The Ontario Securities Commission

OSC Bulletin

December 13, 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 13, 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
Suite 900
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M5H 2T4

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- -

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

SCHEDULED OSC HEARINGS

December 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 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 11, 2013 11:00 a.m.	**Newer Technologies Limited, Ryan Pickering and Rodger Frey** s. 127 and 127.1 B. Shulman in attendance for staff Panel: TBA
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 15, 2013 3:00 p.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
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
February 28, 2013 10:00 a.m.	**Children's Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT

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 **Systematech Solutions Inc., April Vuong and Hao Quach**

s. 127

D. Ferris in attendance for Staff

Panel: TBA

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

s. 127

D. Ferris in attendance for Staff

Panel: TBA

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 Caroline Frayssignes Cotton

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

AND

IN THE MATTER OF
CAROLINE FRAYSSIGNES COTTON

NOTICE OF WITHDRAWAL

WHEREAS on October 9, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, to consider whether it is in the public interest to make orders, as specified therein, in respect of Caroline Frayssignes Cotton. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations (the “Statement of Allegations”) filed by Staff of the Commission (“Staff”) dated September 28, 2012.

TAKE NOTICE that Staff hereby withdraw the Statement of Allegations.

December 6, 2012

Staff of the Ontario Securities Commission
20 Queen Street West
PO Box 55, 19th Floor
Toronto, ON M5H 3S8

1.1.3 Nest Acquisitions and Mergers et al.

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

AND

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

NOTICE OF WITHDRAWAL

WHEREAS on January 18, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, to consider whether it is in the public interest to make orders, as specified therein, in respect of Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes ("Frayssignes"), David Pelcowitz, Michael Smith and Robert Patrick Zuk. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated January 18, 2010 (the "Statement of Allegations").

TAKE NOTICE that Staff hereby withdraw the allegations in the Statement of Allegations solely with respect to Frayssignes.

December 6, 2012

Staff of the Ontario Securities Commission
20 Queen Street West
PO Box 55, 19th Floor
Toronto, ON M5H 3S8

1.1.4 Multilateral CSA Staff Notice 23-313 – Blanket Orders Exempting Marketplace Participants from Certain Provisions of National Instrument 23-103 Electronic Trading and Related OSC Staff Position

MULTILATERAL CSA STAFF NOTICE 23-313

BLANKET ORDERS EXEMPTING MARKETPLACE PARTICIPANTS FROM CERTAIN PROVISIONS OF NATIONAL INSTRUMENT 23-103 *ELECTRONIC TRADING* AND RELATED OSC STAFF POSITION

Background

National Instrument 23-103 *Electronic Trading* (NI 23-103) introduces a framework that addresses risks associated with electronic trading. It comes into effect on March 1, 2013.

Since the publication[1] of the final version of NI 23-103, the Canadian Securities Administrators (the CSA or we) have received comments and inquiries about the implementation of certain provisions of NI 23-103. To better understand the level of preparedness of marketplace participants in implementing NI 23-103, the CSA and the Investment Industry Regulatory Organization of Canada (IIROC) conducted a survey of members of the Investment Industry Association of Canada (IIAC) on the implementation of NI 23-103.

Certain IIAC members responded that they had concerns about their ability to adequately complete testing of the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013. Paragraph 3(3)(a) requires that a marketplace participant's risk management and supervisory controls, policies and procedures must be reasonably designed to systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing:

(i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant, and

(ii) the entry of one or more orders that exceed pre-determined price or size parameters.

While we are of the view that the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 are important to address the risks of electronic trading, we are also of the view that these automated controls may pose other risks to our markets if they are introduced before they have been adequately tested. Therefore, certain CSA members have issued parallel blanket orders (orders) or related staff positions regarding the testing and implementation of these automated pre-trade risk controls.

Interim relief for marketplace participants from implementing automated pre-trade risk controls

CSA members in Quebec, British Columbia and Alberta have issued parallel orders, effective March 1, 2013, that provide temporary relief to marketplace participants. The relief from paragraph 3(3)(a) of NI 23-103 applies if a marketplace participant is testing the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013. The orders grant relief until May 31, 2013.

The orders are available on the following websites:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca

We note that staff in the other CSA jurisdictions, other than Ontario, are considering recommending to their decision makers that they also issue blanket orders that would provide relief from paragraph 3(3)(a) of NI 23-103.

OSC Staff Position

The Ontario Securities Commission (OSC) will not be issuing a blanket order given that orders of general application are not authorized under Ontario securities law.

OSC staff expect marketplace participants to use best efforts to comply with the requirement for automated pre-trade risk controls under paragraph 3(3)(a) of NI 23-103 by March 1, 2013; however, OSC staff are of the view that it is not in the public interest to recommend or pursue an enforcement action against a marketplace participant for failure to fully implement an automated pre-trade risk control where the marketplace participant:

[1] (2012) 35 OSCB 6037

(a) is testing the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013; and

(b) has completed its testing and fully implemented the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by May 31, 2013.

All other requirements under NI 23-103 must be fully implemented by March 1, 2013.

We note that IIROC has followed a comparable approach to the Universal Market Integrity Rule requirements related to the testing and implementation of automated pre-trade risk controls.

In order to address other inquiries about NI 23-103, CSA members expect to publish shortly a Frequently Asked Questions document for NI 23-103 as a CSA Staff Notice.

Questions

If you have questions regarding this notice or the blanket orders please direct them to any of the following:

Sonali GuptaBhaya
Ontario Securities Commission
sguptabhaya@osc.gov.on.ca
416-593-2331

Tracey Stern
Ontario Securities Commission
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514-395-0337 ext. 4358

Shane Altbaum
Alberta Securities Commission
shane.altbaum@asc.ca
403-355-3889

December 7, 2012

1.2 Notices of Hearing

1.2.1 Newer Technologies Limited et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the temporary offices of the Commission, 333 Bay Street, Suite 900, Toronto, ON, M5H 2T4 on January 11, 2013 at 11:00 a.m., or as soon thereafter as the hearing can be held:

TO CONSIDER whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders against Newer Technologies Ltd ("NTL"), Ryan Pickering ("Pickering") and Rodger Frey ("Frey") (collectively the "Respondents"):

(a) that trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of section 127(1) of the Act;

(b) that the acquisition of any securities by the Respondents is prohibited, permanently or for such other period as is specified by the Commission, pursuant to paragraph 2.1 of section 127(1) of the Act;

(c) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of section 127(1) of the Act;

(d) that the Respondents be reprimanded, pursuant to paragraph 6 of section 127(1) of the Act;

(e) that Pickering and Frey resign one or more positions that either holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act;

(f) that Pickering and Frey be prohibited from becoming or acting as a director or officer of any issuer, a registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act;

(g) that the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of section 127(1) of the Act;

(h) that each Respondent pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law, pursuant to paragraph 9 of section 127(1) of the Act;

(i) that each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act;

(j) that the Respondents be ordered to pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(k) such other order as the Commission may deem appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated December 4, 2012 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 proceedings.

DATED at Toronto this 4th day of December, 2012

"John Stevenson"

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

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. Between 2006 and 2010 (the “Material Time”), Newer Technologies Ltd (“NTL”), Ryan Pickering (“Pickering”) and Rodger Frey (“Frey”) sold promissory notes in the amount of approximately $11,900,000 to approximately 140 investors when they were not registered with the Commission and when no exemptions from registration were available to them under the Securities Act, R.S.O. 1990, as amended (the “Act”).

2. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL 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 NTL securities.

3. During the Relevant Period, the Respondents breached sections 25 and 53 of the Act, and Pickering breached section 129.2 of the Act. The Respondents have therefore acted in a manner contrary to Ontario securities law and contrary to the public interest.

II. BACKGROUND

a. The Respondents

4. NTL is an Ontario company incorporated on October, 2003. NTL is an automated teller machine (“ATM”) management company that owns, sells, operates and services white label ATMs in Ontario that are found in corner stores, bars and other locations. It operates and services approximately 1315 ATMs, of which it owns approximately 365.

5. Pickering is a resident of Conestogo, Ontario. He is the President and only signing officer of NTL.

6. Frey is a resident of Elmira, Ontario.

7. NTL, Pickering and Frey have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the Material Time or at any other time.

b. Trading of NTL Promissory Notes without Registration and/or Distribution of Securities without a Prospectus

8. During the Material Time, NTL, Pickering and Frey sold NTL Promissory Notes in the amount of approximately $11,901,895 to approximately 140 investors offering interest rates ranging from 8% to 15%. Many of those investors have since redeemed their promissory notes and NTL has repaid approximately $6,111,818 in principal, plus interest, to those investors. As of June 12, 2012, NTL had $5,790,077 outstanding in NTL Promissory Notes that were owing to approximately 75 different investor entities.

9. From October 2006 through to September 2011, Frey received in excess of $489,000 as commissions or other payments from NTL in connection with his involvement in the sale of NTL Promissory Notes.

10. Each NTL Promissory Note evidenced indebtedness and/or was an investment contract, and the NTL Promissory Notes were thereby securities under the Act.

11. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL 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 NTL securities.

12. Not all of the 140 investors qualified as accredited investors or met applicable exemptions from the prospectus requirement. Further, NTL, Pickering and Frey failed to make any appropriate inquiries relating to investors' financial condition.

13. NTL, Pickering and Frey therefore traded in NTL Promissory Notes when they were not registered with the Commission and when no exemptions from the registration prospectus requirements were available to them under the Act.

III. STAFF'S ALLEGATIONS – Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

14. The specific allegations advanced by Staff are:

(a) NTL, Pickering and Frey 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 section existed at the time the conduct at issue commenced in 2006, and, after September 28, 2009, contrary to subsection 25(1) of the Act;

(b) NTL, Pickering and Frey distributed NTL Securities where no preliminary prospectus and prospectus were issued nor receipted by the Director, and where no exemptions were available, contrary to section 53 of the Act; and

(c) Pickering, as a director and officer of NTL, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, as set out above, contrary to section 129.2 of the Act.

15. By reason of the forgoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest.

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

Dated at Toronto this 4th day of December, 2012

1.3 News Releases

1.3.1 Canadian Securities Regulators Seek Comment on Model Rules Relating to Derivatives: Product Determination and Derivatives Trade Repositories and Data Reporting

FOR IMMEDIATE RELEASE
December 6, 2012

CANADIAN SECURITIES REGULATORS SEEK COMMENT ON MODEL RULES RELATING TO DERIVATIVES: PRODUCT DETERMINATION AND DERIVATIVES TRADE REPOSITORIES AND DATA REPORTING

Toronto – The Canadian Securities Administrators (CSA) today published CSA Staff Consultation 91-301 requesting comment for Model Provincial Rule *Derivatives: Product Determination* (Product Determination Rule) and Model Provincial Rule *Trade Repositories and Derivatives Data Reporting* (TR Rule), collectively referred to as the "Model Reporting Rules".

The proposed Model Reporting Rules:

- define the types of contracts or instruments that are required to be reported to a trade repository;
- establish requirements for the operation of trade repositories; and,
- establish requirements for transaction data reporting.

The reporting of derivatives transactions to trade repositories is one of the most important components of the G-20 commitments to global reform of the over-the-counter (OTC) derivatives markets. Since November 2010, the CSA has published for comment a series of Consultation Papers that recommend proposals to regulate the OTC derivatives markets in Canada. These Model Reporting Rules mark the first policy action resulting from the consultation and will pave the way for other future rules that are essential to the regulation of OTC derivatives transactions and the improvement of market transparency.

"Trade repositories and the requirement to report OTC derivatives contracts to trade repositories will improve transparency in the derivatives markets, mitigate systemic risk and protect against market abuse," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission.

The Product Determination Rule identifies the contracts or instruments that are required to be reported to a trade repository. The TR Rule describes requirements for the operation and ongoing regulation of designated or recognized trade repositories, and the mandatory reporting of derivatives transaction data by market participants. In addition to these Model Reporting Rules, a number of future proposed model rules will be published for comment that relate to the key areas addressed by the Consultation Papers. Together, all the model rules will formulate a proposed regime for the regulation of the OTC derivatives markets. The model rule process is further described in CSA Staff Consultation 91-301, which accompanies the Model Reporting Rules.

The proposed Model Reporting Rules can be found on CSA members' websites and the comment period is open until February 4, 2013.

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

For more information:

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1.3.2 Canadian Securities Regulators Publish Discussion Paper on Mutual Fund Fees

FOR IMMEDIATE RELEASE
December 13, 2012

CANADIAN SECURITIES REGULATORS PUBLISH
DISCUSSION PAPER ON MUTUAL FUND FEES

Toronto – The Canadian Securities Administrators (CSA) today published for comment CSA Discussion Paper 81-407 *Mutual Fund Fees*, which examines the mutual fund fee structure in Canada and identifies potential investor protection issues arising from that structure. The Discussion Paper sets out various topics for discussion in order to evaluate the appropriate structure for Canada.

Canada's mutual fund fees have been the subject of much debate in recent years. Some research studies examining Canada's mutual fund fees, along with international reforms, have prompted greater interest in reviewing the issue of mutual fund fees in Canada.

"Mutual funds are a key investment in the portfolios of many Canadians," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "It is important that we look at Canada's mutual fund fee structure carefully in determining what changes could or should be considered to enhance investor protection and foster confidence in our market."

To date, the CSA has focused its efforts on enhancing the transparency of mutual fund fees and commissions through initiatives such as the Point of Sale, and Cost Disclosure and Performance Reporting projects. While these initiatives remain a priority on behalf of investors, the CSA has determined that it is also necessary to consult extensively with investors and market participants to explore whether further issues remain.

The CSA welcomes feedback on the Discussion Paper, which can be found on CSA members' websites. The comment period is open until April 12, 2013. All comments will be considered in the CSA's decision and next steps, and also assist in the development of a roundtable the CSA plans to hold with investors and industry participants in 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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1.4 Notices from the Office of the Secretary

1.4.1 Jowdat Waheed and Bruce Walter

FOR IMMEDIATE RELEASE
December 5, 2012

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

AND

IN THE MATTER OF
JOWDAT WAHEED AND BRUCE WALTER

TORONTO – The Commission issued an Order with certain provisions in the above matter.

A copy of the Order dated November 29, 2012 is available at **www.osc.gov.on.ca**.

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1.4.2 Newer Technologies Limited et al.

FOR IMMEDIATE RELEASE
December 5, 2012

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

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TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on January 11, 2013 at 11:00 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 4, 2012 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 4, 2012 are available at **www.osc.gov.on.ca**.

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1.4.3 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
December 5, 2012

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

AND

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 – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Ontario Securities Commission and Robert Patrick Zuk.

A copy of the Order dated December 5, 2012 and Settlement Agreement dated December 4, 2012 are available at **www.osc.gov.on.ca**.

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1.4.4 Practice Guideline on the use of the Commission's Book of Authorities in proceedings before the Commission

FOR IMMEDIATE RELEASE
December 4, 2012

PRACTICE GUIDELINE ON THE USE OF
THE COMMISSION'S BOOK OF AUTHORITIES
IN PROCEEDINGS BEFORE THE COMMISSION

TORONTO – A Book of Authorities containing cases frequently relied on by parties appearing before the Commission (the "Book of Authorities"), has been developed by the Office of the Secretary to the Commission and approved for use in proceedings before the Commission effective January 1, 2013.

Copies of the Book of Authorities will be maintained in each hearing room used by the Commission, and will be available in electronic format on the Commission's website.

In accordance with the Practice Guideline dated December 4, 2012, a party relying on an authority contained in the Book of Authorities need not reproduce the authority as part of the materials filed for matters before the adjudicative panels of the Ontario Securities Commission.

There will be additions to, and deletions from, the Book of Authorities from time to time. Any questions or comments concerning the Book of Authorities, including any recommendations for additions to or deletions from the list, should be directed to the Office of the Secretary to the Commission.

See the Commission's Practice Guideline dated December 4, 2012 for details of the Commission's practice with respect to the use of the Book of Authorities in adjudicative proceedings.

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1.4.5 Caroline Frayssignes Cotton

FOR IMMEDIATE RELEASE
December 6, 2012

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

AND

IN THE MATTER OF
CAROLINE FRAYSSIGNES COTTON

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against the Respondent, Caroline Frayssignes Cotton in the above noted matter.

The hearing scheduled to take place on December 7, 2012 is vacated.

