Staff produce the affiants for cross-examination by Medra and/or to answer questions from the Panel concerning their affidavits;

IT IS ORDERED THAT:

1. in accordance with Rule 11, the Merits Hearing is converted to a written hearing for the purposes of taking evidence-in-chief by means of affidavit evidence from the remaining Staff witnesses, namely Allister Field, Michael Ho and Amy Tse ("Staff's Affiants");

2. If Staff wishes to amend any of the affidavits previously served and filed, Staff must serve and file such amendments no later than December 10, 2012;

3. Staff is directed to serve and file, no later than December 10, 2012, written submissions setting out Staff's position with respect to the findings of fact the Panel is asked to make in respect of the evidence from Staff's Affiants;

4. the Merits Hearing will be reconvened on December 19, 2012, at 3:30 p.m. at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, ON, for the purpose of cross-examination of Staff's Affiants and/or to allow Staff's Affiants to answer any questions from the Panel;

5. a schedule for the filing of evidence by Medra and the filing of final written submissions by both parties will be established when the hearing reconvenes on December 19, 2012; and

6. the Panel may recall Staff's Affiants for further questions on the affidavits if, in the opinion of the Panel, further clarification of the evidence is necessary.

DATED at Toronto this 3rd day of December, 2012

"Vern Krishna, Q.C."

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 David Charles Phillips

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS

ENDORSEMENT

Hearing:	June 6, 2012		
Panel:	Edward P. Kerwin	–	Commissioner
Appearances:	Alistair Crawley Bruce O'Toole and Jocelyn Loosemore	–	for David Charles Phillips
	Yvonne Chisholm Sean Horgan	–	for Staff of the Ontario Securities Commission

ENDORSEMENT

At the conclusion of a hearing held on June 6, 2012, I ordered that a temporary cease trade order against David Charles Phillips be extended to September 28, 2012. What follows are my reasons for that order.

The temporary cease trade order was issued by the Commission on May 15, 2012, on an *ex parte* basis at the request of Staff of the Enforcement Branch. The temporary order set out the allegations against Phillips that the Commission relied upon as justification for the issuance of the temporary order. The order required Phillips to cease trading all securities, and ordered that any exemptions contained in Ontario securities law do not apply to Phillips. It was to expire on the fifteenth day after its making, unless extended by order of the Commission.

A Notice of Hearing was issued by the Commission on May 16, 2012, setting the matter down for hearing on May 30, 2012, for the purpose of considering whether the temporary order should be extended.

The hearing was convened on May 30, 2012. Staff sought an extension of the order, and counsel for Phillips opposed an extension. The hearing was adjourned, on consent, to June 6, 2012. The temporary order was extended, also on consent, to June 8, 2012.

On June 4, 2012, Staff filed a Statement of Allegations against Phillips and John Russell Wilson ("the Statement of Allegations"). The Statement of Allegations did not include any of the specific allegations cited in the temporary order.

The hearing was reconvened on June 6, 2012, and I heard evidence from Stephanie Collins, a Senior Forensic Accountant with the Enforcement Branch of the Commission, and Greg Macleod, the chief restructuring officer of the First Leaside Group of Companies. Counsel for Phillips conducted extensive cross-examinations of both Staff witnesses but called no witnesses in response.

In their submissions, Staff argued that there is sufficient evidence of potentially harmful conduct to warrant an extension of the temporary order. Staff requested the order be extended until the conclusion of the hearing on the merits of the Statement of Allegations. In the alternative, Staff requested a significant continuation of the temporary order to allow time for Staff to consider whether the Statement of Allegations should be amended to include the allegations at issue in this hearing.

Counsel for Phillips took the position that Staff have not demonstrated that an extension of the order is warranted. In the alternative, counsel submitted that an extension, if ordered, should not be tied to the resolution of the allegations in the Statement of Allegations because the alleged conduct which Staff claim to justify the existence of temporary restrictions on Phillips' activity in the capital markets will not be resolved through a hearing on the merits of the allegations in the Statement of Allegations. Counsel submitted, therefore, that an extension of the restrictions, if warranted, should only be long enough to allow Staff to amend the Statement of Allegations to include the alleged conduct giving rise to the temporary order.

Without making findings as to the merits of the allegations, I find that Staff have provided sufficient evidence of the alleged conduct on the part of Phillips that gave rise to the temporary order to justify an extension of the temporary order. In my view, the alleged conduct may be harmful to the public, and therefore the continuation of the temporary order is warranted to protect the public interest. However, I share the concern expressed by counsel for Phillips that, barring an amendment to the Statement of Allegations, the allegations giving rise to the temporary order will never be adjudicated. I am troubled that the alleged conduct of Phillips, which may be sufficiently harmful to the public interest to warrant restrictions on his activities in the capital markets, does not appear to be harmful enough to warrant inclusion in the Statement of Allegations. Therefore, I am not prepared to extend the temporary order indefinitely. I find that the public interest would best be served by an extension of the temporary order for a finite period of time, that is, to September 28, 2012, to allow Staff an opportunity to amend, if Staff deems appropriate, the Statement of Allegations filed June 4, 2012, to include the alleged conduct that gave rise to the temporary order.

Dated at Toronto this 27th day of November, 2012.

"Edward P. Kerwin"

3.1.2 Portus Alternative Asset Management Inc. et al. – s. 127

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

AND

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

REASONS AND DECISION with respect to MICHAEL MENDELSON
(Section 127 of the Act)

Hearing:	September 4, 2012 October 2 and 16, 2012		
Decision:	November 29, 2012		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
Appearances:	Cameron Watson Hugh Craig	–	For Staff of the Commission
	Michael Mendelson	–	For himself

No one appeared on behalf of the remaining respondents Portus Alternative Asset Management Inc. and Portus Asset Management Inc.

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REASONS AND DECISION with respect to MICHAEL MENDELSON
(Section 127 of the Act)

I. OVERVIEW

A. Introduction

[1] This is a decision of the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a Notice of Hearing issued by the Commission on October 5, 2005 and a Statement of Allegations filed by Staff of the Commission ("**Staff**") on the same day with respect to Portus Alternative Asset Management Inc. ("**PAAM**"), Portus Asset Management Inc. ("**PAM**"), Boaz Manor ("**Manor**"), Michael Mendelson ("**Mendelson**"), Michael Labanowich ("**Labanowich**") and John Ogg ("**Ogg**")(collectively, the "**Respondents**").

[2] This decision only relates to the conduct of one of the Respondents, Mendelson. Manor, Labanowich and Ogg entered into settlement agreements with Staff which were approved by the Commission on August 27, 2012. The allegations with respect to PAAM and PAM remained outstanding at the time of this hearing.

B. History of Proceedings

[3] On February 2, 2005, the Commission issued a temporary order precluding PAAM from opening new client accounts and accepting any new funds or assets from investors. A further temporary order was issued on February 10, 2005 to preclude redemptions or withdrawals by investors and to preclude Manor from trading in the principal protected notes issued by Société Générale (together, the "**Temporary Orders**"). The Temporary Orders were extended from time to time, and on October 13, 2005, the Temporary Orders were varied pursuant to section 144 of the Act to permit the court-appointed receiver, KPMG Inc., (the "**Receiver**"), to take action as it considers appropriate with respect to certain securities held by PAAM and PAM (together, the "**Corporate Respondents**"). On December 16, 2005, the Commission extended the Temporary Orders "until the Proceeding is concluded and a decision of the Commission is rendered or until the Commission considers appropriate".

[4] On October 5, 2005, the Commission issued a Notice of Hearing in connection with a Statement of Allegations filed by Staff on the same day, commencing proceedings against the Respondents pursuant to sections 127 and 127.1 of the Act (the "**Administrative Proceeding**").

[5] Staff also commenced quasi-criminal proceedings against two of the Respondents, Manor and Mendelson, before the courts pursuant to section 122 of the Act. On October 4, 2005, proceedings were commenced against Manor in the Ontario Court of Justice pursuant to section 122 of the Act and on April 20, 2006, additional charges were laid against Manor in the Ontario Court of Justice pursuant to section 122 of the Act and Staff commenced quasi-criminal proceedings against Mendelson in the Ontario Court of Justice pursuant to section 122 of the Act (collectively, the "**Section 122 Proceedings**").

[6] As a result of the commencement of the Section 122 Proceedings, the Commission, on June 16, 2006, adjourned the Administrative Proceeding until the rendering of judgment in respect of the Section 122 Proceedings.

[7] Manor and Mendelson were also subject to charges laid against them pursuant to the *Criminal Code*, R.S.C., 1985, c. C-46, as amended (the "**Criminal Code**") for acts related to the Administrative Proceeding and the Section 122 Proceedings. On November 19, 2007, Mendelson pled guilty to one count of fraud contrary to section 380 of the Criminal Code in the Ontario Court of Justice and was sentenced to two years in jail and three years probation. On November 19, 2010, Manor pled guilty to two counts under the Criminal Code before the Superior Court of Justice and, on May 25, 2011, he was sentenced to four years in jail.

[8] The Section 122 Proceedings concluded on July 13, 2011. The Commission issued a Notice of Hearing on August 4, 2011 giving notice that the Administrative Proceeding would continue.

[9] Manor, Labanowich and Ogg entered into settlement agreements with Staff in respect of the Administrative Proceeding against them which were approved by the Commission on August 27, 2012 (*Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8128 (settlement with respect to Manor); *Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8119 (settlement with respect to Labanowich); and *Re Portus Alternative Asset Management Inc.* (2012), 35 O.S.C.B. 8136 (settlement with respect to Ogg)). As a term of the settlement agreement between Staff and Manor, Manor was ordered to disgorge to the Commission the amount of $8.8 million.

[10] The hearing on the merits in this matter commenced on September 4, 2012. At that time, I was advised by Staff and Mendelson, the latter of whom attended by teleconference in accordance with Rule 4 of the Commission *Rules of Practice* (1997), 20 O.S.C.B. 1947, that they have reached an agreement regarding the facts against Mendelson in this matter and were discussing the sanctions that would be appropriate in the circumstances. The parties jointly requested that the hearing on the

merits be converted into a sanctions hearing in the event that they could not resolve their differences regarding sanctions. I granted that request and adjourned the hearing to October 2, 2012.

[11] On October 2, 2012, the hearing was further adjourned to October 16, 2012 to allow Staff and Mendelson to finalize the agreed statement of facts. The Commission requested that Staff file written submissions on sanctions with the Commission by the close of business on October 5, 2012 and that Mendelson file written submissions on sanctions by the close of business on October 12, 2012.

[12] The hearing resumed on October 16, 2012. Mendelson was present at the hearing and was not represented by counsel. Although no one appeared on behalf of the Corporate Respondents, I was satisfied that the Receiver received notice of the hearing based on the Affidavit of Service of Peaches A. Barnaby sworn October 15, 2012.

[13] Staff and Mendelson submitted an agreed statement of facts (the "**Agreed Statement of Facts**") upon which I made my findings and concluded the hearing on the merits. The sanctions hearing was then held as requested jointly by the parties. Staff made oral submissions on sanctions, supported by written submissions on sanctions and a book of authorities. Mendelson indicated by e-mail to Staff, dated October 12, 2012 and copied to the Office of the Secretary, that he would not be filing written submissions on sanctions but intended to make oral submissions at the hearing. At the hearing, Mendelson indicated that he had prepared a written version of his oral submissions on sanctions, although he "[did not] have to submit them" (Hearing Transcript dated October 16, 2012 at p. 19). As Mendelson confirmed that this document is merely the text of his oral submissions, I decided that it was not necessary for Mendelson to file it as written submissions. Oral submissions were received from Mendelson during the hearing.

[14] As requested by the Panel during the hearing, Staff filed additional submissions regarding investor losses, which is information made publicly available by the Receiver, on October 16, 2012, informing the Panel that the investors in the Corporate Respondents were "out well in excess of $9.12 million".

C. Mendelson

[15] Mendelson was a directing mind of PAM, a company incorporated on January 8, 2003. In that capacity, he engaged in marketing and record keeping for the Portus investment funds. Mendelson pled guilty to one count of fraud contrary to section 380 of the Criminal Code in the Ontario Court of Justice in connection with the sale of twelve series of investment products to members of the public by the Corporate Respondents.

II. THE AGREED STATEMENT OF FACTS AND FINDINGS

[16] As discussed above, an Agreed Statement of Facts was filed jointly by Staff and Mendelson in this matter. The Agreed Statement of Facts is appended to these Reasons and Decision as Schedule "A". No other evidence was presented by Staff or Mendelson.

[17] The following facts were among those agreed to between Staff and Mendelson as set out in the Agreed Statement of Facts:

(a) Funds received from the investors flowed into PAAM and were controlled solely by Manor and Mendelson signed cheques on behalf of PAAM at Manor's direction.

(b) PAM was controlled by Mendelson and engaged in marketing and record keeping for the Portus investment funds. Neither PAM nor Mendelson ever managed or directed any money on behalf of investors.

(c) Contrary to representations made to PAAM investors, certain securities were not purchased, certain securities issuers were not validly constituted, certain agreements were not valid, certain counterparties were not arm's length or legitimate and investor funds were not actively managed, were not safeguarded or segregated and were not invested in or held in appropriate accounts.

(d) Contrary to representations made to investors and without their knowledge, Manor and Mendelson misappropriated approximately $94 million of the principal invested by clients and used the money for the ongoing operations of the Corporate Respondents.

(e) After receiving advice from legal counsel that the structure and conduct of the business of the Corporate Respondents was risky and problematic and that the Corporate Respondents should stop taking new investor funds immediately, the Corporate Respondents received in excess of $258 million of new investor funds for investment in securities issuers that had been identified as risky and problematic.

(f) In February 2005, after Staff was well into its investigation of the Corporate Respondents, under Manor's direction and to Mendelson's knowledge, electronic files and e-mail accounts were deleted, servers were re-formatted, the hard drives of approximately 90 desktop and laptop computers were re-formatted and voluminous paper files were destroyed.

(g) In January 2005 and March 2005, Mendelson authorized payments to himself over and above his salary in the amount of $320,000 both before and after the commencement of Staff's investigation.

(h) Mendelson has co-operated with Staff's investigation and has been unable to participate in the capital markets since June 2006 pursuant to an undertaking given by Mendelson to the Commission.

(i) Investors in the Corporate Respondents have received at least 97% and up to 102% of the funds invested.

(j) Mendelson has been engaged in community service for the last three years.

[18] In the Agreed Statement of Facts, Mendelson admits to having engaged in conduct which contravened Ontario securities law and was contrary to the public interest, including:

(a) by engaging in the conduct described in the Agreed Statement of Facts, his actions were contrary to subsections 2.1(1) and 2.1(2) of OSC Rule 31-505 – *Conditions of Registration* ("**OSC Rule 31-505**") respectively;

(b) as a consequence of his position of seniority and responsibility at the Corporate Respondents, he authorized, permitted or acquiesced in their failure to exercise their powers and discharge their duties as a Fund Manager in the best interests of the mutual funds, and in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to subsection 116(1) of the Act; and

(c) by authorizing payments to himself over and above his salary in the amount of $320,000.00 both before and after the commencement of Staff's investigation into Mendelson and the Corporate Respondents.

[19] Subsections 2.1(1) and (2) of Rule 31-505 provide that:

> **2.1 General Duties** – (1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.
>
> **(2)** A registered salesperson, officer or partner of a registered dealer or a registered officer or partner of a registered adviser shall deal fairly, honestly and in good faith with his or her clients.

[20] Subsection 116(1) of the Act provides that:

> **116.(1) Standard of care for management of mutual fund** – Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

[21] Based on the Agreed Statement of Facts, I found that Mendelson engaged in conduct contrary to subsections 2.1(1) and 2.1(2) of OSC Rule 31-505 and subsection 116(1) of the Act and acted contrary to the public interest and concluded the merits hearing.

III. SANCTIONS

A. The Positions of the Parties

1. Staff's Submissions

[22] Staff requested that the following sanctions be imposed on Mendelson:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Mendelson cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Mendelson is prohibited permanently from the acquisition of any securities with the exception that Mendelson is permitted to acquire securities in mutual funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mendelson permanently;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mendelson is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mendelson resign one or more positions that he holds as a director or officer of a reporting issuer;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) pursuant to clause 10 of subsection 127(1) of the Act, Mendelson disgorge to the Commission the amount of $320,000 obtained as a result of his non-compliance with Ontario securities law, for allocation, through the Receiver/Trustee KPMG Inc., if appropriate, to or for the benefit of third parties.

[23] Staff submitted during the hearing that it has been informed by Mendelson that he consents to the above-requested sanctions, except for the requested disgorgement order set out in subparagraph 22(h) above. Accordingly, Staff's submissions during the hearing mainly related to the imposition of a disgorgement order.

[24] Staff referred to a number of authorities, including *Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions and Costs***"), *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions and Costs***"), *Re Lehman Brothers and Associates Corp.* (2012), 35 O.S.C.B. 5357 and *Re Maitland Capital Ltd.* (2012), 35 O.S.C.B. 6500 ("***Maitland Sanctions and Costs***") in support of its submission that it is appropriate to order Mendelson to disgorge to the Commission the amount of $320,000, which Mendelson acknowledged as having received in contravention of Ontario securities law and contrary to the public interest. In Staff's submission, the facts before the Panel involve a multi-million-dollar investment scheme for which Mendelson had pled guilty and was sentenced to two years in a federal penitentiary. Mendelson's misconduct and breaches of the Act were serious and demonstrate a disregard for the rules governing the sale of securities to investors and a failure to meet the high standards of fitness and business conduct required by the Act. Although investors have received a high amount of their principal investments through the good work of the Receiver, it was Staff's submission that they were seriously harmed and lost well in excess of $9.12 million. According to Staff, it is not highly probable that investors would be able to obtain redress by other means. Staff submits that all of these factors support the granting of a disgorgement order.

[25] Staff submitted that disgorgement is necessary in this case for specific and general deterrence. Staff acknowledged that, due to Mendelson's circumstances and in particular the time he spent in jail, it may be the case that Mendelson had been deterred from engaging in similar misconduct. However, it is Staff's position that the absence of a disgorgement order in the face of Mendelson's explicit acknowledgement in the Agreed Statement of Facts that he received money in contravention of Ontario securities law and contrary to the public interest would send a signal to the public that wrongdoers would be able to retain financial benefit derived from contravening Ontario securities law. This, according to Staff, would not achieve general deterrence. Rather, the Commission should be known to the public to protect the capital markets from "those people who deprive the citizens of their hard-earned money and deprived their children of their parents' future and their futures" (Hearing Transcript dated October 16, 2012 at p. 60).

[26] Staff also submitted that it is not seeking an administrative penalty or costs in respect of Mendelson because Mendelson had pled guilty to fraud in the criminal courts, had been convicted and had been sentenced to two years in the federal penitentiary.

2. Mendelson's Submissions

[27] Mendelson confirmed at the hearing that he consented to the imposition of the sanctions set out in paragraph 22 above except for the requested disgorgement order set out in subparagraph 22(h).

[28] In his oral submissions, Mendelson indicated that he accepts responsibility for his actions. He acknowledged that he was "greedy", "dishonest" and "selfish" and his behaviour arose out of his "fear … this universal self-limiting belief of not enough" (Hearing Transcript dated October 16, 2012 at p. 46).

[29] He submitted that when Staff commenced its investigation, he retained counsel and cooperated fully. He further submitted that when he was being charged with fraud under the Criminal Code, he "made a decision at that point that [his] life had to be about truth and honour 100 percent". As a result, he went to the police "unprotected, … shared [his] truth, prepared to accept whatever consequences were in store for [him]" (Hearing Transcript dated October 16, 2012 at p. 47). He was sentenced to two years in prison and served six months of that sentence.

[30] Mendelson in his submissions described the impact of his misconduct on his family. Mendelson submitted that he went through a very difficult time, lost his business and all of his money and went into debt and his reputation and career prospects were severely damaged. He submitted that as a result of this experience, he underwent a change in attitude and has since done his best to "[d]o the right thing" and "right any wrongs and to mend any damage that [he] was part of causing" (Hearing Transcript dated October 16, 2012 at pp. 50 and 51).

[31] Mendelson submitted that he now "devote[s] [his] time through teaching and coaching to helping others discover the seductive and destructive nature of greed and how it wreaks havoc in people's lives" (Hearing Transcript dated October 16, 2012 at p. 52). He informed the Commission that he is a self-employed consultant and coach helping clients "grow their business and themselves", that is "behaviors, attitudes, beliefs, and that stuff – that matters" (Hearing Transcript dated October 16, 2012 at p. 49). He also submitted that he was using "what was a difficult experience for the greater good", including sharing his story "pro bono to university students, to churches, synagogues, to youth groups" (Hearing Transcript dated October 16, 2012 at pp. 49 and 50).

[32] According to Mendelson, he is trying to build a new career and leads a modest lifestyle. He submitted, without evidence, that he does not have the ability currently or in the foreseeable future to pay $320,000. He submitted that he did not settle with Staff because he does not want to agree to monetary sanctions that he has no ability to pay.

[33] He also asked the Commission to consider the following mitigating factors when considering disgorgement: (i) investors received at least 97% and up to 102% of the funds invested; (ii) he paid himself a considerably below market salary in the amount of approximately $150,000 annually while he was CEO of PAAM; (iii) he was not a registrant with the Commission; (iv) he never managed any funds directly or indirectly; (v) he did not have knowledge of the offshore investment for which Manor was responsible; (vi) he went to prison which was a powerful deterrent; and (vii) he agreed to lifetime trading and other prohibitions. He asked that the Commission not further punish him by asking for payment that he has no ability to pay and placing strain on his family and his ability to contribute to the society.

[34] Mendelson did not propose an amount of disgorgement that would be appropriate in the circumstances. He did propose that he serve 300 hours of community service as an alternative to paying disgorgement.

3. Reply Submissions

[35] In reply submissions, Staff acknowledged that Mendelson had undergone a difficult and life-altering circumstance when he received a sentence of two years of prison of which he served six months. Staff also acknowledged that Mendelson had a journey of self-discovery and has acknowledged his misconduct. However, Staff described Mendelson as having "gone a ways down the road of remorse … but not far enough" (Hearing Transcript dated October 16, 2012 at p. 60). Staff submitted that Mendelson's remorse was qualified to the point where he had to pay. It was Staff's submission that those who are truly remorseful and want to "right any wrongs" would offer to pay something back, and Mendelson had not even made a modest offer to pay anything back in his submissions.

[36] Staff submitted that while Mendelson had lost his business and all of his money and had gone into debt, the business of the Corporate Respondents was conducted, and the money was received, in contravention of Ontario securities law. With respect to Mendelson's ability to pay, Staff pointed out that there is no evidence before the Panel regarding his financial circumstances.

[37] Staff also submitted that the Commission has no jurisdiction to impose a community service order as proposed by Mendelson in his oral submissions.

[38] Following Staff's reply submissions, Mendelson stated that he is "open to paying something back on a monthly basis over time. [Staff] is exactly right that that is the right thing to do. It's just [$]320,000 right now feels overwhelming to me" (Hearing Transcript dated October 16, 2012 at pp. 62 and 63).

B. The Law on Sanctions

[39] The Commission's mandate, set out in section 1.1 of the Act, is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.

[40] In exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner, as stated by the Commission in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("***Mithras***"):

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra*, at pp. 1610 and 1611)

[41] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

> … the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43)

[42] The Supreme Court of Canada has recognized that general deterrence is an important factor in imposing sanctions: "… it is reasonable to view general deterrence as an appropriate and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[43] The Commission has previously identified the following as factors that the Commission should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

(f) the size of any profit obtained or loss avoided from the illegal conduct;

(g) the size of any financial sanction or voluntary payment;

(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(i) the reputation and prestige of the respondent;

(j) the remorse of the respondent; and

(k) any mitigating factors;

(see, for example, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at p. 7746 ("***Belteco***"); *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at p. 1136; *Limelight Sanctions and Costs*, *supra*, at para. 21; and *Sabourin Sanctions and Costs*, *supra*, at para. 57)

[44] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra*, at p. 1134).

[45] Further, in imposing financial sanctions such as disgorgement, overall financial sanctions imposed on each respondent is a relevant consideration (*Sabourin Sanctions and Costs*, *supra*, at para. 59). The Commission has also held in prior decisions that ability to pay, while not a predominant or determining factor, is clearly relevant in determining the appropriate financial sanctions to be imposed (*Sabourin Sanctions and Costs*, *supra*, at para. 60).

C. Analysis

1. Findings with respect to Sanctions

[46] Overall, the sanctions imposed must protect investors and Ontario capital markets by barring or restricting the respondents who have contravened Ontario securities law from participating in those markets in the future and by sending a strong message of specific and general deterrence.

[47] In considering the factors referred to in paragraph 43 above, I find the following factors and circumstances to be particularly relevant.

(a) Seriousness of the conduct and breaches of the Act

[48] The contraventions of Ontario securities law as admitted by Mendelson in the Agreed Statement of Facts are serious. As discussed in *Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 46, brokers, dealers and other market participants in the business of selling or promoting securities must meet the minimum registration, qualification and conduct requirements of the Act. Mendelson failed to uphold the high standards of fitness and business conduct by failing to act in the best interests of the funds and failing to exercise the degree of care, diligence and skill that a reasonably prudent fund manager would exercise in the circumstances. The Agreed Statement of Facts further suggests that members of the public were induced to invest on the basis of dishonest representations and funds raised from investors were improperly used. I also note that the conduct underlying these contraventions formed the basis of Mendelson's guilty plea to one count of fraud under the Criminal Code and his two-year sentence in a federal penitentiary.

(b) The respondent's experience in the marketplace

[49] Mendelson had never been registered under the Act, which I consider to be a neutral factor in determining the appropriate sanctions.

(c) The size of any profit obtained or loss avoided from the illegal conduct

[50] Approximately 26,000 investors invested approximately $750 million in products offered by the Corporate Respondents. Mendelson acknowledged that he authorized payments to himself over and above his salary in the amount of $320,000 and that this contravened Ontario securities law and was contrary to the public interest.

[51] Investors in Portus received at least 97% and up to 102% of the funds invested, although there is no evidence that the recovery was a result of efforts on the part of Mendelson. The Agreed Statement of Facts discloses that this is a result of the fact that in all of the domestic structures, investor funds were invested in guaranteed notes with Société Générale. Also, the funds returned included the return of referral and brokerage fees from registered brokers and dealers who sold units in the Portus investment structures.

(d) Specific and General Deterrence

[52] Mendelson was a directing mind of one of the Corporate Respondents and discussed decisions made by the Corporate Respondents with Manor. He agreed to use investor funds to operate and support the Corporate Respondents contrary to the representations made to investors. He did so with the understanding that this use of existing investor funds meant that the Corporate Respondents were not sustainable without reducing the operating costs of the companies or the infusion of new funds from investors. The Agreed Statement of Facts also shows that despite having received legal advice in or around July 2004 that any further action taken by them in relation to the Corporate Respondents would be risky and may result in further criminal law problems, the Corporate Respondents continued to receive funds in excess of $258 million. Mendelson was also aware that, in February 2005, following the issuance of the Temporary Orders, Manor took steps to destroy documents and delete electronic information to impede Staff's investigation. The sanctions imposed in this case should deter him and other like-minded people from engaging in similar misconduct.

[53] I do note, however, that the Agreed Statement of Facts provide that Mendelson "did not always know all the details" about the decisions made by Manor and the Corporate Respondents, that he believed the use of investor funds to operate and support the companies was to be on a short-term basis and that he was not involved in the transferring of funds to off-shore entities.

(e) Remorse/Recognition of the seriousness of the improprieties

[54] Mendelson acknowledged in the Agreed Statement of Facts that he contravened Ontario securities law and accepted certain sanctions against him. He expressed remorse at the hearing and made submissions that indicate his acceptance of responsibility for his actions.

(f) Mitigating Factors

[55] Mendelson cooperated with Staff during Staff's investigation and entered into an undertaking in which he agreed to refrain from (i) becoming a director or officer of a reporting issuer; (ii) being an employee, and a director or officer of a registrant; and (iii) engaging directly or indirectly in the solicitation of funds from general public for investment in "securities". As a result of the undertaking, Mendelson has been effectively unable to participate in his chosen field of business in the capital markets since June 2006.

[56] Mendelson was sentenced to two years in jail and served six months of that sentence. As acknowledged in the Agreed Statement of Facts, Mendelson has been engaged in community service for the past 3 years, "teaching business students and other groups about the destructive nature of fear and greed in the business world, using his own story and personal consequences as a powerful model for deterrence from unethical behaviour".

2. Trading and Other Prohibitions

[57] At the outset of the hearing, I noted that some of the sanctions requested by Staff, namely, the prohibition against acquiring securities, the prohibition from becoming or acting as a director or officer of a registrant or investment fund manager and the prohibition from becoming or acting as a registrant, investment fund manager or promoter, are not requested in the Notice of Hearing. However, in view of the fact that the Applicant confirmed that these sanctions were agreed upon as a result of extensive discussions with Staff, I am satisfied that the Applicant received notice of these proposed sanctions.

[58] Based on the factors discussed in paragraphs 48 to 56 above and the consent and agreement of the parties, I find that it is in the public interest to make the following orders:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in securities by Mendelson cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Mendelson is prohibited permanently from the acquisition of any securities with the exception that he is permitted to acquire securities in mutual funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mendelson permanently;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mendelson is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mendelson resign any and all positions that he holds as a director or officer of a reporting issuer;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager; and

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

3. Disgorgement

[59] As set out above, the only issue in dispute at this hearing is the amount of disgorgement, if any, to be ordered against Mendelson.

[60] Clause 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. The Commission in *Limelight Sanctions and Costs*, *supra*, at para. 52 set out a list of relevant factors to be taken into account when determining a disgorgement order:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[61] In my view, it is appropriate to order that Mendelson disgorge to the Commission the amount of $320,000. In this case, Mendelson clearly admitted in the Agreed Statement of Facts that he obtained $320,000 as a result of his contraventions of Ontario securities law, which he admitted were contrary to the public interest and which contraventions I consider to be serious for reasons set out in paragraph 48 above. Although investors received from 97% and up to 102% of the funds they invested, in some cases, they did not recover the entire principal amounts that they invested. This is confirmed by Staff in the additional submissions referred to in paragraph 14 above, which state that the investor losses in this case were well in excess of $9.12 million, that is, the sum of the disgorgement ordered against Manor and the proposed disgorgement against Mendelson.

[62] While Mendelson submitted that he had no ability to pay, he failed to provide the Commission with any evidence in support of this claim.

[63] I am mindful that Mendelson was cooperative in Staff's investigation, was sentenced to two years in a federal penitentiary, expressed remorse during the hearing and submitted that he was specifically deterred. However, as set out in *Sabourin Sanctions and Costs*, *supra*, at para. 65, the purpose of the disgorgement remedy is not only to provide specific and general deterrence but also to ensure that respondents do not retain any financial benefit from their breaches of the Act. In these circumstances, particularly in light of Mendelson's admission that he received funds in the amount of $320,000 in contravention of Ontario securities law, the Commission must order that the entire amount be disgorged in order to ensure that he not be permitted to retain any financial benefit from his breaches of the Act and in order to send a message to the public that the Commission does not permit the retention of any funds derived from the contravention of Ontario securities law.

[64] Accordingly, I order that Mendelson disgorge to the Commission the amount of $320,000, which is designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

4. Other Sanctions proposed by Mendelson

[65] Mendelson proposed that he perform a term of community service as an alternative to an order of disgorgement. As the Commission held in *Maitland Sanctions and Costs*, *supra*, at para. 72, the Commission lacks the statutory authority to impose an order requiring a respondent to perform community service.

IV. ORDER

[66] For the reasons above, I find that it is in the public interest to order the following sanctions, which are proportionate to Mendelson's conduct, reflect the seriousness of his non-compliance with Ontario securities law and will deter him and other like-minded people from engaging in similar misconduct.

[67] I will issue a separate order giving effect to the decision on sanctions, as follows:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in securities by Mendelson cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Mendelson is prohibited permanently from the acquisition of any securities with the exception that he is permitted to acquire securities in mutual funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mendelson permanently;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mendelson is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mendelson resign any and all positions that he holds as a director or officer of a reporting issuer;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Mendelson is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) pursuant to clause 10 of subsection 127(1) of the Act, Mendelson disgorge to the Commission the amount of $320,000 obtained as a result of his non-compliance with Ontario securities law, which is designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

DATED at Toronto on this 29th day of November, 2012.

“Edward P. Kerwin”

SCHEDULE "A"

Agreed Statement Of Facts

A. Overview

1. Michael Mendelson has entered a plea of guilty to one count of fraud contrary to section 380 of the *Criminal Code of Canada* in the Ontario Court of Justice in connection with the sale of twelve series of investment products to members of the public by the Portus companies. Approximately 26,000 investors, the majority Canadian, invested approximately $750 million in Portus products. During the time period covered by the charge, Boaz Manor and Michael Mendelson were close business partners and the directing minds of the Portus companies. They talked about decisions made by the Portus companies but Mendelson did not always know all the details.

2. In the case of each Portus investment product referred to in the charge, members of the public were induced to invest on the basis of dishonest representations, which resulted in members of the public being at risk for substantial amounts of money.

B. The Corporate Structure

3. Portus received its first $1.2 million in "seed money" in equal amounts from Manor and Mendelson through Bringood Investment Ltd, a company owned by Manor's sister-in-law.

4. Paradigm Alternative Asset Management Inc, later to be known as Portus Alternative Asset Management Inc. ("PAAM") was incorporated on January 10, 2003. Boaz Manor controlled PAAM. It was registered as an investment counsellor and portfolio manager or their equivalent under the securities legislation of each of the territories and provinces in Canada, with the exception of Quebec. PAAM was also registered as a limited market dealer under the Ontario *Securities Act*. PAAM developed investment products that Portus marketed to investors. Funds received from the investors flowed into PAAM, and were solely controlled by Manor and Mendelson signed cheques on behalf of PAAM at Manor's direction.. PAAM was also made up of numerous Canadian and offshore "satellite companies".

5. Paradigm Asset Management Inc., later to become Portus Asset Management Inc. (PAM), was incorporated on January 8, 2003. PAM was controlled by Michael Mendelson and engaged in marketing and record keeping for the Portus investment funds. Neither PAM nor Mendelson ever managed or directed any money on behalf of investors.

C. Portus Investment Products

6. Between February 2003 and May 2003, PAAM marketed investments in what it termed its Market Neutral Preservation Fund ("MNPF"). Units of MNPF were sold to "accredited investors" as defined by the Ontario Securities Act. These were individuals with substantial financial assets. MNPF appeared in its offering memorandum to be properly set up as a "hedge fund".

7. PAAM then restructured its investment strategy in order to make its financial services available to all investors. It did this by offering to manage the assets of clients of third party investment dealers on a discretionary basis. Investment advisors working for registered dealers referred their clients to PAAM and received referral fees and trailer fees in consideration. Investors referred to PAAM entered into a managed account agreement wherein PAAM was given authority to invest and reinvest their assets on a discretionary basis.

8. The managed account agreement and the offering memorandum for the relevant "Trust Series" disclosed the fees which were payable to PAAM for its services. The managed account agreement indicated that PAAM would be entitled to an annual management fee ranging from 1.9% to 2.25% of the market value of the assets in an investor's account. It also indicated that PAAM would be entitled to a performance fee of 18% of the growth in the market value of the assets in an investor's account. The offering memorandum disclosed similar fees to PAAM but based the payment of such fees on the net asset value of the relevant Trust Series.

9. PAAM represented that it would exercise its discretionary authority by investing 100% of the investor's funds in a principal protected note guaranteed by a major bank – Societe Generale of France. The money invested was to go into the note and Societe Generale promised the investment note would be linked to the returns of a hedge fund of funds whose managers invested the money. The bank notes participated in the gains of this linked hedge fund of funds so that at the end of the note's term the investor was guaranteed a minimum of the return of the principal plus whatever was made by the linked hedge fund of funds.

10. The terms of the managed account agreements were amended as new Trust Series were set up. While the level of disclosure increased, the managed account agreements and offering memoranda continued to represent to the investors that:

1) their funds would be fully invested;

2) the principal would be protected; and

3) there was an opportunity for profit through the portion of the funds invested in the hedge fund.

11. Investors were also told that the structure of the Trust Series included a complex "swap" agreement utilizing allegedly arms-length counter parties named Premiers Derives Paris Inc. ("PDP") and BNote Management Inc. ("BNote"). It was represented that the use of these offshore counter parties would result in beneficial tax treatment of the investments.

12. Contrary to representations made to PAAM investors:

1) Canadian Equities were not purchased except for MNPF;

2) BancNote Trust Series III through XII(a), were not validly constituted;

3) the option agreements with the counter parties were not valid; and

4) the counter parties were not arms-length but instead were entities created and controlled by Boaz Manor with a view to creating the illusion of legitimacy for the Trust structures.

13. Moreover, PAAM did not actively manage clients' individual accounts and did not provide any advice to investors. With the exception of funds that were improperly used as set out below, funds were pooled and invested directly into the Trusts. The only investments made by the Trusts were the purchase of the principal protected notes from Societe Generale.

14. In July 2003 Portus began offering the BancNote Trust Series and, subsequently, the BancLife Trust Series. The investor funds for all these Trust Series were deposited by PAAM/Manor into one of two co-mingled bank accounts maintained by PAAM at the Royal Bank of Canada in Toronto. The funds then flowed into separate bank accounts at the Royal Bank set up for each of the Trust Series, starting with what was known as a "custodian" account.

15. From October 2003 to March 2004 Manor maintained accounts in various names at Lines Overseas Management, a brokerage house in Bermuda. Most of the funds received by PAAM in respect of BancNote Trust Series II, III, IV, V and portions of VI and VI (a) flowed from PAAM's accounts at Royal Bank to the Bank of Butterfield in Bermuda. These funds were recorded in the brokerage account of PAAM at Lines Overseas Management. The brokerage account statements show that shares in Canadian public companies were purchased and sold. In reality the funds simply moved between the four separate accounts in the names of PAAM, PDP, BNote and BNote Limited (another offshore company affiliated with Manor) and then were transferred back to accounts held by PAAM in the name of each of the Trusts at Royal Bank in Toronto. Manor then transferred the funds from these accounts to an account in the name of PAM at RBC Dominion Securities in Toronto and they were used to purchase the notes from Societe Generale.

16. In or about March 2004 investor funds stopped flowing through Lines Overseas Management. Funds in respect of BancNote Trust Series VIII, VIII (a), X and X (a) and a portion of Series VI and VI (a) were transferred by Manor between a number of bank accounts in the name of PAAM and PAM at Royal Bank in Toronto. Most of the funds were then transferred by Manor from these accounts to an account in the name of PAM at RBC Dominion Securities in Toronto and were used to purchase the notes from Societe Generale.

17. Manor and Mendelson agreed to use investor funds to operate and support the Portus companies. Mendelson believed this was to be on a short-term basis. Contrary to the representations made to investors and without their knowledge, Manor and Mendelson misappropriated approximately $94 million of the principal invested by clients (approximately 13.3% net of redemptions) and used the money for the ongoing operations of the companies (e.g. to pay management fees, performance fees, referral fees, trailer fees and salaries). Mendelson indicates it was his general understanding that this $ 94 million (13.3% of total funds) was obtained pursuant to a financing arrangement where PAAM's annual management fees approximating 2.6% per year were assigned to the structure's counterparty, in exchange for the present value of five years worth of fees paid up front. This totaled $94 million over Portus' life, which equated to both 13.3% total, and 2.6% per year for the five-year term. The vast majority of notes carry a five-year term. Mendelson realized this use of existing investor funds meant that Portus was not sustainable without reducing the operating costs of the companies or the infusion of new funds from investors.

18. Of the approximately $94 million of investor funds misappropriated by Portus, Manor transferred more than approximately $52 million to various offshore entities and then to Basel Trust in the Jersey Islands. Basel Trust then entered into a series of fiduciary agreements with Bank Hapoalim in Switzerland whereby Bank Hapoalim loaned the funds held by Basel Trust to Portus. Approximately $13 million was also transferred to Bank Hapoalim in Switzerland and loaned back to BancNote Corp. (a Portus company). This had the effect of making it look like external financing had been obtained from Bank Hapoalim for the operation of the business when the financing actually came from investor money.

19. Manor then transferred the balance of more than $41 million of misappropriated investor funds directly to BancNote Corp. and used it for the operation of the Portus companies.

D. Legal Advice From Groia & Company

20. In March 2004 PAAM and PAM hired the Toronto law firm of Groia & Company to provide legal advice on the structure and investments of the Portus companies. Groia & Company in turn hired the services of accountants Kroll, Lindquist Avery ("Kroll"). A report prepared by Kroll noted the following issues:

1) Client money was used to fund operations;

2) There was co-mingling of funds at several levels;

3) There were doubts over the authenticity of some of the documents supporting transactions;

4) There was a lack of transparency and information on certain key transactions regarding Edinburgh Estates (a fund referred to by Manor as a Portus investment that did not actually exist), Bank Hapoalim, Bancnote Corp., and the Societe Generale;

5) Funds used for "repayment" of Edinburgh Estates transactions in the Market Neutral Preservation Fund flowed through a bank account of BancNote Trust Series VI; and

6) The source of Hapoalim financing may have been investor funds.

21. On July 27, 2004, Manor and Mendelson admitted that funds directed to Edinburgh Estates that Kroll was unable to account for, were the discounted amount of the principal protected notes purchased (averaging 13.3% as discussed above) and had "circled back" to pay operating expenses for PAM. During the meeting, Mr. Groia advised Manor and Mendelson that they needed to do the following five things immediately:

1) Retain senior counsel at a top tier law firm on behalf of PAAM and PAM and provide true, full and complete disclosure respecting the structure and affairs of PAAM;

2) Manor and Mendelson needed to speak to their own counsel respecting the disclosure of the use of the Edinburgh Estates funds and the fact that Groia & Company had resigned and could no longer act for PAAM or PAM;

3) The Ontario Securities Commission would view it as the obligation of Manor and Mendelson as capital market participants to disclose all of the problems and issues raised to date;

4) PAAM and PAM should stop taking new investor funds immediately; and,

5) Groia could not act for PAAM, PAM, Manor or Mendelson.

22. Manor and Mendelson were also advised that any further action taken by them would be risky and may result in further criminal law problems or may aggravate their situation and the current problems identified.

23. After September 2004 and receiving this advice, Portus received in excess of $258 million (net of redemptions) from investments into BancNote Trust Series X, X (a), XII, XII (a) and BancLife Trust Series I and II (additional funds were also taken in preexisting Trusts and Trusts set up after September 2004 but for which funds were still being pooled at the time of the Ontario Securities Commission's Order).

E. Regulatory Action

24. On February 2, 2005 the Ontario Securities Commission (the "Commission") issued a temporary order precluding Portus from opening any new client accounts or from accepting any new funds or assets from investors. The Commission took this action because PAAM had contravened securities regulations regarding the maintenance of proper books and records, the delivery of client account statements and the discharge of "know your client" and investment suitability requirements. On February 10, 2005 the Commission issued a second temporary order precluding redemptions or withdrawals by investors and precluding Boaz Manor from trading in the principal protected notes issued by Societe Generale. The Commission applied for a court order appointing a Receiver and the order was issued on March 4, 2005.

25. In February 2005, after the Commission was well into their investigation of Portus, under Manor's direction and to Mendelson knowledge electronic files and email accounts were deleted, servers were re-formatted, the hard drives of approximately 60 desktops and 30 laptops were reformatted, and voluminous paper files were destroyed.

F. Mendelson cooperated with Staff's investigation

26. On June 13, 2006, Mendelson signed an undertaking with the Commission in which he agreed to refrain from:

1) becoming a director or officer of a reporting issuer,

2) being an employee, director or officer of a registrant; and,

3) engaging directly or indirectly in the solicitation of funds from the general public for investment in "securities"

27. As a result of signing the undertaking, Mendelson has been effectively unable to participate in his chosen field of business in the capital markets since June of 2006.

28. Investors in Portus received at least 97% and up to 102% of the funds invested. This was primarily the result of fact that in all of the domestic structures, investor funds were invested in guaranteed notes with Societe General.

29. Mendelson has been engaged in community service for the past 3 years, teaching business students and other groups about the destructive nature of fear and greed in the business world, using his own story and personal consequences as a powerful model for deterrence from unethical behavior.

G. Recovery On Investor Claims[1]

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

H. Dishonest Benefits – compensation

31. In January 2005 and March 2005 Mendelson authorized payments to himself over and above his salary in the amount of $320,000.00 both before and after the commencement of the Commission investigation. This conduct was contrary to Ontario securities law and contrary to the public interest.

I. Breaches of the Ontario Securities Act by Mendelson

32. Mendelson agrees that between and including January 10, 2003 and March 5, 2005 (the "Material Time"), by engaging in the conduct as set out above, Mendelson admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

1) by engaging in the conduct described herein, Mendelson's actions were contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505 respectively;

2) as a consequence of his position of seniority and responsibility at Portus, Mendelson authorized, permitted or acquiesced in Portus' failure to exercise its powers and discharge its duties as a Fund Manager in the best interests of the mutual funds and, in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to section 116(1) of the Act; and,

3) by authorizing payments to himself over and above his salary in the amount of $320,000.00 both before and after the commencement of the Staff's investigation into Mendelson and Portus.

33. Mendelson admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 32 (1) to (3).

34. This Agreed Statement of Facts may be signed in one or more counterparts which together will constitute a complete Agreed Statement of Facts.

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[1] For complete reports and analysis of funds seized by KPMG Inc, Trustee in Bankruptcy & Court-Appointed Receiver for Portus, please refer to www.portusgroup.ca.

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

Dated this 16th day of October, 2012

_____
Michael Mendelson

Dated this 16th day of October, 2012

STAFF OF THE ONTARIO SECURITIES COMMISSION

_____
Tom Atkinson
Director, Enforcement Branch

3.1.3 David Charles Phillips and John Russell Wilson

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

REASONS AND DECISION ON A MOTION

Hearing:	November 26, 2012		
Decision:	November 30, 2012		
Panel:	James D. Carnwath	–	Commissioner
Counsel:	Bruce O'Toole Kate McGrann	–	For the Respondents
	Yvonne Chisholm	–	For the Ontario Securities Commission

REASONS AND DECISION ON A MOTION

I. INTRODUCTION

[1] In this motion, David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**"), seek disclosure of certain documents in the possession of Staff of the Ontario Securities Commission (the "**Commission**" and "**Staff**"). The Respondents say that the documents they seek are relevant to Staff's allegation that they engaged in fraud. Staff submits that the documents the Respondents seek are irrelevant to the allegations and in many cases privileged.

[2] For the following reasons, the motion is allowed in part, and Staff is ordered to disclose certain of the documents requested, as set out below, subject to privilege.

[3] The hearing on the merits is scheduled to commence on February 11, 2013, and to continue on February 13, 14, 15, 19, 20, 21, 22, 25, 27 and 28, and March 1, 4, 5 and 6, 2013 (the "**Merits Hearing**"). At the hearing of the motion (the "**Motion Hearing**"), Staff and the Respondents (the "**Parties**") expressed their intent to comply with the disclosure timelines set out in the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "**Rules**"). They are encouraged to be mindful that any further motions in this matter will need to be disposed of quickly to ensure that the Merits Hearing goes ahead as scheduled.

II. BACKGROUND

[4] This proceeding commenced on June 4, 2012, when the Commission issued a Notice of Hearing in relation to a Statement of Allegations issued by Staff on the same day. Staff alleges that the Respondents engaged in fraud, contrary to section 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), between August 22 and October 28, 2011 (the "**Sales Period**"), by selling and overseeing the sales of securities by the First Leaside Group ("**FLG**"), raising approximately $18.9 million from investors, while withholding important information from investors, namely the August 19, 2011 report of Grant Thornton Limited ("**Grant Thornton**").

[5] Four important background facts are undisputed in this motion. First, there is no dispute that in March 2011, Staff urged FLG to retain an independent accounting firm to conduct a viability study, and that FLG selected Grant Thornton from a short-list of firms provided by Staff. Second, there is no dispute that on March 18, 2011, Phillips gave Staff an undertaking that while Grant Thornton conducted its review of FLG (the "**Review**") and for one week after the delivery to Staff of the Grant Thornton report (the "**Report**"), no sale of debt or equity in certain FLG funds would be made to any investors (the "**Undertaking**"). Third, there is no dispute that the Report was delivered to FLG on August 19, 2011, that FLG delivered it to Staff the same day, and accordingly that the Undertaking expired on August 26, 2011. Finally, there is no dispute that following the expiry of the Undertaking, FLG resumed offering all of its products to investors, including the products described in the Undertaking.

[6] The Respondents advise that at the Merits Hearing, they will submit, amongst other things, that: (a) the Report was reasonably viewed by FLG as being neither a material fact nor a material change, Staff did not raise the issue of its disclosure to

investors at the time it was delivered to the Respondents and Staff, notwithstanding detailed discussions between Staff and counsel for FLG, Staff was aware that the Undertaking expired one week after delivery of the Report, and Staff was aware that FLG sold its products during the Sales Period; (b) there were no conclusions or recommendations in the Report that required a reassessment of FLG's business model or that would affect the value or risk associated with the securities offered to investors; (c) the decision not to release the Report was made by the full board of directors of First Leaside Wealth Management ("**FLWM**"), who received legal advice; and (d) the decision to sell FLG's equity and debt products was discussed with the full board of directors of FLWM, with counsel present, and Staff was aware that FLG was selling its products, including those mentioned in the Undertaking, during the Sales Period.

III. DOCUMENTS DISCLOSED BY STAFF

[7] Staff has provided a substantial amount of disclosure. Staff provided affidavit evidence, which was not disputed by the Respondents, that between June 22 and August 27, 2012, Staff disclosed 49 volumes of material to the Respondents, including: interview transcripts, exhibits and documents of witnesses interviewed by Staff; the Report and other reports prepared by Grant Thornton after it was appointed monitor of FLG; the property valuation reports obtained by FLG in early 2011; documents from the proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceeding**"); corporate documents; corporation profile reports; documents regarding the registration of the Respondents and a number of FLG companies; documents regarding the suspension of First Leaside Securities Inc. ("**FLSI**"), an investment dealer, and F.L. Securities Inc. ("**F.L. Securities**"), an exempt market dealer; correspondence; enforcement notices and replies; contact centre and investigation notes; and discs of emails of the Respondents and another individual during the Sales Period, with an explanation of the computer search terms employed.

IV. ADDITIONAL DISCLOSURE REQUESTED BY THE RESPONDENTS

[8] The Respondents ask for disclosure of the following additional categories of documents:

(a) Drafts of the Undertaking and correspondence, both internal and external, regarding the Undertaking;

(b) Documents evidencing receipt of the Report on August 19, 2011;

(c) Staff's commentary, in internal emails or otherwise, about the Report;

(d) Documents evidencing meetings between Staff and counsel for FLG between March and November 2011, including but not limited to notes taken during the meeting and internal emails following the meeting;

(e) Staff's commentary, in internal emails or otherwise, regarding the September 12, 2011 letter from counsel for FLG to Staff concerning the FLG response to the Report;

(f) Staff's commentary, in internal emails or otherwise, regarding FLG's retainer of Grant Thornton in late September 2011;

(g) Documents evidencing Staff's decision, more than two months after receipt of the Report, to seek a cease trade order; and

(h) the reports filed by FLG under National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") and proof of payment made during the Sales Period.

V. THE LAW ON DISCLOSURE

[9] The parties agree that in this Motion, the Commission need not determine whether the documents described in paragraph 8 above (the "**Disputed Documents**") will be admissible in the Merits Hearing.

[10] The parties agree that Staff's disclosure obligations are set out in Rule 4.3(2), which says:

> 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.

[11] The Respondents submit that given the nature of Staff's allegations against them (fraud), their good character and the propriety of their conduct is at issue in the proceeding, and therefore section 8 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") and Rule 4.4 also have application. Section 8 of the SPPA states:

> Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

[12] Rule 4.4 is as follows:

> 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.

[13] The parties agree that Staff's duty of disclosure to the Respondents is "akin to the *Stinchcombe* standard", which requires the Crown, in criminal trials, to disclose all relevant information, whether inculpatory or exculpatory, and whether or not the Crown intends to introduce it into evidence (*R. v. Stinchcombe*, [1991] S.C.J. No. 83, at paragraph 29 ("***Stinchcombe***")). The Commission has adopted the *Stinchcombe* standard of disclosure in its enforcement proceedings. In *Re Biovail Corp.* (2008), 31 O.S.C.B. 7171 ("***Re Biovail***"), the Commission summarized Staff's disclosure obligations as follows:

> The parties agree that Staff has a broad duty of disclosure akin to the *Stinchcombe* standard. The Stinchcombe 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. While the Crown must err on the side of inclusion, clearly irrelevant documents should be excluded, and the initial obligation to separate "the wheat from the chaff" rests with the Crown. Documents should not be withheld if there is a reasonable possibility that doing so would impair the right of the accused to make full answer and defence.
>
> . . . .
>
> As a matter of law, Staff has an obligation to disclose to the Respondents all documents that are relevant to this proceeding, whether inculpatory or exculpatory, in accordance with principles akin to those articulated in *Stinchcombe*. There is no dispute between Staff and the Respondents with respect to that conclusion. The obligation to disclose is a matter of fundamental justice based on fairness to respondents to permit them to make full answer and defence to the allegations against them.
>
> . . . .
>
> With respect to determining relevance, we adopt the following statement from the Court of Appeal decision in *Deloitte* [*Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2002] O.J. No. 2350 (Ont. C.A.) ("***Deloitte CA***"), at paragraph 44]:
>
> > Relevant material in the *Stinchcombe*, *supra*, sense includes material in the possession or control of Staff and intended for use by Staff in making its case against the [Philip] respondents. Relevant material also includes material in Staff's possession which has a reasonable possibility of being relevant to the ability of the [Philip] respondents to make full answer and defence to the Staff allegations. This latter category includes material that the [Philip] respondents could use to rebut the case presented by Staff; material they could use to advance a defence; and material that may assist them in making tactical decisions.
>
> (*Re Biovail*, above, at paragraphs 15, 32 and 40. See also, for example, *Re Berry* (2008), 31 O.S.C.B. 5441, at paragraphs 66-68.)

[14] In *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713 ("***Deloitte SCC***"), the Supreme Court of Canada, applying a reasonableness standard of review, accepted that the Commission's use of the *Stinchcombe* relevance standard and its application in that case were reasonable decisions (*Deloitte SCC*, at paragraph 26).

[15] The parties agree that the Commission's disclosure power is subject to privilege and that any claims of solicitor-client or litigation privilege raised by Staff in relation to specific documents included in the categories of documents ordered disclosed in this Motion will need to be addressed in another motion before the start of the Merits Hearing.

VI. THE RESPONDENTS' SUBMISSIONS

[16] The Respondents submit that they need the Disputed Documents in order to make full answer and defence to Staff's allegation that they engaged in fraud. They submit (and it is not disputed by Staff) that in order to prove fraud, Staff must establish the four elements set out by the Supreme Court of Canada in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***"), as follows:

> . . . the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).
>
> (*Théroux*, above, at paragraph 27)

[17] The Supreme Court of Canada further expanded upon the act element and mental element of fraud in the following passage:

> . . . . To establish the *actus reus* of fraud, the Crown must establish beyond a reasonable doubt that the accused practised deceit, lied, or committed some other fraudulent act. Under the third head of the offence it will be necessary to show that the impugned act is one which a reasonable person would see as dishonest. Deprivation or the risk of deprivation must then be shown to have occurred as a matter of fact. To establish the *mens rea* of fraud the Crown must prove that the accused knowingly undertook the acts which constitute the falsehood, deceit or other fraudulent means, and that the accused was aware that deprivation could result from such conduct.
>
> The requirement of intentional fraudulent action excludes mere negligent misrepresentation. It also excludes improvident business conduct or conduct which is sharp in the sense of taking advantage of a business opportunity to the detriment of someone less astute. The accused must intentionally deceive, lie or commit some other fraudulent act for the offence to be established. Neither a negligent misstatement, nor a sharp business practice, will suffice, because in neither case will the required intent to deprive by fraudulent means be present. A statement made carelessly, even if it is untrue, will not amount to an intentional falsehood, subjectively appreciated. Nor will any seizing of a business opportunity which is not motivated by a person's subjective intent to deprive by cheating or misleading others amount to an instance of fraud. Again, an act of deceit which is made carelessly without any expectation of consequences, as for example, an innocent prank or a statement made in debate which is not intended to be acted upon, would not amount to fraud because the accused would have no knowledge that the prank would put the property of those who heard it at risk. We are left then with deliberately practised fraudulent acts which, in the knowledge of the accused, actually put the property of others at risk. Such conduct may be appropriately criminalized, in my view.
>
> (*Théroux*, above, at paragraphs 39-40)

[18] The Supreme Court of Canada also stated, in *Théroux*, that the *mens rea* element of fraud is subjective, but a guilty mind or wrongful intentions can be inferred from the prohibited acts themselves, barring some explanation casting doubt on such an inference (*Théroux*, above, at paragraphs 20, 21 and 23). Finally, recklessness or wilful blindness as to the consequences of the prohibited acts may be sufficient evidence of wrongful intentions (*Théroux*, above, at paragraphs 26 and 28).

[19] The Respondents submit that while they will deny, at the Merits Hearing, that they engaged in any prohibited acts, it will be open to them to provide an explanation that casts doubt on any inference that their actions demonstrate a wrongful intention

or that they were reckless or wilfully blind in selling and causing the sales of FLG equity and debt offerings while not disclosing the Report to investors. The Respondents submit that the Disputed Documents are relevant to the "factual matrix" that informed their decisions. They submit that they will be impaired in making full answer and defence if the Disputed Documents are not disclosed.

[20] The Respondents also submit that they want the Disputed Documents for tactical reasons, including deciding whether to testify and whether to waive privilege with respect to the communications between Staff and counsel for FLG.

VII. STAFF'S SUBMISSIONS

[21] Staff submits that the Respondents are attempting to convert the Merits Hearing into an enquiry into Staff's actions and state of mind. Staff submits that the Disputed Documents are not relevant to the allegations, which relate to the Respondents' actions and state of mind during the Sales Period.

[22] Staff submits that internal documents evidencing Staff's views, opinions, analysis, and decisions about whether or when to commence proceedings are irrelevant and of no assistance to the Commission. Staff relies on three decisions: *Re Shambleau* (2002), 25 O.S.C.B. 1850 ("***Re Shambleau***"), affirmed by *Shambleau v. Ontario Securities Commission* (2003), 26 O.S.C.B. 1629 (Div. Ct.) ("***Shambleau Div. Ct.***"), *Re Vancouver Stock Exchange*, [1999] 31 B.C.S.C. Weekly Summary 20 (British Columbia Securities Commission) ("***Re VSE***"), and *Re Mills*, [1999] I.D.A.C.D. No. 41 ("***Re Mills***").

[23] In *Re Mills*, a decision of the Ontario District Council of the (Investment Dealers Assocation ("**IDA**"), the issue was whether IDA Staff should be required to produce to the respondent the report of an investigator who was no longer employed by the IDA and would not be called as a witness for IDA Staff. The report appeared to contain conclusions or recommendations inconsistent with the evidence to be given by another IDA Staff investigator, who would be called to testify. The respondent's counsel submitted that the report might be relevant to the credibility of the witnesses called by IDA Staff, noting also that the respondent would be unable to compel the attendance of the former investigator since the IDA does not have power to power to subpoena witnesses. The disclosure motion was dismissed. The District Council held that "neither *Stinchcombe* nor the cases applying its principles in the regulatory context" go so far as to require the disclosure of documents relating to internal deliberations about whether to commence proceedings (*Re Mills*, above, at p. 6).

[24] In *Re VSE*, the B.C. Securities Commission overturned a decision of a hearing panel of the Vancouver Stock Exchange ("**VSE**") that ordered VSE Staff to produce internal documents, including internally-generated investigation reports, to the respondent. The B.C. Securities Commission drew a distinction between documents that were gathered by VSE Staff during the investigation (the "fruits of the investigation"), which must be disclosed, subject to privilege, in accordance with Stinchcombe, and documents that were internally generated by VSE Staff, which need not be disclosed:

> It is the responsibility of the hearing panel to determine whether the allegations ... have been met. The views of ... staff, as expressed in internally generated documents such as investigation reports, are of no relevance in this regard.
>
> (*Re VSE*, above, at page 7).

[25] In *Re Shambleau*, Staff of TSE Regulation Services Inc. ("**RS**") brought an application, pursuant to section 21.7 of the Act, for hearing and review of a decision of the board of the Toronto Stock Exchange (the "**TSE Board**") that upheld a decision of a TSE hearing panel requiring RS Staff to disclose an investigation report to the respondent. The hearing panel held that the report was relevant to opinion evidence that its author, Kim Stewart ("**Stewart**") would give at the merits hearing and would help the respondent cross-examine Michael Prior ("**Prior**"), another investigator who would be called by RS Staff to give expert evidence at the hearing. The Commission overturned the decision of the TSE Board. The Commission held that Stewart was a fact witness, not an expert witness, and her opinions were irrelevant to the decision of the TSE hearing panel:

> Ms. Stewart is a fact witness and her opinions are irrelevant. ... It is ultimately up to the Hearing Panel to make the final determinations on the issues in dispute and Ms. Stewart's opinion or interpretation of the facts, as contained in the investigation report, is of no relevance for the purposes of disclosure.
>
> Unlike in *Howe* [*Howe v. Institute of Chartered Accountants (Ontario)* (1994), 19 O.R. (3d) 483 (Ont. C.A.)], investigators are generally only called as fact witnesses. They introduce the documents, outline the investigation and introduce transcripts but they do not advance opinions on the ultimate issue. It is ultimately up to the Hearing Panel to determine whether, on the facts of the case, Mr. Shambleau executed a trade that was intended to establish an artificial price. Ms. Stewart's opinions, which may or may not be contained in her report, are not relevant to the Hearing Panel's determination.
>
> (*Re Shambleau,* above, at paragraphs 27-28)

[26] The Commission held that while *Stinchcombe* required disclosure of the fruits of the investigation, including all of the facts underpinning Stewart's opinion, the report she had generated setting out that opinion was not relevant to the issues before the hearing panel and therefore need not be disclosed.