A copy of the Notice of Withdrawal dated December 6, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 OSC Securities Proceedings Advisory Committee – Request for Applications

FOR IMMEDIATE RELEASE
December 6, 2012

ONTARIO SECURITIES COMMISSION
SECURITIES PROCEEDINGS ADVISORY COMMITTEE
Request for Applications

TORONTO – The Ontario Securities Commission ("Commission") invites applications for appointment to the Securities Proceedings Advisory Committee ("SPAC"). SPAC is a new advisory committee to the Office of the Secretary to the Commission with a mandate to provide comment and advice on policy and procedural initiatives relating to the Commission's administrative tribunal proceedings.

SPAC will consist of up to ten securities litigation counsel, two staff members of the Commission's Enforcement Branch, the Secretary and the Deputy Secretary.

Experienced securities litigation counsel who wish to be considered for appointment to SPAC should indicate their interest by contacting the Secretary at jstevenson@osc.gov.on.ca and providing a brief summary of their background and relevant qualifications. Applications will be received until December 31, 2012.

A copy of the mandate of SPAC is available at www.osc.gov.on.ca.

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ONTARIO SECURITIES COMMISSION
SECURITIES PROCEEDINGS ADVISORY COMMITTEE

General

1. The "*Securities Proceedings Advisory Committee*" ("SPAC" or "Committee") is an advisory committee to the Office of the Secretary to the Commission ("Secretary"). SPAC provides comment and advice on a variety of policy and procedural initiatives relating to proceedings before the Ontario Security Commission's administrative tribunal ("Tribunal").

Terms of Reference

2. SPAC serves as a source of informed, balanced and timely advice and comment in the following areas relating to Tribunal proceedings:

- proposed revisions of or amendments to the *Ontario Securities Commission Rules of Procedure*;
- proposed *Practice Guidelines and Directives*;
- the administrative policies, practices and procedures of the registrar's office; and
- best practices for administrative tribunals to ensure fairness, transparency and accessibility.

3. Matters for consideration by SPAC are generally proposed by the Secretary. However, SPAC members are encouraged to identify matters within SPAC's mandate that would be suitable for consideration.

4. SPAC generally meets at least quarterly.

Composition of SPAC

5. SPAC consists of up to 10 members who are members in good standing of the Law Society of Upper Canada and who are currently practicing, or have within the last three years practiced, in the area of securities litigation. In addition, up to two staff members of the Enforcement Branch of the Commission may be appointed as SPAC members. The Secretary to the Commission and the Deputy Secretary will also be members of SPAC. The Secretary acts as the chair of SPAC.

Terms of Appointment

6. Other than the Secretary, Deputy Secretary and Enforcement Branch appointees, members of SPAC will generally be requested to serve minimum terms of two years, except where they are appointed for the purpose of completing the unexpired term of a former member. Terms may be staggered so that a certain number of the members may retire in any one year. Members may be reappointed on the expiry of their term.

Appointment Criteria

7. Members appointed to SPAC should have an excellent knowledge of Ontario securities law and have significant practice experience in securities litigation. Expertise in an area of special interest to the Commission at the time an appointment is made may also be a factor in selection. SPAC members are expected to have excellent technical knowledge and experience and a strong interest in the development of securities regulatory proceedings policy.

8. SPAC members will be selected with a view to ensuring that SPAC is reasonably representative of the full spectrum of securities litigation practice.

9. SPAC members should be in a position to make the time commitment that SPAC work entails. Members who find themselves unable to make the time commitment may be asked to resign in order that their places may be filled by more active members.

Application and Appointment Process

10. The Office of the Secretary will publish a notice soliciting applications for membership and setting a deadline for submissions.

11. Applicants interested in serving on SPAC should apply in writing to the Secretary, indicating areas of practice and relevant experience.

12. The Secretary, in consultation with the Adjudicative Committee, will make the final decision on all appointments.

Liaison Between SPAC and the Commission

13. The Secretary acts as liaison between SPAC and the Commission.

Confidentiality

14. All material submitted by the Commission to SPAC is confidential, as are all SPAC meetings. Materials shall not be distributed to or discussed with anyone who is not a member of SPAC, unless the prior consent of the Secretary has been obtained.

1.4.7 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
December 6, 2012

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

AND

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

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal solely against the Respondent, Caroline Myriam Frayssignes in the above noted matter.

A copy of the Notice of Withdrawal dated December 6, 2012 is available at **www.osc.gov.on.ca**.

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1.4.8 Children's Education Funds Inc.

FOR IMMEDIATE RELEASE
December 7, 2012

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

AND

IN THE MATTER OF
CHILDREN'S EDUCATION FUNDS INC.

TORONTO – The Commission issued an Order in the above named matter with certain provisions pursuant to section 127 of the Act. The Temporary Order is extended to March 1, 2013 or until such further order of the Commission; and the hearing is adjourned to February 28, 2013 at 10:00 a.m. for the purpose of providing the Commission with an update on the work completed by the Monitor and the Consultant and to consider whether any changes are required to the Terms and Conditions.

A copy of the Order dated December 6, 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 7, 2012

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

AND

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

TORONTO – The Commission issued an Order which provides that the Temporary Order is revoked in respect of Frayssignes; and pursuant to subsections 127(1) and 127(8) that the Temporary Order is extended in respect of Nest until the completion of the proceeding, including the sanctions hearing, if any.

A copy of the Order dated December 7, 2012 is available at **www.osc.gov.on.ca**.

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1.4.10 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
December 7, 2012

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

AND

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

TORONTO – The Commission issued an Order which provides that:

1. the hearing on the merits dates scheduled for December 11 and 14, 2012 be vacated;

2. on or before December 19, 2012, Staff shall serve and file with the Commission final submissions with respect to allegations against the remaining respondents;

3. on or before January 7, 2013, the remaining respondents shall serve and file with the Commission final submissions, if any; and

4. the hearing on the merits shall continue on January 15, 2013 at 3:00 p.m. for closing submissions from the parties.

A copy of the Order dated December 7, 2012 is available at **www.osc.gov.on.ca**.

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1.4.11 International Strategic Investments et al.

FOR IMMEDIATE RELEASE
December 10, 2012

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

AND

IN THE MATTER OF
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC.,
SOMIN HOLDINGS INC., NAZIM GILLANI
AND RYAN J. DRISCOLL

TORONTO – The Commission issued an Order in the above named matter which provides that the confidential pre-hearing conference will continue on January 16, 2013 at 2:00 p.m. at which time the panel anticipates scheduling dates for a hearing on the merits in this matter.

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

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Fidelity Investments Canada ULC

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The three Filers are affiliated entities and as a result of the ability to register individuals with affiliated entities prior to July 11, 2011, the Filers structured their business so that the same team advises or sub-advises funds with similar mandates managed by each Filer. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition for all current and future representatives.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

December 4, 2012

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

AND

IN THE MATTER OF
FIDELITY INVESTMENTS CANADA ULC
(FIC)

AND

PYRAMIS GLOBAL ADVISORS, LLC
(PGA LLC)

AND

PYRAMIS GLOBAL ADVISORS (CANADA) ULC
(PGA CANADA)
(FIC, PGA LLC and PGA Canada collectively, the Filers)

DECISION

Background

The regulator in the Jurisdiction (the "**Decision Maker**") has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for relief from the requirement under section 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") (the "**Multiple Registration Restriction**") to permit advising representatives and associate advising representatives of a Filer and any future advising representatives and future associate advising representatives employed by that Filer (the "**Representatives**") to be registered as an advising representative or associate advising representative (as the case may be) for the other Filers (the "**Requested Relief**").

Interpretation

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

Representations

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

1. FIC is registered under the Legislation as a mutual fund dealer, portfolio manager and investment fund manager and under the *Commodity Futures Act* (Ontario) ("**CFA**") as a commodity trading manager; and under the securities legislation of each other province and territory in Canada as a portfolio manager and mutual fund dealer. The head office of FIC is in Toronto, Ontario.

2. PGA LLC is registered under the Legislation as a portfolio manager and under the CFA as a commodity trading manager. PGA LLC is also registered as an investment adviser with the U.S. Securities and Exchange Commission. The head office of PGA LLC is in Smithfield, Rhode Island.

3. PGA Canada is registered under the Legislation as a portfolio manager and under the CFA as a commodity trading manager; and under the securities legislation of Quebec as a portfolio manager. The head office of PGA Canada is in Toronto, Ontario.

4. The Filers are not, to the best of their knowledge, in default of any requirement of securities legislation in the Jurisdiction.

5. The Filers are majority-owned subsidiaries (indirect) of the same ultimate parent company, FMR LLC, and, therefore, are affiliates for purposes of the Legislation.

6. FIC acts as investment fund manager for a wide variety of mutual fund and pooled funds under the Fidelity name (collectively, the "**Fidelity Funds**"). Each of the Filers acts as portfolio manager or as sub-adviser for a number of the Fidelity Funds in addition to providing discretionary portfolio management services for other institutional clients such as pension plans and endowments (together with the Fidelity Funds, the **Clients**).

7. Each of the current Representatives is currently registered in Ontario under the Legislation as an advising representative of either FIC, PGA LLC or PGA Canada. Each of the future Representatives will be registered in Ontario with a Filer as an advising representative or as an associate advising representative under the Legislation.

8. The Representatives provide portfolio management services for Clients of the Filer with whom that Representative is currently registered with. It is now proposed that the Representatives provide portfolio management services in respect of Clients of the other Filers in the Representative's capacity as an advising representative (or associate advising representative) of the other Filers.

9. The multiple registration of the Representatives will not create significant additional work for the Representatives and the Representatives will continue to have sufficient time to adequately serve each of the Filers. This is because the Filers take an integrated approach to the management of the Fidelity Funds to ensure the consistency of mandates and compliance oversight. All three Filers may advise the same Fidelity Fund as required by each of its specific mandate and based on its area of expertise and it is therefore more efficient to allocate expertise among the Filers.

10. As of the date hereof, there are three advising representatives that are currently registered with each of the Filers. The business of the Filers has been structured around this model to maximize efficiency and consistency across the mandates of the Fidelity Funds, while maintaining adequate control over potential conflicts of interests.

11. The Representatives will be subject to supervision by, and the applicable compliance requirements of, each Filer with whom that Representative is registered with. Existing compliance and supervisory structures will apply depending on which Filer the Client assets are held with.

12. The Filers are subject to Part 13 of NI 31-103 concerning conflicts of interest.

13. The Filers have in place policies and procedures to address any potential conflicts of interest that may arise in their business, and believe that they will be able to appropriately deal with these conflicts. Because FIC, PGA LLC and PGA Canada have, in general, the same Canadian client base (but with different roles) there is no conflicting relationship to be managed.

14. The relationship between the Filers is disclosed in the Filers' relationship disclosure document.

15. In the absence of the Requested Relief, each Filer would be prohibited under the Multiple Registration Restriction from permitting their Representatives from acting as an advising representative (or associate advising representative) for another Filer even though the Filers are affiliates.

Decision

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

The decision of the Decision Maker under the Legislation is that the Requested Relief is granted.

"Erez Blumberger"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.2 Brookfield Infrastructure Partners L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer wants to put in place a credit support issuer structure, but is unable to rely on the exemption for credit support issuers in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirement, audit committee requirements and corporate governance requirements – Relief also granted from short form prospectus requirements, incorporation by reference requirement, earnings coverage requirements and subsidiary credit supporter requirements – Filer unable to rely on exemption for credit support issuers in applicable securities legislation since Filer only owns 71% of an intermediate holding entity (a limited partnership) that indirectly owns 100% of the voting securities of each Issuer – When the characteristics of the limited partnership units of the holding limited partnership (including that the majority are held by the parent) are viewed together with a voting agreement, control and direction of the holding limited partnership is held by the Filer's parent as if the parent beneficially owned all the outstanding voting securities of holding limited partnership – Filer unable to rely on the exemption since the issuer proposes to issue convertible preferred shares that are convertible into other preferred shares of the Issue – Relief subject to conditions, including conditions relating to minority interest in holding limited partnership.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107, 121(2)(a)(ii).
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1, 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1.

June 26, 2012

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.
(THE FILER)

DECISION

Background

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

(a) the Issuers (as defined below) from the requirements of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Requirements**);

(b) the Issuers from the requirements of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (the **Certification Requirements**);

(c) insiders of the Issuers from the insider reporting requirement (as defined in National Instrument 14-101 – *Definitions* (**NI 14-101**)) (the Insider Reporting Requirements);

(d) the Issuers from the requirements of National Instrument 52-110 *Audit Committees* (**NI 52-110**) (the **Audit Committee Requirements**);

(e) the Issuers from the requirements of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Corporate Governance Requirements**);

(f) the Issuers from the requirement in section 2.8 of National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**) to file a notice of intention to file a short form prospectus no fewer than 10 business days prior to a filing of a preliminary short form prospectus (the **Notice of Intention Requirement**);

(g) the CDN Pref Issuer (as defined below) from the qualification requirements (the **Qualification Requirements**) of Part 2 of NI 44-101, such that the CDN Pref Issuer is qualified to file a prospectus in the form of a short form prospectus;

(h) the Issuers from the requirement to incorporate by reference into a short form prospectus the documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1) of Form 44-101F1 – *Short Form Prospectus* (**Form 44-101F1**) (the **Incorporation by Reference Requirements**);

(i) the Issuers from the requirement to include in a short form prospectus the earnings coverage ratios under section 6.1 of Form 44-101F1 (the **Earnings Coverage Requirements**); and

(j) the Issuers from the requirement to include in a short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1 of Form 44-101F1 (the **Subsidiary Credit Supporter Requirements** and together with the Incorporation by Reference Requirements and the Earnings Coverage Requirements, the **Prospectus Disclosure Requirements**),

in each case to accommodate: (a) the issuance by the Debt Issuers (as defined below) of debt securities (the **Debt Securities**) guaranteed by the Guarantors (as defined below); and (b) the issuance by the CDN Pref Issuer of preferred shares (the **Preferred Shares** and together with the Debt Securities, the **Securities**) guaranteed by the Guarantors (collectively, the **Exemption Sought**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (a) the date on which any Issuer and/or the Filer issues a news release announcing that the Issuers have entered into an agreement relating to an offering of Securities; (b) the date on which an Issuer and/or the Filer otherwise publicly announces an offering of Securities; (c) the date on which any Issuer files a preliminary short form prospectus relating to an offering of Securities; (d) the date on which the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and (e) the date that is 90 days after the date of this decision (the **Confidentiality Sought**).

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

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

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

Interpretation

Terms defined in NI 14-101 and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In this decision, "**Filer's Related Entities**" means, collectively, the Holding LP and subsidiary entities (as this term is defined in Multilateral Instrument 61-101 – *Take-Over Bids and Special Transactions*) of the Holding LP.

Representations

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

The Filer

1. The Filer is a Bermuda exempted limited partnership that was established on May 21, 2007.

2. The limited partnership units (the **Units**) of the Filer are listed on the New York Stock Exchange and the Toronto Stock Exchange under the symbols "BIP" and "BIP.UN", respectively.

3. The Filer is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**).

4. The Filer's sole asset is an approximate 71% limited partnership interest in Brookfield Infrastructure L.P. (the **Holding LP**), a Bermuda exempted limited partnership that was established on August 17, 2007.

5. Brookfield Infrastructure Partners Limited (the **Managing General Partner**) holds the general partner interest in the Filer.

6. The Filer, the Holding LP and the Holding Entities (as defined below) all retained Brookfield Asset Management Inc. (together with its subsidiaries other than the Filer and its subsidiaries, **Brookfield**) and its related entities to provide management, administrative and advisory services under a master services agreement.

7. The Filer is, to the best of its knowledge, not in default of any requirement of the Legislation or equivalent legislation in any of the provinces and territories of Canada.

The Issuers and the Holding LP

8. The Debt Securities will be: (a) issued by an Alberta unlimited liability company (the **CDN Debt Issuer**), a Delaware limited liability company (the **US Issuer**), a proprietary company limited by shares incorporated in Australia (the **AUS Issuer**) and a Bermuda corporation (the BRM Issuer, together with the CDN Debt Issuer, the US Issuer and the AUS Issuer, the **Debt Issuers**), each an entity that is in effect an indirect subsidiary of the Filer; and (b) guaranteed by the Guarantors.

9. The Preferred Shares will be: (a) issued by an Ontario business corporation (the **CDN Pref Issuer** and together with the Debt Issuers, the **Issuers**) that is in effect an indirect subsidiary of the Filer; and (b) guaranteed by the Guarantors.

10. The Issuers were formed under the laws of their respective jurisdictions in May 2012 prior to the filing of a preliminary short form prospectus for an offering of Securities.