[27] On appeal, the Divisional Court found that the decision of the Commission was not unreasonable. After noting that Stewart had been "extensively cross-examined" by the respondent's counsel about her investigation, the Court made the following comments:

> The duty of disclosure which applies in disciplinary matters is a high one. The Commission recognized this and the standard of disclosure set out in its Reasons is entirely consistent with that set out in *Stinchcombe* (1991), 3 S.C.R. 327 and also that set out in the dissenting reasons of Mr. Justice Laskin in *Howe v. Institute of Chartered Accountants (Ontario)* (1994) 19 O.R. (3d) 483 on which counsel for the appellant relies. The Appellant submits that these cases mandate that the investigative report must in all cases be produced. In *Howe v. Institute of Chartered Accountants (Ontario)*, the report in question was that of an accountant who had examined all the books of the accountant charged with professional misconduct, formed opinions as to the propriety of the accused's conduct and was to be called as an expert witness at the hearing as to his findings. Clearly in those circumstances, the entire report was required to be produced. Mr. Justice Laskin noted that the issue was so clear that there was no need to even examine the report itself to decide that a mere summary of the report would not suffice. The reasons of Justice Laskin were given in the context of the case before him and did not purport to establish nor does it establish any rule that in all cases all investigative reports must be released.
>
> The basis of the disclosure requirement is found in the duty of fairness. The question is not whether a particular class of documents must be disclosed or not. Whatever disclosure is necessary to satisfy the duty of fairness must be made. The Commission recognized and accepted this and found that in the present case, the disclosure already made satisfied the duty of fairness without the actual report of Kim Stewart, the document gathering investigator, being produced. We are unable to find that the Commission was unreasonable in so finding.
>
> (*Re Shambleau (Div. Ct.)*, above, at paragraphs 6-7)

[28] Staff submits that at the Merits Hearing, it will be open to the Respondents to testify about their actions and state of mind, including what advice they received from counsel. The Commission will decide, based on the evidence before it, including Staff's evidence and any evidence that may be introduced by the Respondents, whether Staff has met its burden of proving, on a balance of probabilities, that the Respondents, amongst other things, engaged in fraud contrary to section 126.1(b) of the Act. The Disputed Documents, in Staff's submission, are irrelevant to that decision.

VIII. ANALYSIS

[29] The parties agree and the Commission has accepted that Staff's duty of disclosure to the respondents in the Commission's enforcement proceedings is "akin to the *Stinchcombe* standard", which means that Staff must disclose to the respondents all relevant information in Staff's possession or control, whether inculpatory or exculpatory, and whether or not Staff intends to introduce it into evidence at the merits hearing (the fruits of the investigation) (*Re Berry*, *Re Biovail* and *Re Deloitte*). Disclosure enables the respondents to know the case they have to meet, prepare to rebut Staff's evidence, and make tactical decisions about how to present their case. It "is a matter of fundamental justice based on fairness to respondents to permit them to make full answer and defence to the allegations against them." For that reason, "relevance" is defined broadly in the context of disclosure, and includes material that has "a reasonable possibility of being relevant to" the respondents' ability to make full answer and defence to Staff's allegations, though it may not, ultimately, be admitted at the merits hearing. On these principles, there is no dispute. The parties disagree about the application of these principles to the Disputed Documents.

[30] Before considering the categories of Disputed Documents, I make the following general remarks. First, it is no answer to a request for disclosure for Staff to say that the documents are, or should be, independently obtainable by the Respondents from another source, or by waiving privilege. That is not the test. Staff is required to disclose all relevant documents in the possession or control of Staff, including documents that evidence communications between Staff and the Respondents or their counsel, subject to privilege. Amongst other things, it is helpful for the Respondents, in making full answer and defence, to "know what Staff knows".

[31] It is also no answer to a request for disclosure for Staff to say, in effect, "you know what you did and what you were thinking, and it's for you to provide the evidence". That is not the test. Staff bears the onus of proving its allegations on a balance of probabilities at the Merits Hearing, and Staff is required to disclose to the Respondents all relevant documents it has gathered in the investigation, whether or not they are independently available to the Respondents, subject to privilege.

[32] Finally, the parties agree that any claims of privilege in respect of the Disputed Documents will need to be addressed in another motion at a later date, based on an adequate evidentiary record. For the purposes of this Motion, I make no assumptions about whether any of the internal documents sought by the Respondents may raise issues of solicitor-client or litigation privilege.

[33] I accept that documents evidencing communications between Staff and the Respondents may be relevant in considering the Respondents' actions and state of mind during the Sales Period and they must, therefore, be disclosed, subject to privilege. I do not accept that Staff's disclosure obligations are limited to the Sales Period because I find that previous events, especially communications with Staff before and during the Sales Period, may be relevant in considering the Respondents' actions and state of mind during the Sales Period.

[34] The crux of the dispute between the Parties in this Motion is whether Staff must disclose internally-generated documents evidencing Staff's analysis, commentary, opinion or discussions about commencing proceedings ("**Staff work product**"). *Re Shambleau* governs the disposition of this question. I find that Staff is not required to disclose Staff work product because it is irrelevant to the issues that will be considered by the Commission at the Merits Hearing.

[35] Nothing prevents the Respondents from seeking further disclosure before or during the Merits Hearing. The Commission would then decide the relevance of any particular documents sought by the Respondents in making full answer and defence to the allegations.

IX. CONCLUSION

[36] At the Motion Hearing, Staff provided evidence that it had disclosed "documents evidencing receipt of the Report on August 19, 2011" (item (b) at paragraph 8 above). Staff also advised that the NI 45-106 reports and proof of payment documents (item (h)) will be disclosed, once available to Staff. Staff is required to disclose these documents, if they have not already done so, subject to privilege.

[37] Staff also advised, at the Motion Hearing, that it had not been aware that Grant Thornton was retained by FLG in late September 2011 (item (f) at paragraph 8 above). Any such documents in the possession or control of Staff are to be dealt with in accordance with paragraphs 38-39 below.

[38] With respect to items (a), (c), (d), (e), (f) and (g) at paragraph 8 above, the Motion is allowed with respect to documents that were gathered during the investigation and documents that evidence communications between Staff and the Respondents and counsel in relation to the allegations, because such documents may be relevant at the Merits Hearing in considering the Respondents' actions and state of mind. Staff is required to disclose these documents, subject to privilege.

[39] The Motion is dismissed with respect to internally-generated documents, described in items (a), (c), (d), (e), (f) and (g) at paragraph 8 above, evidencing Staff's analysis, commentary, opinion or discussions about commencing proceedings (Staff work product).

[40] For clarity, this order is subject to any privilege issue that may be raised in a subsequent motion, and any further disclosure orders that may be made by the Commission before or during the Merits Hearing. The Parties are urged to attempt to resolve any such issues in a timely way, and in accordance with the Rules, to ensure that the Merits Hearing goes ahead, as scheduled, on February 11, 2013.

DATED at Toronto this 30th day of November, 2012.

"James D. Carnwath"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Mexivada Mining Corp.	21 Nov 12	03 Dec 12	03 Dec 12	
Corona Minerals Limited	21 Nov 12	03 Dec 12	03 Dec 12	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Boyuan Construction Group, Inc.	02 Oct 12	15 Oct 12	15 Oct 12		
Red Crescent Resources Ltd.	21 Nov 12	03 Dec 12		05 Dec 12	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Boyuan Construction Group, Inc.	02 Oct 12	15 Oct 12	15 Oct 12		
Red Crescent Resources Ltd.	21 Nov 12	03 Dec 12		05 Dec 12	

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Chapter 6

Request for Comments

6.1.1 CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting

CSA STAFF CONSULTATION PAPER 91-301

MODEL PROVINCIAL RULES – *DERIVATIVES: PRODUCT DETERMINATION*
AND
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

1. Introduction

We, the Canadian Securities Administrators OTC Derivatives Committee (the "Committee") are publishing for a 60 day-comment period:

- Model Provincial Rule – *Derivatives: Product Determination* (the "Scope Rule"),
- Model Explanatory Guidance to Model Provincial Rule – *Derivatives: Product Determination* (the "Scope EG"),
- Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the "TR Rule"), and
- Model Explanatory Guidance to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the "TR EG").

Collectively the Scope Rule, the Scope EG, the TR Rule and the TR EG will be referred to as the "Model Rules".

We are issuing this notice to provide interim guidance and solicit comments on the Model Rules, which currently have been drafted based on existing provisions of Ontario securities law. Once we have considered comments received on the Model Rules and made appropriate changes, each jurisdiction will publish its own rules, explanatory guidances and appendices, with necessary local modifications.[1]

2. Background

In order to implement the G-20 commitments[2] that relate to the regulation of the trading of derivatives in Canada, the Committee has been working on recommendations both independently and in collaboration with the Canadian OTC Derivatives Working Group.[3] Since November 2010, the Committee has published a series of derivatives consultation papers outlining policy recommendations for the regulation of derivatives in Canada.[4] In formulating these recommendations, the Committee has sought to strike a balance between proposing regulation that does not unduly burden participants in the derivatives market, while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

The regulatory framework will be implemented through provincial rules that are intended to impose specific regulatory requirements tailored to address the unique characteristics of derivatives products, how they are marketed and traded, the sophistication of the counterparties, existing regulation in other areas (such as the regulation of financial institution), and the

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1 In some cases, jurisdictions with substantively similar securities legislation may consider developing and publishing multi-lateral instruments.

2 The G-20 commitments include requirements that all standardized over-the-counter derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. Moreover, over-the-counter derivative contracts should be reported to trade repositories. Also, non-centrally cleared contracts should be subject to higher capital requirements.

3 The Canadian OTC Derivatives Working Group consists of the Bank of Canada, the federal Department of Finance, the Office of the Superintendent of Financial Institutions, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission.

4 91-401 *Over-the-Counter Derivatives Regulation in Canada*, 91-402 *Derivatives: Trade Repositories*, 91-403 *Derivatives: Surveillance and Enforcement*, 91-404 *Segregation and Portability in OTC Derivatives Clearing*, 91-405 *Derivatives: End User Exemption*, and 91-406 *Derivatives: OTC Central Counterparty Clearing.*

risks they present to the derivatives and financial markets. To the greatest extent appropriate, the derivatives rules will be harmonized with international standards and be consistent across Canada.

3. Rule-making process

The next stage in the Committee's rule-making process is the publication for comment of a number of "model" rules covering a variety of areas of regulation that together will create a regime for the regulation of derivatives markets. The "model" rules will reflect the public commentary on the consultation papers and are the Committee's recommendations for specific proposals to regulate the derivatives market in Canada. Due to variations in provincial securities legislation, the final provincial rules will contain differences. However, it is the intention of the Committee that the substance of the rules will be the same across jurisdictions, and market participants and derivative products will receive the same treatment across Canada.

The Model Rules have been drafted based on the *Securities Act* (Ontario) and should be considered in the context of that legislation. Subsequent model rules will be based on other provincial statutes and in each case the accompanying notice will identify the legislation upon which the rules are based.

Each of the "model" rules (including the Model Rules being published with this notice) will be published for a consultation period of 60 days after which the Committee will evaluate comments received and recommend appropriate amendments to the proposed rule. Once this process is completed, each province will publish province-specific rules for comment in accordance with the legislative requirements of the province. In a number of provinces legislative amendments will need to be implemented before province-specific rules can be published for consultation. Because of this, publication dates of province-specific rules may vary. Once each province's comment period has been completed, final rules will be implemented by that province.

4. Substance and purpose of the Scope Rule

The Scope Rule provides a foundation for the regulation of derivatives that is both responsive and flexible. The broad definition of "derivative" in existing and proposed provincial securities legislation is intended to include the types of instruments traditionally referred to as derivatives (for example, swaps and forwards) as well as other novel instruments.[5] Legislation in many Canadian jurisdictions contemplates that an instrument that meets the general definition of derivative may be treated as a derivative, a security, or be excluded in whole or in part from regulation.

The definitions of "derivative" and "security" in securities legislation are, or will be, expansive and, in some cases, overlapping. The Scope Rule is intended to resolve conflicts that arise when a contract or instrument meets both the definition of "derivative" and "security". By making clear which contracts or instruments are to be regulated as derivatives, securities or are outside the scope of securities or derivatives legislation, the Scope Rule provides the flexibility to appropriately tailor regulation to a broad range of existing and emerging products.

The Scope Rule will initially only apply for the purposes of the TR Rule. The Committee expects that the Scope Rule, subject to necessary amendments, will also be made applicable to existing provisions of securities legislation, and to future derivatives rules that will be brought into force, including but not limited to rules relating to over-the-counter central counterparty clearing, end-user exemptions, trading platforms, capital and collateral, and registration. However, there may be variations in the Scope Rule for these new rules. In particular, certain contracts or instruments that are prescribed to be securities or derivatives for the purposes of the TR Rule may be treated differently in other new rules.

Until the Scope Rule has been extended to other derivatives rule-making areas any legislation, rules, notice or other policies applicable to derivatives will continue to apply. For example, OSC Staff Notice 91-702 – *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* would continue to apply to these types of instruments until any new rules replacing the treatment as described in the notice have been implemented.

5. Substance and purpose of the TR Rule

The TR Rule describes proposed requirements for the operation and ongoing regulation of designated or recognized trade repositories and the reporting of derivative transaction data by market participants. The purpose of the TR Rule is to improve transparency in the derivatives market to regulators and the public, and ensure that designated trade repositories operate in a manner that promotes the public interest. Trade repository data is essential for regulatory oversight of the derivatives market. This oversight will allow regulators to address a variety of risks including monitoring of systemic risk and the risk of market abuse. Derivatives data reported to designated trade repositories will also assist policy-making by providing regulators with information on the nature and characteristics of the Canadian derivatives market.

[5] Some jurisdictions are developing amendments to securities legislation to adopt a definition of "derivative". The provisions of the Scope Rule are dependent on the approval in each jurisdiction of definitions of "derivative" that are substantively similar to those jurisdictions that have already adopted a definition.

The TR Rule can generally be divided into two rule-making areas (i) those relating to the regulation of trade repositories (including rules with respect to the designation/recognition process, requirements and restrictions relating to data dissemination and ongoing operational requirements), and (ii) those relating to reporting requirements of derivatives market participants. As explained above, the Scope Rule outlines the contracts or instruments that are required to be reported to designated or recognized trade repositories.

Please note that the TR EG does not provide guidance on Appendix A. Guidance for Appendix A is included in the interpretive column of the reporting fields in the appendix.

6. Foreign-based trade repositories and market participants

In order for any trade repository, local or foreign, to be an acceptable venue for local market participants to comply with the reporting obligations contained in Part 3 of the TR Rule, the trade repository must be designated or recognized in the applicable provincial jurisdiction. However, the Committee recommends that exemptions under section 40 of the TR Rule to certain requirements of the TR Rule be made available to a foreign-based trade repositories if the trade repository is subject to an equivalent regulatory and oversight regime in its home jurisdiction. We recognize that some foreign-based trade repositories are already subject to equivalent regulation in their home jurisdiction and believe that the imposition of a duplicate regime is inefficient.

The Committee has attempted to harmonize reporting requirements under the TR Rule with international practice. It is the Committee's view that the reporting of derivative transaction data by market participants that are located in a foreign-jurisdiction but whose derivatives activities trigger reporting requirements under the TR Rule is appropriate and is not an unnecessary burden. To the extent that minor differences exist between a foreign regime's reporting requirements and those in the TR Rule, it would be possible to apply for an exemption on the grounds of equivalency.

7. Local aspects of the model rules

In this section of the notice, we have included information specific to the securities legislation of certain CSA jurisdictions that relates to the Model Rules.

- **Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan**

  These provinces are in the process of considering amendments to their securities acts. In these provinces the implementation of final rules based on the Model Rules will be dependent on the legislative amendments developed in each jurisdiction. Specific information relating to the application of final rules based on these Model Rules will be provided when province-specific rules are published for comment.

- **Manitoba**

  The Model Rules apply only to derivatives that are traded over-the-counter, because commodity futures contracts and commodity futures options as defined in subsection 1(1) of the *Commodity Futures Act* (Manitoba) are excluded from the definition of "derivative" in the *Securities Act* (Manitoba).

- **Ontario**

  The Model Rules apply only to derivatives that are traded over-the-counter, because commodity futures contracts and commodity futures options as defined in subsection 1(1) of the *Commodity Futures Act* (Ontario) are excluded from the definition of "derivative" in the *Securities Act* (Ontario). It is proposed that the Model Rules will be made by the Ontario Securities Commission under the rule-making authority set out in the *Securities Act* (Ontario). For greater certainty, the Model Rules will not be made under, or governed by, the provisions of the *Commodity Futures Act* (Ontario).

- **Quebec**

  In Quebec, the *Derivatives Act* (Québec) governs both over-the-counter and exchange-traded derivatives. The treatment of certain contracts or instruments prescribed by the Scope Rule has already been implemented under that legislation. As such, the Autorité des marchés financiers ("AMF") does not intend to propose the adoption of certain sections of the Scope Rule because these sections are already covered by or excluded from the *Derivatives Act* (Québec).

  The following is a list of Scope Rule provisions that will not be adopted and the corresponding *Derivatives Act* (Québec) or the *Securities Act* (Québec) provisions:

Scope Rule	*Derivatives Act* ("QDA") or *Securities Act* ("QSA")
2(b)	This section is already covered by paragraph 6(3) of the QDA.
2(e)(f)	Deposits are securities under the QSA - see paragraph 1(3) and would most certainly be predominantly a security according to section 4 of the QDA.
3	This section is already covered by paragraph 6(2) of the QDA.
4	This section is already addressed by the hybrid test under section 4 of the QDA.
5	This section is already covered by paragraph 6(4) of the QDA.

The AMF will rely on its rulemaking powers to designate as a derivative or exclude from the application of the QDA an instrument or contract, respectively at paragraphs 176(1) and 175(7) of the QDA, to adopt the remaining sections.

8. Comments

We request your comments on the Model Rules and Appendix A. The Committee also seeks specific feedback on subsection 40(2) of the TR Rule that provides an exemption for reporting requirements for derivatives transactions in the physical commodity market involving market participants with small derivatives exposures. The text of the proposed exemption is as follows:

> *Despite anything in this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if the local counterparty is not a dealer or adviser and has less than $500 000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.*

The purpose of this exemption is to reduce regulatory burdens for small market participants whose physical commodity transactions may include contractual terms that would make them subject to transaction reporting requirements. The Committee seeks guidance as to whether this exemption and the proposed $500 000 threshold are appropriate.

You may provide written comments in hard copy or electronic form. The comment period expires February 4, 2013.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca).

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
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Questions

Please refer your questions to any of:

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December 6, 2012

MODEL PROVINCIAL RULE
DERIVATIVES: PRODUCT DETERMINATION

Application

1. This Rule applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting*.

Excluded derivatives

2. A contract or instrument is prescribed under the definition of "derivative" in subsection X [Definitions] of the Act not to be a derivative if it is

(a) regulated by gaming control legislation of Canada or a province,

(b) an insurance or annuity contract issued by an insurer holding a license under insurance legislation of Canada or a province,

(c) a spot market contract or instrument for the purchase and sale of currency,

(i) that requires the counterparties to make or take physical delivery of the currency within two business days and does not allow for the contract or instrument to be rolled over,

(ii) that does not allow for cash settlement in place of physical delivery of the foreign currency, and

(iii) that is intended by the counterparties to be physically settled,

(d) a contract or instrument for immediate or deferred delivery of a physical commodity other than cash or a currency

(i) that requires the counterparties to make or take physical delivery,

(ii) that does not allow for cash settlement in place of physical delivery, and

(iii) that is intended by the counterparties to be physically settled,

(e) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies, or

(f) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of a province (other than Ontario) or territory of Canada applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a province (other than Ontario) or territory of Canada.

Investment contracts and over-the-counter options

3. All contracts or instruments (other than any contract or instrument to which section 2 applies) that are derivatives, and that are otherwise securities solely by reason of being an investment contract under paragraph X of the definition "security" in subsection X [Definitions] of the Act or being an option described in paragraph X of that definition that is not described in section 5, are prescribed not to be securities.

Derivatives that are securities

4. All contracts or instruments (other than any contract or instrument to which any of sections 2 and 3 apply) that are securities and otherwise derivatives are prescribed not to be derivatives.

Derivatives prescribed to be securities

5. All contracts or instruments that would otherwise be derivatives (other than any contract or instrument to which any of sections 2 to 4 apply), are prescribed not to be derivatives if such contract or instrument is used by an issuer or an affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.

MODEL EXPLANATORY GUIDANCE
TO
MODEL PROVINCIAL RULE – DERIVATIVES: PRODUCT DETERMINATION

TABLE OF CONTENTS

1. General comments

(1) This Model Explanatory Guidance sets out the views of the Canadian Securities Administrators OTC Derivatives Committee (the "Committee" or "we") on various matters relating to Model Provincial Rule – *Derivatives: Product Determination* (the "Scope Rule").

(2) Except for section 1, the numbering and headings of the sections in this Model Explanatory Guidance generally correspond to the numbering and headings in the Scope Rule. Any general guidance for a section appears immediately after the section heading. Any specific guidance on a section follows any general guidance.

(3) The Scope Rule only applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reportin*g (the "TR Rule"). The Committee expects that elements of the Scope Rule, subject to necessary amendments, will also be made applicable to certain provisions of securities legislation, and to additional derivatives rules that will be brought into force, including but not limited to rules relating to over-the-counter central counterparty clearing, end-user exemptions, trading platforms, capital and collateral, and registration. However, there may be variations in the application of the Scope Rule for these other rules. In particular, certain contracts or instruments that are prescribed to be securities or derivatives for the purposes of the TR Rule may be treated differently in other rules.

(4) Unless defined in the Scope Rule or this Model Explanatory Guidance, terms used in the Scope Rule and in this Explanatory Guidance have the meaning given to them in Ontario securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and OSC Rule 14-501 *Definitions*.[1]

2. Excluded derivatives

Subsections 2(a) and (b) of the Scope Rule prescribe a contract or instrument not to be a derivative if it is regulated by federal or provincial gaming control legislation, or is an insurance or annuity contract issued by an insurer licensed under federal or provincial insurance legislation. While these instruments may meet the technical definition of "derivative", they are generally not recognized as being financial derivatives and typically do not pose the same potential risks to the financial system as certain other derivatives products. In addition, the Committee does not believe that the derivatives regulation regime that it expects to implement will be appropriate for these types of contracts and instruments. Further, the federal and provincial legislation regulating these contracts and instruments often have consumer protection as an objective and are therefore aligned with the objective of the Act to provide protection to market participants from unfair, improper or fraudulent practices. It should be noted that the Committee's view is that credit derivatives are not insurance or annuity contracts.

Subsection 2(c) of the Scope Rule prescribes a short-term contract or instrument for the purchase and sale of currency not to be a derivative if it meets the requirements specified in paragraphs 2(c)(i), (ii) and (iii). Examples of these include a consumer currency exchange or a contract for immediate or near-immediate delivery of currency to support a commercial import or export transaction. Therefore, for transaction reporting purposes, forward foreign exchange contracts would need to be reported but spot foreign exchange contracts that meet the applicable requirements would not.

Paragraph 2(c)(ii) requires that the contract or instrument not allow for cash settlement in place of physical delivery of the foreign currency. This means that the specific foreign currency contracted for would have to be delivered and not an equivalent amount

[1] As explained in the accompanying Notice, the Scope Rule has been drafted based on the Securities Act (Ontario). Certain conforming amendments will be necessary in other jurisdictions.

in a different currency. We consider physical delivery to refer to actual physical delivery of the specific foreign currency contracted for rather than a simple notation in a client account statement that is denominated in a foreign currency and may then be converted back into domestic currency at a later date.

The presence of provisions in the contract or instrument setting out the effect of breach or frustration of the contract or instrument, force majeure or similar events occurring outside of the control of the parties that render physical delivery of the agreed upon currency impossible do not make an otherwise firm obligation for physical delivery merely an option for physical delivery. We note that standard form contracts used in derivatives markets may include provisions that permit cash settlement in place of physical delivery in the context of termination rights, should a counterparty default on its obligation to physically deliver. To the extent that such standardized provisions relate exclusively to termination rights resulting from a breach of contract, we would not interpret them as allowing for cash settlement in place of physical delivery. This exclusion will not apply to contracts where the termination rights are used as a cash settlement option.

We note that the intention requirement in paragraph 2(c)(iii) of the Scope Rule is not limited to the point in time at which the contract is entered into, but applies for the duration of the contract. If a contract is intended to be physically settled at the time it is entered but this intention changes, the contract would become subject to all applicable derivatives rules. The intention requirement is designed to address situations where contractual provisions that do not permit cash settlement are not observed. The exclusion would therefore not be available if, for example, the counterparties set out an obligation for physical settlement of the contract or instrument but actually intend to rely on breach or frustration provisions in the contract or instrument in order to achieve an economic outcome akin to cash settlement. Additionally, in situations where a market participant settles contracts in cash on a repeated basis, we take the position that irrespective of contractual requirements for physical settlement, this may be evidence of a party's intention not to physically settle.

Subsection 2(d) of the Scope Rule prescribes a contract or instrument for delivery of a physical commodity not to be a derivative if it meets the requirements specified in paragraphs 2(d)(i), (ii) and (iii). In order to be a physical contract or instrument, its terms must provide for immediate or deferred delivery of a physical commodity. The phrase "immediate or deferred delivery" is intended to convey that the exclusion is available for contracts or instruments that meet the criteria in subparagraphs 2(d)(i) to (iii) regardless of whether they are entered into for spot delivery or forward settlement. Physical commodities include, but are not limited to, agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stone or other gem, electricity, energy and fuel products (including gas, oil, and any by-products), and water. For the purposes of the Scope Rule, we are of the view that physical commodities do not include financial commodities such as currencies, interest rates, securities and indexes, so as to limit the exemption to commercial transactions in physical goods.

We take the position that the obligation for physical delivery in paragraph 2(d)(i) of the Scope Rule means a firm obligation of a party to the contract or instrument and not merely an option to make or take physical delivery. A contract or instrument that has an option relating to some aspect of the physical delivery such as the volume of physical commodity to be delivered or the location of delivery would not, as a result of such an option, be a derivative.

We take the view that the presence of provisions in the contract or instrument setting out obligations in the case of breach or frustration of the contract or instrument, force majeure, or similar events occurring outside of the control of the parties that render physical delivery impossible do not make an otherwise firm obligation for physical delivery merely an option for physical delivery. In addition, an option to vary delivery obligations (e.g., volume) based on factors beyond the control of the parties will not on its own make a contract ineligible for the reporting exclusion in subsection 2(d) of the Scope Rule. We note that standard form contracts used in derivatives markets may include provisions that permit cash settlement in place of physical delivery in the context of termination rights, should a counterparty default on its obligation to deliver. To the extent that such standardized provisions relate exclusively to termination rights arising as a result of the breach of the terms of the contract or instrument, we would not interpret them as allowing for cash settlement in place of physical delivery. This exclusion will not apply to contracts where the termination rights are used as a cash settlement option.

Paragraph 2(d)(iii) of the Scope Rule requires that counterparties intend to physically settle the contract or instrument. The exclusion would therefore not be available if, for example, the counterparties set out an obligation for physical settlement of the contract or instrument but actually intend to rely on breach or frustration provisions in the contract or instrument in order to achieve an economic outcome akin to cash settlement. In addition, the exclusion would not be available if the counterparties intend to enter into collateral agreements which, together with the original contract or instrument, achieve an economic outcome that is, or is akin to, cash settlement of the original contract or instrument.

Paragraph 2(f) of the Scope Rule refers to "similar statutes from a province or territory of Canada". As explained, the Scope Rule is based on the *Securities Act* (Ontario) therefore the provincial acts explicitly mentioned in the provision are from Ontario. The intention is that all province-specific statutes will receive the same treatment in every province or territory. For example, if a credit union to which the Ontario *Credit Unions and Caisses Populaires Act, 1994* applies issues an evidence of deposit to a market participant located in a different province, that province would apply the treatment under their legislation equivalent to paragraph 2(f) of the Scope Rule.

Apart from the contracts and instruments expressly prescribed not to be derivatives in section 2 of the Scope Rule, there are other contracts or instruments which we would not be considered to be "derivatives" for the purposes of the Act. A feature common to these contracts and instruments is that they are entered into for consumer, business or non-profit purposes that do not involve investment, speculation or hedging. Typically, they provide for the transfer of ownership of a good or the provision of a service. In most cases they are not traded on a market.

These contracts or instruments include, but are not limited to:

- a consumer or commercial contract or instrument to acquire, or lease real or personal property, to provide personal services, to sell or assign rights, equipment, receivables or inventory, or to obtain a loan or mortgage, including a loan or mortgage with a variable rate of interest, interest rate cap, interest rate lock or embedded interest rate option;
- a consumer contract or instrument to purchase products or services at a fixed, capped or collared price;
- an employment contract or retirement benefit arrangement;
- a guarantee;
- a performance bond;
- a commercial sale, servicing, or distribution arrangement;
- a contract or instrument for the purpose of effecting a business purchase and sale or combination transaction;
- a contract or instrument representing a lending arrangement in connection with building an inventory of assets in anticipation of a securitization of such assets; and
- a commercial contract or instrument containing mechanisms indexing the purchase price or payment terms for inflation such as via reference to an interest rate or consumer price index.

3. Investment contracts and over-the-counter options

Section 3 of the Scope Rule prescribes a contract or instrument (to which section 2 of the Scope Rule does not apply), that is a derivative and a security solely by reason of being an investment contract[2], not to be a security. Some types of contracts traded over-the-counter, such as foreign exchange contracts and contracts for difference meet the definition of "derivative" (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) but also meet the definition of "security" (because they are investment contracts). This provision prescribes that such instruments will be treated as derivatives and therefore be required to be reported to a designated trade repository.

Similarly, options are covered by both the definition of "derivative" and the definition of "security"[3]. Section 3 of the Scope Rule prescribes options that are only securities by virtue of provision (d) of the definition of "security" (and not described in section 5 of the Scope Rule), not to be securities. Therefore, derivatives treatment will apply to these instruments which will be required to be reported to a designated trade repository. It should be noted that this treatment will only apply to options traded over-the-counter. Exchange-traded options will not be required to be reported to a designated trade repository. In Ontario, these types of options are commodity futures options and therefore regulated under the *Commodity Futures Act* and excluded from definition of "derivative". This reporting exclusion will also be implemented in other jurisdictions although the form of the exclusion may differ.[4]

4. Derivatives that are securities

Section 4 of the Scope Rule prescribes a contract or instrument (to which sections 2 and 3 of the Scope Rule do not apply) that is a security and a derivative, not to be a derivative. Derivatives that are securities and are contemplated by this provision include structured notes, asset-backed securities, exchange-traded notes, capital trust units, exchangeable securities, income trust units, securities of investment funds and warrants. This provision ensures that such instruments will continue to be subject to applicable prospectus disclosure and continuous disclosure requirements as well as applicable registration requirements for dealers and advisers. The Committee anticipates that it will review the categorization of instruments as securities and derivatives once the comprehensive derivatives regime has been implemented.

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2 See paragraph (n) of the definition of security in the *Securities Act* (Ontario).

3 See paragraph (d) of the definition of security in the *Securities Act* (Ontario).

4 Please see Section 7 – *Local Aspect of Model Rules* of the accompanying *CSA Notice and Request for Comments* for further details.

5. Derivatives prescribed to be securities

Section 5 of the Scope Rule prescribes a security-based derivative that is used by an issuer or its affiliate to compensate an officer, director, employee or service provider, or as a financing instrument, not to be a derivative. Examples of the compensation instruments contemplated by section 5 include stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers such as broker options. Securities treatment would also apply to the above described instruments when used as financing instruments, for example, rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. It is the Committee's view that an instrument would only be considered a financing instrument if it is used for capital raising purposes. An equity swap, for example, would generally not be considered a financing instrument. The classes of derivatives referred to in section 5 can have similar or the same economic effect as a securities issuance and are therefore subject to requirements generally applicable to securities. As they are prescribed not to be derivatives they are not subject to the transaction reporting requirements under the TR Rule.

MODEL PROVINCIAL RULE
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Rule

"asset class" means the broad asset category underlying a derivative including, but not limited to, interest rate, foreign exchange, credit, equity and commodity,

"counterparty information" means the information used to identify a counterparty to a transaction, including information regarding attributes of counterparties that include, at a minimum, the data in the applicable fields listed in Appendix A under the heading "Counterparty Information",

"creation data" means operational data, principal economic terms, counterparty information and event data,

"derivatives data" means all data related to a transaction that is required to be reported pursuant to Part 3,

"event data" means the information that records the occurrence of an event and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading "Event Data",

"interim period" has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*,

"life-cycle data" means changes to creation data resulting from any life-cycle event,

"life-cycle event" means any event that results in a change to derivatives data previously reported to the designated[1] trade repository in respect of a transaction,

"local counterparty" means a party to a transaction if, at the time of the transaction, any of the following applies

(a) the party is an individual who is a resident of [Province x],

(b) the party is a person or company, other than an individual, organized under the laws of [Province x] or that has its head office or principal place of business in [Province x],

(c) the party is a reporting issuer under the securities legislation of [Province x],

(d) the party is a registrant under the securities legislation of [Province x],

(e) the party negotiates, executes, settles, writes or clears any part of the transaction in [Province x],

(f) the party is a subsidiary of a person or company, or group of persons and companies, described in any of paragraphs (a) to (d),

"operational data" means the data related to how a transaction is executed, confirmed, cleared and settled and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading "Operational Data",

"principal economic terms" means the material terms of a transaction and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading "Principal Economic Terms",

"reporting counterparty" means the counterparty that is required to report derivatives data to a designated trade repository as determined by subsections 27(1) and (2),

"transaction" means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative,

"user" means, in respect of a designated trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that designated trade repository pursuant to this Rule, and

[1] Note that the term "designated" would be replaced with "recognized" in certain jurisdictions.

"valuation data" means data that reflects the current value of the transaction.

(2) In this Rule, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: "accounting principles"; "auditing standards"; "U.S. AICPA GAAS"; "U.S. GAAP"; and "U.S. PCAOB GAAS".

PART 2
TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Trade repository initial filing of information and designation

2. (1) An applicant for designation under section [x][2] of the Act must file a completed Form F1 – *Application For Designation and Trade Repository Information Statement*.

(2) The applicant must include in its Form F1 information sufficient to demonstrate that

(a) it is in the public interest to designate the applicant under section [x] of the Act,

(b) the applicant is or will be in compliance with securities legislation, and

(c) the applicant has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories.

(3) An applicant that is located outside of [Province x] that is applying for designation under section [x] of the Act must

(a) certify on Form F1 that it will provide the [applicable local securities regulator] with access to its books and records and will submit to onsite inspection and examination by the [applicable local securities regulator],

(b) certify on Form F1 that it will provide the [applicable local securities regulator] with an opinion of legal counsel that,

(i) the applicant is able to provide the [applicable local securities regulator] with access to the applicant's books and records, and

(ii) the applicant is able to submit to onsite inspection and examination by the [applicable local securities regulator], and

(c) file a completed Form F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process* if it is located outside of Canada.

(4) For the purposes of subsection (3), an applicant is located outside of [Province x] if the applicant does not have its head office or principal place of business anywhere in [Province x].

(5) An applicant for designation under section [x] of the Act must inform the [applicable local securities regulator] in writing immediately of any change to the information provided in Form F1 or if any of the information becomes inaccurate for any reason, and the applicant must file an amendment to the information provided in Form F1 in the manner set out in the Form no later than 7 days after the change occurs or after becoming aware of any inaccuracy.

Change in information

3. (1) Subject to subsection (2), a designated trade repository must not implement a significant change to a matter set out in Form F1 unless it has filed an amendment to the information provided in Form F1 in the manner set out in the Form at least 45 days before implementing the change.

(2) A designated trade repository must file an amendment to the information provided in Exhibit J (Fees) of Form F1 at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For any change to a matter set out in Form F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to the information provided in the Form by the earlier of

[2] Section x will be the designation or recognition provision in the applicable provincial securities legislation.

(a) the close of business of the designated trade repository on the 10th day after the end of the month in which the change was made, or

(b) if applicable, the time the designated trade repository discloses the change publicly.

Ceasing to carry on business

4. (1) A designated trade repository that intends to cease carrying on business in [Province x] as a trade repository must make an application and file a report in Form F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

(2) A designated trade repository that involuntarily ceases to carry on business in [Province x] as a trade repository must file a report in Form F3 as soon as practicable after it ceases to carry on that business.

Filing of initial audited financial statements

5. (1) A person or company must file, as part of its application for designation as a designated trade repository, together with Form F1, audited financial statements for its most recently completed financial year that

(a) are prepared in accordance with one of the following

(i) Canadian GAAP applicable to publicly accountable enterprises,

(ii) IFRS, or

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United Stated of America,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) are accompanied by an auditor's report and are audited in accordance with one of the following

(i) Canadian GAAS,

(ii) International Standards on Auditing, or

(iii) U.S. AICPA GAAS or U.S. PCAOB GAAS if the person or company is incorporated or organized under the laws of the United Stated of America.

(2) The auditor's report must

(a) if paragraph (1)(d)(i) or (ii) applies, express an unmodified opinion,

(b) if paragraph (1)(d)(iii) applies, express an unqualified opinion,

(c) identify all financial periods presented for which the auditor's report applies,

(d) identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements,

(e) be prepared in accordance with the same auditing standards used to conduct the audit, and

(f) be prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

6. (1) A designated trade repository must file annual audited financial statements no later than the 90th day after the end of its financial year that comply with the requirements outlined in section 5.

(2) A designated trade repository must file interim financial statements no later than the 45th day after the end of each interim period that are:

(a) prepared in accordance with accounting principles referred to in any one of the paragraphs 5(1)(a)(i) to (iii), and

(b) identify in the notes to the interim financial statements the accounting principles used to prepare the interim financial statements.

Legal framework

7. (1) A designated trade repository must establish, implement, maintain and enforce rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

(2) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

(a) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,

(b) the rights and obligations of users, owners and regulators with respect to the use of its information are clear and transparent,

(c) the contractual arrangements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability, and

(d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

Governance

8. (1) A designated trade repository must have governance arrangements that

(a) are clear and transparent,

(b) promote the safety and efficiency of the designated trade repository,

(c) ensure effective oversight of the designated trade repository,

(d) support the stability of the broader financial system and other relevant public interest considerations, and

(e) properly balance the interests of relevant stakeholders.

(2) A designated trade repository must establish, implement, maintain and enforce written governance arrangements that are well-defined and that include a clear organizational structure with consistent lines of responsibility and effective internal controls.

(3) A designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

(4) A designated trade repository must make the governance arrangements referred to in subsections (2) and (3) available to the public.

Board of directors

9. (1) The board of directors of a designated trade repository must include

(a) individuals who have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and

(b) appropriate representation by individuals who are independent of the designated trade repository.

(2) The board of directors of a designated trade repository must, in consultation with the chief compliance officer of the designated trade repository, resolve conflicts of interest identified by the chief compliance officer.

(3) The board of directors of a designated trade repository must meet with the chief compliance officer of the designated trade repository on a regular basis.

Management

10. (1) A designated trade repository must specify, in writing, the roles and responsibilities of management and must establish, implement, maintain and enforce written policies and procedures to ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge such roles and responsibilities.

(2) A designated trade repository must notify the [applicable local securities regulator] no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

Chief compliance officer

11. (1) A designated trade repository must have a chief compliance officer and its board of directors must appoint an individual who has the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

(2) The chief compliance officer of a designated trade repository must report directly to the board of directors of the designated trade repository or, if determined by the board of directors, to the chief executive officer of the designated trade repository.

(3) The chief compliance officer of a designated trade repository must

(a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and to ensure that the designated trade repository complies with securities legislation and must monitor compliance with these policies and procedures on an ongoing basis,

(b) report to the designated trade repository's board of directors as soon as practicable if he or she becomes aware of any circumstances indicating that the designated trade repository, or any individual acting on its behalf, is not in compliance with the securities or derivatives laws of any jurisdiction in which it operates and any of the following apply

(i) the non-compliance creates a risk of harm to a user,

(ii) the non-compliance creates a risk of harm to the capital markets,

(iii) the non-compliance is part of a pattern of non-compliance, or

(iv) the non-compliance may have an impact on the ability of the designated trade repository to carry on business as a trade repository in compliance with securities legislation,

(c) report to the designated trade repository's board of directors as soon as practicable if he or she becomes aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and

(d) prepare and certify an annual report assessing compliance by the designated trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraphs (3)(b), (c) or (d), the chief compliance officer must file a copy of the report.

Fees

12. All fees and other material costs imposed by a designated trade repository on its users must be

(a) fairly and equitably allocated among users, and

(b) publicly disclosed for each service it offers with respect to the collection and maintenance of derivatives data.

Access to designated trade repository services

13. (1) A designated trade repository must have objective, risk-based, and publicly disclosed criteria for participation that permit fair and open access.

(2) Without limiting the generality of subsection (1), a designated trade repository must not do any of the following

(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by it,

(b) permit unreasonable discrimination among its users, or

(c) impose any burden on competition that is not reasonably necessary and appropriate.

Acceptance of reporting

14. A designated trade repository must accept derivatives data for reporting purposes from its users for all derivatives of the asset class or classes set out in its designation order.

Communication policies, procedures and standards

15. (1) A designated trade repository must use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of

(a) its users,

(b) other trade repositories,

(c) exchanges, clearing agencies and alternative trading systems, and

(d) other service providers.

Due process

16. For any decision made by a designated trade repository that affects a user or an applicant that applies to become a user, the designated trade repository must ensure that

(a) the user or applicant is given an opportunity to be heard or make representations, and

(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

Rules

17. (1) The rules and procedures of a designated trade repository must

(a) be clear, comprehensive and provide sufficient information to enable users to have an accurate understanding of the rights and obligations of users in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the designated trade repository,

(b) be reasonably designed to govern all aspects of the services offered by the designated trade repository with respect to the collection and maintenance of derivatives data and other information on completed transactions, and

(c) not be inconsistent with securities legislation.

(2) A designated trade repository's rules and procedures, and the processes for adopting new rules and procedures or amending existing rules and procedures, must be transparent to users and the general public.

(3) A designated trade repository must monitor compliance with its rules and procedures on an ongoing basis.

(4) A designated trade repository must have clearly defined and publicly disclosed processes for sanctioning non-compliance with its rules and procedures.

(5) A designated trade repository must file all of its proposed new or amended rules and procedures for approval in accordance with the terms and conditions of the [applicable local securities regulator]'s designation order, unless the order explicitly exempts the designated trade repository from this requirement.

Records of data reported

18. (1) A designated trade repository must design its recordkeeping procedures so that derivatives data is recorded accurately, completely and on a timely basis.

(2) A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a derivative for the life of the derivative and for a further 7 years after the date on which the derivative expires or terminates.

(3) Throughout the period described in subsection (2), a designated trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), in a safe location and in durable form, separate from the location of the original record.

Comprehensive risk-management framework

19. A designated trade repository must establish, implement and maintain a sound risk-management framework for comprehensively managing risks including business, legal, and operational risks.

General business risk

20. (1) A designated trade repository must establish, implement and maintain appropriate systems, controls and procedures to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize.

(3) A designated trade repository must identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for an orderly wind-down.

(4) A designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (3).

(5) A designated trade repository must establish, implement, maintain and enforce written policies and procedures to ensure that it or any successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of section 37 and subsection 4(2) in the event of the bankruptcy or insolvency of the designated trade repository or the wind-down of the designated trade repository's operations.

System and other operational risk requirements

21. (1) A designated trade repository must establish, implement, maintain and enforce appropriate systems, controls and procedures to identify and minimize the impact of all plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.

(2) The systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

(3) Without limiting the generality of subsection (1), a designated trade repository must

(a) develop and maintain

(i) an adequate system of internal controls over its systems, and

(ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(c) promptly notify the [applicable local securities regulator] of any material systems failure, malfunction, delay or other disruptive incident, or any breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce business continuity plans, including disaster recovery plans reasonably designed to

(a) achieve prompt recovery of its operations following any disruptions,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) cover the exercise of authority in the event of any emergency.

(5) A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) For each of its systems for collecting and maintaining reports of derivatives data, a designated trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

(7) A designated trade repository must provide the report resulting from the review conducted under subsection (6) to

(a) its board of directors or audit committee promptly upon the report's completion, and

(b) the [applicable local securities regulator] not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A designated trade repository must make publicly available, in their final form, all technology requirements regarding interfacing with or accessing the designated trade repository,

(a) if operations have not begun, for at least 3 months immediately before operations begin, and

(b) if operations have begun, for at least 3 months before implementing a material change to its technology requirements.

(9) After complying with subsection (8), a designated trade repository must make available testing facilities for interfacing with or accessing the designated trade repository,

(a) if operations have not begun, for at least 2 months immediately before operations begin, and

(b) if operations have begun, for at least 2 months before implementing a material change to its technology requirements.

(10) A designated trade repository must not begin operations in [Province x] until it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and

(a) the designated trade repository immediately notifies the [applicable local securities regulator] of its intention to make the change, and

(b) the designated trade repository publishes the changed technology requirements as soon as practicable.

Data security and confidentiality

22. (1) To ensure the safety and confidentiality of derivatives data, a designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of the derivatives data.

(2) A designated trade repository may not release any derivatives data that has not otherwise been disclosed pursuant to section 39 for commercial or business purposes, unless the counterparties to the transaction have expressly granted to the designated trade repository their written consent to use the derivatives data.

Confirmation of data and information

23. A designated trade repository must establish, implement, maintain and enforce written policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade repository receives from a reporting counterparty or from a party to whom a reporting counterparty has delegated its reporting obligation as required by this Rule is correct.

Outsourcing

24. (1) If a designated trade repository outsources any of its key services or systems to a service provider, including an associate or affiliate of the designated trade repository, it must

(a) establish, implement, maintain and enforce written policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of those outsourcing arrangements,

(b) identify any conflicts of interest between the designated trade repository and the service provider to which key services and systems are outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest,

(c) enter into a contract with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,

(d) maintain access to the books and records of the service provider relating to the outsourced activities,

(e) ensure that the [applicable local securities regulator] has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangements,

(f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangements,

(g) take appropriate measures to determine that a service provider to which key services or systems are outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with section 21,

(h) take appropriate measures to ensure that the service provider protects the designated trade repository users' confidential information in accordance with section 22, and

(i) establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements.

PART 3
DATA REPORTING

Duty to Report

25. (1) Subject to subsection (2), section 26 and Part 5, a local counterparty must, in accordance with this Part, report, or cause to be reported, to a designated trade repository, derivatives data for each transaction to which it is a counterparty.

(2) If no designated trade repository accepts derivatives data in respect of a derivative or of a derivative of a particular asset class, the local counterparty must, in accordance with this Part, electronically report, or cause to be reported, such derivatives data to the [applicable local securities regulator] in Form [X].

(3) Each reporting counterparty that is required by this Part to report derivatives data to a designated trade repository must report each error or omission in the derivatives data as soon as technologically possible after discovery of the error or omission.

(4) If a local counterparty, other than the reporting counterparty, discovers any error or omission with respect to any derivatives data reported in accordance with subsections (1) and (2), the local counterparty must promptly notify the reporting counterparty of that error or omission.

(5) For the purpose of complying with this Part, the reporting counterparty must ensure that all reported derivatives data relating to a particular transaction

(a) is reported to the same designated trade repository or [applicable local securities regulator] to which the initial report was made, and

(b) is accurate and contains no misrepresentations.

Pre-existing derivatives

26. (1) Notwithstanding subsection 25(1) and subject to subsection 41(4), a local counterparty to a transaction entered into before the day this Part comes into force that had outstanding contractual obligations on that day must report, or cause to be reported, the derivatives data in relation to that transaction to a designated trade repository in accordance with this Part not later than 365 days after this Part comes into force.

(2) Derivatives data required to be reported pursuant to subsection (1) must include the same creation data as a transaction entered into after the coming into force of this Rule and must reflect the current terms of the transaction.

Reporting counterparty

27. (1) The counterparty required to report derivatives data for a transaction is determined as follows

(a) if the transaction is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer is the reporting counterparty,

(b) in any other case, both counterparties are reporting counterparties unless they agree in writing between themselves that one of them is to be the reporting counterparty.

(2) Notwithstanding any other provision in this Rule, if the reporting counterparty as determined under subsection (1) is not a local counterparty and that counterparty does not comply with the reporting requirements of this Rule, the local counterparty must act as the reporting counterparty.

(3) The reporting counterparty in respect of a transaction is responsible for ensuring that all reporting requirements in respect of that transaction have been fulfilled.

(4) The reporting counterparty may delegate its reporting obligation, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

Real-time reporting

28. (1) The reporting counterparty for a transaction, subject to the reporting requirements of this Rule, must make a report required by this Part in real time unless it is not technologically practicable to do so.

(2) If it is not technologically practicable to report in real time, the reporting counterparty must make the report as soon as technologically practicable and in no event later than the end of the next business day following the day of the entering into of the transaction, change or event that is to be reported.

Identifiers, general

29. (1) The reporting counterparty for a transaction must include in every report required by this Part in respect of the transaction

(a) the legal entity identifier of each counterparty to the transaction as set out in section 30,

(b) the unique transaction identifier for the transaction as set out in section 31, and

(c) the unique product identifier for the transaction as set out in section 32.

Legal entity identifiers

30. (1) Each counterparty to a transaction that is subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers

(a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System, and

(b) each local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty at the time when a reporting obligation pursuant to this Rule arises, all of the following rules apply

(a) a designated trade repository must assign to that counterparty a substitute legal entity identifier using its own methodology which complies with applicable international standards relating to legal entity identifiers,

(b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), and

(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

Unique transaction identifiers

31. (1) Each transaction subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a unique transaction identifier.

(2) Each of the following rules apply to unique transaction identifiers

(a) a designated trade repository must assign a unique transaction identifier to the transaction using its own methodology, and

(b) a transaction must not have more than one unique transaction identifier.

Unique product identifiers

32. (1) Each transaction subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a unique product identifier.

(2) Each of the following rules apply to unique product identifiers

(a) a unique product identifier must be a unique identification code that is based on the taxonomy of the derivative and assigned in accordance with international or industry standards, and

(b) each derivative must not have more than one unique product identifier.

(3) Despite subsection (1), if international or industry standards for unique product identifiers are unavailable when a reporting obligation pursuant to this Rule arises then a unique product identifier is not required to be utilized until such standards are available.

Creation data

33. Upon execution of a transaction that is subject to the reporting requirements of this Rule, the reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

Life-cycle data

34. For each transaction that is subject to the reporting requirements of this Rule, the reporting counterparty must report life-cycle data to a designated trade repository upon the occurrence of a life-cycle event.

Valuation data

35. (1) For a transaction that is cleared, valuation data must be reported to the designated trade repository at the end of each business day by the reporting counterparty.

(2) Valuation data for a transaction that is not cleared must be reported to the designated trade repository

(a) at the end of each business day by each local counterparty if that counterparty is a derivatives dealer, and

(b) at the end of each calendar quarter for all reporting counterparties that are not derivatives dealers.

(3) For the purposes of paragraph (2)(b), and despite section 28, the report must set out the valuation data as of the last day of each calendar quarter and must be reported to the designated trade repository not later than 30 days after the end of the calendar quarter.

Records of data reported

36. (1) Local counterparties to a transaction must keep records of the derivatives data in relation to the derivative for the life of the derivative and for a further 7 years after the date on which the derivative expires or terminates.

(2) Records to which these requirements apply must be kept in a safe location and in a durable form.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) A designated trade repository must, at no cost

(a) provide to the [applicable local securities regulator] direct, continuous and timely electronic access to such data in the designated trade repository's possession as is required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate, and

(b) accept and promptly fulfil any ad hoc data requests from the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate.

(2) A designated trade repository must, at no cost and as required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate, create and make available to the [applicable local securities regulator] aggregate data derived from data in the designated trade repository's possession.

(3) A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

Data available to counterparties

38. (1) A designated trade repository must provide counterparties to a transaction with access to all derivatives data relevant to that transaction which is submitted to the designated trade repository.

(2) A designated trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by non-reporting counterparties or a party acting on behalf of a non-reporting counterparty.

(3) Each counterparty to a transaction is deemed to have consented to the release of derivatives data for the purposes of subsection (1).

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a transaction.

Data available to public

39. (1) A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and prices, relating to the transactions reported to it pursuant to this Rule.

(2) The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, product type, whether the transaction is cleared, maturity and geographic location and type of counterparty.

(3) A designated trade repository must make transaction level reports of the principal economic terms of each transaction reported pursuant to this Rule available to the public at no cost not later than

(a) one day after receiving those terms from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, and

(b) two days after receiving those terms from the reporting counterparty to the transaction in all other circumstances.

(4) In disclosing transaction level reports required by subsection (3), a designated trade repository must not disclose the identity of either counterparty to the transaction.

(5) A designated trade repository must make the data required to be made available to the public under this section available through a publicly accessible website or other publically accessible technology or medium.

PART 5
EXEMPTIONS

Exemptions

40. (1) A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite anything in this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if the local counterparty is not a dealer or adviser and has less than $500 000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.

PART 6
EFFECTIVE DATE

Effective date

41. (1) Parts 1, 2, 4, 5 and 6 come into force on the 15th day after this Rule is approved by the Minister.

(2) Part 3 comes into force 6 months after the day on which Parts 1, 2, 4, 5 and 6 come into force.

(3) Despite subsection (2), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer to make any reports under that Part until 9 months after the day on which Parts 1, 2, 4, 5 and 6 come into force.

(4) Despite the foregoing, Part 3 does not apply to a transaction entered into before the day Part 3 comes into force that expires or terminates not later than 365 days after that day.

APPENDIX A OF MODEL PROVINCIAL RULE –
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

MINIMUM DATA FIELDS REQUIRED TO BE REPORTED TO A DESIGNATED TRADE REPOSITORY

Instructions:

The reporting counterparty is required to provide a response for each of the fields. Where a field does not apply to the transaction, the reporting counterparty may respond that the field is non-applicable (N/A).

Data field	Description
1. Operational data	
Transaction identifier	The unique transaction identifier as provided by the designated trade repository or, if no unique transaction identifier is available, the internal identifier as identified by the two counterparties or by the electronic trading venue of execution.
Master agreement type	The type of master agreement that was executed.
Master agreement date	Date of the master agreement. (e.g. 2002, 2006)
Calculation agent	Name of the calculation agent or, if applicable, its Legal Entity Identifier (LEI) or client code.
Settlement agent for the reporting counterparty	Yes/No. If yes, name of the settlement agent or, if applicable, its LEI or client code.
Settlement agent for the non-reporting counterparty	Yes/No. If yes, name of the settlement agent or, if applicable, its LEI or client code.
Cleared	Yes/No. An indicator of whether the transaction has been cleared by a clearing agency.
Clearing obligation	Indicate if clearing is mandatory or voluntary.
Clearing agency	Name of the clearing agency where the transaction was cleared.
Clearing member	Name of the clearing member or, if applicable, its LEI or client code.
Clearing exemption	Yes/No. Indicates whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement.
Mutual confirmation	Yes/No. Indicates whether the details contained here have been confirmed by both counterparties.

Data field	Description
Broker	Yes/No. If yes, name of the broker or, if applicable, its LEI or client code.
Electronically traded	Yes/No. Indicates whether the transaction has traded on an electronic trading venue.
Electronic trading venue name	Name of the electronic trading venue where the transaction was executed.
Intragroup	Yes/No. Indicates whether the transaction is between two related, affiliated or associated entities.
Custodian	Name of the custodian or, if applicable, its LEI or client code, if collateral is held by a third party custodian.
Initial margin requirement	Yes/No. Indicates the initial margin required by the counterparties.
Initial margin amount	Amount and currency of the initial margin.
Counterparty posting initial margin	Indicate which counterparty, or whether both counterparties, are posting initial margin.
Variation margin	Whether variation margin is required to be collected under the terms of the transaction.
Counterparty posting variation margin	Indicate which counterparty, or whether both counterparties, are posting variation margin.
Calculating variation margin	Yes/No. Indicate whether the variation margin is calculated on a portfolio basis.
2. Counterparty information	
Identifier of reporting counterparty	Name of the reporting counterparty or, if applicable, its LEI or client code.
Identifier of non-reporting counterparty	Name of the non-reporting counterparty or, if applicable, its LEI or client code.
Identifier of agent reporting the trade	Name of the agent reporting the transaction on behalf of the reporting counterparty or, if applicable, its LEI or client code.

Data field	Description
Registration category and registering authority of reporting counterparty	Authority with which the reporting counterparty is registered and its registration category.
Registration category and registering authority of non-reporting counterparty	Authority with which the non-reporting counterparty is registered and its registration category.
Registration category and registering authority of the reporting agent	Authority with which the reporting agent is registered and its registration category.
Branch/desk identifier	Country of the counterparties or their brokers.
3. Principal economic terms	
Unique product identifier	Unique product identification code based on the taxonomy of the product.
Contract type	The name of the contract type. (e.g. swap, swaption, forwards, options, basis swap, index swap, basket swap, other)
Underlying Identifier	International Securities Identifying Number (ISIN)/Basket (B)/Index (I).
Asset Class	Major asset classes of the product. (e.g. interest rate, credit, commodity, foreign exchange, equity, etc.)
Reference asset	The specific underlying asset. (e.g. class A shares of company X. For non-Canadian underlying assets, provide the country. For Canadian underlying assets provide if provincial or federal.)
Effective date or start date	The date the transaction becomes effective or starts.
Maturity, termination or end date	The day the transaction expires.
Payment dates	The dates the transaction requires payments to be made.
Delivery type	Deliverable or non-deliverable.
Counterparty receiving up-front payment	Name of the counterparty or, if applicable, its LEI or client code.

Data field	Description
Price multiplier	The number of units of the underlying reference entity represented by 1 unit of the contract.
A. Swaps and Forwards	
Notional amount/total notional quantity – reporting counterparty	Total notional amount or total quantity in the unit of measure of an underlying commodity.
Notional amount/total notional quantity – non-reporting counterparty	Total notional amount or total quantity in the unit of measure of an underlying commodity.
Fixed rate payer	Name of the reporting or non-reporting counterparty that pays the fixed rate or, if applicable, its LEI or client code.
Floating rate payer	Name of the reporting or non-reporting counterparty that pays the floating rate or, if applicable, its LEI or client code.
Notional currency – reporting counterparty	Notional currency payable by reporting counterparty. (International Organization for Standardization (ISO) code)
Notional currency – non-reporting counterparty	Notional currency payable by non-reporting counterparty. (ISO code)
Reporting counterparty floating index name	The floating index/rate name used to calculate the reporting counterparty's payment amount.
Non-reporting counterparty floating index name	The floating index/rate name used to calculate the non-reporting counterparty's payment amount.
Fixed rate or floating rate index reference level – reporting counterparty	The rate or reference level used to determine the payment amount of the reporting counterparty for each leg of the transaction.
Fixed rate or floating rate index reference level – non-reporting counterparty	The rate or reference level used to determine the payment amount of the non-reporting counterparty for each leg of the transaction.
Fixed rate day count fraction	Factor used to calculate the fixed payer payments. (e.g. 30/360, actual/360)
Fixed leg payment frequency	Frequency of payments for the fixed rate leg of the transaction. (e.g. quarterly, semi, annual)
Floating rate payment frequency	Frequency of payments for the floating rate leg of the transaction. (e.g. quarterly, semi-annual, annual)

Data field	Description
Floating rate reset frequency	How often the floating leg of the transaction is reset. (e.g. quarterly, semi-annual, annual)
Up-front payment	Amount of any up-front payment.
Currency or currencies of up-front payment	The currency in which payment is made by one counterparty to another. (ISO code)
Settlement currency	The currency in which payment is made by one counterparty to another. (ISO code)
Other material economic term(s) matched by the counterparties in verifying the swap	E.g. early termination option clause.
B. Options	
Option exercise period	List of dates or period of time within which the option may be exercised.
Option premium	Fixed premium paid by the buyer to the seller.
Option premium currency	The currency used to compute the option premium.
Strike price (cap/floor rate)	The strike price of the option.
Value for options	The value of the option.
Option style	Indication of whether the option can be exercised on a fixed date or anytime during the life of the contract. (e.g. American, European, Bermudan, Asian)
Option type	Put/Call.
Other material economic term(s) matched by the counterparties in verifying the option	E.g. early termination option clause.

Data field	Description
C. Additional asset information	
i) Currency Derivatives	
Foreign exchange swap forward leg	Information needed by trade repository to match with spot leg of the transaction.
Foreign exchange swap spot leg	Information needed by trade repository to match with forward leg of the transaction.
Exchange rate	Rate of exchange of the currencies for the transaction in the contract.
ii) Commodity Derivatives	
Unit of measure	Unit to measure the quantity of each side of the transaction. (e.g. barrels, bushels, etc.)
Grade	Grade of product being delivered.
Delivery point	For power, the delivery location.
Transmission days	For power, the delivery days of the week.
Transmission duration	For power, the hours of day transmission starts and ends.
Load type	Load profile for the delivery of power.
4. Event Data	
Action	Describes the type of action required. (e.g. new, modify, cancel, compression, etc.)
Submission of transaction entry timestamp	The time and date when the transaction was sent to the trading venue to be executed.

Data field	Description
Execution timestamp	The time and date the transaction was executed on a trading venue.
Confirmation timestamp	The time and date the transaction was confirmed by both counterparties (mainly for non-electronically traded).
Submission timestamp for clearing	The time and date when the transaction was submitted to a clearing agency.
Clearing timestamp	The time and date the transaction was cleared.
Reporting date	The time and date the transaction was submitted to the trade repository.
Reset dates	The date and time when the transaction will reset.
5. Valuation Data	
Value of contract	Mark-to-market valuation of the contract, or mark-to-model valuation.
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.
Valuation type	Indicate whether valuation was based on mark-to-market or mark-to-model.

FORM F1
TO MODEL PROVINCIAL RULE – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

APPLICATION FOR DESIGNATION
TRADE REPOSITORY
INFORMATION STATEMENT

Filer: ☐ **TRADE REPOSITORY**

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

1. Full name of trade repository:

2. Name(s) under which business is conducted, if different from item 1:

3. If this filing makes a name change on behalf of the trade repository in respect of the name set out in item 1 or item 2, enter the previous name and the new name:

   Previous name:

   New name:

4. Head office

   Address:

   Telephone:

   Facsimile:

5. Mailing address (if different):

6. Other offices

   Address:

   Telephone:

   Facsimile:

7. Website address:

8. Contact employee

   Name and title:

   Telephone number:

   Facsimile:

   E-mail address:

9. Counsel

   Firm name:

   Contact name:

   Telephone number:

   Facsimile:

   E-mail address:

10. Canadian counsel (if applicable)

    Firm name:

    Contact name:

    Telephone number:

    Facsimile:

    E-mail address:

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the trade repository, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Except as provided below, if the filer files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer must, in order to comply with section 3 of Model Provincial Rule Trade Repositories and Derivatives Data Reporting (the "TR Rule"), provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and blacklined version showing changes from the previous filing.

If the filer has otherwise filed the information required by the previous paragraph pursuant to section 17 of the TR Rule, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:

    ☐ Corporation

    ☐ Partnership

    ☐ Other (specify):

2. Indicate the following:

    1. Date (DD/MM/YYYY) of formation.

    2. Place of formation.

    3. Statute under which trade repository was organized.

    4. Regulatory status in other jurisdictions.

3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.