11. The CDN Debt Issuer and the CDN Pref Issuer will each be a wholly-owned subsidiary of Brookfield Infrastructure Holdings (Canada) Inc., a company incorporated under the laws of the Province of Ontario (**Can Holdco**); the US Issuer will be a wholly-owned subsidiary of Brookfield Infrastructure Corporation, a company incorporated under the laws of the State of Delaware (**US Holdco**); and the BRM Issuer and the AUS Issuer will be wholly-owned subsidiaries of BIP Bermuda Holdings I Limited, a company incorporated under the laws of Bermuda (**BRM Holdco**, and together with Can Holdco and US Holdco, the **Holding Entities**).

12. Prior to the issuance of a receipt for a final short form prospectus of the Issuers qualifying the distribution of the Securities, none of the Issuers will be a reporting issuer in any of the provinces and territories of Canada.

13. The Holding LP owns all of the common shares of the Holding Entities. Brookfield owns all of the preferred shares of the Holding Entities (the **Holding Entity Preferred Shares**). The Holding Entity Preferred Shares are redeemable for cash at the option of the Holding Entities, subject to certain limitations, and are not entitled to vote, except as required by law. The Holding Entity Preferred Shares are not equity securities as such term is defined in the *Securities Act* (Ontario).

14. Each of the Issuers will operate as a financing company and will have no significant assets or liabilities unrelated to the Securities and will not have any ongoing business operations of its own. Each of the Issuers will be wholly-owned by the Holding Entities, which are in effect subsidiaries of the Holding LP. The Holding LP owns all the equity and voting securities of the Holding Entities. The Filer owns approximately 71% of the outstanding limited partnership interest in the Holding LP with the remaining limited partnership interest held by Brookfield. The limited partnership units of the Holding LP held by Brookfield are subject to a redemption-exchange mechanism pursuant to which Brookfield has the right to require that the Holding LP redeem all or a portion of its limited partnership units of the Holding LP for a cash amount equal to the fair market value of one Unit multiplied by the number of limited partnership units of the Holding LP to be redeemed. In connection with the redemption, the Filer has the right to purchase all the limited partnership units of the Holding LP to be redeemed in exchange for Units on a one for one basis.

15. The Managing General Partner has a 0.01% general partnership interest in the Filer and acts as the general partner of the Filer and Brookfield Infrastructure GP L.P. (the **Infrastructure General Partner**) has a 1% general partnership interest in the Holding LP and acts as the general partner of the Holding LP.

16. The Managing General Partner and the Infrastructure General Partner are wholly-owned by Brookfield.

17. In December 2010, the Filer and Brookfield executed a voting agreement (the **Voting Agreement**) pursuant to which Brookfield agreed that any voting rights with respect to the Holding LP and the Infrastructure General Partner (including its general partner) will be voted in accordance with the direction of the Filer with respect to: (a) the election of directors of the general partner of the Infrastructure General Partner (provided such directors meet the eligibility requirements stipulated in the by-laws of the general partner); and (b) the approval or rejection of the following matters relating to any such entity, as applicable: (i) any sale of all or substantially all of its assets; (ii) any merger, amalgamation, consolidation, business combination or other material corporate transaction, except in connection with any internal reorganization that does not result in a change of control; (iii) any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization or any case, proceeding or action seeking relief under any existing laws or future laws relating to bankruptcy or insolvency; (iv) any amendment to the limited partnership agreement of the Filer or the Holding LP; or (v) any commitment or agreement to do any of the foregoing. As a result, the Filer has consolidated the Holding LP (and all of the Holding LP's assets, including the Holding Entities) into its financial statements.

18. All of the outstanding voting securities of each Issuer, when issued, will be held directly or indirectly by the respective Holding Entity that is its parent.

19. The Guarantors will be "credit supporters" (as defined in NI 51-102).

20. Each Issuer will be a "credit support issuer" (as defined in NI 51-102).

21. The Filer does not directly satisfy the definition of "parent credit supporter" (as defined in NI 51-102) as a result of the indirect ownership of the Issuers through the Holding LP. Therefore, the Securities will not be "designated credit support securities" (as defined in NI 51-102). If the Exemption Sought is granted, the Filer and each Issuer will: (a) treat the Filer as a parent credit supporter and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to parent credit supporters; and (b) treat the Debt Securities, the Preferred Shares and the Resulting Preferred Shares (as defined below) as designated credit support securities and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to designated credit support securities, in accordance with the terms and conditions of the decision.

22. The Preferred Shares will be issuable in one or more series having such rights, restrictions and privileges determined by the directors of CDN Pref Issuer.

23. The Preferred Shares will satisfy the definition of "designated credit support securities" (as defined in NI 51-102), but for: (a) the fact that the Filer does not directly satisfy the definition of "parent credit supporter" (as defined in NI 51-102); and (b) the Preferred Shares may be convertible, in certain circumstances, at the option of the holder or the CDN Pref Issuer, into Preferred Shares of another series (the **Resulting Preferred Shares**).

24. The CDN Pref Issuer does not directly satisfy the eligibility criteria in Part 2 of NI 44-101 in order to be able to file a prospectus in the form of a short form prospectus for Preferred Shares that are convertible into Resulting Preferred Shares.

25. The Filer does not meet the test set forth in section 13.4(2)(a) of NI 51-102 and by virtue of section 13.4(4) of NI 51-102, is unable to meet the test set forth in section 13.4(2)(b)(ii) of NI 51-102.

26. It is proposed that the Issuers distribute the Securities to the public pursuant to a short form prospectus in respect of the distribution of the Securities, filed in each of the provinces and territories of Canada, in reliance upon sections 2.4 of NI 44-101 and, if applicable, National Instrument 44-102 – *Shelf Distributions* (**NI 44-102**). The short form prospectus will be prepared pursuant to the short form procedures contained in NI 44-101 and, if applicable, NI 44–102 and will comply with the requirements set out in Form 44-101F1 and, if applicable, NI 44-102, other than the Prospectus Disclosure Requirements.

27. The Debt Securities will be governed by a trust indenture (the **Indenture**), to be entered into among the Issuers and a trustee. Under the terms of the Indenture, the Issuers will be jointly and severally liable for the Debt Securities.

28. The Filer, the Holding LP and each of the Holding Entities (collectively, the **Guarantors**) will provide full and unconditional joint and several guarantees (the **Guarantees**) of the payments to be made by the Issuers in respect of the Debt Securities, the Preferred Shares and Resulting Preferred Shares (if applicable) as stipulated in agreements governing the rights of holders of the Debt Securities, the Preferred Shares and Resulting Preferred Shares (if applicable), that result in the holders of such securities being entitled to receive payment from the Guarantors within 15 days of any failure by the Issuers to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in NI 51-102.

Offering of Securities

29. At the time of the filing of any short form prospectus or shelf prospectus supplement in connection with an offering of Securities:

    (a) each Issuer will comply with all of the filing requirements and procedures set out in NI 44-101, other than the Qualification Requirements in the case of the CDN Pref Issuer, and, if applicable, NI 44-102 other than the Notice of Intention Requirement, except as permitted by the Legislation;

    (b) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 and, if applicable, NI 44-102 other than the Prospectus Disclosure Requirements, except as permitted by the Legislation;

    (c) the Filer will continue to exercise its voting rights in accordance with the Voting Agreement;

    (d) the Filer will continue to be a reporting issuer under the Legislation;

    (e) the prospectus will incorporate by reference the documents of the Filer set forth under Item 11.1 of Form 44-101F1;

    (f) the prospectus disclosure required by Item 11 of Form 44-101F1 will be addressed by incorporating by reference the Filer's public disclosure documents referred to in paragraph 29(e) above; and

    (g) the Filer will continue to satisfy all of the criteria in section 2.2 of NI 44-101, as applicable, pursuant to Part 4 of NI 71-102.

30. Prior to issuing any Debt Securities:

    (a) the Filer will provide the Guarantees in respect of the Debt Securities; and

    (b) the Issuers will be jointly and severally liable for the Debt Securities under the Indenture.

31. Prior to issuing any Preferred Shares, the Filer will provide the Guarantees in respect of such Preferred Shares and any Resulting Preferred Shares (if applicable).

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:

1. in respect of the Continuous Disclosure Requirements, each Issuer and the Filer continue to satisfy the conditions set out in subsection 13.4(2.1) of NI 51-102, except as modified as follows:

    (a) any reference to parent credit supporter in section 13.4 shall be deemed to include the Filer notwithstanding its indirect ownership of the Issuers through the Holding LP,

    (b) any reference to subsidiary credit supporter in section 13.4 of NI 51-102 shall be deemed to include the Holding Entities and their affiliates, including the Filer and the Filer's Related Entities, notwithstanding the Filer's indirect ownership of such entities through the Holding LP,

    (c) the Filer does not have to comply with the conditions in section 13.4(2)(a) and section 13.4(2.1)(b) of NI 51-102 if:

        (i) the Voting Agreement remains in force with the terms described in paragraph 17 above and the Voting Agreement is disclosed in the Filer's AIF (as defined in NI 51-102),

        (ii) the aggregate ownership interest of Brookfield and the Infrastructure General Partner in the Holding LP does not exceed 49.99%,

        (iii) no party other than the Filer, Brookfield and the Infrastructure General Partner will have any direct or indirect ownership of, or control or direction over, voting securities of the Holding LP,

(iv) no party other than the Filer, Brookfield, the Infrastructure General Partner and the Holding LP will have any direct or indirect ownership of, control or direction over, voting securities of the Holding Entities,

(v) no party other than the Filer, Brookfield, the Infrastructure General Partner, the Holding LP and the Holding Entities and their affiliates, including the Filer and the Filer's Related Entities, will have any direct or indirect ownership of, or control or direction over, voting securities of the Issuers,

(vi) the Filer consolidates in its financial statements the Holding LP, the Holding Entities and the Issuers as well as any entities consolidated by any of the foregoing and, if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, files its financial statements pursuant to Part 4 of NI 51-102, except that the Filer does not have to comply with the conditions in section 4.2 of NI 51-102 if it files such financial statements on or before the date that it is required to file its Form 20-F with the U.S. Securities and Exchange Commission (SEC), and

(vii) the issued and outstanding voting securities of the Holding Entities and the Issuers are 100% owned, directly or indirectly, by their respective parent companies or entities,

(d) section 13.4(4) of NI 51-102 does not apply to the Filer (the **SEC Foreign Issuer Relief**) if:

(i) the Filer continues to be a reporting issuer,

(ii) the Filer continues to be a SEC foreign issuer (as defined in NI 71-102) and only relies on the exemptions in Part 4 of NI 71-102,

(iii) to the extent that the Filer complies with the foreign private issuer disclosure regime under U.S. securities law, it does not rely on any exemption from that regime,

(iv) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the summary financial information referred to in section 13.4(2.1)(c) of NI 51-102 will be reconciled to the consolidated financial statements of the Filer, including any minority interest adjustments,

(v) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the Filer files a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Filer that is not reported or filed by the Filer on SEC Form 6-K,

(vi) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the Filer files an interim financial report as set out in Part 4 of NI 51-102 and the Management Discussion and Analysis as set out in Part 5 of NI 51-102 for each period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year,

(vii) the Filer includes in the prospectus of each Issuer financial statements or other information about any acquisition that would have been or would be a significant acquisition for the purposes of Part 8 of NI 51-102 that the Filer has completed or has progressed to a state where a reasonable person would believe that the likelihood of the Filer completing the acquisition is high if the inclusion of the financial statements is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. The requirement to include financial statements or other information must be satisfied by including or incorporating by reference (a) the financial statements or other information as set out in Part 8 of NI 51-102, or (b) satisfactory alternative financial statements or other information, unless at least 9 months of the operations of the acquired business or related businesses are incorporated into the Filer's current annual financial statements included or incorporated by reference in the prospectus of each Issuer,

(viii) if the Debt Issuers complete a public offering of Debt Securities in Canada prior to the CDN Pref Issuer completing a public offering of Preferred Shares in Canada, the SEC Foreign Issuer relief will expire on the date that is the earlier of the day after the maturity date of the first series of Debt Securities or the date that is seven years and six months after the date of this decision,

(ix) if the CDN Pref Issuer completes a public offering of Preferred Shares in Canada prior to the Debt Issuers completing a public offering of Debt Securities in Canada, the SEC Foreign Issuer relief will

expire on the date that is the earlier of the day after the first at par redemption date of the first series of Preferred Shares or the date that is seven years and six months after the date of this decision, and

(x) if the Issuers have not completed a public offering of Preferred Shares or Debt Securities in Canada by the date that is five years after the date of this decision, the SEC Foreign Issuer relief will expire on the date that is five years after the date of this decision.

(e) the Issuers do not have to comply with the conditions in section 13.4(2)(c) of NI 51-102 if each Issuer does not issue any securities and does not have any securities outstanding other than:

(i) designated credit support securities,

(ii) securities issued to and held by the Filer or the Filer's Related Entities,

(iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, saving or credit unions, financial services cooperatives, insurance companies or other financial institutions,

(iv) securities issued under exemptions from the prospectus requirements in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*, and

(v) Debt Securities or Preferred Shares and Resulting Preferred Shares, provided that the Filer has provided Guarantees in respect of such securities.

2. in respect of the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements, the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

3. in respect of the Insider Reporting Requirements, an insider of an Issuer can only rely on the Exemption Sought so long as:

(a) the insider complies with the conditions in sections 13.4(3)(b) and (c) of NI 51-102, and

(b) the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

4. in respect of the Qualification Requirements, the Notice of Intention Requirement, the Incorporation by Reference Requirement, the Earnings Coverage Requirements and the Subsidiary Credit Supporter Requirements so long as:

(a) the preliminary short form prospectus of the Issuers is in respect of an offering of Securities,

(b) the Issuers are qualified to file the preliminary short form prospectus under section 2.4 or section 2.5 of NI 44-101, except modified as follows:

(i) the CDN Pref Issuer does not have to comply with the condition in section 2.4 of NI 44-101 that the securities being distributed be non-convertible preferred shares if, on completion of any offering of Preferred Shares, it meets the conditions in paragraph 1(e) of this decision above,

(c) the Issuers become, on or before the filing of the preliminary short form prospectus, and thereafter remain so long as any of the Securities issued to the public remain outstanding, electronic filers under National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval* (**SEDAR**),

(d) the Issuers create profiles on SEDAR and file the notices required by section 2.8 of NI 44-101 prior to filing the preliminary short form prospectus,

(e) the Issuers and the Filer satisfy the conditions set out in section 13.3 of Form 44-101F1, except as modified as follows:

(i) any reference to parent credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include the Filer notwithstanding its indirect ownership of the Issuers through the Holding LP,

(ii) any reference to subsidiary credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include the Holding Entities and their affiliates, including the Filer and the Filer's Related Entities, notwithstanding the Filer's direct ownership of such entities through the Holding LP,

(iii) the Filer does not have to comply with the conditions in sections 13.3(1)(e) and 13.3(1)(f) of Form 44-101F1 if it meets the conditions in paragraph 1(c) of this decision above,

(iv) the CDN Pref Issuer does not have to comply with the condition in section 13.3(1)(d) of Form 44-101F1 if, on completion of any offering of Preferred Shares, it meets the conditions in paragraph 1(e) of this decision above, and

(v) the summary financial information referred to in section 13.3(1)(g) of Form 44-101F1 will be reconciled to the consolidated financial statements of the Filer, including any minority interest adjustments,

(f) any preliminary short form prospectus and final short form prospectus of the Issuers contain (or incorporate by reference a document containing) a corporate organizational chart showing the ownership and control relationships among Brookfield, the Filer, the Managing General Partner, the Infrastructure General Partner, the Holding LP, the Holding Entities and the Issuers,

(g) the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above,

(h) the Issuers and the Filer, as applicable, comply with paragraphs 29, 30 and 31 above, as applicable,

(i) each of the Issuers will operate as a financing company and will have no significant assets or liabilities unrelated to the Securities and will not have any ongoing business operations of its own,

(j) all of the outstanding voting securities of each Issuer are held directly or indirectly by the respective Holding Entity that is its parent, and

(k) the Issuers will issue a news release and file a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Issuers that is not also a material change in the affairs of the Filer.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

As to the Exemption Sought (other than from the Insider Reporting Requirements in the Securities Act (Ontario)) and the Confidentiality Sought in this regard.

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

As to the Exemption Sought from the Insider Reporting Requirements in the Securities Act (Ontario) and the Confidentiality Sought in this regard.

"Christopher Portner"
Commissioner
Ontario Securities Commission

"Edward P Kerwin"
Commissioner
Ontario Securities Commission

2.1.3 La Mancha Resources Inc.

Headnote

Coordinated Review for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer under applicable securities laws.

Applicable Ontario Statutory Provisions

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

November 14, 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
LA MANCHA RESOURCES INC.
(THE FILER)

DECISION

Background

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

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

Representations

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

1. the Filer is a corporation governed by the *Business Corporations Act* (British Columbia) with its registered and record office located at 550 Burrard Street, Suite 2900, Vancouver, British Columbia, Canada V6C 0A3 and its head office located in Montreal, Quebec; the Filer is not a reporting issuer or the equivalent in Quebec and therefore does not require the Exemption Relief Sought in Quebec;

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

3. the Filer is authorized to issue an unlimited number of common shares without par value (the Shares);

4. Weather Investments II S.a.r.l. through its indirect wholly-owned subsidiary, 0944289 B.C. Ltd. (the Offeror), made an offer (the Offer) to acquire all of the Shares at a price of $3.50 per Share; on September 10, 2012, the Offeror acquired a total of 141,289,646 Shares pursuant to the Offer, representing approximately 98.99%, of the outstanding Shares on a fully diluted basis;

5. the Filer's issued and outstanding share capital immediately prior to the Offer was 142,725,850 Shares;

6. as the Offer was accepted by holders of more than 90% of the Shares (other than Shares held by the Offeror and its affiliates and associates at the date of the Offer), the Offeror exercised its rights under the compulsory acquisition provisions (the Compulsory Acquisition) of the *Business Corporations Act* (British Columbia) to acquire all remaining outstanding Shares; a notice of compulsory acquisition was mailed to all remaining holders of Shares and the Compulsory Acquisition closed on November 12, 2012 at which time the Filer became a wholly-owned subsidiary of the Offeror;

7. the Shares of the Filer were de-listed from TSX on November 12, 2012;

8. 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;

9. 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;

10. 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;

11. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer;

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

13. 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 wants to avoid the 10-day waiting period under that Instrument;

14. the Filer is not eligible to use 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

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

Decision

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

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

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

2.1.4 Credit Suisse AG

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from eligibility requirements under NI 44-102 for reporting issuer whose equity securities are not listed on a short form eligible exchange – issuer is a wholly-owned subsidiary – issuer is a substantial global financial services provider – securities of the issuer are listed and posted for trading on NYSE, NYSE Amex and NYSE Arca – the business and consolidated results and financial position of the issuer and the parent are substantially similar – equity securities of parent listed on SIX Swiss Exchange and American Depository Shares representing equity securities of parent listed on NYSE

Applicable Legislative Provisions

National Instrument 44-102 Shelf Distributions, ss. 2.2, 11.1.

November 21, 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
CREDIT SUISSE AG
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision (the "**Exemption Sought**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from the qualification requirements in subsection 2.2(1) and clause 2.2(3)(b)(iii) of National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**") which would otherwise require that the Filer's equity securities be listed and posted for trading on a short form eligible exchange as defined in National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**") in order for the Filer to distribute under its base shelf short form prospectus dated June 28, 2012 (the "**Prospectus**") medium term notes ("**Notes**") with the principal amount payable at maturity or interest to be paid on such tranche of Notes, or both, to be determined with reference to the price or prices of specified commodities, stocks or indices, any statistical measure of

economic or financial performance, the exchange rate of a specified currency relative to one or more other currencies, currency units, composite currencies or units of account specified in an applicable prospectus supplement ("**indexed Notes**") which are not principal protected.

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,

(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 all provinces and territories of Canada other than Ontario.

Interpretation

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

Representations

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

1. The Filer selected the OSC as the principal regulator in respect to the Prospectus in accordance with subsection 3.4(5) of National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* as the Canadian branch of the Filer has its principal office in Ontario and therefore the Filer has the most significant connection with Ontario.

2. In accordance with subsection 3.6(1) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdiction*s, the OSC is the principal regulator for the Exemption Sought.

3. The Filer is a corporation established under the laws of the Canton of Zurich, Switzerland. The registered and main offices of the Filer are located at Paradeplatz 8, CH-8001, Zurich, Switzerland.

4. The Filer is a wholly-owned subsidiary of Credit Suisse Group AG ("**CSG**") and is CSG's principal operating subsidiary. The business and consolidated results and financial position of the Filer and CSG are substantially similar. However, Neue Aargauer Bank AG and BANK – now Bank AG, both based in Switzerland, are owned by CSG directly and their results are not consolidated in the Filer's results.

5. The Filer is licensed as a bank in Switzerland and has additional executive offices and principal branches in London, New York, Hong Kong, Singapore and Tokyo.

6. The Filer's business is to operate as a bank, with all related banking, finance, consultancy, service and trading activities in Switzerland and abroad.

7. Together with CSG, the Filer consists of three operating divisions; Private Banking, Investment Banking and Asset Management. The three divisions are complemented by Shared Services and a regional management structure.

8. As of December 31, 2011, the Filer had total assets of CHF[1]1,023,175 million and total shareholders equity of CHF27,502 million. As at December 31, 2011, the Filer was the second largest Swiss bank and among the fifteen largest European banks measured by total assets.

9. The main listing and principal trading market for the common shares of CSG is The SIX Swiss Exchange. American Depositary Shares ("**ADS**") representing CSG's common shares are also listed and posted for trading on the New York Stock Exchange ("**NYSE**").

10. Each of the Filer and CSG has securities registered under Section 12(b) of the United States *Securities Exchange Act of 1934* and the Filer has classes of securities listed and posted for trading on the NYSE, NYSE Amex and NYSE Arca.

11. The Filer is a "well-known seasoned issuer" in the United States and a "foreign private issuer" as defined in Rule 405 within the meaning of the United States *Securities Act of 1933*.

12. The Filer currently is and has been a reporting issuer, or the equivalent, in all the provinces and territories of Canada since April 16, 2008.

13. The Filer satisfies the qualification criteria of NI 44-102 under the alternative qualification criteria for issuers of approved rating non-convertible securities set out in section 2.3 of NI 44-102 and NI 44-102.

14. The Filer filed and obtained a receipt for the Prospectus qualifying the issuance of, among other Notes, non-principal protected indexed Notes (as defined in the Prospectus).

15. The Filer's Canadian long-term senior unsecured medium term note program qualified by the Prospectus has been rated A and its Canadian short-term senior unsecured medium term note program qualified by the Prospectus has been rated F1 by Fitch Ratings Ltd. and Fitch, Inc. ("**Fitch**"). The Filer is not aware of any pending downgrades of such ratings. The ratings are assigned to the program generally and not to any specific issuances of Notes. In May 2010, Fitch

[1] Swiss francs.

announced that it will no longer rate market-linked notes which have variable principal protection. Moody's Investors Services Ltd. ("**Moody's**") and Standard & Poor's, a division of The McGraw Hill Companies Inc. ("**S&P**") had each previously announced in June and December 2009, respectively, that it would no longer rate market-linked notes which have variable principal protection.

16. Absent the grant of the exemption sought, the Filer would not be qualified under Part 2 of NI 44-102 to issue non-principal protected indexed Notes under the Prospectus.

17. The Filer satisfies the basic qualification criteria set forth in section 2.2 of NI 44-101 and section 2.2 of NI 44-102 other than the requirement that its equity securities be listed and posted for trading on a short-form eligible exchange.

18. The Filer does not plan to seek ratings for the specific issuances of non-principal protected indexed Notes under the Prospectus.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted so long as:

i) the Filer satisfies the criteria in paragraphs 2.2(a), (b), (c) and (d) of NI 44-101;

ii) the Filer is not an issuer whose operations have ceased or whose principal asset is cash, cash equivalents or an exchange listing;

iii) the common shares of CSG, the Filer's parent company, are listed and posted for trading on The SIX Swiss Exchange and ADSs representing the common shares of CSG are listed and posted for trading on the NYSE.

iv) each shelf prospectus supplement qualifying non-principal protected indexed Notes distributed under the Prospectus will includes cover page disclosure that:

a) the non-principal protected indexed Notes qualified under the Prospectus are not rated;

b) any non issue specific credit rating applicable to Notes issued under the Prospectus only applies to credit-related factors such as the Filer's ability to make any payments it would be obligated to make under the Notes;

c) any non issue specific credit rating applicable to Notes issued under the Prospectus does not apply to non-principal protected indexed Notes and, for so long as Fitch, Moody's and S&P continue not to rate non-principal protected indexed Notes, an explanation to that effect; and

d) an investor's principal is at risk as a result of non credit-related factors such as the performance of the underlying reference asset.

v) the Filer complies with its undertaking filed concurrently with the Prospectus that it will not distribute in any local jurisdiction under the Prospectus specified derivatives, that, that the time of distribution, are novel without pre-clearing with the regulator the disclosure contained in a shelf prospectus supplement pertaining to the distribution of the novel specified derivatives, in accordance with subsection 4.1(2) of NI 44-102.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Tyco International Ltd. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from prospectus requirements to allow parent company to spin-off shares of its subsidiary to investors and to allow the parent company and subsidiary to distribute certain options and stocks to existing Canadian option and stockholders in connection with the spin-off – spin-off not technically covered by prescribed legislative exemptions – parent company having a *de minimis* shareholder presence in Canada – no investment decision from Canadian shareholders in order to receive the spin-off shares or to receive options or stock units

Applicable Legislative Provisions

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

September 25, 2012

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

AND

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

AND

IN THE MATTER OF
TYCO INTERNATIONAL LTD. ("Tyco"),
PENTAIR LTD. formerly known as Tyco Flow
Control International Ltd.) ("Tyco Flow Control")
AND THE ADT CORPORATION ("ADT" and, together
with Tyco and Tyco Flow Control, 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**") exempting the Filers from the prospectus requirements of section 53 of the *Securities Act* (Ontario) (the "**Prospectus Requirements**") in connection with:

(a) the proposed distribution by Tyco of:

(i) adjusted options to acquire common shares of Tyco ("**Tyco Options**") to holders of options to purchase common shares of Tyco resident in Canada (the "**Tyco Canadian Optionholders**") who, at the time of the distribution, are not employees of Tyco or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (the "**Tyco Non-Employee Canadian Optionholders**");

(ii) adjusted restricted stock units of Tyco ("**Tyco RSUs**") to holders of restricted stock units of Tyco resident in Canada (the "**Tyco Canadian RSU Holders**") who, at the time of the distribution, are not employees of Tyco or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (the "**Tyco Non-Employee Canadian RSU Holders**"); and

(iii) adjusted participating stock units of Tyco ("**Tyco PSUs**")" to holders of participating stock units of Tyco resident in Canada ("**Tyco Canadian PSU Holders**") who, at the time of the distribution, are not employees of Tyco or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available; and

(b) the proposed distribution by Tyco and Tyco Flow Control of:

(i) adjusted options to acquire common shares of Tyco Flow Control ("**Tyco Flow Control Options**") (A) by Tyco to Tyco Canadian Optionholders and (B) by Tyco Flow Control to Tyco Canadian Optionholders who, at the time of the distribution, are not employees of Tyco Flow Control or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (collectively, the "**New Tyco Flow Control Canadian Optionholders**");

(ii) adjusted restricted stock units of Tyco Flow Control ("**Tyco Flow Control RSUs**") (A) by Tyco to Tyco Canadian RSU Holders and (B) by Tyco Flow Control to Tyco Canadian RSU Holders who, at the time of the distribution, are not employees of Tyco Flow Control or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (collectively, the "**New Tyco Flow Control Canadian RSU Holders**"); and

(iii) adjusted participating stock units of Tyco Flow Control ("**Tyco Flow Control PSUs**") (A) by Tyco to Tyco Canadian PSU Holders and (B) by Tyco Flow Control to Tyco Canadian PSU Holders who, at the time of the distribution, are not employees of Tyco Flow Control or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available; and

(c) the proposed distribution by Tyco and ADT of:

(i) adjusted options to acquire common stock of ADT ("**ADT Options**") (A) by Tyco to Tyco Canadian Optionholders and (B) by ADT to Tyco Canadian Optionholders who, at the time of the distribution, are not employees of ADT or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (collectively, the "**New ADT Canadian Optionholder**s");

(ii) adjusted restricted stock units of ADT ("**ADT RSUs"**) (A) by Tyco to Tyco Canadian RSU Holders and (B) by ADT to Tyco Canadian RSU Holders who, at the time of the distribution, are not employees of ADT or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available (collectively the "**New ADT Canadian RSU Holders**"); and

(iii) adjusted participating stock units of ADT ("**ADT PSUs**") (A) by Tyco to Tyco Canadian PSU Holders and (B) by ADT to Tyco Canadian PSU Holders who, at the time of the distribution, are not employees of ADT or a related entity and in respect of whom exemptions from the Prospectus Requirement would not otherwise be available; and

(d) the resale of:

(i) common shares of Tyco ("**Tyco Common Shares**") acquired by Tyco Non-Employee Canadian Optionholders on exercise of Tyco Options; common shares of Tyco Flow Control ("**Tyco Flow Control Common Shares**") acquired by New Tyco Flow Control Canadian Optionholders on exercise of Tyco Flow Control Options; and common stock of ADT ("**ADT Common Shares**") acquired by New ADT Canadian Optionholders on exercise of ADT Options; and

(ii) Tyco Common Shares acquired by Tyco Non-Employee Canadian RSU Holders represented by Tyco RSUs; Tyco Flow Control Common Shares acquired by New Tyco Flow Control Canadian RSU Holders represented by Tyco Flow Control RSUs; and ADT Common Shares acquired by New ADT Canadian RSU Holders represented by ADT RSUs

(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 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 each of British Columbia, Alberta, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador (together with Ontario, the "Jurisdictions").

Interpretation

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

Representations

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

1. Tyco is a corporation limited by shares organized under the laws of Switzerland. Tyco is a diversified, global company that is a leading provider of security products and services, fire protection and detection products and services, valves and controls, and other industrial products. Tyco's registered and principal office is located in Schaffhausen, Switzerland. Its management office in the United States is located in Princeton, New Jersey.

2. Tyco Flow Control is a corporation limited by shares organized under the laws of Switzerland and is a wholly owned subsidiary of Tyco, formed to hold Tyco's flow control business. Its principal executive offices are located in Schaffhausen, Switzerland.

3. ADT is a corporation incorporated under the laws of Delaware and is a wholly owned indirect subsidiary of Tyco, formed to hold Tyco's residential and small business security business in the United States and Canada. Its principal executive offices in the United States are located in Boca Raton, Florida.

4. Tyco is a reporting issuer under the Legislation of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec and Nova Scotia. Tyco became a reporting issuer in such jurisdictions in July, 1997 when a wholly-owned subsidiary of what was formerly known as ADT Limited merged with Tyco International Ltd. To its knowledge, none of Tyco, Tyco Flow Control nor ADT is in default of the securities legislation of the Jurisdictions.

5. As of June 30, 2012, there were 459,722,328 Tyco Common Shares outstanding (excluding shares held directly or indirectly in treasury).

6. The Tyco Common Shares are listed on the New York Stock Exchange ("**NYSE**"). The Tyco Common Shares are not listed on any Canadian stock exchange and Tyco has no intention of listing its securities on any Canadian stock exchange.

7. Tyco is currently subject to the U.S. *Securities Exchange Act of 1934*, as amended, and the rules, regulations and orders promulgated thereunder (the "**U.S. Exchange Act**").

8. Neither Tyco Flow Control nor ADT is a reporting issuer under the legislation of the Jurisdictions and to Tyco's knowledge, they have no current intention of becoming a reporting issuer under the legislation of the Jurisdictions or to list any of their securities on any Canadian stock exchange.

9. As of June 30, 2012, there were approximately 535 registered holders of Tyco Common Shares resident in Canada ("**Tyco Canadian Shareholders**"). There may be registered and beneficial Tyco Canadian Shareholders resident in each province of Canada. The Tyco Canadian Shareholders constituted less than 0.002% of the approximately 24,000,734 holders of Tyco Common Shares ("**Tyco Shareholders**") of record globally as of June 30, 2012. As of June 30, 2012, the Tyco Canadian Shareholders collectively held approximately 18,026 Tyco Common Shares, constituting less than 0.0039% of the 459,722,328 Tyco Common Shares outstanding as of such date.

10. As of June 30, 2012, there were 82 Tyco Canadian Optionholders. The Tyco Canadian Optionholders constituted approximately 4.3% of the approximately 1894 holders of Tyco options worldwide on June 30, 2012. As of June 30, 2012, Tyco Canadian Optionholders collectively held approximately 348,334 Tyco options, constituting approximately 1.66% of the approximately 20,991,042 outstanding Tyco options.

11. As of June 30, 2012, there were 122 Tyco Canadian RSU Holders. The Tyco Canadian RSU Holders constituted approximately 4.35% of the approximately 2803 holders of Tyco restricted stock units worldwide on June 30, 2012. As of June 30, 2012, Tyco Canadian RSU Holders collectively held approximately 84,752 Tyco restricted stock units, constituting approximately 2.51% of the approximately 3,381,327 outstanding Tyco restricted stock units.