4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the trade repository or the services it provides, including those related to the commercial interest of the trade repository, the interests of its owners and its operators, the responsibilities and sound functioning of the trade repository, and those between the operations of the trade repository and its regulatory responsibilities.

5. An applicant that is located outside of [Province x] that is applying for designation as a trade repository under section 2(3) of the Act must provide the following:

    1. An opinion of legal counsel that, as a matter of law the applicant is able to provide the [applicable local securities regulator] with prompt access to the applicant's books and records (including data that is required to be reported to the trade repository) and is able to submit to onsite inspection and examination by the [applicable local securities regulator].

2. A completed Form F2, Submission to Jurisdiction and Appointment of Agent for Service.

Exhibit B – Ownership

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository. For each of the persons listed in the Exhibit, please provide the following:

1. Name.

2. Principal business or occupation and title.

3. Ownership interest.

4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

In the case of a trade repository that is publicly traded, if the trade repository is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a security with voting rights.

Exhibit C – Organization

1. A list of partners, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

    1. Name.

    2. Principal business or occupation and title.

    3. Dates of commencement and expiry of present term of office or position.

    4. Type of business in which each is primarily engaged and current employer.

    5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

    6. Whether the person is considered to be an independent director.

2. A list of the committees of the board, including their mandates.

3. The name of the trade repository's Chief Compliance Officer.

Exhibit D – Affiliates

1. For each affiliated entity of the trade repository provide the name, head office address and describe the principal business of the affiliate.

2. For each affiliated entity of the trade repository

    (i) to which the trade repository has outsourced any of its key services or systems described in Exhibit E – Operations of the Trade Repository, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison, data feed, or

    (ii) with which the trade repository has any other material business relationship, including loans, cross-guarantees, etc.,

provide the following information:

1. Name and address of the affiliate.

2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.

3. A description of the nature and extent of the contractual and other agreements with the trade repository, and the roles and responsibilities of the affiliate under the arrangement.

4. A copy of each material contract relating to any outsourced functions or other material relationship.

5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

6. For the latest financial year of any affiliated entity that has any outstanding loans or cross-guarantee arrangements with the trade repository, financial statements, which may be unaudited, prepared in accordance with:

   a. Canadian GAAP applicable to publicly accountable enterprises;

   b. IFRS; or

   c. U.S. GAAP where the affiliated entity is incorporated or organized under the laws of the U.S.

Exhibit E – Operations of the Trade Repository

Describe in detail the manner of operation of the trade repository and its associated functions. This should include, but not be limited to, a description of the following:

1. The structure of the trade repository.

2. Means of access by the trade repository's users and, if applicable, their clients to the trade repository's facilities and services.

3. The hours of operation.

4. A description of the facilities and services offered by the trade repository including, but not limited to, collection and maintenance of derivatives data.

5. A list of the types of derivatives instruments for which data recordkeeping is offered, including, but not limited to, a description of the features and characteristics of the instruments.

6. Procedures regarding the entry, display and reporting of derivatives data.

7. Description of recordkeeping procedures that ensure derivatives data is recorded accurately, completely and on a timely basis.

8. The safeguards and procedures to protect derivatives data of the trade repository's users, including required policies and procedures reasonably designed to protect the privacy and confidentiality of the data.

9. Training provided to users and a copy of any materials provided with respect to systems and rules and other requirements of the trade repository.

10. Steps taken to ensure that the trade repository's users have knowledge of and comply with the requirements of the trade repository.

11. A description of the trade repository's risk management framework for comprehensively managing risks including business, legal, and operational risks.

The filer must provide all policies, procedures and manuals related to the operation of the trade repository.

Exhibit F – Outsourcing

Where the trade repository has outsourced the operation of key services or systems described in Exhibit E – Operations of the Trade Repository to an arms-length third party, including any function associated with the collection and maintenance of derivatives data, provide the following information:

1. Name and address of person or company (including any affiliates of the trade repository) to which the function has been outsourced.

2. A description of the nature and extent of the contractual or other agreement with the trade repository and the roles and responsibilities of the arms-length party under the arrangement.

3. A copy of each material contract relating to any outsourced function.

Exhibit G – Systems and Contingency Planning

For each of the systems for collecting and maintaining reports of derivatives data, describe:

1. Current and future capacity estimates.

2. Procedures for reviewing system capacity.

3. Procedures for reviewing system security.

4. Procedures to conduct stress tests.

5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.

6. Procedures to test business continuity and disaster recovery plans.

7. The list of data to be reported by all types of users.

8. A description of the data format or formats that will be available to the [applicable local securities regulator] and other persons receiving trade reporting data.

Exhibit H – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the trade repository described in Exhibit E.4.

2. Describe the types of trade repository users.

3. Describe the trade repository's criteria for access to the services of the trade repository.

4. Describe any differences in access to the services offered by the trade repository to different groups or types of users.

5. Describe conditions under which the trade repository's users may be subject to suspension or termination with regard to access to the services of the trade repository.

6. Describe any procedures that will be involved in the suspension or termination of a user.

7. Describe the trade repository's arrangements for permitting clients of users to have access to the trade repository. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit I – Trade Repository Users

Provide an alphabetical list of all the trade repository's users who are counterparties to a transaction whose derivatives data is required to be reported pursuant to the TR Rule, including the following information:

1. Name.

2. Date of becoming a user.

3. Describe the type of derivatives reported whose counterparty is the user.

4. The class of participation or other access.

5. Provide a list of all local counterparty who were denied or limited access to the trade repository, indicating for each:

   (i) whether they were denied or limited access;

(ii) the date the repository took such action;

(iii) the effective date of such action; and

(iv) the nature and reason for any denial or limitation of access.

Exhibit J – Fees

A description of the fee model and all fees charged by the trade repository, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to access and the collection and maintenance of derivatives data, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

IF APPLICABLE, ADDITIONAL CERTIFICATE OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF ONTARIO

The undersigned certifies that

(a) it will provide the [applicable local securities regulator] with access to its books and records and will submit to onsite inspection and examination by the [applicable local securities regulator] ;

(b) as a matter of law, it is able to

i. provide the [applicable local securities regulator] with access to its books and records, and

ii. submit to onsite inspection and examination by the [applicable local securities regulator].

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

FORM F2
TO MODEL PROVINCIAL RULE – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

TRADE REPOSITORY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of trade repository (the "Trade Repository"):

   _____

2. Jurisdiction of incorporation, or equivalent, of Trade Repository:

   _____

3. Address of principal place of business of Trade Repository:

   _____

4. Name of the agent for service of process for the Trade Repository (the "Agent"):

   _____

5. Address of Agent for service of process in Ontario:

   _____

6. The Trade Repository designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Trade Repository in Ontario. The Trade Repository hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Trade Repository.

7. The Trade Repository agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Trade Repository in Ontario.

8. The Trade Repository shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Trade Repository ceases to be designated or exempted by the Commission, to be in effect for six years from the date it ceases to be designated or exempted unless otherwise amended in accordance with section 9.

9. Until six years after it has ceased to be a designated or exempted by the Commission from the recognition requirement under subsection 21.2.2(1) of the Act, the Trade Repository shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of Ontario.

Dated: _____

_____
Signature of the Trade Repository

_____
Print name and title of signing
officer of the Trade Repository

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, (Name of Agent in full; if Corporation, full Corporate Name) of (Business address), hereby accept the appointment as agent for service of process of [insert name of Trade Repository] and hereby consent to act as agent for service pursuant to the terms of the appointment executed by [insert name of Trade Repository] on [insert date].

Dated: _____ _____

Signature of Agent

_____

Print name of person signing and, if Agent is not an individual, the title of the person

FORM F3
TO MODEL PROVINCIAL RULE – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY

1. Identification:

   A. Full name of the designated trade repository:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date designated trade repository proposes to cease carrying on business as a trade repository:

3. If cessation of business was involuntary, date trade repository has ceased to carry on business as a trade repository.

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the trade repository, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the designated trade repository ceasing to carry on business as a trade repository.

Exhibit B

A list of all derivatives instruments for which data recordkeeping is offered during the last 30 days prior to ceasing business as a trade repository.

Exhibit C

A list of all users who are counterparties to a transaction whose derivatives data is required to be reported pursuant to Model Provincial Rule – Trade Repositories and Derivatives Data Reporting and for whom the trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

MODEL EXPLANATORY GUIDANCE
TO
MODEL PROVINCIAL RULE – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

TABLE OF CONTENTS

PART 1
GENERAL COMMENTS

Introduction

1. (1) This Model Explanatory Guidance sets out the views of the Canadian Securities Administrators OTC Derivatives Committee (the "Committee" or "we") on various matters relating to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the "TR Rule") and related securities legislation.

(2) Except for Part 1, the numbering of Parts, sections and subsections in this Model Explanatory Guidance generally correspond to the numbering in the TR Rule. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section or subsection in the TR Rule follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Model Explanatory Guidance will skip to the next provision that does have guidance.

(3) Unless otherwise stated, any reference to a Part, section, subsection, paragraph or definition in this Model Explanatory Guidance is a reference to the corresponding Part, section, subsection, paragraph or definition in the TR Rule.

Definitions and interpretation

2. (1) Unless defined in the TR Rule, terms used in the TR Rule and in this Model Explanatory Guidance have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions* and OSC Rule 14-501 *Definitions*.[1]

(2) In this Model Explanatory Guidance

"CPSS" means the Committee on Payment and Settlement Systems,

"FMI" means a financial market infrastructure,

"IOSCO" means the Technical Committee of the International Organization of Securities Commissions,

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPSS and IOSCO, as amended from time to time, [2] and

"principle" means, unless the context otherwise indicates, a principle set out in the PFMI Report.

(3) A "life-cycle event" is defined as any event that results in a change to derivatives data previously reported to a designated trade repository. Where a life-cycle event occurs, the change must be reported as life-cycle data. Life-cycle data will not include creation data that has not changed as a result of a life-cycle event. Examples of a life-cycle event would include

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1 As explained in the accompanying Notice, the TR Rule has been drafted based on the *Securities Act* (Ontario). Certain conforming amendments will be necessary in other jurisdictions.

2 The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

- a change to the termination date for the transaction,
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported,
- the availability of a legal entity identifier for a counterparty previously identified by name or by some other identifier,
- a corporate action affecting a security or securities on which the transaction is based (e.g. a merger, dividend, stock split, or bankruptcy),
- the exercise of a right or option that is an element of the expired transaction, or
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

(4) The term "transaction" is defined and used instead the term "trade", as defined in the *Securities Act* (Ontario) (the "Act"), in order to reflect the types of activities that require a unique transaction report, as opposed to the modification of an existing transaction report. The primary difference between the two definitions is that unlike the term "transaction", the term "trade", as defined in the Act, includes material amendments and terminations.

A material amendment is not referred to in the definition of "transaction" but would be required to be reported as a life-cycle event of an existing transaction pursuant to section 34, and not a new transaction. A termination is not referred to in the definition of "transaction" as the expiry or termination of a transaction would be reported to a trade repository without the requirement for a new transaction record.

In addition, unlike the definition of "trade" , the definition of "transaction" includes a novation to a clearing agency as such action is are required to be reported as separate, new transactions with reporting links to the original transactions.

(5) The term "valuation data" is defined as data that reflects the current value of a transaction, meaning the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants, at the current date. It is the Committee's view that valuation data can be calculated based upon the use of an industry accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles that will result in a reasonable valuation of a transaction. The valuation methodology should be consistent over the entire life of a transaction.

PART 2
TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Part 2 contains rules for trade repository designation and ongoing requirements for designated trade repositories.[3] To obtain and maintain a designation as a trade repository, a person or entity must comply with these rules and requirements in addition to all of the terms and conditions in the designation order made by the [applicable local securities regulator]. In order to comply with the reporting obligations contained in Part 3, market participants must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in [Province x], a market participant using it would not be in compliance with reporting obligations.

Trade repository initial filing of information and designation

2. (1) The legal entity that applies to be a designated trade repository will typically be the entity that operates the facility that collects and maintains records of completed transactions by other persons or companies. In some cases, the applicant may own and operate more than one trade repository facility. In such cases, the trade repository may file separate forms in respect of each trade repository facility, or it may choose to file one form to cover all of the different trade repository facilities. If the latter alternative is chosen, the trade repository must clearly identify the facility to which the information or changes apply.

(2) Under paragraph 2(2)(a) in determining whether to designate an applicant a trade repository under section [x][4] of the Act, it is anticipated that the [applicable local securities regulator] will consider a number of factors, including

(i) the manner in which the trade repository proposes to comply with the TR Rule,

(ii) whether the trade repository has meaningful representation on its governing body,

[3] Certain Canadian jurisdictions "recognize" trade repositories instead of "designating" them. However, the Committee intends that consistent requirements will be applied in all jurisdictions regardless of whether a trade repository is designated or recognized.

[4] Section [x] would be the designation or recognition provision in the securities legislation of a province.

(iii) whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,

(iv) whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters fair and efficient capital markets and facilitates the [applicable local securities regulator]'s objectives of improving transparency in the derivatives market,

(v) whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides,

(vi) whether the requirements of the trade repository relating to access to its services are fair and reasonable,

(vii) whether the trade repository's process for setting fees is fair, transparent and appropriate,

(viii) whether the trade repository's fees are equitably allocated among the users, have the effect of creating barriers to access or place an undue burden on any user or class of users,

(ix) the manner and process for the [applicable local securities regulator] and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions, and

(x) whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data.

Under paragraph 2(2)(b) the [applicable local securities regulator] will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the TR Rule and any terms and conditions attached to the [applicable local securities regulator]'s designation order in respect of a designated trade repository.

Under paragraph 2(2)(c), a trade repository that is applying for designation as a trade repository must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories including, but not limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the relevant sections of the TR Rule that are to be interpreted and applied in accordance with each principle:

Principle in the PFMI Report applicable to a trade repository	***Relevant section(s) of the TR Rule***
Principle 1: Legal Basis	Section 7 – Legal Framework Section 17 – Rules (in part)
Principle 2: Governance	Section 8 – Governance Section 9 – Board of Directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive Risk Management Framework Section 20 – General Business Risk (in part)
Principle 15: General business risk	Section 20 – General Business Risk
Principle 17: Operational risk	Section 21 – Systems and Other Operational Risk Requirements Section 22 – Data Security and Confidentiality Section 24 – Outsourcing
Principle 18: Access and participation requirements	Section 13 – Access to Designated Trade Repository Services Section 16 – Due Process (in part) Section 17 – Rules (in part)
Principle 19: Tiered participation arrangements	No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 20: FMI links	No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.

Principle in the PFMI Report applicable to a trade repository	*Relevant section(s) of the TR Rule*
Principle 21: Efficiency and effectiveness	No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 22: Communication procedures and standards	Section 15 – Communication Policies, Procedures and Standards
Principle 23: Disclosure of rules, key procedures, and market data	Section 17 – Rules (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

It is anticipated that the [applicable local securities regulator] will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the TR Rule, designated trade repositories will be expected to observe the principles.

The forms filed by an applicant or designated trade repository under the TR Rule will be kept confidential in accordance with the provisions of the Act. The Committee is of the view that the forms generally contain proprietary financial, commercial and technical information and that the cost and potential risks to the filers of disclosure therefore outweigh the benefit of the principle requiring that forms be available for public inspection. However, the Committee would expect a designated trade repository to publicly disclose its responses to CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*.[5] In addition, much of the information that will be included in the forms filed will be required to be publicized by a designated trade repository pursuant to the TR Rule or the terms and conditions of the designation order imposed by the [applicable local securities regulator].

While Form F1 – *Applicant for Designation and Trade Repository Information Statement* and any amendments to it will be kept generally confidential, if the [applicable local securities regulator] considers that it is in the public interest to do so, it may require the applicant or designated trade repository to publicly disclose a summary of the information contained in such form, or amendments to it.

Change in information

3. (1) Under subsection 3(1) a designated trade repository is required to file an amendment to the information provided in Form F1 at least 45 days prior to implementing a significant change. The Committee considers a change to be significant when it could impact a designated trade repository, its users, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). The Committee would consider a significant change to include, but not be limited to

(a) a change in the structure of the designated trade repository, including procedures governing how derivatives data is collected and maintained, that have or may have a direct impact on users in [Province x],

(b) a change to services provided by the designated trade repository, including the hours of operation, that have or may have a direct impact on users in [Province x],

(c) a change to means of access to the designated trade repository's facility and its services, including changes to data formats or protocols, that have or may have a direct impact on users in [Province x],

(d) a change to the types of derivative asset classes or categories of derivatives that may be reported to the designated trade repository,

(e) a change to the systems and technology used by the designated trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,

(f) a change to the governance of the designated trade repository, including changes to the structure of its board of directors or board committees, and their related mandates,

(g) a change in control of the designated trade repository,

[5] Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

(h) a change in affiliates that provide key services or systems to or on behalf of the designated trade repository,

(i) a change to outsourcing arrangements for key services or systems of the designated trade repository,

(j) a change to fees and the fee model of the designated trade repository,

(k) a change in the designated trade repository's policies and procedure relating to risk-management, including policies and procedures relating to business continuity and data security, that have or may have an impact on the designated trade repository's provision of services to its users, and

(l) a change in the location of the designated trade repository's head office or primary place of business or the location where the main data servers and contingency sites are housed.

(2) The Committee generally considers a change in a designated trade repository's fees or fee structure to be a significant change. However, the Committee recognizes that designated trade repositories may frequently change their fees or fee structure and may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3(2) provides that a designated trade repository may provide information describing the change in fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change in fees or fee structure). See section 12 of this Model Explanatory Guidance for an explanation of fee requirements applicable to designated trade repositories.

The [applicable local securities regulator] will make best efforts to review amendments to Form F1 required under subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes.

(3) Subsection 3(3) sets out the filing requirements for changes to information other than those described in subsections 3(1) or (2). Such changes to information in Form F1 are not considered significant and include changes that:

(a) would not have an impact on the designated trade repository's structure or users, or more broadly on market participants, investors or the capital markets; or

(b) are administrative changes such as

(i) changes in the routine processes, policies, practices, or administration of the designated trade repository that would not impact users,

(ii) changes due to standardization of terminology,

(iii) corrections of spelling or typographical errors,

(iv) changes to the types of users in [Province x] of the designated trade repository,

(iv) necessary changes to conform to applicable regulatory or other legal requirements of [Province x] or Canada, and

(v) minor system or technology changes that would not significantly impact the system or its capacity.

For the changes referred to in subsection 3(3), the [applicable local securities regulator] may review these filings to ascertain whether they have been categorized appropriately. If the [applicable local securities regulator] disagrees with the categorization, the designated trade repository will be notified in writing. Where the [applicable local securities regulator] determines that changes reported under subsection 3(3) are in fact significant under subsection 3(1), the designated trade repository will be required to file an amended Form F1 that will be subject to review by the [applicable local securities regulator].

Ceasing to carry on business

4. (1) In addition to filing Form F3 – *Cessation of Operations Report for Trade Repository*, a designated trade repository that intends to cease carrying on business in [Province x] as a designated trade repository must make an application to voluntarily surrender its designation to the [applicable local securities regulator] pursuant to section [x][6] of the Act. The [applicable local securities regulator] may accept the voluntary surrender subject to terms and conditions.

[6] In Ontario, section 21.4 of the *Securities Act* (Ontario) provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of trade data/information can be addressed through the terms and conditions imposed by the Commission on such application.

Legal framework

7. (1) Designated trade repositories are required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions. This would include other Canadian and foreign jurisdictions.

(2) Paragraph 7(2)(d) requires a designated trade repository to establish whether records of contracts in its repository are the legal contracts of record. In order to do this, the designated trade repository must disclose whether a transaction record is a legal contract of record or a representation of terms in the legal contract of record.

Governance

8. Designated trade repositories are required to have in place governance arrangements that meet the policy objectives set out in subsection 8(1). Subsections 8(2) and 8(3) explain the types of written governance arrangements and policies and procedures that are required from a designated trade repository.

(4) Under subsection 8(4), a designated trade repository is required to make the written governance arrangements required under subsections 8(2) and (3) available to the public. A designated trade repository may fulfil this requirement by posting this information on a publicly accessible website, provided that interested parties are able to locate the information through a web search or through clearly identified links on the designated trade repository's website.

Board of directors

9. The board of directors of a designated trade repository is subject to a various requirements pertaining to board composition, conflicts of interest.

(1) Paragraph 9(1)(a) requires individuals who comprise the board of directors of a designated trade repository to have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations. This would include individuals with experience and skills in business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(1)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Committee would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Committee would expect that independent directors of a designated trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled and that the interests of participants who are not derivatives dealers are considered.

Chief compliance officer

11. References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

Fees

12. Designated trade repositories are responsible for ensuring that the fees they set are in compliance with section 12. In assessing whether a designated trade repository's fees and costs are fair and equitably allocated as required under paragraph 12(a), the [applicable local securities regulator] will consider a number of factors, including

(a) the number of and complexity of the transactions being reported,

(b) the amount of the fee or cost imposed relative to the cost of services provided,

(c) the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market,

(d) with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the designated trade repository, and

(e) whether the fees or costs represent a barrier to accessing the services of the designated trade repository for any category of market participant.

A designated trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a designated trade repository should also disclose other fees and costs related to connecting or accessing the trade repository. For example, a designated trade repository should disclose information on the system design, as

well as technology and communication procedures, which influence the costs of using the designated trade repository. A designated trade repository is also expected to provide timely notice to users and the public of any changes to services and fees.

Access to designated trade repository services

13. (2) Under subsection 13(2) a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its users or imposing unreasonable burdens on competition. For example, a designated trade repository should not engage in anti-competitive practices such as product or service tying, setting overly restrictive terms of use or anti-competitive price discrimination. A designated trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the designated trade repository.

Acceptance of reporting

14. Section 14 requires that a designated trade repository accept derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository includes interest rate derivatives, the designated trade repository is required to accept transaction data for all types of interest rate derivatives entered into by counterparties located in [Province x]. It is possible that a designated trade repository may accept only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories which accept only certain types of commodity derivatives such as energy derivatives.

Communication policies, procedures and standards

15. Section 15 sets out the required standard of communication to be used by a designated trade repository with other specified entities. The reference in paragraph 15(1)(d) to "other service providers" could include market participants who offer technological or transaction processing services.

Rules

17. Subsections 17(1) and (2) require that the publicly disclosed written rules and procedures of a designated trade repository must be clear and comprehensive and include explanatory material written in plain language so that participants can fully understand the system's design and operations, their rights and obligations, and the risks of participating in the system. Moreover, a designated trade repository should disclose to its users and the public basic operational information and responses to CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

(3) Subsection 17(3) requires that designated trade repositories monitor compliance with its rules and procedures. The methodology of monitoring the compliance should be fully documented.

(4) Subsection 17(4) requires a designated trade repository to have clearly defined and publicly disclosed processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person or company, including the [applicable local securities regulator] or other regulatory body.

(5) Subsection 17(5) requires a designated trade repository to file its rules and procedures with the [applicable local securities regulator] for approval in accordance with the terms and conditions of the designation order. Upon designation, the [applicable local securities regulator] may develop and implement a protocol with the designated trade repository that will set out the procedures to be followed with respect to the review and approval of rules and procedures and any amendments thereto. Generally, such a rule protocol will be appended to and form part of the designation order. Depending on the nature of the changes to the designated trade repository's rules and procedures, such changes may also impact the information contained in Form F1. In such case, the designated trade repository will be required to file a revised Form F1 with the [applicable local securities regulator]. See section 3 of this Model Explanatory Guidance for a discussion of the filing requirements.

Records of data reported

18. A designated trade repository is a market participant under securities legislation and therefore subject to the record-keeping requirements under Act. The record-keeping requirements under section 18 are in addition to the requirements under the Act.

(2) Subsection 18(2) requires that records be maintained for 7 years after the expiration or termination of a transaction. The requirement to maintain records for 7 years after the expiration or termination of a transaction rather than from the date the transaction was entered into reflects the fact that transactions create ongoing obligations and therefore information is subject to change throughout the life of a transaction.

Comprehensive risk-management framework

19. Requirements for a comprehensive risk-management framework of a designated trade repository are set out in section 19.

Features of framework

A designated trade repository should have a sound risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in or are borne by designated trade repository. A designated trade repository's framework should include the identification and management of risks that could materially affect its ability to perform or to provide services as expected such as interdependencies.

Establishing a framework

A designated trade repository should have comprehensive internal processes to help its board of directors and senior management monitor and assess the adequacy and effectiveness of its risk-management policies, procedures, systems, and controls. These processes should be fully documented and readily available to the designated trade repository's personnel responsible for implementing them.

Maintaining a framework

A designated trade repository should regularly review the material risks it bears from, and poses to, other entities (such as other FMIs, settlement banks, liquidity providers, or service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become non-viable.

General business risk

20. (1) Subsection 20(1) requires a designated trade repository to manage its general business risk appropriately. General business risk includes any potential impairment of the designated trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a designated trade repository.

(2) For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a designated trade repository should hold is to be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services, if such action is taken. At a minimum, however, the Committee is of the view that a designated trade repository must hold liquid net assets funded by equity equal to at least six months of current operating expenses.

(3) For the purposes of subsections 20(3) and (4), and in connection with developing a comprehensive risk-management framework under section 19, a designated trade repository should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. These scenarios should take into account the various independent and related risks to which the designated trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(3) (and taking into account any constraints potentially imposed by legislation), the designated trade repository should prepare appropriate written plans for its recovery or orderly wind-down. The plan should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the designated trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The designated trade repository should maintain the plan on an ongoing basis to achieve recovery and orderly wind-down and should hold sufficient liquid net assets funded by equity to implement this plan (see also subsection 20(2) above). A designated trade repository should also take into consideration the operational, technological, and legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

Systems and other operational risk requirements

21. (1) Subsection 21(1) sets out a general principle concerning the management of operational risk. In interpreting subsection 21(1), the following key considerations should be applied:

- a designated trade repository should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;

- a designated trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and

- a designated trade repository should have clearly defined operational-reliability objectives and policies in place that are designed to achieve those objectives.

(2) The board of directors of a designated trade repository should clearly define the roles and responsibilities for addressing operational risk and approve the designated trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a designated trade repository to develop and maintain an adequate system of internal control over its systems as well as adequate general information-technology controls. The latter controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recommended Canadian guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from the Canadian Institute of Chartered Accountants and '*COBIT'* from the IT Governance Institute. A designated trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a designated trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. The paragraph also imposes an annual requirement for designated trade repositories to conduct periodic capacity stress tests. Continual changes in technology, risk management requirements and competitive pressures will often result in these activities or tests being carried out more frequently.

Paragraph 21(3)(c) requires a designated trade repository to notify the [applicable local securities regulator] of any material systems failure. The Committee would consider a failure, malfunction, delay or other disruptive incident to be "material" if the designated trade repository would in the normal course of its operations escalate the matter to or inform its senior management responsible for technology or it would have an impact on users. The Committee also expects that, as part of this notification, the designated trade repository will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.

(4) Subsection 21(4) requires that a designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Committee believes that these plans are intended to provide continuous and undisrupted service as backup systems ideally should commence processing immediately. Where a disruption is unavoidable, a designated trade repository is expected to provide prompt recovery of operations, meaning that it resume operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk such as the failure of critical service providers or utilities or events affecting a wide metropolitan area such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) Subsection 21(5) requires a designated trade repository to test its business continuity plans periodically, and at least once a year. The expectation is that the designated trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans.

(6) Subsection 21(6) requires a designated trade repository to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraphs 21(3)(a) and (b) and subsections 21(4) and (5). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, the designated trade repository should notify the [applicable local securities regulator].

(8) Subsection 21(8) requires a designated trade repository to make its technology requirements regarding interfacing with or accessing the designated trade repository publicly available in their final form for at least 3 months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new 3 month period prior to operations. An operating designated trade repository should make its technology specifications publicly available for at least 3 months before implementing a material change to its technology requirements.

(9) Subsections 21(9) and (10) require a designated trade repository to provide testing facilities for interfacing with or accessing the trade repository for at least 2 months immediately prior to operations once the technology requirements have been made publicly available. Should the trade repository make its specifications publicly available for longer than 3 months, it may make the testing available during that period or thereafter as long as it is at least 2 months prior to operations. If the designated trade

repository, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least 2 months before implementing the material systems change.

(11) Subsection 21(11) provides that if a designated trade repository must make a change to its technology requirements regarding interfacing with or accessing the designated trade repository to immediately address a failure, malfunction or material delay of its systems or equipment it does not have to comply with paragraphs 21(8)(b) and 21(9)(b) if it immediately notifies the [applicable local securities regulator] of the change and the amended technology requirements are made publicly available as soon as practicable, either while the changes are being made or immediately thereafter.

Data security and confidentiality

22. (1) Subsection 22(1) provides that a designated trade repository must put in place policies and procedures to ensure the safety and confidentiality of derivatives data to be reported to it under the TR Rule. The policies must include limitations on access to confidential trade repository data and standards to safeguard against persons and companies affiliated with the designated trade repository using trade repository data for their personal benefit or the benefit of others.

(2) Subsection 22(2) prohibits a designated trade repository from utilizing reported derivatives data that is not required to be publicly disclosed for commercial or business purposes under section 39, without the written consent of the counterparties who supplied the derivatives data. The purpose of this provision is to ensure that users of the designated trade repository have some measure of control over their derivatives data.

Confirmation of data and information

23. Section 23 requires a designated trade repository to confirm derivatives data with each counterparty to a reported transaction. Pursuant to section 25, only one counterparty is required to report a transaction. The purpose of the confirmation requirement in section 23 is to ensure that the reported information is agreed to by both counterparties. Similar to the reporting obligations in section 25, confirmation under section 23 can be delegated to a third-party representative.

Outsourcing

24. (1) Section 24 sets out requirements applicable to a designated trade repository that outsources any of its key services or systems to a service provider. Generally, a designated trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements. Such policies and procedures include assessing the suitability of potential service providers and the ability of the designated trade repository to continue to comply with securities legislation in the event of the bankruptcy, insolvency or termination of business of the service provider. A designated trade repository is also required to monitor the ongoing performance of the service provider to which it outsources key services, systems or facilities. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers, or affiliates of the designated trade repository. A designated trade repository that outsources its services or systems remains responsible for those services or systems and for compliance with securities legislation.

PART 3
DATA REPORTING

Part 3 deals with reporting obligations for transactions and includes a description of the counterparties that will be subject to the duty to report, requirements as to the timing of reports and a description of the data that is required to be reported.

Duty to report

25. Section 25 outlines the reporting duties and contents of derivatives data.

(2) With reference to the subsection 25(2), prior to the reporting rules in Part 3 coming into force, the [applicable local securities regulator] will provide public guidance on how reports for derivatives that are not accepted for reporting by any designated trade repository should be electronically submitted to the [applicable local securities regulator].

(3) The Committee interprets the requirement in subsection 25(3) to report errors or omissions in derivatives data “as soon as technologically possible” after it is discovered to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(4) Under subsection 25(4) where a local counterparty, that is not a reporting counterparty, discovers an error or omission in respect of derivatives data reported to a designated trade repository, it has an obligation to report the error or omission to the reporting counterparty. Once the error or omission is reported to the reporting counterparty, the reporting counterparty then has an obligation to report the error or omission to the designated trade repository in accordance with subsection 25(3). The Committee interprets the requirement in subsection 25(4) to notify the reporting counterparty of errors or omissions in

derivatives data "promptly" after it is discovered to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(5) Paragraph 25(5)(a) requires that all derivatives data reported for a given transaction must be reported to the same designated trade repository or [applicable local securities regulator] to which the initial report is submitted. The purpose of this requirement is to ensure the [applicable local securities regulator] has access to all reported derivatives data for a particular transaction from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories. Where the entity to which the transaction was originally reported is no longer a designated trade repository, all data relevant to that transaction should be reported to another designated trade repository as otherwise required by the TR Rule.