12. As of June 30, 2012, there was one Tyco Canadian PSU Holder. The Tyco Canadian PSU Holder constituted approximately 0.68% of the approximately 147 holders of Tyco participating stock units worldwide on June 30, 2012. As of June 30, 2012, the Tyco Canadian PSU Holder held approximately 2774 Tyco participating stock units, constituting approximately 0.15% of the approximately 1,815,315 outstanding Tyco participating stock units.

13. On September 19, 2011, Tyco announced its intention to separate into three independent, publicly traded companies. Tyco's residential and small business security business in the United States and Canada will be spun off by means of a *pro rata* distribution of 100% of the outstanding ADT Common Shares to Tyco Shareholders. Tyco's flow control business will be spun off by means of a *pro rata* distribution of 100% of the outstanding Tyco Flow Control Common Shares to Tyco Shareholders. The distributions are intended to be made as special dividends out of qualifying

contributed surplus. Tyco will continue to operate its commercial fire and security businesses and the residential and small business security business of Tyco outside the United States and Canada. The spin-off of ADT and the spin-off of Tyco Flow Control are not conditional on each other.

14. The Spin-Offs will be effected under the laws of Switzerland. Under the Swiss Federal Code of Obligations, approval of Tyco Shareholders is required to effect the special dividends in connection with the Spin-Offs. The Spin-Offs were approved at a special general meeting of Tyco Shareholders on September 17, 2012.

15. Subject to the satisfaction of certain conditions, it is currently anticipated that the Spin-Offs will become effective on September 28, 2012. At such time, ADT will cease to be a wholly owned subsidiary of Tyco and will become an independent, publicly traded company.

16. Tyco Flow Control and certain subsidiaries of Tyco Flow Control have entered into a merger agreement with Pentair, Inc. ("**Pentair**") providing that immediately following the distribution of the outstanding Tyco Flow Control Common Shares, a subsidiary will merge with and into Pentair, Inc., with Pentair, Inc. surviving the merger as a wholly-owned subsidiary of Tyco Flow Control. Tyco Flow Control will cease to be a wholly owned subsidiary of Tyco and Tyco Flow Control will be an independent, publicly-traded company. Tyco Flow Control International Ltd. changed its name to Pentair Ltd. effective September 14, 2012.

17. A definitive proxy statement for Tyco Shareholders will be filed with the United States Securities and Exchange Commission (the "**SEC**"). Tyco will mail the final proxy statement to Tyco Shareholders.

18. The final version of ADT's information statement will be distributed to Tyco Shareholders who hold Tyco Common Shares as of the record date for the ADT distribution. The information statement will contain information such as the audited combined financial statements of ADT, *pro forma* financial information for ADT after giving effect to the ADT spin-off, as well as certain risks involved in holding ADT Common Shares following the ADT distribution and risks associated with ADT's business.

19. In connection with the shareholder meeting, a prospectus pertaining to Tyco Flow Control was distributed to Tyco Shareholders who hold Tyco Common Shares as of the record date for the shareholder meeting. The prospectus contains information such as the audited financial statements of each of Tyco Flow Control and Pentair, *pro forma* financial information for Tyco Flow Control after giving effect to the Tyco Flow Control spin-off and the merger with Pentair, as well as certain risks involved in holding Tyco Flow Control Common Shares following the Tyco Flow Control distribution and the merger and risks associated with Tyco Flow Control and Pentair's businesses.

20. All materials relating to the Spin-Offs and the distributions sent by or on behalf of Tyco, Tyco Flow Control or ADT in the United States will be sent concurrently to the Tyco Canadian Shareholders. Subsequent to the Spin-Offs, Tyco Flow Control and ADT will send, concurrently to the holders of Tyco Flow Control Common Shares and ADT Common Shares resident in Canada, the same disclosure materials that it sends to holders of Tyco Flow Control Common Shares and ADT Common Shares resident in the United States.

21. Tyco expects that the Tyco Flow Control Common Shares and the ADT Common Shares will be qualified for public distribution in the United States and will be listed on the NYSE. Subsequent to the Spin-Offs, Tyco Common Shares will continue to trade on the NYSE.

22. Under existing stock and incentive plans under which Tyco's outstanding Tyco Options, Tyco RSUs and Tyco PSUs (collectively, the "**Equity Awards**") were issued, the Tyco Compensation Committee has authorized various adjustments to outstanding Equity Awards be made to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the applicable Equity Awards as a result of the Spin-Offs. The adjustments vary depending on several factors, including the type of award, the nature of the employee's post spin-off employment and whether the Equity Award was granted prior to October 12, 2011 (the date of the annual grant for fiscal year 2012). The Tyco Compensation Committee has also modified the terms of outstanding Equity Awards to make certain provisions for employees who are terminated in connection with the Spin-Offs.

23. The Equity Award adjustments are generally designed to cause the intrinsic value of each converted Equity Award immediately after the distributions to be the same as the intrinsic value of such Equity Award immediately prior to the distributions, such that the financial position of the holder with respect to the Equity Award remains the same immediately prior to and immediately after the distributions (the "**intrinsic value methodology**").

24. The adjustments that are expected to be made to the Equity Awards on the date of the distributions, prior to the distribution of shares in the Spin-Offs, include:

(a) for each employee who was an employee of Tyco's corporate segment on the date the Spin-Offs were announced, all outstanding Equity Awards following the distribution date:

(i) that were granted prior to October, 2011 will, as of the distribution date, convert into like-kind Equity Awards of the three separately traded companies resulting from the Spin-Offs at equivalent value determined using the intrinsic value methodology; and

(ii) that were granted on or after October, 2011 will, as of the distribution date, convert into like kind Equity Awards of the separately traded company that is the employer of such employee immediately following the distribution date at equivalent value determined using the intrinsic value methodology;

(b) for each employee that was not an employee in Tyco's corporate segment on the date the Spin-Offs were announced:

(i) all Equity Awards (other than restricted stock units granted prior to October, 2011) held by such employee will, as of the distribution date, convert into like-kind Equity Awards of the separately traded company that is the employer of such employee immediately following the distribution date at equivalent value determined using the intrinsic value methodology; and

(ii) with respect to restricted stock units granted prior to October, 2011, such awards will, as of the distribution date, convert into like-kind Equity Awards of the three separately traded companies resulting from the Spin-Offs at equivalent value determined using the intrinsic value methodology;

(c) for all persons who are former employees of Tyco as of the distribution date because they cease employment with Tyco as a result of the Spin-Offs or were former employees of Tyco prior to the Spin-Offs:

(i) all Equity Awards (other than restricted stock units granted on or after October, 2011) held by such former employees will, as of the distribution date, convert into like-kind Equity Awards of the three separately traded companies resulting from the Spin-Offs at equivalent value determined using the intrinsic value methodology; and

(ii) all restricted stock units granted on or after October, 2011 held by such former employees will, in accordance with the award certificates governing such restricted stock units, be reduced on a time-pro-rated basis and, as of the distribution date, convert into like-kind restricted stock units of the three separately traded companies resulting from the Spin-Offs at equivalent value determined using the intrinsic value methodology; and

(d) following the adjustments above, all performance share units will convert into restricted stock units as the applicable performance conditions will have been met.

25. Canadian Equity Award holders will receive written communications describing the adjustments made to the Equity Awards.

26. The issuance of Tyco Common Shares, Tyco Flow Control Common Shares and ADT Common Shares on the exercise, conversion or exchange of the Tyco Options, the Tyco RSUs, the Tyco Flow Control Options, the Tyco Flow Control RSUs, the ADT Options and the ADT RSUs will be made in accordance with all applicable laws of Switzerland and the United States. As there will be no active trading market for the Tyco Common Shares, the Tyco Flow Control Common Shares or the ADT Common Shares in Canada and none is expected to develop, it is expected that any resale of the Tyco Common Shares, the Tyco Flow Control Common Shares and the ADT Common Shares issued on such exercise, conversion or exchange will occur through the facilities of the NYSE.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) the first trade in

(i) Tyco Common Shares acquired by Tyco Non-Employee Canadian Optionholders on exercise of Tyco Options; Tyco Flow Control Common Shares acquired by New Tyco Flow Control Canadian

Optionholders on exercise of Tyco Flow Control Options; and ADT Common Shares acquired by New ADT Canadian Optionholders on exercise of ADT Options; and

(ii) Tyco Common Shares acquired by Tyco Non-Employee Canadian RSU Holders represented by Tyco RSUs; Tyco Flow Control Common Shares acquired by New Tyco Flow Control Canadian RSU Holders represented by Tyco Flow Control RSUs; and ADT Common Shares acquired by New ADT Canadian RSU Holders represented by ADT RSUs

will be deemed to be a distribution unless the conditions in section 2.6 or 2.14 of National Instrument 45-102 – Resale of Securities (NI 45-102) are satisfied.

"Vern Krishna"
Commissioner
Ontario Securities Commission

"Wesley M. Scott"
Commissioner
Ontario Securities Commission

2.1.6 Karmin Exploration Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 4.5 – National Instrument 52-110 Audit Committees, s. 8.1 – National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1 – General – Filer seeks relief from the requirement in s. 1.1 definition of "venture issuer", that a reporting issuer not have any of its securities listed or quoted on a marketplace outside of Canada and the United States of America, in order to remain listed on the Risk Capital Segment of the Lima Stock Exchange Segmento de Capital de Riesgo da la Bolsa de Valores de Lima) (the Exchange) – A venture issuer with common shares listed on the TSXV wants to list on an exchange that does not meet the requirements of the definition of a venture issuer; the Exchange is a junior market that has less onerous requirements than the TSXV; the Exchange requires the Filer to comply with TSXV requirements in order to maintain listing on the Exchange; to remain a venture issuer, the Filer must continue to have its common shares listed on the TSXV and the Exchange must remain a junior market.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1.

November 19, 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
KARMIN EXPLORATION INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the requirement in the definition of "venture issuer" in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the **Exemption Sought**).

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

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

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

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.

In this decision,

"Exchange" means the Risk Capital Segment of the Lima Stock Exchange (Segmento de Capital de Riesgo de la Bolsa de Valores de Lima) in Peru; and

"TSXV" means the TSX Venture Exchange.

Representations

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

1. the Filer is a corporation incorporated under the *Business Corporations Act* (Alberta) and its registered and head office is in Toronto, Ontario;

2. the Filer is a reporting issuer in British Columbia, Alberta, Ontario and Nova Scotia (the **Reporting Jurisdictions**);

3. the Filer owns 100% of the Cushuro Gold Project in Peru, 100% of the Aripuanã Gold Project in Brazil and 30% of the Aripuanã Zinc Project in Brazil;

4. the common shares of the Filer (the **Shares**) are listed on the TSXV under the trading symbol

"KAR" and, since June 25, 2012, on the Exchange;

5. the Filer listed its common shares on the Exchange due to the Filer's connection to Peru and to facilitate the sale and transfer of its common shares in Peru;

6. from June 25, 2012 to the date of this decision, the Filer has been in default of securities legislation requirements in the Reporting Jurisdictions that apply to a non-venture issuer. Specifically, the Filer did not file its interim financial reports and management discussion and analysis for the period ending July 31, 2012 (the **Interim Financial Report**) within the 45-day filing deadline. The Interim Financial Report was subsequently filed within the 60-day filing deadline for venture issuers;

7. the Filer acknowledges that any right of action, remedy, penalty and/or sanction available to any person or company or to a securities regulatory authority against the Filer from June 25, 2012 until the date of this decision are not terminated or altered as a result of this decision;

8. the Exchange is a junior market;

9. the Exchange is similar to the TSXV in terms of its requirements as the requirements of the Exchange were modelled after those of the TSXV;

10. the Exchange requires the Filer to comply with TSXV requirements in order to maintain its listing; the Exchange also requires that the Filer file with the Exchange copies of all public disclosure documents filed with Canadian securities regulators; and

11. the information that the Filer has provided about the Exchange (and its status as a junior market) is accurate as the date of this decision.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that :

(a) the Exchange is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;

(b) the representations listed in Sections 8 to 11 above continue to be true;

(c) the Filer continues to have the Shares listed on the TSXV; and

(d) the Filer does not have any securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Exchange, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

"Sonny Randhawa"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.1.7 20-20 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.

October 22, 2012

[Translation]

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

AND

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

AND

IN THE MATTER OF
20-20 TECHNOLOGIES INC.
(the "Filer")

DECISION

Background

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

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

(a) the Autorité des marchés financiers 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

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

Representations

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

1. 20-20 Technologies Inc. ("**20-20**") was incorporated under the *Companies Act* (Québec) on September 30, 1987. It then proceeded with an amalgamation under the *Companies Act* (Québec) with its parent on November 1, 2000. Pursuant to an arrangement under Chapter XVI – Division II of the *Business Corporations Act* (Québec) completed on September 12, 2012 (the "**Arrangement**"), 20-20, 9266-7674 Québec Inc. ("**Vector**") and 9267-7749 Québec Inc. amalgamated and continued as one entity (the "**Amalgamation**"). The Filer is the company resulting from the Amalgamation.

2. The Filer's head and registered office is located at 400 Armand-Frappier Blvd., Suite 2020, Laval, Québec, H7V 4B4.

3. The Filer is a reporting issuer in all Jurisdictions.

4. Pursuant to the Arrangement, Vector acquired all of the outstanding shares of 20-20 for $4.00 in cash per Share, other than shares held by Mignault Holding Inc. ("**Holding**"), a company controlled by Jean Mignault, the founder and Executive Chairman of the board of 20-20.

5. In connection with the Arrangement, Mr. Mignault, sold, through Holding, approximately 80% of his interest in 20-20 to Vector for consideration of $4.00 in cash per share, and the remainder of his shares of 20-20 were transferred to 9266-7708 Québec Inc. in exchange for an equity interest of approximately 9.92% in 9266-7708 Québec Inc., which indirectly owned all of Vector's shares.

6. The issued and paid-up capital account for the common shares of the Filer following the Amalgamation is equal to the issued and paid-up capital account of the issued and outstanding common shares of Vector immediately prior to the effective time of the Amalgamation.

7. At the time of the Amalgamation, Vector and 9267-7749 Québec Inc. were not reporting issuers. Each of Vector, 9266-7708 Québec Inc. and 9267-7749 Québec Inc. were formed solely for the purpose of consummating the transactions contemplated by the Arrangement. Prior to the Amalgamation, Vector was an indirect wholly-owned subsidiary of 9266-7708 Québec Inc. and

9267-7749 Québec Inc. was a direct wholly-owned subsidiary of Holding.

8. Under the terms of the Arrangement, 20-20 also acquired and cancelled all outstanding options to acquire shares of 20-20 issued under 20-20's share option plans (the "**Options**") and deferred share units issued under 20-20's deferred share unit plan (the "**DSUs**"). The consideration paid for Options was a cash payment per Option equal to $4.00 less the applicable exercise price of such Option, except for Options with an exercise price of more than $4.00 for which no consideration was paid. The consideration paid for DSUs was a cash payment of $4.00 per DSU.

9. The Arrangement was approved by the shareholders of 20-20, holding approximately 93.7% of the outstanding shares of 20-20 represented, in person or by proxy, at a special meeting of shareholders of 20-20 held on September 5, 2012. The Arrangement was also approved by a simple majority of the votes cast by the holders of the shares of 20-20 present in person or represented by proxy at the meeting.

10. The Arrangement was sanctioned by the Superior Court of Québec on September 7, 2012.

11. The Filer is not in default of any of its obligations applicable to a reporting issuer under the Legislation, except for the obligation arising after the Amalgamation to file its interim financial statements and related management's discussion and analysis for the three-month period ended July 31, 2012, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

12. 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 of Canada and fewer than 51 security holders in total worldwide.

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 did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* in order to avoid the 10-day waiting period under this Instrument.

15. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 – *Application for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia.

16. Prior to the completion of the Arrangement, the shares of 20-20 were listed on The Toronto Stock Exchange under the symbol "TWT". The shares of 20-20 were delisted as of the close of business on September 17, 2012.

17. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada or to list its securities on any marketplace in Canada.

18. 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.