Pre-existing derivatives

26. (1) Subsection 26(1) requires that pre-existing transactions, that have not expired or been terminated before the reporting obligations set out in the TR Rule come into effect, be reported to a designated trade repository. Transactions which terminate or expire prior to the reporting obligations coming into force will not be required to be reported. Further, pursuant to subsection 41(4), transactions that expire or terminate within 365 days of Part 3 coming into force, will not be required to be reported. These transactions are exempted from the reporting obligations to relieve some of the reporting burden for market participants and because they would provide marginal utility to the [applicable local securities regulator] due to their imminent termination or expiry.

Reporting counterparty

27. The terms "derivative" and "dealer" are both defined in the Act and the term "derivatives dealer" takes its meaning from the combination of these definitions. Reporting obligations on derivatives dealers apply irrespective of whether the derivatives dealer is a registrant.

(1) Under paragraph 27(1)(b), if the counterparties are unable to come to an agreement on who should report the transaction, then both counterparties must act as reporting counterparty. However, it is the Committee's view that one counterparty to every transaction should accept the reporting obligations to avoid duplicative reporting.

(2) Subsection 27(2) applies to situations where the reporting counterparty, as determined under subsection 27(1), is not a local counterparty**.** In situations where a non-local reporting counterparty does not report a transaction or otherwise fails in its reporting duties, the local counterparty must act as the reporting counterparty. The Committee is of the view that non-local counterparties that are derivatives dealers should assume the reporting obligations for non-dealer counterparties. However, to the extent that non-local counterparties are not subject to reporting obligations under the TR Rules, it is necessary to apply the ultimate reporting obligation on the local counterparty.

(3) Under subsection 27(3) the reporting counterparty for a transaction must ensure that all reporting obligations, including future requirements such as valuation reporting and the reporting of life-cycle events, are fulfilled.

(4) Subsection 27(4) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle data and valuation data. For example, for cleared transactions, some or all of the reporting obligations may be delegated to the clearing agency. However, the local counterparty remains responsible for ensuring that reporting of derivatives data is done accurately and within the required timeframes under the TR Rule.

Real-time reporting

28. (1) Subsection 28(1) requires that reporting be done in real time which means that derivatives data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be "technological practicable", the [applicable local securities regulator] will take into account the prevalence of implementation and use of technology by comparable market participants located in Canada and foreign jurisdictions. The [applicable local securities regulator] may also conduct independent reviews to determine the state of reporting technology.

(2) Subsection 28(2) is intended to take into account the fact that not all market participants will have the same technological capabilities. For example, market participants that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real time reporting. There is an outside limit of the end of the business day following the execution of the transaction to be reported in all cases.

Legal entity identifiers

30. Section 30 requires that all counterparties to transactions be identified by a legal entity identifier. It is envisioned that this identifier be a Legal Entity Identifier (LEI) from the Global LEI System. The Global LEI System is a G20 endorsed initiative[7] which will uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the Financial Stability Board (FSB) with the proposed launch date of March 2013.

(2) The "Global Legal Entity Identifier System" referred to in subsection 30(2) means the G20 endorsed system which will serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally to counterparties who enter into transactions.

(3) While it is anticipated that the Global LEI System will be operational in March 2013, if it is not available at the time counterparties are required to report their legal entity identifier under the TR Rule, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the FSB for pre-LEI identifiers. At the time the Global LEI System is operational, counterparties must cease using their substitute LEI and commence reporting their LEI. It is conceivable that the two identifiers could be identical.

Unique transaction identifier

31. (1) The unique transaction identifier will be supplied by the designated trade repositories to which the transaction has been submitted. The designated trade repository must ensure that no other transaction shares a similar identifier. There is currently no internationally accepted system of unique transaction identifiers available. The Committee anticipates that if such a system is developed, then unique transaction identifiers will be assigned in accordance with that system.

(2) A transaction in this context means a transaction from the perspective of all its counterparties. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier.

Unique product identifier

32. Section 32 requires that each transaction that is subject to the reporting obligation under the TR Rule be assigned a unique product identifier. There is currently no system of unique product identifiers available but work is ongoing by industry participants to develop a system of product taxonomy which could be used for this purpose.[8]

Until a standard for uniquely indentifying products is available and acceptable to the Committee, no unique product identifier is required to be reported.

Valuation data

35. (1) Subsection 35(1) requires that valuation data for a transaction that is cleared must be reported at the end of each business day. A transaction is considered to be "cleared" where it has been novated to a central counterparty.

The reporting counterparty, as described in subsection 27(4), may delegate the reporting of valuation data to a third party, but ultimately remains responsible for ensuring the timely and accurate reporting of this data. It is contemplated that the reporting counterparty may delegate the reporting of valuation data for cleared transactions to the central counterparty with which the transaction has been cleared.

(2) For transactions which are not cleared, valuation must be reported quarterly under paragraph 35(2)(b). In all cases, as per subsection 27(4) reporting of valuation data may be delegated to a third party. This is the case even if the reporting counterparty has assumed all other reporting obligations.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) Subsections 37(1) and (2) require designated trade repositories to (at no cost to the [applicable local securities regulator]): (i) provide to the [applicable local securities regulator] continuous and timely electronic access to derivatives data; (ii) promptly fulfill ad hoc data requests from the [applicable local securities regulator]; and (iii) provide aggregate derivatives data. Electronic access includes the ability of the [applicable local securities regulator] to access, download, or receive a direct real-time feed of derivatives data maintained by the designated trade repository.

[7] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

[8] See http://www2.isda.org/identifiers-and-otc-taxonomies/ for more information.

The derivatives data covered by these subsections is data necessary to carry out the [applicable local securities regulator's] mandate to protect derivative market participants from unfair, improper or fraudulent practice, to foster confidence in and fair and efficient capital markets, and to address systemic risk. This includes derivatives data with respect to any transaction or transactions that may impact the provincial market.

Transactions that reference an underlying asset or class of assets with a nexus to [Province x] or Canada can impact the provincial market even if the counterparties to the transaction are not local counterparties. Therefore, the [applicable local securities regulator] has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting provisions in the TR Rule but is held by a designated trade repository.

(3) Subsection 37(3) requires designated trade repositories to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards are currently being developed by CPSS and IOSCO in a report entitled "*Authorities' access to TR data*". It is expected that all designated trade repositories will comply with the access recommendations in the final report.

Data available to counterparties

38. Section 38 is intended to ensure that each counterparty, and persons acting on behalf of counterparties, have access to all data relating to their transaction for the entire duration of their transactions.

Data available to public

39. (1) Subsection 39(1) requires designated trade repositories to make available to the public free of charge certain aggregate data for all transactions reported to it under the TR Rule (including open positions, volume, number of transactions and price). It is expected that a designated trade repository will provide aggregate derivatives data by notional amounts outstanding and level of activity. Such data is anticipated to be available on the designated trade repository's website.

(2) Subsection 39(2) requires that the aggregated data disclosed under subsection 39(1), be broken down into various categories. The following are examples of the aggregated data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated),
- geographic location of the underlying reference entity (e.g., the United States for derivatives which reference the S&P 500 index),
- asset class of reference entity (e.g., fixed income, credit or equity),
- product type (e.g. options, forwards or swaps),
- cleared or uncleared,
- maturity ranges (broken down into maturity ranges such as less than one year, 1-2 years, 2-3 years), and
- geographic location and type of counterparty (e.g., the United States, end user).

(3) Under subsection 39(3), the timing for public reporting of the principal economic terms of a transaction where at least one counterparty is a derivatives dealer is within one day. For transactions where neither counterparty is a derivatives dealer, the principal economic terms must be reported within 2 days of receipt of the derivatives data by the designated trade repository. The purpose of the public reporting delays is to ensure that market participants have adequate time to enter into any offsetting transaction necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

(4) Subsection 39(4) provides that a designated trade repository must not disclose the identity of either counterparty to the transaction. This means that published data must be anonymized and the names or legal entity identifiers of counterparties must not be published. This provision is not intended to create a requirement for a designated trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the transaction.

PART 5
EXEMPTIONS

Exemptions

40. (2) Subsection 40(2) provides a reporting exemption for physical commodity transaction in certain limited circumstances. This exemption only applies if a local counterparty to a transaction has less than $500 000 aggregate notional value under all outstanding derivatives contracts including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a physical commodity transaction would be calculated by multiplying the quantity of the physical commodity by the price for that commodity. Any counterparty that is above the $500 000 threshold would be required to act as reporting counterparty for a transaction involving a party exempt from the requirement to report pursuant to 40(2).

This exemption applies to physical commodity transactions that are not excluded from reporting requirements pursuant to subsection 2(d) of Model Rule – *Derivatives: Product Determination*. An example of a physical commodity transaction that would be required to be reported (and therefore could benefit from this exemption) would be a physical commodity contract that allowed for cash settlement in the place of physical delivery.

Although a party that qualifies for exemption under subsection 40(2) is not required to report derivatives data to a designated trade repository, other provisions of the TR Rule may apply to such a party. For example, the obligation under subsection 36(1) for each counterparty to a transaction to keep, and make available to the [applicable local securities regulator] when requested any derivatives data will continue to apply notwithstanding the exemption under subsection 40(2).

PART 6
EFFECTIVE DATE

Effective date

41. (1) Pursuant to subsection 41(1) the provisions of the TR Rule applicable to designated trade repositories come into force 15 days after the TR Rule is approved by the Minister.

(2) Reporting obligations for derivatives dealers come into force 6 months after the provisions applicable to derivatives dealers.

(3) For non-derivatives dealers, subsection 41(3) provides that no reporting is required until 9 months after the provisions of the TR Rule applicable to designated trade repositories come into force.

(4) For pre-existing transactions that terminate or expire within 365 days of the reporting obligation coming into force, subsection 41(3) provides that no reporting is required.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/07/2012	3	Aetna, Inc. - Notes	14,887,637.57	3.00
11/27/2012	17	Ainsworth Lumber Co. Ltd. - Notes	40,986,000.00	17.00
11/13/2012	5	AirIQ Inc. - Common Shares	178,000.00	2,225,000.00
10/23/2012	2	Aleris International, Inc. - Notes	26,821,800.00	2.00
11/14/2012	3	Alexandria Minerals Corporation - Units	1,634,000.00	13,072,000.00
10/12/2012	1	Asher Resources Corporation - Common Shares	7,000.00	25,000.00
11/09/2012	22	Atlanta Gold Inc. - Units	606,000.00	12,120,000.00
11/07/2012	29	Auro Resources Corp. - Units	414,977.49	13,832,583.00
11/02/2012	1	Ausdrill Finance Pty Ltd. - Note	3,985,600.00	1.00
11/08/2012	8	Avis Budget Car Rental, LLC and Avis Budget Finance, Inc. - Notes	5,991,600.00	8.00
11/14/2012	5	Barclays Bank Plc - Notes	24,043,200.00	5.00
10/29/2012	3	Brigus Gold Corp. - Notes	30,000,000.00	3.00
11/06/2012	3	Canadian Orebodies Inc. - Common Shares	2,887,500.00	17,500,000.00
11/16/2012	1	Checkers Drive-In Restaurants, Inc. - Note	250,000.00	1.00
11/13/2012	21	Clifton Star Resources Inc. - Flow-Through Shares	3,450,000.00	2,760,000.00
11/09/2012	4	Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. - Notes	26,964,630.00	4.00
11/01/2012	21	Corvus Gold Inc. - Common Shares	3,477,500.00	3,250,001.00
10/24/2012	10	Cynapsus Therapeutics Inc. - Common Shares	170,000.00	3,400,000.00
11/09/2012	1	Delta Uranium Inc. - Common Shares	25,000.00	500,000.00
11/23/2012	2	DNI Metals Inc. - Flow-Through Shares	500,000.00	1,666,666.00
10/10/2012	5	Dollar General Corporation - Common Shares	7,498,121.68	3,600,000.00
11/16/2012 to 11/22/2012	8	Ecuador Bancorp Inc. - Common Shares	40,000.00	400,000.00
10/23/2012	43	Empire Mining Corporation - Common Shares	1,470,000.00	15,213,000.00
11/05/2012	2	Enablence Technologies Inc. - Common Shares	2,050,000.00	124,133,073.00
11/15/2012	1	Fusion Trust - Note	5,000,000.00	1.00
11/09/2012	10	Globex Mining Enterprises Inc. - Common Shares	3,336,650.00	2,570,500.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/08/2012	8	Golden Valley Mines Ltd. - Units	754,999.90	4,922,219.00
10/29/2012	25	Goldeneye Resources Corp. - Units	691,375.00	9,218,333.00
10/31/2012	1	Goldstrike Resources Ltd. - Common Shares	256,000.16	492,308.00
11/01/2012	11	Goldstrike Resources Ltd. - Common Shares	800,800.00	1,300,000.00
10/29/2012	78	Greybrook Ordnance Limited Partnership - Units	16,773,300.00	167,733.00
10/09/2012 to 10/12/2012	28	Huldra Silver Inc. - Units	1,490,510.70	1,029,082.00
10/26/2012	42	Intertainment Media Inc. - Units	1,375,197.20	6,875,986.00
11/14/2012	1	INV Metals Inc. - Common Shares	22,128,090.30	221,280,903.00
11/07/2012	21	Kennady Diamonds Inc. - Common Shares	2,999,998.45	4,917,921.00
11/07/2012	2	Kennametal Inc. - Notes	9,972,000.00	2.00
11/07/2012	118	Kirkland Lake Gold Inc. - Debentures	69,000,000.00	69,000.00
11/07/2012	4	Land O'Lakes, Inc. - Notes	24,531,120.00	24,600.00
10/25/2012	1	Lumina Copper Corp. - Common Shares	23,750,000.00	2,500,000.00
11/23/2012	17	MacDonald Mines Exploration Ltd. - Flow-Through Shares	2,822,750.00	37,636,666.67
10/15/2012	26	MCW Energy Group Limited - Receipts	0.00	280,000.00
10/23/2012	12	Morgan Stanley - Notes	44,406,790.54	12.00
11/07/2012	16	MountainStar Gold Inc. - Units	293,238.00	1,172,952.00
11/22/2012	1	NEW DAWN MINING CORP. - Common Shares	2,000,000.00	2,000,000.00
11/14/2012	131	New Gold Inc. - Notes	505,909,000.00	131.00
08/12/2012 to 11/16/2012	11	Newport Balanced Fund - Trust Units	221,629.16	N/A
11/08/2012 to 11/16/2012	6	Newport Canadian Equity Fund - Trust Units	273,800.00	N/A
11/08/2012 to 11/16/2012	25	Newport Yield Fund - Trust Units	1,432,652.00	N/A
10/24/2012	1	Nexstar Broadcasting, Inc. - Note	497,300.00	1.00
11/22/2012	1	North Sea Energy Inc. - Debentures	3,800,000.00	3,800.00
09/25/2012	1	Northern Gold Mining Inc. - Common Shares	36,000.00	100,000.00
11/08/2012	2	Northern Tier Energy LLC - Notes	623,126.40	2.00
10/19/2012 to 10/22/2012	4	Northfield Metals Inc. - Common Shares	135,000.00	675,000.00
11/16/2012	1	NorthWest Healthcare Properties Real Estate Investment Trust - Trust Units	21,499,373.38	1,746,142.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/05/2012	1	Obsidian Strategics Inc. - Unit	50,000.00	1.00
10/31/2012	4	Plasco Energy Group Inc. - Preferred Shares	7,749,993.40	399,842.00
10/22/2012	2	PNC Bank, National Association - Notes	13,910,695.74	2.00
11/16/2012	1	Probe Mines Limited - Common Shares	193,000.00	100,000.00
11/07/2012	1	PRR Trust - Bonds	120,000,000.00	120.00
11/14/2012	182	Q Residential Real Estate Investment Trust - Units	153,969,000.00	15,396,900.00
11/16/2012	2	Rainy River Resources Ltd. - Common Shares	43,890.88	8,000.00
11/14/2012	8	Redzone Resources Ltd. - Common Shares	1,077,499.95	7,183,333.00
11/07/2012	6	Restoration Hardware Holdings, Inc. - Common Shares	1,293,727.59	5,164,332.00
10/09/2012	3	ROI Capital C/O 2183 Lakeshore Blvd. - Units	4,198,856.95	4,198,856.95
10/09/2012	1	ROI Capital C/O 480 Bayfield Inc. - Units	208,812.00	208,812.00
10/11/2012	2	ROI Capital C/O Villarboit Owen Sound/Heritage Grove - Units	1,771,735.00	1,771,735.00
10/11/2012	2	ROI Capital / JD Development King St L.P. - Units	1,593,660.00	1,593,660.00
11/05/2012	1	Rough Rider Escrow, Inc. - Note	4,832,917.00	1.00
11/06/2012	13	Royal Bank of Canada - Notes	1,728,000.00	1,728.00
11/13/2012	27	Royal Bank of Canada - Notes	13,000,000.00	130,000.00
11/19/2012 to 11/27/2012	12	Shoal Point Energy Ltd. - Units	500,140.00	7,660,666.00
11/02/2012	2	Sidewinder Drilling Inc. - Notes	5,000,000.00	2.00
11/14/2012	6	Sienna Gold Inc. - Units	698,608.70	2,328,696.00
10/15/2012	17	Sniper Resources Ltd. - Units	146,700.00	1,467,000.00
11/01/2012	1	Southern Hemisphere Mining Limited - Common Shares	4,950,000.00	19,800,000.00
10/24/2012	12	Strata Minerals Inc. - Common Shares	650,000.00	6,500,000.00
10/16/2012	1	St. Augustine Gold and Copper Limited - Units	4,593,750.00	25,000,000.00
10/25/2012	31	Tembo Gold Corp. - Units	2,948,000.00	5,896,000.00
09/13/2012	1	Three2N International Inc. - Debenture	25,000.00	1.00
10/11/2012	1	Three2N International Inc. - Debenture	100,000.00	1.00
10/26/2012	1	Three2N International Inc. - Debenture	75,000.00	1.00
11/23/2012	4	Tri Origin Exploration Ltd. - Common Shares	400,000.00	4,000,000.00
11/02/2012	28	True North Gems Inc. - Common Shares	368,700.00	7,374,000.00
10/25/2012	7	United Rentals (North America), Inc. - Notes	7,755,923.38	7,800.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
10/31/2012	50	Vertex Fund - Trust Units	5,191,029.48	N/A
10/31/2012	50	Vertex Fund - Trust Units	5,096,279.48	N/A
10/23/2012	3	Walter Investment Management Corp. - Notes	2,483,500.00	3.00
11/06/2012	13	Windsor Canada Utilities Ltd. - Debentures	103,000,000.00	103,000.00
11/01/2012	4	WMG Acquisition Corp. - Notes	8,000,000.00	4.00
11/05/2012	37	Wyatt Oil + Gas Inc. - Common Shares	6,477,484.50	16,441,277.00
10/24/2012	16	W&T Offshore, Inc. - Notes	11,461,951.17	16.00
11/14/2012	30	Zephyr Minerals Ltd. - Units	300,049.80	2,000,332.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Biovest Corp. I
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
Minimum offering: $3,000,000.00 - 5,084,746 Common Shares
Maximum offering: $5,000,000.00 - 8,474,576 Common Shares
Price: $0.59 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
-
Project #1989003

Issuer Name:
Blue Ribbon Income Fund (formerly Citadel Diversified Investment Trust)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
Maximum $* - * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
MACKIE RESEARCH CAPITAL
Promoter(s):
-
Project #1989511

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
$35,518,000.00 - 2,408,000 Units
Price: $14.75 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLDMARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
BROOKFIELD FINANCIAL CORP.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #1993746

Issuer Name:
Cynapsus Therapeutics Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 26, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Minimum Offering of $6,000,000.00 to Maximum Offering of $8,000,000.00 - * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
M Partners Inc.
Promoter(s):
-
Project #1988098

Issuer Name:
Emera Incorporated
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
$175,103,500.00 - 5,135,000 Common Shares
Price: $34.10 per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1993670

Issuer Name:
Empire Life Dividend Growth Mutual Fund
Empire Life Emblem Aggressive Growth Portfolio
Empire Life Emblem Balanced Portfolio
Empire Life Emblem Conservative Portfolio
Empire Life Emblem Growth Portfolio
Empire Life Emblem Moderate Growth Portfolio
Empire Life Monthly Income Mutual Fund
Empire Life Small Cap Equity Mutual Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 29, 2012
NP 11-202 Receipt dated December 3, 2012
Offering Price and Description:
Series F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
EMPIRE LIFE INVESTMENTS INC.
Project #1994155

Issuer Name:
Enbridge Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
$1,000,000,000.00 - Medium Term Notes

Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1993957

Issuer Name:
Groundstar Resources Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 29, 2012
NP 11-202 Receipt dated November 29, 2012
Offering Price and Description:
$2,000,000.00 - 10,000,000 Common Units
Price: $0.20 per Common Unit and
$2,000,000.00 - 8,000,000 Flow-Through Units
Price: $0.25 per Flow-Through Unit
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1992775

Issuer Name:
Horizons Active S&P/TSX 60 Index Covered Call ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 26, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Class E and Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
AlphaPro Management Inc.
Project #1988741

Issuer Name:
Innergex Renewable Energy Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$50,000,000.00 - 2,000,000 Cumulative Redeemable Fixed Rate Preferred Shares Series C
Price: $25.00 per Series C Share to yield 5.75%per annum
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
Promoter(s):
-
Project #1988423

Issuer Name:
Polymet Mining Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated November 29, 2012
NP 11-202 Receipt dated December 3, 2012
Offering Price and Description:
US$500,000,000.00 - Debt Securities, Common Shares, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1993962

Issuer Name:
Raging River Exploration Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 3, 2012
NP 11-202 Receipt dated December 3, 2012
Offering Price and Description:
$68,900,000.00 -26,000,000 Common Shares
Price: $2.65 per Common Shares
Underwriter(s) or Distributor(s):
PETERS & CO. LIMITED
FIRSTENERGY CAPITAL CORP.
DUNDEE SECURITIES LTD.
DESJARDINS SECURITIES INC.
PARADIGM CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
CORMARK SECURITIES INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1994274

Issuer Name:
Sprott Physical Platinum and Palladium Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
US$*-* Units
Minimum Subscription: US$1,000.00 (100 Units)
Price: US$10.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Morgan Stanley Canada Limited
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
GMP Securities L.P.
Desjardins Securities Inc.
Macquarie Private Wealth Inc.
Raymond James Ltd.
UBS Securities Canada Inc.
Promoter(s):
Sprott Asset Management L.P.
Project #1973787

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$100,100,000.00 - 3,250,000 Units
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
CIBC WORLDMARKETS INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
MACQUARIE CAPITALMARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
Promoter(s):
-
Project #1984947

Issuer Name:
CanBanc 8 Income Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Maximum $100,000,000.00 (10,000,000 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:
Canadian 50 Advantaged Preferred Share Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 29, 2012
Offering Price and Description:
Maximum $75,000,000 (3,082,614 Class A and/or Class F Units)
Price: $24.33 per Class A Unit / $24.51 per Class F Unit
Minimum purchase: 100 Class A Units or Class F Units
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACKIE RESEARCH CAPITAL CORPORATION
MACQUARIE PRIVATE WEALTH INC.
DESJARDINS SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1977404

Issuer Name:
Cequence Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
$16,007,200.00 - 8,560,000 Flow-Through Shares
Underwriter(s) or Distributor(s):
Peter & Co. Limited
Cormark Securities Inc.
CIBC World Markets Inc.
GMP Securities L.P.
National Bank Financial Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
-
Project #1985055

Issuer Name:
Detour Gold Corporation
Principal Regulator - Ontario
Type and Date:
Short Form Prospectus dated December 3, 2012
NP 11-202 Receipt dated December 3, 2012
Offering Price and Description:
$106,000,000.00 - 4,000,000 Common Shares
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
MERRILL LYNCH CANADA INC.
Promoter(s):
-
Project #1987602

Issuer Name:
Dundee Industrial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated November 26, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$1,000,000,000.00 - Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1984713

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated November 26, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$2,000,000,000.00 - Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1984714

Issuer Name:
First National Mortgage Investment Fund
Principal Regulator - Ontario
Type and Date:
Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
Maximum: $100,000,000.00 - 10,000,000 Units @ $10.00 per Unit
Minimum: $25,000,000.00 - 2,500,000 Units - @ $10.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Macquarie Private Wealth Inc.
Promoter(s):
First National Asset Management Inc.
Project #1973293

Issuer Name:
FN Mortgage Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
First National Asset Management Inc.
Project #1976543

Issuer Name:
Friedberg Asset Allocation Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
FRIEDBERG MERCANTILE GROUP LTD.
Friedberg Mercantile Group Ltd.
Promoter(s):
TORONTO TRUST MANAGEMENT LTD.
FRIEDBERG MERCANTILE GROUP LTD.
Project #1977568

Issuer Name:
Friedberg Global-Macro Hedge Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
FRIEDBERG MERCANTILE GROUP LTD.
Friedberg Mercantile Group Ltd.
Promoter(s):
TORONTO TRUST MANAGEMENT LTD.
FRIEDBERG MERCANTILE GROUP LTD.
Project #1977570

Issuer Name:
Inter Pipeline Fund
Principal Regulator - Alberta
Type and Date:
Short Form Base Shelf Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
$3,000,000,000.00 - Class A Limited Partnership Units Debt Securities Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1984466

Issuer Name:
Trimark Canadian Bond Class
Trimark Diversified Yield Class
Trimark Global Dividend Class
Trimark Global Balanced Class
Trimark U.S. Companies Class
Trimark Canadian Plus Dividend Class
Trimark Global Small Companies Class
Trimark Global Endeavour Class
Trimark Global Fundamental Equity Class
Trimark International Companies Class
Invesco Canadian Equity Growth Class
Invesco Select Canadian Equity Class
Invesco International Growth Class
Invesco Intactive Diversified Income Portfolio Class
Invesco Intactive Diversified Income Portfolio
Invesco Intactive Balanced Income Portfolio
Invesco Intactive Balanced Income Portfolio Class
Invesco Intactive Balanced Growth Portfolio
Invesco Intactive Balanced Growth Portfolio Class
Invesco Intactive Growth Portfolio
Invesco Intactive Growth Portfolio Class
Invesco Intactive Maximum Growth Portfolio
Invesco Intactive Maximum Growth Portfolio Class
Invesco Intactive Strategic Capital Yield Portfolio Class
Invesco Intactive Strategic Yield Portfolio
Invesco Intactive 2023 Portfolio
Invesco Intactive 2028 Portfolio
Invesco Intactive 2033 Portfolio
Invesco Intactive 2038 Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated November 22, 2012 to the Simplified Prospectus and Annual Information Form dated July 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
(Series A, Series F, Series F4, Series F6, Series F8, Series I, Series P, Series PF, Series PT4, Series PT6, Series PT8, Series T4, Series T6 and Series T8 @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
INVESCO CANADA LTD.
Project #1916961

Issuer Name:
Killam Properties Inc.
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated November 30, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
$30,000,000.00 - 2,500,000 Common Shares Price: $12.00 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
BROOKFIELD FINANCIAL CORP.
Promoter(s):
-
Project #1986831

Issuer Name:
Landry Morin Canadian Momentum Fund
Landry Morin U.S. Momentum Fund
Landry Morin World Momentum Fund
Principal Regulator - Quebec
Type and Date:
Amendment #1 dated November 2, 2012 to Final Simplified Prospectus and Annual Information Form dated April 2, 2012
NP 11-202 Receipt dated November 29, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1872781

Issuer Name:
Mackenzie Sentinel Cash Management Fund
Mackenzie Sentinel Money Market Fund
Mackenzie Sentinel Canadian Short-Term Yield Class
Mackenzie Sentinel Short-Term Income Fund
Symmetry Fixed Income Portfolio
Symmetry Fixed Income Portfolio Class
Mackenzie Sentinel Bond Fund
Mackenzie Sentinel Corporate Bond Fund
Mackenzie Sentinel Real Return Bond Fund
Mackenzie Sentinel Income Fund
Mackenzie Sentinel Strategic Income Class
Mackenzie Sentinel Strategic Income Fund
Mackenzie Saxon Balanced Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Income Portfolio Class
Symmetry Conservative Portfolio
Symmetry Conservative Portfolio Class
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Mackenzie Ivy Canadian Fund
Mackenzie Universal American Growth Class
Mackenzie Maxxum All-Canadian Equity Class
Symmetry Equity Portfolio Class
Mackenzie Universal Global Growth Class
Mackenzie Saxon Dividend Income Class
Mackenzie Saxon Stock Class
Mackenzie Saxon Small Cap Class
Mackenzie Founders Global Equity Class
Mackenzie Universal Canadian Resource Fund
Mackenzie Cundill Recovery Fund
Principal Regulator - Ontario
Type and Date:
Simplified Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 30, 2012
Offering Price and Description:
Series LB, Series LM, Series LP and/or Series LX securities @ Net Asset Value
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
LBC Financial Services Inc
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #1972166

Issuer Name:
Niko Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Short Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
$102,000,000.00 - 12,000,000 Common Shares; and $100,000,000.00 - 7.00% Convertible Senior Unsecured Notes Due December 31, 2017
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.
FIRSTENERGY CAPITAL C
UBS SECURITIES CANADA INC.
BMO NESBITT BURNS INC.
RAYMOND JAMES LTD.
CORMARK SECURITIES INC.
MAISON PLACEMENTS CANADA INC.
Promoter(s):
-
Project #1984506

Issuer Name:
Niko Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 28, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
$49,999,975.00 - 5,882,350 Common Shares Per Offered Share $8.50
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1984509

Issuer Name:
Orefinders Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Minimum of $3,000,000.00 up to Maximum of $4,000,000.00 - Minimum of 6,000,000 Common Shares up to Maximum of 8,000,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
Promoter(s):
William Yeomans
Alexander Stewart
Project #1957597

Issuer Name:
Pepcap Ventures Inc.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated November 23, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Minimum Offering: $200,000.00 - 2,000,000 Common Shares;
Maximum Offering: $500,000.00 - 5,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
Clark Swanson
Project #1970816

Issuer Name:
Potash Ridge Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 28, 2012
Offering Price and Description:
$14,944,746.00 - 14,944,746 Common Shares Price: $1.00 per Offered Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
Promoter(s):
-
Project #1963375

Issuer Name:
ROI Canadian High Income Mortgage Fund (formerly ROI High Income Private Placement Fund)
Type and Date:
Final Long Form Prospectus dated November 29, 2012
Receipted on November 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Return On Innovation Advisors Ltd.
Project #1967637

Issuer Name:
ROI Canadian Mortgage Income Fund (formerly ROI Private Placement Fund)
Type and Date:
Final Long Form Prospectus dated November 29, 2012
Receipted on November 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RETURN ON INNOVATION ADVISORS LTD.
Project #1970711

Issuer Name:
ROI Canadian Real Estate Fund (formerly ROI Strategic Private Placement Fund)
Type and Date:
Final Long Form Prospectus dated November 29, 2012
Receipted on November 30, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RETURN ON INNOVATION ADVISORS LTD.
Project #1970714

Issuer Name:
Redwood Emerging Markets Dividend Fund (formerly Redwood Emerging Markets Dividend Income Fund)
Redwood Energy Growth Class (formerly Redwood Catapult Energy Class Fund)
Redwood Energy Income Class (formerly Redwood Ark Energy Class)
Redwood Global High Dividend Fund (formerly Ark NorthRoad Global Fund)
Redwood Income Strategies Class (formerly Redwood Ark Monthly Income Class)
Trapeze Value Class (formerly Ark Aston Hill Opportunities Class)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated November 22, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
Series A, F, AA and FF Securities
Underwriter(s) or Distributor(s):
Redwood Asset Management Inc.
Promoter(s):
Redwood Asset Management Inc.
Project #1969989

Issuer Name:
Top 20 Europe Dividend Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 29, 2012
Offering Price and Description:
$100,000,000.00 (10,000,000 Units) Maximum
Price: $10.00 per Unit
Minimum Purchase: $2,000 (200 Units)
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:
Tricon Capital Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$55 005 000.00 - 9 650 000 actions ordinaires
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
FRASER MACKENZIE LIMITED
Promoter(s):
-
Project #1984984

Issuer Name:
TTE Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 29, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1974636

Issuer Name:
Western Forest Products Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 27, 2012
NP 11-202 Receipt dated November 27, 2012
Offering Price and Description:
$75,000,000.00 - 62,500,000 Non-Voting Shares (to be converted into Common Shares) at $1.20 per Offered Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
GOLDMAN SACHS CANADA INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #1984087

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	River Plate Capital Management Corp.	Exempt Market Dealer, Investment Fund Manager and Restricted Portfolio Manager	November 27, 2012
Consent to Suspension (Pending Surrender)	River Plate Capital Management Inc.	Exempt Market Dealer, Investment Fund Manager and Restricted Portfolio Manager	November 27, 2012
Change of Registration Category	Genus Capital Management Inc.	From: Portfolio Manager To: Portfolio Manager and Exempt Market Dealer	November 29, 2012
New Registration	Tempest Capital Corp.	Investment Dealer	November 29, 2012
Surrender of Registration	Dahlman Rose & Company Canada, Inc.	Investment Dealer	November 29, 2012
Change of Registration Category	Leith Wheeler Investment Counsel Ltd.	From: Exempt Market Dealer and Portfolio Manager To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	November 29, 2012
Change of Registration Category	North Growth Management Ltd.	From: Exempt Market Dealer To: Exempt Market Dealer and Investment Fund Manager	November 29, 2012
Change of Registration Category	Epoch Investment Partners, Inc.	From: Portfolio Manager To: Portfolio Manager Exempt Market Dealer	November 30, 2012

Type	Company	Category of Registration	Effective Date
Change of Registration Category	NorRock Realty Management Services Ltd.	From: Exempt Market Dealer, Investment Fund Manager To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	November 30, 2012
New Registration	Coerente Capital Management Inc.	Portfolio Manager	November 30, 2012
Consent to Suspension (Pending Surrender)	OFM Group Funds Inc.	Investment Fund Manager	November 30, 2012
Consent to Suspension (Pending Surrender)	BowMont Capital and Advisory Ltd.	Exempt Market Dealer	November 30, 2012
Consent to Suspension (Pending Surrender)	BGC Canada Securities Company	Exempt Market Dealer	November 30, 2012
Change of Registration Category	Creststreet Asset Management Limited	From: Portfolio Manager, Investment Fund Manager, and Commodity Trading Manager To: Commodity Trading Manager	December 1, 2012
Amalgamation	BlackRock Asset Management Canada Limited and BlackRock Investments Canada Inc. To Form: BlackRock Asset Management Canada Limited	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager and Commodity Trading Manager	December 1, 2012

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 Notice of Commission Approval – IIROC Dealer Member Rules 800.49 and 200.1(h) – Trade Confirmation and Matching Requirements

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

DEALER MEMBER RULES 800.49 AND 200.1(h) – TRADE CONFIRMATION AND MATCHING REQUIREMENTS

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission (Commission or OSC) approved proposed amendments to IIROC dealer member Rule 200.1(h), which governs client trade confirmations, and Rule 800.49, which requires dealers to report and match non-exchange dealer-to-dealer trades on a timely basis. In addition, the British Columbia Securities Commission did not object to, and the Alberta Securities Commission, the Autorité des marchés financiers, the Saskatchewan Financial Services Commission, the Financial Services Regulation Division of the Department of Government Services of Newfoundland and Labrador, the Nova Scotia Securities Commission and the New Brunswick Securities Commission approved the amendments. The primary objectives of the amendments are to promote compliant trade matching practices, as well as to eliminate the sending of duplicative trade related correspondence to clients. More specifically, the amendments to Rule 800.49 will provide dealer members with greater clarity with respect to their broker-to-broker trade reporting and matching requirements; while the amendments to Rule 200.1(h) will provide dealer members with a limited exemption from the trade confirmation requirements in Rule 200.1(h), provided that certain conditions are met.

The amendments, as originally proposed (original amendments), were published for comment on April 9, 2010 in the OSC's Bulletin at (2010) 33 OSCB 3259. Following comments from IIROC's Recognizing Regulators, IIROC staff made revisions to the original amendments to both Rules 800.49 and 200.1(h). These revisions are considered to be non-material. IIROC also summarized the public comments it received on the original amendments and provided responses.

Immediately following this notice, the following documents (in the order shown below) are included in this Chapter 13 of this Bulletin:

1. a black-lined text of the rules showing the cumulative revised amendments made to the existing rules;

2. a black-lined text of the rules showing the revisions made to the original amendments published on April 9, 2010;

3. IIROC's draft summary of public comments and its responses.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEALER MEMBER RULE 200.1(h) – TRADE CONFIRMATION REQUIREMENTS

PROPOSED RULE

(Black-lined text of the proposed rule showing the cumulative Revised Amendments made to the existing rules)

Dealer Member Rule 200.1(h):

(h) Copies of confirmations of all purchases and sales of securities and of all trades in commodity futures contracts and commodity futures contract options and copies of notices of all other debits and credits of money, securities, property, proceeds of loans and other items for the account of customers. Such written confirmations are required to be sent promptly to customers and shall set forth at least the day and the ~~stock exchange or commodity futures exchange~~marketplace or marketplaces upon which the trade took place, or marketplace disclosure language acceptable to the *Corporation*; the commission, if any, charged in respect of the trade; the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade; the name of the salesman, if any, in the transaction; the name of the dealer, if any, used by the *Dealer Member* as its agent to effect the trade; and,

In the case of a trade in securities:

(1) The quantity and description of the security,

(2) The consideration,

(3) Whether or not the person or company registered for trading acted as principal or agent,

(4) If acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

In the case of trades in commodity futures contracts:

(5) The commodity and quantity bought or sold,

(6) The price at which the contract was entered into,

(7) The delivery month and year,

In the case of trades in commodity futures contract options:

(8) The type and number of commodity futures contract options,

(9) The premium,

(10) The delivery month and year of the commodity futures contract that is the subject of the commodity futures contract option,

(11) The declaration date,

(12) The striking price;

And in the case of trades in mortgage-backed securities and subject to the proviso below:

(13) The original principal amount of the trade,

(14) The description of the security (including interest rate and maturity date),

(15) The remaining principal amount (RPA) factor,

(16) The purchase/sale price per $100 of original principal amount,

(17) The accrued interest,

(18) The total settlement amount,

(19) The settlement date,

Provided that in the case of trades entered into from the third clearing day before month end to the fourth clearing day of the following month, inclusive, a preliminary confirmation shall be issued showing the trade date and the information in clauses (13), (14), (16) and (19) and indicating that the information in clauses (15), (17) and (18) cannot yet be determined and that a final confirmation will be issued as soon as such information is available. After the remaining principal amount factor for the security is available from the central payor and transfer agent, a final confirmation shall be issued including all of the information required above;

And in the case of stripped coupons and residual debt instruments:

(20) The yield thereon calculated on a semi-annual basis in a manner consistent with the yield calculation for the debt instrument which has been stripped,

(21) The yield thereon calculated on an annual basis in a manner consistent with the yield calculation for other debt securities which are commonly regarded as being competitive in the market with such coupons or residuals such as guaranteed investment certificates, bank deposit receipts and other indebtedness for which the term and interest rate is fixed.

And in the case of all other debt instruments, other than stripped coupons and residual debt instruments:

(22) The yield to maturity calculated in a manner consistent with market conventions for the security traded. Where the debt security is subject to call prior to maturity through any means, a notation of "callable" shall be included; and for debt securities carrying a variable coupon rate, the following notation must be included: "The coupon rate may vary."

And in the case of all over-the-counter traded securities, including contracts for difference and foreign exchange contracts, but excluding primary market transactions and over-the-counter derivatives with non-standardized contract terms that are customized to the needs of a particular client and for which there is no secondary market, where the amount of the mark-up or mark-down and other service charges applied by the *Dealer Member* has not been disclosed on the confirmation sent to retail clients, a statement as follows:

(23) "The investment dealer's remuneration on this transaction has been added to the price in the case of a purchase or deducted from the price in the case of a sale."

Each such confirmation shall, in respect of transactions involving securities of the *Dealer Member* or a related issuer of the *Dealer Member*, or in the course of a distribution to the public, securities of a connected issuer of the *Dealer Member*, state that the securities are securities of the *Dealer Member*, a related issuer of the *Dealer Member* or a connected issuer of the *Dealer Member*, as the case may be. For the purposes of this paragraph, the terms "related issuer" and "connected issuer" shall have the same meaning as ascribed to them in the Regulation made under the Securities Act (Ontario).

In the case of a *Dealer Member* controlled by or affiliated with a financial institution, the relationship between the *Dealer Member* and the financial institution shall be disclosed on each confirmation slip in connection with a trade in securities of a mutual fund sponsored by the financial institution or a corporation controlled by or affiliated with the financial institution.

The *Corporation*'s policies with respect to electronic delivery of documents are set out in the applicable guideline.

Notwithstanding the provisions of this Rule 200.1(h), a *Dealer Member* shall not be required to provide a confirmation to a client in respect of a trade in a managed account, provided that:

(i) Prior to the trade, the client has consented in writing to waive the trade confirmation requirement;

(ii) The client may terminate a waiver by notice in writing. The termination notice shall be effective upon receipt of the written notice by the *Dealer Member*, for trades following the date of receipt;

(iii) The provision of a confirmation is not required under any applicable securities law, regulation or policy of the jurisdiction in which the client resides or the *Dealer Member* has obtained an exemption from any such law, regulation or policy by the responsible securities regulatory authority; and

(iv)

(a) where a person other than the *Dealer Member* manages the account

(A) a trade confirmation has been sent to the manager of the account, and

(B) the *Dealer Member* complies with the requirements of Rule 200.1(c); or

(b) where the *Dealer Member* manages the account:

(A) the account is not charged any commissions or fees based on the volume or value of transactions in the account;

(B) the *Dealer Member* sends to the client a monthly statement that is in compliance with Rule 200.1(c) and contains all of the information required to be contained in a confirmation under this Rule 200.1(h) except:

(1) the day and the ~~stock exchange or commodity futures exchange~~marketplace or marketplaces upon which the trade took place, or marketplace disclosure language acceptable to the *Corporation*;

(2) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;

(3) the name of the salesman, if any, in the transaction;

(4) the name of the dealer, if any, used by the *Dealer Member* as its agent to effect the trade; and,

(5) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

(C) the *Dealer Member* maintains the information not required to be in the monthly statement pursuant to paragraph (B) and discloses to the client on the monthly statement that such information will be provided to the client on request.

Exemption:

For delivery against payment (DAP) and receipt against payment (RAP) trade accounts, a *Dealer Member* is not required to send a trade confirmation if:

(i) the trade is either subject to or matched in accordance with broker-to-broker or institutional trade matching requirements under the *Corporation*'s Rules or securities legislation;

(ii) the *Dealer Member* maintains an electronic audit trail of the trade under the *Corporation*'s Rules or securities legislation;

(iii) prior to the trade, the client has agreed in writing to waive receipt of trade confirmations from the *Dealer Member*;

(iv) the client is either:

(a) another *Dealer Member* who is reporting or affirming trade details through an acceptable trade matching utility in accordance with Rule 800.49; or

(b) an Institutional Customer who is matching DAP/RAP account trades (either directly or through a custodian) in accordance with National Instrument 24-101- Institutional Trade Matching and Settlement;

(v) the *Dealer Member* and the client have real-time access to, and can download into their own system from the acceptable trade matching utility's or the matching service utility's system, trade details that are similar to the prescribed information under Rule 200.1(h); and

(vi) the *Dealer Member* has not filed a report as required under Rule 800.49(6) informing the *Corporation* that it has not met the quarterly compliant trade percentage or has not filed a trade matching exception report as required under securities legislation relevant to the trade, for a minimum of three consecutive quarters.

A client may terminate their trade confirmation waiver, referred to in Rule 200.1(h) under part (iii) of the exemption, by providing a written notice confirming this fact to the *Dealer Member*. The termination notice takes effect upon the *Dealer Member*'s receipt of the notice.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

RULE 800.49 – BROKER-TO-BROKER NON-EXCHANGE TRADE MATCHING

PROPOSED RULE

(Black-lined text of the proposed rule showing the cumulative Revised Amendments made to the existing rules)

800.49. ~~Acceptable broker~~ Broker-to-broker non-exchange trade matching ~~utility~~

(1) Trade matching requirement

For each non-exchange trade, involving a *CDS eligible* ~~securities,~~*security* that is executed by a *Dealer Member* with another *Dealer Member*, each *Dealer Member* must ~~enter~~:

(i) Enter the trade into an ~~Acceptable Trade Matching Utility or accept~~*acceptable trade matching utility* or

(ii) Accept or reject any trade entered into an ~~Acceptable Trade Matching Utility~~*acceptable trade matching utility* by another *Dealer Member* ~~[within one hour of executing the trade.]~~.

at or before 6 p.m. (Toronto time) on the day the trade was executed.

(2) Definition of non-exchange trade

For ~~purposes of this Rule 800.49, an "**Acceptable Trade Matching Utility**" shall be the Broker-To-Broker Trade Matching Utility developed as part of the CDSX development or any similar system approved by the Board of Directors of the *Corporation*."~~the purposes of this Rule a non-exchange trade is defined as any trade in a *CDS eligible security* (excluding new issue trades and repurchase and reverse repurchase transactions) between two *Dealer Members*, which has not been submitted to the CDS continuous net settlement service by a recognized exchange. The dealer to dealer portion of a jitney trade that is executed between two *Dealer Members* that is not reported by a recognized exchange is a non-exchange trade.

(3) **List of acceptable trade matching utilities**

The Corporation maintains a list of acceptable trade matching utilities that is published from time to time.

(4) **Trade classification where a *Dealer Member* enters a trade into the matching utility**

If a *Dealer Member* enters a trade into an *acceptable trade matching utility* under clause 800.49(1)(i), the trade is considered for each dealer trade counterparty to be a *compliant trade*, a *don't know trade* or a *non-compliant trade* according to the following table:

		Action of other *Dealer Member*					
		Enter trade at or before 6 p.m.	Accept trade at or before 6 p.m.	Enter or accept trade after 6 p.m.	Reject trade at or before 6 p.m.	Reject trade after 6 p.m.	No action
Action of *Dealer Member*	Enter trade at or before 6 p.m.	- *Dealer Member* compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* non-compliant trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* non-compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* non-compliant trade
	Enter trade after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade		- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade		- *Dealer Member* non-compliant trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade

(5) **Trade classification where a *Dealer Member* does not enter a trade into the matching utility**

If a *Dealer Member* accepts or rejects a trade entered into an acceptable trade matching utility by another *Dealer Member* under clause 800.49(1)(ii) or takes no action on a trade entered into an acceptable trade matching utility by another *Dealer Member*, the trade is considered for each dealer trade counterparty to be a compliant trade, a don't know trade or a non-compliant trade according to the following table:

		Action of other *Dealer Member*	
		Enter trade at or before 6 p.m.	Enter trade after 6 p.m.
Action of *Dealer Member*	Accept at or before 6 p.m.	*Dealer Member* compliant trade Other *Dealer Member* compliant trade	
	Accept after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade
	Reject at or before 6 p.m.	- *Dealer Member* don't know or DK trade - Other *Dealer Member* don't know or DK trade	
	Reject after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* non-compliant trade
	No action	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade

(6) **Determination of quarterly compliant trade percentage**

The quarterly compliant trade percentage for a *Dealer Member* is determined by dividing the sum of quarter's compliant trades (which does not include "don't know" trades) by the total number of non-exchange trades that are executed during the quarter by the *Dealer Member* with other *Dealer Members*.

A *Dealer Member* must promptly report to the *Corporation* when their quarterly compliant trade percentage is less than 90% in any quarter and must include in this report its action plan to improve its percentage. Failure to increase the compliant trade percentage to 90% or more within the next quarter after the first sub-standard report will be grounds for the *Corporation* to pursue disciplinary action.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEALER MEMBER RULE 200.1(h) – TRADE CONFIRMATION REQUIREMENTS

PROPOSED RULE

(Black-lined text of the proposed rule showing the cumulative Revised Amendments made to the Original Amendments)

Dealer Member Rule 200.1(h):

(h) Copies of confirmations of all purchases and sales of securities and of all trades in commodity futures contracts and commodity futures contract options and copies of notices of all other debits and credits of money, securities, property, proceeds of loans and other items for the account of customers. Such written confirmations are required to be sent promptly to customers and shall set forth at least the day and the marketplace or marketplaces upon which the trade took place, or marketplace disclosure language to the *Corporation*; the commission, if any, charged in respect of the trade; the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade; the name of the salesman, if any, in the transaction; the name of the dealer, if any, used by the *Dealer Member* as its agent to effect the trade; and,

In the case of a trade in securities:

(1) The quantity and description of the security,

(2) The consideration,

(3) Whether or not the person or company registered for trading acted as principal or agent,

(4) If acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

In the case of trades in commodity futures contracts:

(5) The commodity and quantity bought or sold,

(6) The price at which the contract was entered into,

(7) The delivery month and year,

In the case of trades in commodity futures contract options:

(8) The type and number of commodity futures contract options,

(9) The premium,

(10) The delivery month and year of the commodity futures contract that is the subject of the commodity futures contract option,

(11) The declaration date,

(12) The striking price;

And in the case of trades in mortgage-backed securities and subject to the proviso below:

(13) The original principal amount of the trade,

(14) The description of the security (including interest rate and maturity date),

(15) The remaining principal amount (RPA) factor,

(16) The purchase/sale price per $100 of original principal amount,

(17) The accrued interest,

(18) The total settlement amount,

(19) The settlement date,

Provided that in the case of trades entered into from the third clearing day before month end to the fourth clearing day of the following month, inclusive, a preliminary confirmation shall be issued showing the trade date and the information in clauses (13), (14), (16) and (19) and indicating that the information in clauses (15), (17) and (18) cannot yet be determined and that a final confirmation will be issued as soon as such information is available. After the remaining principal amount factor for the security is available from the central payor and transfer agent, a final confirmation shall be issued including all of the information required above;

And in the case of stripped coupons and residual debt instruments:

(20) The yield thereon calculated on a semi-annual basis in a manner consistent with the yield calculation for the debt instrument which has been stripped,

(21) The yield thereon calculated on an annual basis in a manner consistent with the yield calculation for other debt securities which are commonly regarded as being competitive in the market with such coupons or residuals such as guaranteed investment certificates, bank deposit receipts and other indebtedness for which the term and interest rate is fixed.

And in the case of all other debt instruments, other than stripped coupons and residual debt instruments:

(22) The yield to maturity calculated in a manner consistent with market conventions for the security traded. Where the debt security is subject to call prior to maturity through any means, a notation of "callable" shall be included; and for debt securities carrying a variable coupon rate, the following notation must be included: "The coupon rate may vary."

And in the case of all over-the-counter traded securities, including contracts for difference and foreign exchange contracts, but excluding primary market transactions and over-the-counter derivatives with non-standardized contract terms that are customized to the needs of a particular client and for which there is no secondary market, where the amount of the mark-up or mark-down and other service charges applied by the Dealer Member has not been disclosed on the confirmation sent to retail clients, a statement as follows:

(23) "The investment dealer's remuneration on this transaction has been added to the price in the case of a purchase or deducted from the price in the case of a sale."[1]

Each such confirmation shall, in respect of transactions involving securities of the *Dealer Member* or a related issuer of the *Dealer Member*, or in the course of a distribution to the public, securities of a connected issuer of the *Dealer Member*, state that the securities are securities of the *Dealer Member*, a related issuer of the *Dealer Member* or a connected issuer of the *Dealer Member*, as the case may be. For the purposes of this paragraph, the terms "related issuer" and "connected issuer" shall have the same meaning as ascribed to them in the Regulation made under the Securities Act (Ontario).

In the case of a *Dealer Member* controlled by or affiliated with a financial institution, the relationship between the *Dealer Member* and the financial institution shall be disclosed on each confirmation slip in connection with a trade in securities of a mutual fund sponsored by the financial institution or a corporation controlled by or affiliated with the financial institution.

The *Corporation's* policies with respect to electronic delivery of documents are set out in the applicable guideline.

Notwithstanding the provisions of this Rule 200.1(h), a *Dealer Member* shall not be required to provide a confirmation to a client in respect of a trade in a managed account, provided that:

1 OSC staff note: The above underlined text that includes these new parapgaphs (22) and (23) was not part of the proposed amendments to Rule 200.1(h) published for comment on April 9, 2010. This text was a seperate amendment that was published for comment on June 4, 2010. See IIROC's Rules Notice and Request for Comments on proposed amendments to dealer member rules concerning the fair pricing of over-the-counter securities and confirmation disclosure requirements (the "OTC fair pricing amendments") at (2010) 33 OSCB 5165. The OTC fair pricing amendments were approved by the Recognizing Regulators in August 2011. See the Commission's notice of approval dated August 26, 2011 at (2011) 34 OSCB 9037. The above underlined text came into effect on September 4, 2012. See IIROC's Rules Notice - Notice of Approval/Implementation 11-0256 dated September 1, 2011 at: http://www.iiroc.ca/Documents/2011/2de65b7e-0866-4e35-b760-468c54007592_en.pdf. The above text is underlined here only because it did not exist when the original amendments to IIROC's *Trade Matching and Confirmation Requirements* were published for comment on April 9, 2010.

(i) Prior to the trade, the client has consented in writing to waive the trade confirmation requirement;

(ii) The client may terminate a waiver by notice in writing. The termination notice shall be effective upon receipt of the written notice by the *Dealer Member*, for trades following the date of receipt;

(iii) The provision of a confirmation is not required under any applicable securities law, regulation or policy of the jurisdiction in which the client resides or the *Dealer Member* has obtained an exemption from any such law, regulation or policy by the responsible securities regulatory authority; and

(iv)

(a) where a person other than the *Dealer Member* manages the account

(A) a trade confirmation has been sent to the manager of the account, and

(B) the *Dealer Member* complies with the requirements of Rule 200.1(c); or

(b) where the *Dealer Member* manages the account:

(A) the account is not charged any commissions or fees based on the volume or value of transactions in the account;

(B) the *Dealer Member* sends to the client a monthly statement that is in compliance with Rule 200.1(c) and contains all of the information required to be contained in a confirmation under this Rule 200.1(h) except:

(1) the day and the marketplace or marketplaces upon which the trade took place, or marketplace disclosure language acceptable to the *Corporation*;

(2) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;

(3) the name of the salesman, if any, in the transaction;

(4) the name of the dealer, if any, used by the *Dealer Member* as its agent to effect the trade; and,

(5) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

(C) the *Dealer Member* maintains the information not required to be in the monthly statement pursuant to paragraph (B) and discloses to the client on the monthly statement that such information will be provided to the client on request.

Exemption:

For delivery against payment (DAP) and receipt against payment (RAP) trade accounts, a *Dealer Member* is not required to send a trade confirmation if:

(i) the trade is either subject to or matched in accordance with broker-to-broker or institutional trade matching requirements under *the Corporation's* Rules or securities legislation;

(ii) the *Dealer Member* maintains an electronic audit trail of the trade under *the Corporation's* Rules or securities legislation;

(iii) prior to the trade, the client has agreed in writing to waive receipt of trade confirmations from the *Dealer Member*;

(iv) the client is either:

(a) another *Dealer Member* who is reporting or affirming trade details through an *acceptable trade matching utility* in accordance with Rule 800.49; or

(b) ~~a DAP/RAP account customer other than a *Dealer Member*~~an Institutional Customer who is matching DAP/RAP account trades (either directly or through a custodian) in accordance with National Instrument 24-101- Institutional Trade Matching and Settlement;

(v) the *Dealer Member* ~~has~~and the client have real-time access to, and can download into their own system from the *acceptable trade matching utility's* or the matching service utility's system, trade details that are similar to the prescribed information under Rule 200.1(h); and

(vi) the *Dealer Member* ~~is in compliance with the trade matching requirements~~has not filed a report as required under Rule 800.49(6) informing the *Corporation's* ~~Rules or~~ that it has not met the quarterly compliant trade percentage or has not filed a trade matching exception report as required under securities legislation relevant to the trade, for a minimum of three consecutive quarters.

A client may terminate their trade confirmation waiver, referred to in Rule 200.1(h)~~(2)~~ under part (iii) of the exemption, by providing a written notice confirming this fact to the *Dealer Member*. The termination notice takes effect upon the *Dealer Member's* receipt of the notice.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

RULE 800.49 – BROKER-TO-BROKER NON-EXCHANGE TRADE MATCHING

PROPOSED RULE

(Black-lined text of the proposed rule showing the cumulative Revised Amendments made to the Original Amendments)

800.49. Broker-to-broker non-exchange trade matching

(1) **Trade matching requirement**

For each non-exchange trade, involving a *CDS eligible security* that is executed by a *Dealer Member* with another *Dealer Member*, each *Dealer Member* must:

(i) Enter the trade into an *acceptable trade matching utility* or

(ii) Accept or reject any trade entered into an *acceptable trade matching utility* by another *Dealer Member*.

at or before 6 p.m. (Toronto time) on the day the trade was executed.

(2) **Definition of non-exchange trade**

For the purposes of this Rule a non-exchange trade is defined as any trade in a *CDS eligible security* (excluding new issue trades and repurchase and reverse repurchase transactions) between two *Dealer Members*, which has not been submitted to the CDS continuous net settlement service~~, CDSX,~~ by a recognized exchange. The dealer to dealer portion of a jitney trade that is executed between two *Dealer Members* that is not reported by a recognized exchange is a non-exchange trade.

(3) **List of acceptable trade matching utilities**

The Corporation maintains a list of *acceptable trade matching utilities* that is published from time to time.

(4) **Trade classification where a Dealer Member enters a trade into the matching utility**

If a *Dealer Member* enters a trade into an *acceptable trade matching utility* under clause 800.49(1)(i), the trade is considered for each dealer trade counterparty to be a *compliant trade*, a *don't know trade* or a *non-compliant trade* according to the following table:

		Action of other *Dealer Member*					
		Enter trade at or before 6 p.m.	Accept trade at or before 6 p.m.	Enter or accept trade after 6 p.m.	Reject trade at or before 6 p.m.	Reject trade after 6 p.m.	No action
Action of *Dealer Member*	Enter trade at or before 6 p.m.	- *Dealer Member* compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* non-compliant trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* non-compliant trade	- *Dealer Member* compliant trade - Other *Dealer Member* non-compliant trade
	Enter trade after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade		- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade		- *Dealer Member* non-compliant trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade

(5) **Trade classification where a Dealer Member does not enter a trade into the matching utility**

If a Dealer Member accepts or rejects a trade entered into an *acceptable trade matching utility* by another *Dealer Member* under clause 800.49(1)(ii) or takes no action on a trade entered into an *acceptable trade matching utility* by another *Dealer Member*, the trade is considered for each dealer trade counterparty to be a *compliant trade*, a *don't know trade* or a *non-compliant trade* according to the following table:

		Action of other *Dealer Member*	
		Enter trade at or before 6 p.m.	Enter trade after 6 p.m.
Action of *Dealer Member*	Accept at or before 6 p.m.	- *Dealer Member* compliant trade - Other *Dealer Member* compliant trade	
	Accept after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade
	Reject at or before 6 p.m.	- *Dealer Member* don't know or DK trade - Other *Dealer Member* don't know or DK trade	
	Reject after 6 p.m.	- *Dealer Member* non-compliant trade - Other *Dealer Member* don't know or DK trade	- *Dealer Member* don't know or DK trade - Other *Dealer Member* non-compliant trade
	No action	- *Dealer Member* non-compliant trade - Other *Dealer Member* compliant trade	- *Dealer Member* non-compliant trade - Other *Dealer Member* non-compliant trade

(6) **Determination of ~~monthly~~quarterly compliant trade percentage**

The ~~monthly~~quarterly compliant trade percentage for a *Dealer Member* is determined by dividing the sum of ~~month~~quarter's compliant trades (which does not include "don't know" trades) by the total number of non-exchange trades that are executed during the ~~month~~quarter by the *Dealer Member* with other *Dealer Members*.

~~For months ending prior to or on June 30, 2012, a~~A *Dealer Member* must promptly report to the *Corporation* ~~when this monthly compliant trade percentage is less than 85% in any month and must include in this report its action plan to improve its percentage. Failure to increase the compliant trade percentage to 85% or more within 3 months of the first sub-standard report will be grounds for the *Corporation* to pursue disciplinary action. Beginning on or after July 1, 2012, a *Dealer Member* must promptly report to the Corporation~~ when their ~~monthly~~quarterly compliant trade percentage is less than 90% in any ~~month~~quarter and must include in this report its action plan to improve its percentage. Failure to increase the compliant trade percentage to 90% or more within ~~3 months of~~the next quarter after the first ~~substandard~~sub-standard report will be grounds for the *Corporation* to pursue disciplinary action.

DRAFT

December xx, 2012

Subject: IIROC response to comments on the proposed amendments to IIROC Dealer Member Rules 800.49 and 200.1(h)

Dear Public Commenter:

IIROC staff (we) are publishing this letter in response to the five public comment letters we received on the proposed amendments to IIROC Dealer Member Rules 800.49 and 200.1(h). We thank you for your comments and we have summarized and grouped them according to the Dealer Member Rule and issues raised. Our response follows each particular issue. As detailed in the Implementation Notice, we have made revisions to the proposed amendments to both Dealer Member Rules 800.49 and 200.1(h). Those revisions are considered to be non-material and are emphasized in our responses, where relevant.

DEALER MEMBER RULE 200.1(H)

1. Marketplace disclosure requirement

(i) Further clarification and details are required on the definition of 'marketplace', and whether or not a Dealer Member will be permitted to use the present format rather than change to the recommendation given the reference to 'or marketplace disclosure language acceptable to the Corporation' in the proposed amendments.

IIROC staff response

Currently, Rule 200.1(h) requires Dealer Members to set forth "the stock exchange or commodity futures exchange upon which a trade took place". By replacing this language with 'the marketplace or marketplaces upon which the trade took place', all exchange facilities, including those which are not recognized exchange facilities, such as quotation and trade reporting systems and alternative trading systems, are captured. Under the proposed amendments [at the beginning of proposed Rule 200.1(h)], Dealer Members would have the choice to simply name the marketplace (which is the present format) or use marketplace disclosure language that is acceptable to IIROC. That choice is up to the Dealer Member.

2. Account types and clients eligible for exemptive relief

(i) In addition to the 'delivery against payment' (DAP) and 'receipt against payment' (RAP) trade accounts, IIROC should also consider adding 'Direct Participant' (DP) trade accounts to the list of account types that would be considered eligible for the exemption under the proposed amendments to Rule 200.1(h).