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

Decision

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

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

"Josée Deslauriers"
Senior Director
Investment Funds and Continuous Disclosure
Autorité des marchés financiers

2.2 Orders

2.2.1 Jowdat Waheed and Bruce Walter

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

AND

IN THE MATTER OF
JOWDAT WAHEED AND BRUCE WALTER

ORDER

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

AND WHEREAS the Respondents brought a motion before the Commission with respect to Staff's disclosure obligations which was scheduled for November 29, 2012;

AND WHEREAS the Respondents and Staff were able to resolve the motion on a consent basis as set out in paragraphs 1 to 3 below;

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

IT IS ORDERED that:

1. Staff will advise the Respondents as soon as reasonably practicable as to whether they have interviewed any individuals as potential witnesses for whom a transcript or summary of information has not already been disclosed;

2. If Staff interviews a new witness for whom a transcript or summary of information has not already been disclosed, Staff will provide the Respondents as soon as reasonably practicable with a typewritten summary of relevant information of the witness and Staff will identify any documents referred to in the summary that have been previously disclosed, and if there are any documents referred to in the summary which have not been previously disclosed, Staff will disclose such documents as soon as reasonably practicable;

3. If Staff interviews a witness for whom a transcript or summary of evidence has been previously disclosed, Staff will provide the Respondents as soon as reasonably practicable with a typewritten summary of any new relevant information of the witness and Staff will identify any documents referred to in the summary that have been previously disclosed, and if there are any documents referred to in the summary which have not been previously disclosed, Staff will disclose such documents as soon as reasonably practicable.

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

"Mary G. Condon"

2.2.2 Sensato Investors, LLC – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Foreign adviser exempted from the adviser registration requirement in section 22(1)(b) of the CFA where such adviser acts as an adviser in respect of commodity futures contracts or commodity futures options (commodities) for certain individual and institutional investors in Ontario who meet the definition of "permitted client" in NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Commodities are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada.

Terms and conditions on exemption correspond to the relevant terms and conditions on the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in section 8.26 of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption also subject to a "sunset clause" condition.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.
Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 80.

Instruments Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.26.

December 4, 2012

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
SENSATO INVESTORS, LLC

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Sensato Investors, LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA that the Applicant and any individuals engaging, in or holding themselves out as engaging in, the business of advising others on the Applicant's behalf (the **Representatives**) be exempt, for a period of five years, from the adviser registration requirements in paragraph 22(1)(b) of the CFA, subject to certain terms and conditions;

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

AND WHEREAS for the purposes of this Order;

"CFA Adviser Registration Requirement" means the requirement in the CFA that prohibits a person or company from acting as an adviser unless the person or company is registered in the appropriate category of registration under the CFA;

"CFTC" means the United States Commodity Futures Trading Commission;

"Contract" has the meaning ascribed to that term in subsection 1(1) of the CFA;

"International Adviser Exemption" means the exemption set out in section 8.26 of NI 31-103 from the OSA Adviser Registration Requirement;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended;

"OSA" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

"OSA Adviser Registration Requirement" means the requirement in the OSA that prohibits a person or company from acting as an adviser unless the person or company is registered in the appropriate category of registration under the OSA;

"Permitted Client" means a client in Ontario that is a "permitted client", as that term is defined in section 1.1. of NI 31-103, except that for purposes of the Order such definition shall exclude a person or company registered under the securities or commodities legislation of a jurisdiction of Canada as an adviser or dealer;

"SEC" means the United States Securities and Exchange Commission; and

"U.S. Advisers Act" means the *United States Investment Advisers Act of 194*0.

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a limited liability company organized under the laws of the State of Delaware, United States of America. The Applicant's head office and principal place is located in the State of California, United States of America.

2. The Applicant is an investment advisor that is specialized in managing Asia Pacific equity long short strategies. As at August 31, 2012, the Applicant had over US $780 million in assets under management.

3. The Applicant is registered in the United States with the SEC as an investment adviser under the U.S. Advisers Act.

4. The Applicant is not registered under the OSA and relies on the International Adviser Exemption to advise Permitted Clients in Ontario with respect to foreign securities.

5. The Applicant is currently exempt from the CFTC's registration requirements for commodity pool operators under CFTC Rule 4.13(a)(3) and commodity trading advisors under Section 4m(1) of the Commodity Exchange Act.

6. The Applicant is not registered in any capacity under the CFA.

7. In Ontario, institutional investors that are Permitted Clients seek to engage the Applicant as a discretionary investment manager for purposes of implementing certain specialized investment strategies.

8. The Applicant seeks to act as a discretionary investment manager on behalf of prospective institutional investors that are Canadian Permitted Clients. The proposed advisory services would include the use of specialized investment strategies employing commodity futures contracts and/or commodity futures options traded primarily on one or more organized exchanges located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada(collectively, the "**Foreign Contracts**") to construct and manage global portfolios of foreign currency, interest rate, stock index and commodity sector futures, options and forwards.

9. Were the proposed advisory services limited to securities, the Applicant could rely on the International Adviser Exemption and carry out such activities on behalf of Permitted Clients on a basis that would be exempt from the OSA Adviser Registration Requirement.

10. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients as to trading in Foreign Contracts, the Applicant would be required to satisfy the CFA Adviser Registration Requirement and would have to apply for registration in Ontario as an adviser under the CFA in the category of commodity trading manager.

11. The Applicant submits that it would not be prejudicial to the public interest for the Commission to grant the requested relief because:

    (a) the Applicant will only advise Permitted Clients as to trading in Foreign Contracts;

    (b) Permitted Clients seek to access certain specialized portfolio management services provided by the Applicant, including advice as to trading in Foreign Contracts;

    (c) the Applicant meets the prescribed conditions to rely on the International Adviser Exemption in connection with the provision of advice to Permitted Clients with respect to foreign securities; and

(d) the Applicant would provide advice to Permitted Clients as to trading in Foreign Contracts on terms and conditions that are analogous to the prescribed terms and conditions of the International Adviser Exemption.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to section 80 of the CFA that the Applicant and its Representatives are exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA in respect of providing advice to Permitted Clients as to the trading of Foreign Contracts provided that:

1. the Applicant provides advice to Permitted Clients only as to trading in Foreign Contracts and does not advise Permitted Clients as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to its providing advice on Foreign Contracts;

2. the Applicant's head office or principal place of business remains in the United States;

3. the Applicant is registered, or operates under an exemption from registration, under the applicable securities or commodity futures legislation in the United States in a category of registration that permits it to carry on the activities in the United States that registration as an adviser under the CFA Adviser Registration Requirement would permit it to carry on in Ontario;

4. the Applicant continues to engage in the business of an adviser, as defined in the CFA, in the United States;

5. as at the end of the Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships is derived from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada;

6. before advising a Permitted Client with respect to Foreign Contracts, the Applicant notifies the Permitted Client of all of the following:

   (i) the Applicant is not registered in the local jurisdiction to provide the advice described under paragraph 1 of this Order;

   (ii) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;

   (iii) all or substantially all of the Applicant's assets may be situated outside of Canada;

   (iv) there may be difficulty enforcing legal rights against the Applicant because of the above; and

   (v) the name and address of the Applicant's agent for service of process in Ontario;

7. the Applicant has submitted to the Commission a completed Submission to jurisdiction and appointment of agent for service in the form attached as Appendix “A”;

8. the Applicant notifies the Commission of any regulatory action initiated with respect to the Applicant by completing and filing Appendix “B” within 10 days of the commencement of such action; and

9. by December 1 of each year, the Applicant notifies the Commission if it is relying on the exemption from registration granted pursuant to this order.

Dated this 4th of December, 2012.

“C. Wesley M. Scott”
Commissioner
Ontario Securities Commission

“James D. Carnwath”
Commissioner
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:

E-mail address:

Phone:

Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

[ ] Section 8.18 [*international dealer*]

[ ] Section 8.26 [*international adviser*]

[ ] Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above 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 or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form is to be submitted to the following address:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Portfolio Manager Team
Telephone: (416) 593-8164
email: amcbain@osc.gov.on.ca

APPENDIX B

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator ,securities or derivatives exchange, SRO or similar organization:

	Yes	No
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		

[1] In this Appendix, the term “specified affiliate” has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 – *Registration Information*.

	Yes	No
(g) Issued an order (other than en exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner

Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Portfolio Manager Team
Telephone: (416) 593-8164
email: amcbain@osc.gov.on.ca

2.2.3 Nest Acquisitions and Mergers et al. – s. 127(1)

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

AND

IN THE MATTER OF
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

ORDER
(Section 127(1))

WHEREAS on January 18, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against in respect of Robert Patrick Zuk ("Zuk") and others. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated January 18, 2010;

AND WHEREAS Zuk entered into a Settlement Agreement with Staff of the Commission dated December 4, 2012 (the "Settlement Agreement") in which Zuk agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated January 18, 2010, subject to the approval of the Commission;

WHEREAS on December 4, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Zuk;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) trading in any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)2 of the Act;

(c) acquisition of any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)2.1 of the Act;

(d) any exemptions contained in Ontario securities law do not apply to Zuk for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)3 of the Act;

(e) Zuk be reprimanded, pursuant to s. 127(1)6 of the Act;

(f) Zuk is prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8 of the Act;

(g) Zuk is prohibited from becoming or acting as a director or officer of a registrant for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8.2 of the Act;

(h) Zuk is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8.4 of the Act;

(i) Zuk is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, as defined in s. 1(1) of the Act, for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.5 of the Act; and

(j) Zuk shall disgorge to the Commission the amount of $36,176.67 obtained as a result of his non-compliance with Ontario securities law, pursuant to s. 127(1)10 of the Act, to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED AT TORONTO this 5th day of December 2012.

"Paulette L. Kennedy"

2.2.4 theScore, Inc. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the Issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in each of British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Remaining Provinces") – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in the Remaining Provinces substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
theSCORE, INC.

ORDER
(Clause 1(11)(b))

UPON the application of theScore, Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") for a designation order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

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

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant is a company governed by the *Business Corporations Act* (Ontario) (the "**OBCA**").

2. The Applicant was incorporated under the OBCA on August 30, 2012.

3. The registered office of the Applicant is located at 66 Wellington Street West, Toronto Dominion Bank Tower, Suite 5300, Toronto, ON M5K 1E6.

4. The authorized capital of the Applicant consists of an unlimited number of Class A Subordinate Voting Shares ("**Class A Shares"**), 5,566 Special Voting Share and an unlimited number of preference shares, issuable in series, of which 95,015,276 Class A Shares, 5,566 Special Voting Shares and no preference shares are issued and outstanding. An aggregate of 9,500,000 Class A Shares of the Applicant are also reserved for issuance on the exercise of stock options that may be granted by the Applicant.

5. The Applicant became a reporting issuer or reporting issuer equivalent on October 19, 2012, pursuant to applicable securities legislation in each of British Columbia, Alberta, Manitoba, Saskatchewan, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Remaining Provinc**es") as a result of a court approved statutory plan of arrangement under section 192 of the *Canada Business Corporations Act* completed on October 19, 2012.

6. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to applicable securities legislation in the Remaining Provinces and, to the best of its knowledge, is not in default of any of its obligations under applicable securities legislation in the Remaining Provinces.

7. The continuous disclosure materials filed by the Applicant under the applicable securities legislation in the Remaining Provinces are available on the System for Electronic Document Analysis and Retrieval (SEDAR) under the Applicant's profile.

8. The continuous disclosure requirements under the applicable securities legislation in the Remaining Provinces are substantially the same as the requirements under the Act.

9. The Applicant's Class A Shares are listed and posted for trading on the TSX Venture Exchange (the "**TSXV**") and currently trade under the trading symbol "SCR".

10. The Applicant is not in default under any of the rules, regulations or policies of the TSXV.

11. Pursuant to the policies of the TSXV, a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess on an annual basis whether it has a "Significant Connection to Ontario" (as defined in the policies of the TSXV) and, upon becoming aware that it has a significant connection to Ontario, promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

12. The Applicant has determined that it has a "Significant Connection to Ontario" as its mind and management are principally located in Toronto, Ontario and it has registered and beneficial shareholders resident in Ontario who beneficially own more than 10% of the issued and outstanding equity securities of the Applicant.

13. Neither the Applicant nor any of its officers, directors or, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been the subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

14. Other than as set forth in paragraph 15 of this Order, neither the Applicant nor any of its officers, directors or, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known or ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) a court or regulatory body, other than the Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

15. The statement in paragraph 14, is qualified by the following disclosure:

    (a) Mr. William Thomson was a director of Imperial PlasTech Inc., which was subject to certain orders under the *Companies Creditors Arrangement Act* (Canada) and the *Bankruptcy and Insolvency Act* (Canada) from the period from June 12, 2003 to April 11, 2006. Mr. Thomson resigned as a director of Imperial PlasTech Inc. in January 2005.

16. Other than as set forth in paragraph 17 of this Order, neither any of the officers or directors of the Applicant nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade order or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

17. The statement in paragraph 16, is qualified by the following disclosure:

(a) Mr. William Thomson was the Chairman of Asia Media Group Corporation, a TSXV listed company, at the time it had its shares cease traded on November 25, 2002 for failure to file certain financial statements. The cease trade order has not been revoked and Asia Media Group Corporation was voluntarily dissolved in November 2006;

(b) Mr. William Thomson was a director of Open EC Technologies Inc. ("**Open EC**"), a TSXV listed company from November 2005 to November 2009. In September 2008, the United States Securities and Exchange Commission (the "**SEC**") revoked the registration of each class of registered securities of Open EC for failure to make required periodic filings with the SEC; and

(c) Mr. Ralph Lean was a director of National Construction Inc., a TSXV listed company, from 2002 to 2003. National Construction Inc. had its shares cease traded on July 23, 2003, after Mr. Lean had ceased to be a director, for failure to file certain financial statements during the time Mr. Lean was acting in his capacity as director.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto, this 7th day of November, 2012.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.5 Children's Education Funds Inc.

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

AND

IN THE MATTER OF
CHILDREN'S EDUCATION FUNDS INC.

ORDER

WHEREAS on September 14, 2012, the Ontario Securities Commission (the "Commission") ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") and with the consent of Children's Education Funds Inc. ("CEFI") that the terms and conditions (the "Terms and Conditions") set out in Schedule "A" to the Commission order dated September 14, 2012 be imposed on CEFI (the "Temporary Order");

AND WHEREAS on September 14, 2012, the Commission ordered that the Temporary Order shall take force immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission and ordered that the matter be brought back before the Commission on September 26, 2012 at 10:00 a.m.;

AND WHEREAS on September 20, 2012, the Commission issued a Notice of Hearing pursuant to section 127 in respect of a hearing to be held on September 26, 2012 at 10:00 a.m. to consider whether, in the opinion of the Commission, it is in the public interest, pursuant to subsection 127(7) and (8) of the Act to extend the Temporary Order;

AND WHEREAS on September 26, 2012, Staff filed the Affidavit of Maria Carelli sworn September 18, 2012 with the Commission in support of the extension of the Temporary Order;

AND WHEREAS on September 26, 2012, the Commission extended the Temporary Order against CEFI until December 7, 2012 and ordered that the matter be brought back before the Commission on December 6, 2012 at 10:00 a.m.;

AND WHEREAS the Terms and Conditions required CEFI to retain a consultant (the "Consultant") to prepare and assist CEFI in implementing plans to strengthen their compliance systems and to retain a monitor (the "Monitor") to review all applications of new clients and contact new clients as set out in the Terms and Conditions;

AND WHEREAS CEFI retained Compliance Support Services Inc. ("Compliance Support") as both its Monitor and its Consultant;

AND WHEREAS Compliance Support filed its Consultant's plan on October 2, 2012 and filed an addendum to the Consultant's plan with the OSC manager on November 12, 2012;

AND WHEREAS Staff has filed an Affidavit of Lina Creta sworn December 3, 2012 setting out the work completed to date by Compliance Support;

AND WHEREAS Staff has advised that Staff's investigation of CEFI is ongoing;

AND WHEREAS Staff requests that the Temporary Order be extended until March 1, 2013 and counsel for CEFI has advised that CEFI consents to the terms of this Order;

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

IT IS HEREBY ORDERED pursuant to section 127 of the Act that:

1. Paragraph 5 of the Terms and Conditions is deleted and replaced as follows:

"5. As of December 3, 2012, the Monitor will:

(a) review a random sample of 50% of applications from New Clients of CEFI with an income less than $50,000 for the purpose of ensuring adequate KYC Information in order to determine suitability of the investment and should the Monitor not be satisfied with the KYC Information for this purpose, contact the New Client; and

(b) review a random sample of 10% of applications from New Clients of CEFI with an income greater than $50,000 for the purpose of ensuring adequate KYC Information in order to determine suitability of the investment and should the Monitor not be satisfied with the KYC Information for this purpose, contact the New Client."

2. The Temporary Order is extended to March 1, 2013 or until such further order of the Commission; and

3. The hearing is adjourned to February 28, 2013 at 10:00 a.m. for the purpose of providing the Commission with an update on the work completed by the Monitor and the Consultant and to consider whether any changes are required to the Terms and Conditions.

DATED at Toronto this 6th day of December, 2012.

"James E. A. Turner"

2.2.6 Nest Acquisitions and Mergers and Caroline Frayssignes – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
AND
CAROLINE FRAYSSIGNES

ORDER
(Subsections 127(1) & 127(8) of the Securities Act)

WHEREAS on April 8, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that all trading in securities by Nest Acquisitions and Mergers ("Nest") and Caroline Frayssignes ("Frayssignes") shall cease;

AND WHEREAS on April 8, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on April 15, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 22, 2009 at 2:00 p.m;

AND WHEREAS Staff served Nest and Frayssignes with the Notice of Hearing on April 16, 2009 by sending a copy by email to counsel for Nest and Frayssignes;

AND WHEREAS the Commission held a Hearing on April 22, 2009 and counsel for Staff and an agent for counsel for the respondents attended before the Commission;

AND WHEREAS counsel for Staff provided the Commission with a signed consent to an order extending the Temporary Order until May 21, 2009;

AND WHEREAS on April 22nd, 2009, a panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order be extended as against the respondents to May 22, 2009 and that the hearing be adjourned to May 21, 2009 at 2:00 p.m.;

AND WHEREAS the Commission held a Hearing on May 21, 2009, in writing, and counsel for Staff and counsel for the respondents consented to an order extending the Temporary Order until June 17th, 2009 and adjourning the Hearing until June 16th, 2009 at 2:00 p.m.;

AND WHEREAS the Commission held a Hearing on June 16, 2009, where counsel for Staff and counsel for the respondents attended in person and consented to an order extending the Temporary Order until October 7, 2009 and adjourning the hearing to October 6, 2009;

AND WHEREAS on June 16, 2009 the Commission ordered pursuant to subsection 127(8) of the Act, that the Temporary Order be extended as against the respondents to October 7, 2009 and that the hearing be adjourned to October 6, 2009;

AND WHEREAS the Commission held a Hearing on October 6, 2009, where counsel for Staff and counsel for the respondents attended in person and consented to an order extending the Temporary Order to December 10, 2009 and adjourning the hearing to December 9, 2009;

AND WHEREAS the Commission held a Hearing on December 9, 2009, where counsel for Staff attended in person and counsel for the respondents did not attend;

AND WHEREAS Counsel for Staff advised that proceedings would likely be commenced prior to January 7, 2010;

AND WHEREAS the parties consented to an order extending the Temporary Order to January 8, 2010 and adjourning the hearing to January 7, 2010 at 10:00 a.m.;

AND WHEREAS on December 9, 2009, the Commission extended the Temporary Order to January 8, 2010, and adjourned the hearing to January 7, 2010;

AND WHEREAS the Commission held a Hearing on January 7, 2010, where counsel for Staff attended in person and the respondents, although on notice of the hearing, did not attend;

AND WHEREAS Staff advised that the commencement of proceedings had been delayed by virtue of continued discussion with a potential respondent;

AND WHEREAS on January 7, 2010, the Commission extended the Temporary Order to January 25, 2010, and adjourned the hearing to January 22, 2010;

AND WHEREAS the Commission held a Hearing on January 22, 2010, where counsel for Staff attended in person and the respondents did not attend;

AND WHEREAS Staff advised that Staff have filed a Statement of Allegations dated January 18, 2010 and the Commission has issued a Notice of Hearing dated January 18, 2010;

AND WHEREAS Staff advised that the respondents consented to an order extending the Temporary Order until the end of the hearing on the merits;

AND WHEREAS on January 22, 2010, the Commission extended the Temporary Order to the end of the hearing on the merits;

AND WHEREAS the hearing on the merits began on May 16, 2012 and continued thereafter periodically;

AND WHEREAS on December 6, 2012, Staff filed a Notice of Withdrawal solely in respect of the allegations against Frayssignes;

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

IT IS ORDERED that the Temporary Order is revoked in respect of Frayssignes;

IT IS FURTHER ORDERED pursuant to subsections 127(1) and 127(8) that the Temporary Order is extended in respect of Nest until the completion of the proceeding, including the sanctions hearing, if any.

DATED at Toronto this 7th day of December, 2012.

"James D. Carnwath"

"Margot C. Howard"

2.2.7 Nest Acquisitions and Mergers et al.

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

AND

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

ORDER

WHEREAS on January 18, 2010, the Secretary to the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Monday, January 28th, 2010 at 10 a.m., or as soon thereafter as the hearing can be held;

AND WHEREAS on January 18, 2010, Staff of the Commission ("Staff") filed with the Commission a Statement of Allegations in this matter;

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Robert Patrick Zuk ("Zuk"), and counsel for Caroline Myriam Frayssignes ("Frayssignes") and Nest Acquisitions and Mergers ("Nest") appeared before the Commission for the purpose of a further pre-hearing conference;

AND WHEREAS on January 25, 2011, no one appeared on behalf of David Paul Pelcowitz ("Pelcowitz"), Michael Smith ("Smith") and IMG International Inc. ("IMG"), and the Commission was satisfied that Pelcowitz, Smith and IMG had been provided with notice of the pre-hearing conference;

AND WHEREAS on January 25, 2011, the Commission heard submissions by counsel for Staff, counsel for Frayssignes and Nest, and counsel for Zuk as to the unavailability of certain documents from a third party and to an anticipated motion to be brought by Frayssignes, Nest and Zuk;

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Zuk, and counsel for Frayssignes and Nest consented that the dates for the hearing on the merits set for January 31, 2011 to February 11, 2011 (except for February 8, 2011) be vacated and agreed to tentative dates for the hearing on the merits from June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Zuk, and counsel for Frayssignes and Nest consented to a hearing for the anticipated motion to be held on June 6, 2011;

AND WHEREAS the Commission wished to allow Pelcowitz a further opportunity to make submissions on the tentative dates for the hearing on the merits prior to making an order;

AND WHEREAS on January 25, 2011, the Commission ordered that the dates for the hearing on the merits set for January 31, 2011 to February 11, 2011 be vacated and that the motion by Zuk, Frayssignes and Nest be heard on June 6, 2011;

AND WHEREAS Pelcowitz consented to the scheduling of the hearing on the merits from June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on March 4, 2011, the Commission ordered that the hearing on the merits be set for June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on June 20, 2011, Pelcowitz, counsel for Staff and counsel for Zuk attended before the Commission and no one attended on behalf of the other respondents;

AND WHEREAS counsel for Staff requested that the hearing on the merits be adjourned to June 27, 2011;

AND WHEREAS Zuk, through his counsel, and Pelcowitz consented to the adjournment;

AND WHEREAS on June 27, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission and no one attended on behalf of the other respondents;

AND WHEREAS on June 27, 2011, Frayssignes requested that she be provided with a simultaneous French translation of the hearing on the merits and a translation of the documents Staff proposes to tender at the hearing on the merits;

AND WHEREAS on June 27, 2011, upon hearing submissions from Staff counsel and Zuk, on behalf of Frayssignes, the Commission ordered, *inter alia*, that the hearing on the merits be adjourned to a date to be fixed by the Office of the Secretary, the Commission will provide a simultaneous translation into French of the hearing on the merits, and that a motion be heard in respect of Frayssignes' request for translation of the documents sought to be tendered by Staff on September 26, 2011 at 2:00 p.m. ("Frayssignes' Motion");

AND WHEREAS on September 26, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission;

AND WHEREAS on September 26, 2011, the Commission adjourned the hearing of Frayssignes' Motion to a date to be fixed by the Office of the Secretary, upon consultation with the parties;

AND WHEREAS on December 16, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission for the hearing of Frayssignes' Motion;

AND WHEREAS on December 16, 2011, upon hearing submissions from Frayssignes and upon considering the written submissions of Frayssignes and Staff, the Commission dismissed Frayssignes' Motion, with written reasons and decision to follow and ordered that the hearing on the merits be set on a date to be fixed by the Office of the Secretary, upon consultation with the parties;

AND WHEREAS on January 26, 2012, the Commission was advised that Staff, Zuk, Frayssignes, and Pelcowitz consent that the hearing on the merits be set for May 16, 17, 18, 23, 24, and 25, and June 4 and 6, 2012;

AND WHEREAS on February 1, 2012, the Commission ordered the hearing on the merits is set for May 16, 17, 18, 23, 24, and 25, and June 4 and 6, 2012;

AND WHEREAS on February 3, 2012, the Commission issued written reasons for dismissing Frayssignes' Motion;

AND WHEREAS the hearing on the merits began on May 16, 2012 and continued thereafter periodically;

AND WHEREAS on December 5, 2012, the Commission approved a settlement agreement between Staff and Zuk;

AND WHEREAS on December 6, 2012, Staff filed a Notice of Withdrawal solely in respect of the allegations against Frayssignes;

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

IT IS ORDERED that:

1. the hearing on the merits dates scheduled for December 11 and 14, 2012 be vacated;

2. on or before December 19, 2012, Staff shall serve and file with the Commission final submissions with respect to allegations against the remaining respondents;

3. on or before January 7, 2013, the remaining respondents shall serve and file with the Commission final submissions, if any; and

4. the hearing on the merits shall continue on January 15, 2013 at 3:00 p.m. for closing submissions from the parties.

DATED at Toronto this 7th day of December, 2012.

"James D. Carnwath"

"Margot C. Howard"

2.2.8 International Strategic Investments et al.

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

AND

IN THE MATTER OF
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC.,
SOMIN HOLDINGS INC., NAZIM GILLANI
AND RYAN J. DRISCOLL

ORDER

WHEREAS on March 6, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 5, 2012, to consider whether it is in the public interest to make certain orders as against International Strategic Investments, International Strategic Investments Inc., (collectively, "ISI"), Nazim Gillani ("Gillani"), Ryan J. Driscoll ("Driscoll") and Somin Holdings Inc. ("Somin");

AND WHEREAS on April 3, 2012, a hearing was held before the Commission and Staff appeared and filed the Affidavit of Peaches A. Barnaby, sworn on March 29, 2012, evidencing service of the Notice of Hearing and the Statement of Allegations on ISI, Gillani and Driscoll;

AND WHEREAS counsel for ISI and Gillani and counsel for Driscoll appeared and made submissions;

AND WHEREAS on April 3, 2012, the Commission ordered that a status hearing take place on April 13, 2012, for Staff to update the Commission on the status of service on Somin (the "Status Hearing") and that a pre-hearing conference is scheduled for Wednesday, June 6, 2012;

AND WHEREAS on April 13, 2012, the Status Hearing was held and Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 10, 2012, outlining efforts of service on Somin;

AND WHEREAS on April 13, 2012, Staff and counsel for Gillani appeared and made submissions;

AND WHEREAS on April 13, 2012, the Status Hearing was adjourned to April 30, 2012 at 10:00 a.m. to determine whether service had been effected on Somin pursuant to Rule 1.5.1 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017;

AND WHEREAS on April 30, 2012, Staff and counsel for Gillani appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on April 30, 2012, Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 27, 2012;

AND WHEREAS on April 30, 2012, Staff undertook to continue to serve Somin through David F. Munro and Nazim Gillani;

AND WHEREAS on April 30, 2012, the Commission was satisfied that Somin had been served and accepted Staff's undertaking for future service;

AND WHEREAS on June 6, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on June 6, 2012, Staff agreed to continue to serve Somin through David F. Munro and Nazim Gillani personally;

AND WHEREAS on June 6, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to August 20, 2012;

AND WHEREAS on August 20, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on August 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to October 9, 2012;

AND WHEREAS on October 9, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on October 9, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to November 20, 2012;

AND WHEREAS on November 20, 2012, the Commission was not available to hold the confidential pre-hearing conference, Staff, counsel for Gillani and counsel for Driscoll consented via email to adjourning the confidential pre-hearing conference to December 3, 2012 and no one responded on behalf of Somin or ISI although duly notified via email;

AND WHEREAS on November 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to December 3, 2012;

AND WHEREAS on December 3, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and International Strategic Investments Inc. and counsel for Driscoll appeared and made

submissions and no one appeared on behalf of Somin or International Strategic Investments;

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

IT IS ORDERED that the confidential pre-hearing conference will continue on January 16, 2013 at 2:00 p.m. at which time the panel anticipates scheduling dates for a hearing on the merits in this matter.

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

"Edward P. Kerwin"

2.2.9 Maple Group Acquisition Corporation et al. – s. 144

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

IN THE MATTER OF
MAPLE GROUP ACQUISITION CORPORATION
AND
TMX GROUP INC.
AND
TSX INC.
AND
ALPHA TRADING SYSTEMS LIMITED PARTNERSHIP
ALPHA TRADING SYSTEMS INC.
ALPHA MARKET SERVICES INC.
AND
ALPHA EXCHANGE INC.

AND

IN THE MATTER OF
TD SECURITIES INC.
AND
1802146 ONTARIO LIMITED

ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (Commission) issued an order dated July 4, 2012, recognizing each of Maple Group Acquisition Corporation (Maple), TMX Group Inc. (TMX Group), TSX Inc. (TSX), Alpha Trading Systems Limited Partnership (Alpha LP) and Alpha Exchange Inc. (Alpha Exchange) as an exchange pursuant to section 21 of the Act (the Exchange Recognition Order);

AND WHEREAS at the time of granting the Exchange Recognition Order, TD Securities Inc. (TDSI) was an investor in Maple and is included in the definition of "original Maple shareholder" in subsection 1(a) of Schedule 2 to the Exchange Recognition Order;

AND WHEREAS TDSI wishes to transfer those shares of TMX Group Limited (formerly, Maple) acquired by it in connection with the takeover bid and subsequent arrangement of TMX Group to 1802146 Ontario Limited, an affiliate of TDSI;

AND WHEREAS TDSI has applied to the Commission (the Application) for an order amending the Exchange Recognition Order to include 1802146 Ontario Limited in the definition of "original Maple shareholder" in the Exchange Recognition Order;

AND WHEREAS 1802146 Ontario Limited agrees to be bound by the applicable terms and conditions of the Exchange Recognition Order and TDSI agrees to continue to be bound by the applicable terms and conditions of the Exchange Recognition Order;

AND WHEREAS based on the Application and the representations that TDSI has made to the Commission, the Commission has determined that it is not prejudicial to the public interest to amend the Exchange Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED that:

(a) pursuant to section 144 of the Act, the definition of "original Maple shareholder" in subsection 1(a) of Schedule 2 to the Exchange Recognition Order is deleted and replaced with the following:

"original Maple shareholder" means each of the AIMCo, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), The Manufacturers Life Insurance

Company, National Bank Financial & Co. Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc., TD Securities Inc. and 1802146 Ontario Limited;

DATED this 7th day of December, 2012.

"Sarah B. Kavanagh"
Commissioner

"Vern Krishna"
Commissioner

2.2.10 TD Securities Inc. and 1802146 Ontario Limited – s. 144

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

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

AND

IN THE MATTER OF
TD SECURITIES INC.
AND
1802146 ONTARIO LIMITED

ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (Commission) issued an order dated July 4, 2012, recognizing each of The Canadian Depository for Securities Limited (CDS Ltd.) and CDS Clearing and Depository Services Inc. (CDS Clearing) as a clearing agency pursuant to section 21.2 of the Act (the Clearing Agency Recognition Order);

AND WHEREAS TMX Group Limited (formerly, Maple Group Acquisition Corporation or Maple) owns all of the issued and outstanding voting securities of CDS Ltd. and, indirectly, CDS Clearing;

AND WHEREAS on the effective date of the Clearing Agency Recognition Order, TD Securities Inc. (TDSI) was a beneficial owner of issued and outstanding voting securities of TMX Group Limited;

AND WHEREAS TDSI is included in the definition of "original Maple shareholder" in Part I of Schedule "B" to the Clearing Agency Recognition Order;

AND WHEREAS TDSI wishes to transfer its holding of the issued and outstanding voting securities of TMX Group Limited to 1802146 Ontario Limited, an affiliate of TDSI;

AND WHEREAS TDSI has applied to the Commission (the Application) for an order amending the Clearing Agency Recognition Order to include 1802146 Ontario Limited in the definition of "original Maple shareholder" in the Clearing Agency Recognition Order;

AND WHEREAS 1802146 Ontario Limited agrees to be bound by the applicable terms and conditions of the Clearing Agency Recognition Order and TDSI agrees to continue to be bound by the applicable terms and conditions of the Clearing Agency Recognition Order;

AND WHEREAS based on the Application and the representations that TDSI has made to the Commission, the Commission has determined that it is not prejudicial to the public interest to amend the Clearing Agency Recognition Order;

IT IS HEREBY ORDERED that:

(a) pursuant to section 144 of the Act, the definition of "original Maple shareholder" in Part I of Schedule "B" to the Clearing Agency Recognition Order is deleted and replaced with the following:

"original Maple shareholder" means each of the AIMCo, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), The Manufacturers Life Insurance Company, National Bank Financial & Co. Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc., TD Securities Inc. and 1802146 Ontario Limited;

DATED this 7th day of December, 2012.