IIROC staff response

There are two types of DPs (IIROC Dealer Members and non-IIROC Dealer Members, such as HKBF and CGUS). The proposed amendments would make DP accounts that are for IIROC Dealer Members eligible for the exemption. The issue with extending this exemption eligibility to DP accounts that are for non-IIROC Dealer Members is that the non-IIROC Dealer Members trades are not subject to either NI 24-101 or Rule 800.49 requirements, and we currently do not include those trades in IIROC's broker-to-broker (dealer) trade matching monthly compliance reports to Dealer Members.

3. Transition period

(i) IIROC should outline a transition period for Dealer Members to discontinue the issuance of client confirmations since Dealer Members may be required to update their systems in order to identify those accounts for which the client has provided consent to waive the receipt of trade confirmations.

IIROC staff response

Dealer Members will have the discretion to exercise this exemption once all requirements have been satisfied, as well as the flexibility to update their systems at that time. Because the exemption is optional for Dealer Members who have satisfied the requirements listed in proposed Rule 200.1(h), a transition period is not necessary.

4. Compliant trade matching percentages

(i) What is meant by compliant? If a Dealer Member reports they have missed the 90% threshold, but has policies and procedures designed to meet the threshold are they compliant? If compliance means meeting the percentage threshold, is the requirement to be compliant for a certain portion of a given period (e.g. compliant for x months in a year) or is it a requirement to always be compliant? The latter would lead to a situation which is unworkable from an operational perspective and confusing to a client. There is also a concern that in many firms, there is a manual process to trigger confirmation processing and uncertainty and delay about the trigger might result in unnecessary stopping and starting of the confirmation reporting process.

IIROC staff response

In order to be considered 'compliant' pursuant to part (vi) of the exemption under proposed Rule 200.1(h), Dealer Members must be able to demonstrate that they have met the required compliant trade percentage thresholds in NI 24-101 and proposed Rule 800.49 for at least three consecutive quarters. It is insufficient to have in place policies and procedures designed to the meet these thresholds, and yet fail to satisfy the required compliant target thresholds. IIROC staff believes that these standards are reasonably attainable and do not impose unrealistic percentage thresholds on Dealer Members. Proposed Rule 200.1(h) has been revised to clarify this requirement.

(ii) If the Dealer Member is non compliant in any quarter how will this impact the ability to offer non receipt of confirmations to their clients?

IIROC staff response

Please see response to (iii).

(iii) If a Dealer Member is in compliance with the trade matching percentages for a period of months and then has one instance of non-compliance, would the proposed amendments require them to resume sending the client a trade confirmation? The client, whom this Rule is intended to protect, would only become confused as to when they receive trade confirmations. From the client's perspective, the receipt of trade confirmation would be random and unpredictable.

IIROC staff response

Yes, the proposed amendments would require the Dealer Member to resume sending the client trade confirmations. Should the Dealer Member choose to take advantage of the exemption in proposed Rule 200.1(h) at a later date, they would be required to re-satisfy the requirements under the exemption under proposed Rule 200.1(h), including obtaining an updated written consent by the client to waive receipt of trade confirmations, as well as demonstrate compliant thresholds for three consecutive quarters.

(iv) Once the compliant threshold requirements are met, is the Dealer Member immediately eligible for exemptive relief?

IIROC staff response

In order to qualify for the exemptive relief, Dealer Members must demonstrate that trade percentage thresholds have been satisfied for at least three consecutive quarters, as well as satisfy the other requirements in parts (i) to (v) of the exemption under proposed Rule 200.1(h).

(v) Further clarification is required regarding the documentation of accounts if a Dealer Member is not compliant with the requirements outlined in Rule 800.49 or NI-24-101. Would a Dealer Member be a required to review all of the accounts if they are not compliant with the applicable requirements and be required to distribute the trade confirmations immediately? Based on the results of their monthly compliant trade percentage threshold, a Dealer Member may be required to start/stop the trade confirmations for clients. One comment letter suggests that Rule 200.1(h) be amended to indicate that if a Dealer Member is not in compliance with Rule 800.49 or NI 24-101 for more than three consecutive quarters, then it would be mandatory for the Dealer Member to distribute the trade confirmations to all clients.

IIROC staff response

Dealer Members will be required to immediately resume distribution of trade confirmations if they fail to satisfy the requirements set out in parts (i) to (vi) of the exemption under proposed Rule 200.1(h). Proposed Rule 200.1(h) has been revised to indicate that if a Dealer Member is not in compliance with proposed Rule 800.49 or NI 24-101 for more than three consecutive quarters, then it would be mandatory for the Dealer Member to redistribute the trade confirmations to all clients.

(vi) *The exemption from sending trade confirmations should not be predicated on a Dealer Member being compliant with percentage thresholds. If the client has consented (and in many instances requested) to not receive trade confirmations, and they receive the necessary information they require electronically, what aim is achieved by the requirement to also meet trade matching compliant percentage thresholds?*

IIROC staff response

The exemptive relief is to enhance overall compliance by Dealer Members. Only Dealer Members who have policies and procedures that successfully meet compliant thresholds will qualify for the exemptive relief.

(vii) *Will the client also have to meet the compliance percentages in order to request in writing non receipt of confirmations?*

IIROC staff response

No, the client will not also have to meet the compliance percentages in order to request in writing non receipt of confirmations.

(viii) *Does the Dealer Member have to meet the trade matching requirements in both equity and debt and in all dollar value categories?*

IIROC staff response

The requirement is for Dealer Members to meet the monthly trade percentage set out in proposed Rule 800.49 and NI 24-101, for a minimum of three consecutive quarters, in addition to the requirements set out in parts (i) to (v) under the exemption in proposed Rule 200.1(h). For proposed Rule 800.49, the percentage threshold is determined by dividing the sum of month's compliant trades by the total number of non-exchange trades that are executed during the month by the Dealer Member with other Dealer Members.

(ix) *Will there be a requirement for the Dealer Member to monitor the client account(s) for ongoing compliance and if so with what frequency?*

IIROC staff response

Although there is no formal requirement to monitor client account(s), Dealer Members should be engaged in such practices to ensure compliance.

(x) *Are the Dealer Member and/or the client required to be compliant in both entered and entered/matched if they only have the responsibility to enter the transactions and provide sufficient lead time for the matching market participant?*

IIROC staff response

As detailed in part (vi) under "Exemption" in the proposed amendments to Rule 200.1(h), it is the Dealer Member that is required to be in compliance with the trade matching requirements under the Corporation's Rules [Rule 800.49] or securities legislation [NI 24-101] relevant to the trade. Under section 4.1 of Part 4 of NI 24-101, the exception reporting requirement is based on matched trades and therefore, a Dealer Member cannot conclude they only have the responsibility to enter the transactions and provide sufficient lead time for the matching market participant.

DEALER MEMBER RULE 800.49

1. Don't know trades ("DK Trades")

(i) *Rule 800.49 reads as follows: "The monthly compliant trade percentage for a Dealer Member is determined by dividing the sum of month's compliant trades (which does not include DK Trades) by the total number of non-exchange trades that are executed during the month by the Dealer Member with other Dealer Members." When saying non-exchange trades that are executed during the month, does that include DK Trades?*

IIROC staff response

Yes, "DK Trades" are to be included in the total number of non-exchange trades that are executed during the month by the Dealer Member with another Dealer Member. A DK Trade is a non-exchange trade that has been subsequently DK'd by the other Dealer Member to the trade. **The revisions to Rule 800.49(6) have made the compliance monitoring quarterly instead of monthly and therefore, DK Trades are to be included in the total number of non-exchange trades that are executed during the quarter by the Dealer Member with another Dealer Member.**

(ii) *If we send 10 trades and 2 are DK Trades, from what we understand we would achieve an 80% compliant rate. If we correct those 2 DK Trades, then they would in fact be non-compliant trades. However, if those 10 trades were sent on time and the 2 DK Trades were only unDK Trades the following day with no change and matched by the other dealer, the trades should become compliant, bringing us to 100%. Often trades are DK Trades when a dealer has no instructions, yet when the instructions come in, the trades are then matched. The first submitter should not be penalized for the other dealer's lack of instructions. If our rate is below the target we will need to file an exception report to IIROC.*

Furthermore, if we are asked to explain the discrepancies we would then be forced to disclose dealers who were DKing our trades due to lack of instructions which would then affect our business relationship with such dealers.

IIROC staff response

The first submitter should not be penalized for the other Dealer Member's lack of instructions. IIROC will not know the reason for a DK Trade without an explanation from one or both of the Dealer Members involved in the DK Trade. In addition, given that the requirement to report or confirm a trade will be extended from "within one hour or trade execution" to "at or before 6 p.m. on the day of trade", IIROC expects Dealer Members will be less inclined to DK the other Dealer Member's trade for lack of instructions.

IIROC needs the explanation from both Dealer Members to investigate which Dealer Member has systemic operational problems in reporting trades. IIROC also believes that your firm should also be concerned that the Dealer Member you are trading with has systemic operational problems in reporting trades, which could affect the settlement of your trades with that Dealer Member.

2. Extension of trade reporting requirement

(i) *Members agree that the change from "within one hour or trade execution" to "at or before 6:00 p.m. on the day of the trade" will enable clients who presently use batch processing to achieve higher rates of compliance. However, while Dealer Members are generally pleased with the change to a 6:00 p.m. cut off time, this time frame may be early given that daily batch trade file submission to CDS occurs closer to midnight on T. We would appreciate some clarification as to why the cut-off times have not been made consistent.*

IIROC staff response

See response to (ii).

(ii) *In order to ensure compliance some Dealer Members may need to extend their hours of operation. With the potential to enter non exchange trades until 6 p.m., the other Dealer Member may have insufficient time or the staffing available to ensure that the trade is matched or DK'd when necessary. While larger Dealer Members may have the ability to adjust staffing hours, small and midsize firms may not have the same flexibility. While we do not believe that mandating staffing until the cut off time is an option, this may have a negative impact on some Dealer Members in consistently meeting the compliance timeline.*

IIROC staff response

It is IIROC's understanding that Dealer Members or their service providers have control over the time they submit batch trades to CDS. The 6 p.m. cut-off time was chosen by IIROC as it offered a balance for:

- Dealer Members that do not want to have staff working to report the day's trades well beyond when the markets closed (4:30 p.m.);
- Dealer Members that do market-on-close trades and/or accumulation type trades, which sometimes occur up to 5:00 p.m.;
- Dealer Members that use batch trade file submission and want to continue to use batch trade file submission, but did not see the benefit in submitting trade files within the hour of trade execution; and
- Dealer Members that have made the effort and investment in people, systems and processes to comply with meeting the current "one-hour requirement", which was implemented several years ago.

IIROC must still have timely trade reporting and matching requirements in order to achieve a high quality regulatory and investment industry standard that strengthens market integrity while maintaining efficient and competitive capital markets.

(iii) *In order to take advantage of an extension, some Dealer Members may need to extend their hours of operation to ensure that contacts are available to discuss a particular transaction. There may be potential for non-compliance among Dealer Members (and clients) that cannot incur the extra costs of maintaining staff until an extended cut-off time (whether it is 6:00 p.m. or otherwise). While we do not think it is appropriate to mandate staffing requirements, the compliance rates will continue to be affected in the instances where firms and clients do not have the resources to extend their hours.*

IIROC staff response

The intent of the extension is to offer Dealer Members that have difficulty reporting trades within the hour of trade execution some additional time. For firms that currently do not have a problem reporting trades within the hour of trade execution, IIROC does not expect them to be negatively impacted by the extension.

3. Monthly compliance report

(i) *Members agree that the requirement to complete a monthly compliance report will increase the focus of members and clients on the requirements of the Rule. However, it is recommended that IIROC provide further details on the reporting requirements (i.e. provide a format for the report to ensure consistency in the content). Dealer Members were also interested in the availability of online reporting, similar to what is available for reporting under National Instrument 24-101.*

IIROC staff response

IIROC will provide further details on the reporting requirements including whether online reporting would be made available to Dealer Members, as well as the timeframe in which the report is to be provided. **The revisions to Rule 800.49(6) have made the compliance monitoring quarterly instead of monthly and therefore, the monthly compliance report will now be a quarterly compliance report.**

(ii) *The requirement to submit a monthly compliance report will likely increase the focus on meeting the revised compliance timeframe. However, further guidance and information is required on the actual report. It was suggested that a standard report format be provided, due date for filing and the option to file online as with the quarterly reports pursuant to NI 24-101. The standard format will ensure consistency in the level of detail and information contained within the report, as well as ensure that all submissions meet the requirements for any follow up required. We question as well as to whether a Nil report will be required.*

IIROC staff response

See response to (i).

(iii) *More guidance is required on the timeframe in which the report is to be provided (the draft language only provides for reports to be made "promptly"). It has been suggested that quarterly reporting, similar to what is required by NI 24-101, would be more appropriate and efficient than what is proposed in the Notice since confusion between the two rules may occur.*

IIROC staff response

See response to (i).

(iv) *The notice issued in connection with the proposed amendments introduces inconsistencies between Dealer Member Rules and NI 24-101. Currently NI 24-101 requires reporting at noon on T+1 where compliance trade matching thresholds are below 90%. Rule 800.49 introduces a two-tiered standard (85% or more prior to June 30, 2012 and 90% or more after July 1, 2012) which is similar to, but not the same, as NI 24-101. Furthermore NI 24-101 requires quarterly reporting where Rule 800.49 requires monthly reporting. We believe that the Dealer Member Rules should be harmonized with NI 24-101.*

IIROC staff response

IIROC's two-tiered phased in approach was based on the CSA's Notice and Request for Comments on Proposed Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement [October 30, 2009, (2009) 32 OSCB][2], which had proposed reporting thresholds on T of 70 per cent, 80 per cent and 90 per cent that were to be phased in July 1, 2015, July 1, 2016 and July 1, 2017 under

[2] http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20091030_24-101_pro-amd.pdf

Part 7 – Transition. However, the revised percentages of NI 24-101 have since been revised in the CSA Notice of Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement [April 16, 2010, (2010) 33 OSB][3] to remove the reporting thresholds on T phased in approach and maintain the current requirement to match trades by noon on T+1 with a reporting threshold of 90 per cent.

The revisions to Rule 800.49(6) have made the compliance monitoring quarterly instead of monthly and removed the staged implementation of the compliant trade percentage threshold. They were agreed to in order to reduce the potential confusion among Dealer Members that also execute institutional trades that are subject to quarterly compliance monitoring and a 90% compliant trade percentage threshold under NI 24-101.

(v) *How will compliancy rates be measured going forward? For instance, will Dealer Members be required to build in house reporting tools? Furthermore, we request clarification on whether or not the proposed thresholds will continue to be based on the number of trades.*

IIROC staff response

Going forward, CDS will measure the compliance rates and will provide them to Dealer Members. The thresholds will continue to be based on the number of trades.

(vi) *We understand the reason for the request for monthly submissions however, for the longer term, is there a plan to move to the quarterly submissions to be consistent with the requirements under NI 24-101?*

IIROC staff response

The revisions to Rule 800.49(6) have made the compliance monitoring quarterly instead of monthly and were agreed to in order to reduce the potential confusion among Dealer Members that also execute institutional trades that are subject to quarterly compliance monitoring under NI 24-101.

Sincerely,

Angie F. Foggia
Policy Counsel, Member Regulation Policy

Answerd A. Ramcharan
Specialist, Member Regulation Policy

CC: Jack Rando, Investment Industry Association of Canada
Rena Shadowitz, BMO Nesbitt Burns Inc.
André Zanga, Casgrain & Company Limited
Catherine Patterson, RBC Dominion Securities Inc.
Irene Urshon, TD Waterhouse Canada Inc.
IIROC Oversight Committee

[3] http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20100416_24-101_notice-amd.pdf

13.3 Clearing Agencies

13.3.1 Notice of Commission Approval – Material Amendments to CDS Procedures – Enhancements to the CNS Allotment Process

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES

ENHANCEMENTS TO THE CNS ALLOTMENT PROCESS

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on November 28, 2012, amendments filed by CDS to its procedures relating to the CNS allotment process for voluntary corporate actions. A copy and description of the procedural amendments were published for comment on September 20, 2012 at (2012) 35 OSCB 8708. No comments were received.

13.3.2 Notice and Request for Comments – Material Amendments to CDS Procedures – Enhancements to the CNS Allotment and Conversion Process

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

ENHANCEMENTS TO THE CNS ALLOTMENT AND CONVERSION PROCESS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

On September 7, 2012 CDS submitted a Notice and Request for Comments – Material Amendments to CDS Procedures relating to Enhancements to the CNS Allotment Process, for regulatory review, that described proposed changes to the processing of voluntary events. The Notice and the proposed amendments to the procedures were published on September 20, 2012 by the Ontario Securities Commission (OSC Bulletin (2012) 35 OSCB 8708) and on September 13, 2012 by the Autorité des marchés financiers (AMF Bulletin 13 septembre 2012 - Vol. 9, n° 37).

This document proposes amendments to the CDS Participant Procedures that will amend functionality of the allotment process in the Continuous Net Settlement Service (CNS) for mandatory events, thereby aligning the allotment processing of both mandatory and voluntary corporate actions. This change is made at the request of the Debt and Equity Subcommittee of the Strategic Development Review Committee (SDRC). The CNS allotment process refers to (i) the creation of non-exchange trades with a settlement mode of trade-for-trade (TFT) from outstanding CNS positions by assigning or allotting buyers to sellers against outstanding CNS positions, and (ii) trade conversion activities whereby exchange and non-exchange trades with a settlement mode of CNS are changed to settle TFT. This process is initiated in the case of mandatory corporate actions that would result in a participant receiving (i) a non-CNS eligible security, (ii) cash or (iii) a combination of security and cash.

Background

CNS is a central counterparty service designed to clear and settle primarily equity trades initiated on a Canadian exchange, a quotation and trade reporting system or an alternative trading system. Transactions targeted to CNS may also originate as non-exchange trades with a settlement mode of CNS, manually setup in CDSX® by participants.

Novation and netting of CNS trades

When an exchange or non-exchange trade with a settlement mode of CNS reaches value date, the original buyer and seller obligations (to receive securities and deliver payment, and vice versa) are extinguished and replaced with settlement obligations between each party and CDS (i.e., novation). Each time another trade for the same security reaches value date, the new novated obligations are netted with the existing settlement obligations for that security. These netted obligations are the “to receive” and “to deliver” positions that are settled in the overnight batch net settlement process, and continuously settled in CDSX in the real-time CNS settlement process that runs from system start-up through to the start of payment exchange.

Allotment of CNS positions and trade conversion activities for mandatory corporate actions

Outstanding positions and trades directed to settle in CNS, involving a security subject to a mandatory corporate action, are treated differently depending upon whether the action results in exchanging that security with another CNS eligible security, a CNS ineligible security, or a cash payment (the “receive” item). If the only receive item is a CNS eligible security, the outstanding CNS position, and all exchange and non-exchange trades, are converted to the new security at the conversion rate stipulated by the corporate action. These actions occur on the payable date of the corporate action.

If one of the receive items is a security ineligible for the CNS service or is a cash payment, the outstanding CNS position is allotted and then converted. The allotment process removes CDS as the central counterparty by assigning buyers and sellers to the outstanding CNS obligations and replacing those obligations with non-exchange trades targeted to settle TFT. In addition to allotting the outstanding CNS position, CNS exchange and non-exchange trades are retargeted to settle TFT. The TFT trades are then converted to the new receive item at the conversion rate stipulated by the corporate action. These actions also occur on the payable date of the corporate action.

The current process contains inherent inefficiencies. Changing the mode of settlement from CNS to TFT results in a large number of trades over which participants have no control. This is because participants cannot modify exchange trades and therefore they cannot effectively prioritize their settlement activity. Moreover, the process of converting existing trades to the new CNS eligible security results in multiple trades undergoing conversion activity, one at a time. This results in multiple fractional differences that cannot be credited to the participant. For example; if the specified conversion rate was 1.333, a trade

for 100 shares of security A would result in a trade for only 133 shares of security B. In this case, .3 shares would be truncated or dropped from the converted trade.

Proposed Amendments

The SDRC Debt and Equity Subcommittee requested that CDS review the current process related to mandatory conversions and propose an approach whereby participants would be (i) afforded greater flexibility to manage their settlement activities, (ii) mitigate the effects of the trade conversion process, and, (iii) be consistent with the process in place for voluntary corporate actions. The proposal approved by the SDRC Debt and Equity Subcommittee amends the process as described below.

If the receive item specified in a mandatory corporate action results in the exchange of the affected security with another CNS eligible security, all existing trades targeted to settle CNS will now be netted on value date with any existing outstanding CNS positions. Once netting has occurred, the outstanding CNS position will then be converted to the new security. This process will reduce fractional differences arising from the conversion of individual trades.

If one of the receive items is an ineligible CNS security or is a cash payment, all existing exchange and non-exchange trades targeted to settle CNS will be netted on value date with any existing outstanding CNS position. Once netted, the outstanding CNS position will then be allotted and non-exchange TFT trades will be created. These TFT trades will be subsequently converted to the new security. This process is consistent with the recently proposed enhancements for voluntary corporate actions and will allow for the prioritization of settlement of the non-exchange TFT trades by the participant.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments describe changes to the CNS allotment process, the timing of when trades targeted to CNS are retargeted to TFT, and the timing of when trade conversion from one security to another is applied.

These changes will address the inefficiencies noted above, specifically netting will (i) eliminate the exchange and non-exchange trades that are currently retargeted to settle TFT, (ii) reduce the number of TFT trades requiring conversion and settlement and (iii) reduce the number of fractional shares that could result from a corporate action.

CDS participants will benefit from the proposed enhancements in the following ways:

- The number of transactions that require monitoring and settlement management activities by the participant will be reduced, thereby reducing operational risk
- The novation and netting process will reduce the quantity to be settled; and
- The number of trades undergoing conversion will be reduced, thereby minimizing the number of fractional shares that are not credited to the participant.

Currently, when a CNS settlement restriction exists on a security requiring allotment, all trades with a settlement mode of CNS, received from an exchange or entered by participants, are prevented from being picked up in the CNS novation and netting processes. The settlement mode of the trades is automatically changed to TFT and these trades are subsequently converted to the receive item of the corporate action. Participants must manage these transactions manually. However, participants are restricted from placing the trades that originated at an exchange on hold, which prevents settlement until such time as they are ready for the movement of securities or cash to be completed from their CDSX ledgers. This results in trades which participants have no ability to manage, and which may have used funds or securities for small value trades that participants would have preferred to first target toward larger value trades. In addition, conversion of these trades can produce fractional differences depending on the rate applied to the receive item. These fractional differences cannot be allocated to a participant.

In cases where a security is undergoing a corporate action and the receive item is a CNS eligible security, a CNS settlement restriction is not placed on the security. The exchange and non-exchange trades with a mode of settlement of TFT and CNS, as well as the outstanding CNS position, are directly converted to the receive item on the payable date of the corporate action. In these cases fractional differences may result from the conversion of these trades to the new security

A change will be made so that the CNS novation and netting process will disregard the CNS settlement restriction if it has been automatically created by a mandatory corporate action. This will allow all CNS trades reaching value date to be netted each day during the corporate action period. Settlement of outstanding obligations will still be restricted, and these settlement obligations will then be allotted out and converted to the new receive item each day. In cases where a restriction has not been placed on a security (i.e. the receive item is a CNS eligible security), future dated trades will not be converted on payable date. This will allow all CNS trades reaching value date to be novated and netted, and then converted to the new receive item. This will result in fewer numbers of non-exchange trades over which settlement can be managed. This will also reduce the number of trades

converted to the receive item, thereby reducing the fractional differences that are created at the time of conversion to a new security.

CNS settlement restrictions that have been placed on a security manually or automatically for reasons other than a corporate action will continue to be processed as they are today. That is, the mode of settlement on exchange and non-exchange trades will be converted from CNS to TFT.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments will provide processing efficiencies and trade settlement management flexibility. The impact of these changes will be limited to those CDS participants that utilize the CNS function within CDSX.

C.1 Competition

The proposed procedure amendments apply to all CDS participants who currently use, or may choose to use, the CNS service. Consequently, no CDS participant will be disadvantaged with the introduction of these enhancements.

C.2 Risks and Compliance Costs

CDS Risk Management has determined that the proposed amendments will improve the risk profile of its participants due to the novation and netting process. It will not change the risk profile of CDS.

The introduction of the proposed enhancement to the CNS allotment process will not result in any changes to the existing CDSX settlement process. The method of (i) applying non-entitlement related CNS settlement restrictions to securities, (ii) placing holds on non-exchange transactions, and (iii) the settlement of exchange and non-exchange trades remain unchanged. The prioritization of settlements is also not impacted by this initiative.

There are no compliance costs to the participants associated with the proposed enhancements to the CNS allotment process.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

As stated in Principle #21 – Efficiency and effectiveness – of the new international standards for payment, clearing and settlement systems set out in the CPSS/IOSCO report *Principles for Financial Market Infrastructures*[4], a financial market infrastructure such as CDS "should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures".

This development, requested by some of CDS's participants, supports greater flexibility for managing the settlement of transactions.

No other comparisons to international standards were identified.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

The development request was tabled at the SDRC Debt and Equity Subcommittee as an opportunity to increase efficiencies in the settlement of trades systematically allotted from the CNS service and converted to the receive item. Once approved by the SDRC for further analysis, CDS developed a requirements document that was reviewed with the SDRC Debt and Equity Subcommittee. Their input was incorporated into the final design which was subsequently approved by the SDRC.

D.2 Procedure Drafting Process

The CDS procedure amendments were drafted by CDS's Business Systems Development and Support group, and subsequently reviewed and approved by the SDRC. The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from a cross-section of the CDS participant community, and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on October 25, 2012.

[4] The report can be found at http://www.bis.org/publ/cpss101.htm

D.3 Issues Considered

During the processing of a corporate action where the receive item is a new security, the quantity amounts of any existing trades in the original security are converted to the corresponding equivalent amount of the new security. When the rate of the receive item includes a fractional amount (e.g. receive 1.333 shares of a new security for each 1 share of the original security), the resulting quantity amounts on the converted trades may contain a fractional quantity. CDSX only handles settlement of whole shares; consequently, the conversion process truncates any fractions. This systematic truncation of fractional amounts can result in dropping a significant number of shares when applied to large volumes of trades. These fractional shares are accumulated by CDS and may be reclaimed by the participant. The proposal increases the potential for netting, thus reducing the negative impact of the conversion process.

D.4 Consultation

This development was requested by the SDRC Debt and Equity Subcommittee. CDS reviewed the requirements document with that group and received their final approval for the development of the described enhancement.

CDS's Customer Service account managers provide continuous communication and status updates of all proposed changes to their clients, as well as soliciting input on those changes.

CDS facilitates consultation through a variety of means, including regularly scheduled SDRC subcommittee meetings which provide a forum for detailed requirement review, and monthly meetings with service bureaus to discuss development impacts to them. All development initiatives are also presented to the Investment Industry Regulatory Organization of Canada's (IIROC) Financial Administrators Section (FAS) working group.

D.5 Alternatives Considered

Initially, the SDRC Debt and Equity Subcommittee requested that CDS enable participants to manage the settlement control indicator on exchange trades changed from CNS to TFT. During the review and analysis phase, it was determined that this approach would be insufficient to achieve maximum efficiencies in the management of these trades because large volumes of trades would continue to exist. Consequently, the SDRC Debt and Equity Subcommittee and the SDRC agreed that CDS's proposal to net CNS trades prior to allotment and conversion was a more complete solution.

D.6 Implementation Plan

The proposed procedure amendments and the scheduled date of implementation have been communicated regularly to CDS participants through the SDRC and its subcommittees, as well as through Customer Service relationship meetings. The Customer Service account managers will provide their clients with details of the upcoming changes, and provide customer-related training during the months of December 2012 and January 2013. CDS will distribute a bulletin to all CDS participants the week before implementation reminding them of the upcoming changes and confirming the effective date of those changes.

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of this initiative is planned for February 9, 2013.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDSX functionality will be impacted by these changes as follows:

a) Eliminate the change to the settlement mode of existing trades from CNS to TFT during the allotment process. Trades will remain as CNS and be available for novation and netting.

b) Newly entered exchange and non-exchange CNS trades will be populated with a mode of settlement as CNS when a CNS settlement restriction exists. Trades will remain as CNS and be available for novation and netting.

c) Allow for novation and netting of CNS trades (exchange and non-exchange) when a CNS settlement restriction exists on a security. CNS positions will not be settled when this restriction is applied, as per the current process.

d) Automate additional allotments of CNS positions. Existing CNS trades will remain intact. New process to be triggered upon completion of CNS netting where an allotment has previously taken place on the event.

e) Automate additional conversions of (i) trades created through the allotment process or (ii) outstanding CNS positions when a CNS eligible security is received.

E.2 CDS Participants

There are no technological system changes required by CDS Participants.

E.3 Other Market Participants

There are no technological system changes required by CDS Participant service bureaus.

F. COMPARISON TO OTHER CLEARING AGENCIES

A similar CNS trade allotment and conversion process is provided by the National Securities Clearing Corporation (NSCC) as outlined in the NSCC Rules and Procedures dated June 28, 2012. Reference to conversion and allocation as it pertains to corporate actions is made, however CDS is not aware of any impending rule changes in this regard.

No comparable or similar procedures were available for other clearing agencies in order to conduct an analysis.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin, the British Columbia Securities Commission Bulletin or the Autorité des marchés financiers Bulletin to:

Elaine Spankie
Senior Business Analyst, Business Systems Development and Support
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-3595
Email: espankie@cds.ca

Copies should also be provided to the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^{e} Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
email: marketregulation@osc.gov.on.ca

Doug MacKay
Manager, Market and SRO Oversight
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C. V7Y 1L2

Fax: 604-899-6506
Email: dmackay@bcsc.bc.ca

Mark Wang
Manager, Legal Services
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C., V7Y 1L2

Fax: 604-899-6506
Email: mwang@bcsc.bc.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS PROCEDURE AMENDMENTS

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page (www.cdsservices.ca).

13.3.3 OSC Staff Notice of Commission Approval – Material Amendments to CDS Rules – CDCC Interface – Phase 2 – Partial Settlement

OSC STAFF NOTICE OF COMMISSION APPROVAL

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES

CDCC INTERFACE – PHASE 2 – PARTIAL SETTLEMENT

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on November 30, 2012, amendments filed by CDS to its rules relating to CDCC Interface – Phase 2 – Partial Settlement. A copy and description of the rule amendments were published for comment on September 13, 2012 at (2012) 35 OSCB 8527. No comments were received.

13.3.4 OSC Staff Notice of Commission Approval – Material Amendments to CDS Procedures – CDCC Interface – Caps and Lines of Credit Updates

OSC STAFF NOTICE OF COMMISSION APPROVAL

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES

CDCC INTERFACE – CAPS AND LINES OF CREDIT UPDATES

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on November 30, 2012, amendments filed by CDS to its procedures relating to the CDCC interface – caps and lines of credit updates. A copy and description of the procedure amendments were published for comment on September 13, 2012 at (2012) 35 OSCB 8521. No comments were received.

13.3.5 OSC Staff Notice of Commission Approval – Material Amendments to CDS Procedures – CDCC Interface – Phase 2

OSC STAFF NOTICE OF COMMISSION APPROVAL

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES

CDCC INTERFACE – PHASE 2

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on November 30, 2012, amendments filed by CDS to its procedures relating to the CDCC interface – phase 2. A copy and description of the procedure amendments were published for comment on September 13, 2012 at (2012) 35 OSCB 8515. No comments were received.

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