"Sarah B. Kavanagh"
Commissioner

"Howard Wetston"
Commissioner

2.2.11 Happy Creek Minerals Ltd. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am. s. 1(11)(b).

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

AND

IN THE MATTER OF
HAPPY CREEK MINERALS LTD.

ORDER
(Clause 1(11)(b) of the Act)

UPON the application of Happy Creek Minerals Ltd. (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

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

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant was incorporated in the Province of British Columbia on November 17, 2004.

2. Applicant's registered office is located at #1200 – 750 West Pender Street, Vancouver, British Columbia, V6C 2T8, and its head office is located at #460 – 789 West Pender Street, Vancouver, British Columbia, V6C 1H2.

3. The authorized share capital of the Applicant consists of an unlimited number of common voting shares without par value of which a total of 55,546,629 are issued and outstanding;

4. The Applicant became a reporting issuer in British Columbia under the *Securities Act* (British Columbia) (the "BC Act") and Alberta under the *Securities Act* (Alberta) (the "Alberta Act") on July 5, 2006.

5. The Applicant is not currently a reporting issuer or equivalent in any jurisdiction in Canada other than British Columbia and Alberta.

6. The Applicant is not on the lists of defaulting reporting issuers maintained pursuant to the BC Act and Alberta Act and is not in default of any requirement of either the BC Act or Alberta Act or the rules and regulations made thereunder.

7. The continuous disclosure document requirements of the BC Act and Alberta Act are substantially the same as the continuous disclosure requirements under the Act.

8. The continuous disclosure materials filed by the Applicant under the BC Act and Alberta Act are available on the System for Electronic Document Analysis and Retrieval.

9. The Applicant's Common Shares are listed and posted for trading on the TSX Venture Exchange (the "Exchange") under the trading symbol "HPY".

10. The Applicant is not in default of any of the rules, regulations or policies of the Exchange.

11. Pursuant to the policies of the Exchange, a listed issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "significant connection to Ontario" (as defined in the policies of the Exchange) and upon becoming aware that it has a significant connection to Ontario, the issuer must promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

12. The Applicant has determined that it has a "significant connection to Ontario" (as defined in Exchange policies) because beneficial holders of the Applicant resident in Ontario hold more than 20% of the Applicant's common shares.

13. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

14. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

15. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade order or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED this 30th day of November, 2012.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.12 Plexmar Resources Inc. – s. 144

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

AND

IN THE MATTER OF
PLEXMAR RESOURCES INC.

ORDER
(Section 144)

WHEREAS the securities of Plexmar Resources Inc. (the "**Applicant**") are subject to a temporary cease trade order dated May 7, 2012 issued by the Director of the Ontario Securities Commission (the "**Commission**"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further cease trade order dated May 18, 2012 made by the Director, pursuant to paragraph 2 of subsection 127(1) of the Act (collectively, the "**Ontario Cease Trade Order**"), ordering that all trading in the securities of the Applicant, whether direct or indirect, cease until the Ontario Cease Trade Order is revoked by the Director;

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

AND WHEREAS the Applicant is also subject to a temporary cease trade order dated May 3, 2012 made by the Autorité des marchés financiers pursuant to section 318 of the *Securities Act* (Québec), as extended by a further cease trade order dated May 18, 2012 made by the Autorité des marchés financiers pursuant to section 265 of the *Securities Act* (Québec) (collectively, the "**Québec Cease Trade Order**"), ordering that the trading in the securities of the Applicant cease until the Québec Cease Trade Order is revoked by the Autorité des marchés financiers;

AND WHEREAS the Applicant is also subject to a cease trade order dated May 9, 2012 made by the Executive Director pursuant to section 164(1) of the *Securities Act* (British Columbia) (the "**B.C. Cease Trade Order**") ordering that all trading in the securities of the Applicant cease until it files the required records and the B.C. Cease Trade Order is revoked by the Executive Director;

AND WHEREAS the Applicant has applied to the Commission for a revocation of the Ontario Cease Trade Order (the "**Application**") pursuant to section 4.1 of National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order*;

AND WHEREAS the Applicant has concurrently applied to the Autorité des marchés financiers for an order for revocation of the Québec Cease Trade Order and the

British Columbia Securities Commission for an order for revocation of the B.C. Cease Trade Order;

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant was incorporated on June 20, 1951, under the name of Parquet Mines Limited. On June 21, 1984, the Applicant changed its name for Parquet Resources Inc. and on July 13, 1993, it changed its name for Plexmar Resources Inc. The Applicant is currently governed by the *Canada Business Corporations Act*. The Applicant's head and registered offices are located at 2505 Boulevard Laurier, Suite 240, Québec, QC G1V 2L2;

2. The Applicant is a reporting issuer in Québec, Ontario, Alberta and British Columbia;

3. The Applicant's common shares are listed on the TSX Venture Exchange Inc. and are suspended from trading since May 3, 2012;

4. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file with the Commission its audited annual financial statements for the year ended December 31, 2011, the management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2011 as well as the certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* for the corresponding period (collectively, the "**2011 Annual Filings**");

5. The Applicant has concurrently applied to the Autorité des marchés financiers and the British Columbia Securities Commission for orders for revocation of the Québec Cease Trade Order and the B.C. Cease Trade Order, respectively;

6. On May 22, 2012, the Applicant filed on SEDAR the 2011 Annual Filings, copies of which are available under the Applicant's profile at www.sedar.com ("**SEDAR**");

7. The Applicant has undertaken and agreed to hold an annual meeting of shareholders within three months of the date hereof;

8. The Applicant has paid all outstanding participation fees, filing fees and late fees owing to the Commission, the Autorité des marchés financiers and the British Columbia Securities Commission;

9. The Applicant's SEDAR and SEDI profiles are up-to-date;

10. Other than the Ontario Cease Trade Order, the Québec Cease Trade Order and the B.C. Cease Trade Order, the Applicant is not in default of its continuous disclosure obligations under Ontario / Québec / British Columbia securities laws;

11. Upon the issuance of this revocation order, the Applicant will issue a news release and file a material change report on SEDAR to announce the revocation of the Ontario Cease Trade Order and to outline the Applicant's future plans;

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is hereby revoked.

DATED this 2nd day of October, 2012.

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

2.2.13 Parametric Portfolio Associates LLC – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Foreign adviser exempted from the adviser registration requirement in section 22(1)(b) of the CFA where such adviser acts as an adviser in respect of commodity futures contracts or commodity futures options (commodities) for certain individual and institutional investors in Ontario who meet the definition of "permitted client" in NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Commodities are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada.

Terms and conditions on exemption correspond to the relevant terms and conditions on the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in section 8.26 of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption also subject to a "sunset clause" condition.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.
Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 80.

Instruments Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.26.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C. 20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
PARAMETRIC PORTFOLIO ASSOCIATES LLC

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Parametric Portfolio Associates LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA that the Applicant and any individuals engaging in, or holding themselves out as engaging in, the business of advising others on the Applicant's behalf (the Representatives) be exempt, for a period of five years, from the adviser registration requirements in paragraph 22(1)(b) of the CFA, subject to certain terms and conditions;

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

AND WHEREAS for the purposes of this Order;

"CFA Adviser Registration Requirement" means the requirement in the CFA that prohibits a person or company from acting as an adviser unless the person or company is registered in the appropriate category of registration under the CFA;

"CFTC" means the United States Commodity Futures Trading Commission;

"Contract" has the meaning ascribed to that term in subsection 1(1) of the CFA;

"Foreign Contract" means a Contract that is primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"International Adviser Exemption" means the exemption set out in section 8.26 of NI 31-103 from the OSA Adviser Registration Requirement;

"NFA" means the United States National Futures Association;

"NI 31-103" means National Instrument 31-103 *Registration Requirements and Exemptions and Ongoing Registrant Obligations*, as amended;

"OSA" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

"OSA Adviser Registration Requirement" means the requirement in the OSA that prohibits a person or company from acting as an adviser unless the person or company is registered in the appropriate category of registration under the OSA;

"Permitted Client" means a client in Ontario that is a "permitted client", as that term is defined in section 1.1. of NI 31-103, except that for purposes of the Order such definition shall exclude a person or company registered under the securities or commodities legislation of a jurisdiction of Canada as an adviser or dealer;

"SEC" means the United States Securities and Exchange Commission; and

"U.S. Advisers Act" means the *United States Investment Advisers Act of 1940*.

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation formed under the laws of the State of Delaware in the United States. The head office of the Applicant is located in Seattle, Washington, United States.

2. The Applicant is a portfolio manager that manages investments primarily for institutional investors across multiple strategies and financial instruments.

3. The Applicant is registered in the United States with the SEC as an investment adviser under the U.S. Advisers Act.

4. The Applicant is registered with the CFTC as a commodity trading advisor and is an approved member of the NFA. The Applicant engages in the business of commodity trading advising in the United States.

5. The Applicant is not registered in any capacity under the CFA or the OSA.

6. In Ontario, institutional investors that are Permitted Clients seek to engage the Applicant as a discretionary investment manager for purposes of implementing certain specialized investment strategies.

7. The Applicant seeks to act as a discretionary portfolio manager on behalf of prospective institutional investors that are Permitted Clients. The proposed advisory services would primarily include the use of specialized investment strategies employing Foreign Contracts.

8. Were the proposed advisory services limited to securities, the Applicant could rely on the International Adviser Exemption and carry out such activities on behalf of Permitted Clients on a basis that would be exempt from the OSA Adviser Registration Requirement.

9. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients in Ontario as to trading in Foreign Contracts, the Applicant would be required to satisfy the CFA Adviser Registration Requirement and would have to obtain registration in Ontario as an adviser under the CFA in the category of commodity trading manager.

10. The Applicant submits that it would not be prejudicial to the public interest for the Commission to grant the requested relief because:

    (a) the Applicant will only advise Permitted Clients as to trading in Foreign Contracts;

    (b) Permitted Clients seek to access certain specialized portfolio management services provided by the Applicant, including advice as to trading in Foreign Contracts;

    (c) the Applicant meets the prescribed conditions to rely on the International Adviser Exemption in connection with the provision of advice to Permitted Clients with respect to foreign securities; and

    (d) the Applicant would provide advice to Permitted Clients as to trading in Foreign Contracts on terms and conditions that are analogous to the prescribed terms and conditions of the International Adviser Exemption.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to section 80 of the CFA that the Applicant and its Representatives are exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA in respect of the provision of advice to Permitted Clients as to the trading of Foreign Contracts, provided that:

1. the Applicant provides advice to Permitted Clients only as to trading in Foreign Contracts and does not advise Permitted Clients as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to its providing advice on Foreign Contracts;

2. the Applicant's head office or principal place of business remains in the United States;

3. the Applicant remains registered in the United States in a category of registration that permits it to carry on the activities in the United States that registration as an adviser under the CFA Adviser Registration Requirement would permit it to carry on in Ontario;

4. the Applicant continues to engage in the business of an adviser, as defined in the CFA, in the United States;

5. as at the end of the Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships is derived from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada;

6. before advising a Permitted Client with respect to Foreign Contracts, the Applicant notifies the Permitted Client of all of the following:

    (i) the Applicant is not registered in the local jurisdiction to provide the advice described under paragraph 1 of this Order;

    (ii) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;

    (iii) all or substantially all of the Applicant's assets may be situated outside of Canada;

    (iv) there may be difficulty enforcing legal rights against the Applicant because of the above; and

    (v) the name and address of the Applicant's agent for service of process in Ontario;

7. the Applicant has submitted to the Commission a completed Submission to jurisdiction and appointment of agent for service in the form attached as Appendix “A”;

8. the Applicant notifies the Commission of any regulatory action initiated with respect to the Applicant by completing and filing Appendix “B” within 10 days of the commencement of such action; and

9. by December 1 of each year, the Applicant notifies the Commission if it is relying on the exemption from registration granted pursuant to this order.

Dated this 7th of December, 2012.

“Sarah B. Kavanagh”
Commissioner
Ontario Securities Commission

“Vern Krishna”
Commissioner
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:

E-mail address:

Phone:

Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

[ ] Section 8.18 [*international dealer*]

[ ] Section 8.26 [*international adviser*]

[ ] Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above 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 or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form is to be submitted to the following address:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Portfolio Manager Team
Telephone: (416) 593-8164
email: amcbain@osc.gov.on.ca

APPENDIX B

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator ,securities or derivatives exchange, SRO or similar organization:

	Yes	No
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		

[1] In this Appendix, the term “specified affiliate” has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 – *Registration Information*.

	Yes	No
(g) Issued an order (other than en exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner

Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Portfolio Manager Team
Telephone: (416) 593-8164
email: amcbain@osc.gov.on.ca

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Nest Acquisitions and Mergers et al.

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

AND

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

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
ROBERT PATRICK ZUK

PART I – INTRODUCTION

1. By Notice of Hearing dated January 18, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on January 28, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Robert Patrick Zuk ("Zuk") and the other named respondents. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated January 18, 2010.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Zuk.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated January 18, 2010 against Zuk (the "Proceeding") in accordance with the terms and conditions set out below. Zuk consents to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

4. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Zuk agrees with the facts as set out in Part III of this Settlement Agreement.

I. OVERVIEW

5. This proceeding, as it relates to Zuk, centres on the use of an Ontario bank account for the receipt of funds from various residents of the United Kingdom (the "U.K. Residents").

6. The funds were obtained in furtherance of an "advance-fee" scheme operated by individuals, including David Pelcowitz ("Pelcowitz"), purporting to act on behalf of a fictional company called Nest Acquisitions and Mergers ("Nest A&M"). The solicitations in connection with the "advance-fee" scheme spanned the period from August 14, 2008 to April 8, 2009 (the "Material Time").

7. During the Material Time, representatives of Nest A&M made false, inaccurate and misleading representations to the U.K. Residents to induce the U.K. Residents to send funds (the "Advanced Fees") to a bank account in Ontario. The U.K. Residents were told the Advanced Fees were required to facilitate and guarantee the completion of the sale of the securities already held by them for a substantial premium.

8. Zuk was not a representative of Nest A&M and did not communicate with the U.K. Residents. Zuk provided Pelcowitz with access to a bank account in Ontario in to which funds could be sent by the U.K. Residents, withdrew those funds, and provided them to Pelcowitz in cash less a fee paid to Zuk in compensation to him for the use of the Nest Account.

II. BACKGROUND

A. Zuk

9. Zuk is a resident of Oakville, Ontario. He is the subject of an order of the Commission dated March 1, 2007. Zuk was registered with the Commission in the category of salesperson from February 13, 1987 to November 15, 1990.

10. From 2006, Zuk had access and control over a business banking account at a Royal Bank of Canada branch in Oakville, Ontario which was in the name of a sole proprietorship business called Nest (the "Nest Account").

11. In or about the end of August 2008, Pelcowitz approached Zuk and requested Zuk's assistance in obtaining access to a bank account into which funds could be deposited. Zuk agreed to provide Pelcowitz with access to the Nest Account. Pelcowitz and Zuk agreed that Zuk would advise Pelcowitz when funds were deposited into the Nest Account. They also agreed that Zuk would withdraw those funds and provide them to Pelcowitz less a fee. To facilitate the agreement, Zuk obtained and then provided to Pelcowitz the wire transfer details for the Nest Account.

12. On April 8, 2009, the Commission issued a direction pursuant to subsection 126(1) of the Act, to the Royal Bank of Canada ("RBC") directing that they retain all funds in the Nest Account (the "Freeze Direction").

13. The Freeze Direction was extended on consent by order of the Superior Court of Justice on April 15, 2009, May 20, 2009, June 19, 2009, and, on December 7, 2009, the Freeze Direction was extended until the completion of proceedings commenced by the Commission if not revoked or varied by the Commission or until further order of the Superior Court of Justice.

14. At the time the Freeze Direction was issued, there was $36,390.67 in the Nest Account. As of November 23, 2012, there is $36,176.67 in the Nest Account (the "Frozen Funds").

15. The Frozen Funds were obtained through non-compliance with the Act.

III. THE ADVANCE-FEE SCHEMES

16. During the Material Time, the U.K. Residents received unsolicited phone calls from representatives of Nest A&M and were told that Nest A&M had buyers for securities already held by the U.K. Residents for a substantial premium to their original purchase price.

17. The U.K. Residents were then told that they would have to pay "performance bonds", "non-resident taxes" and/or fees to remove "share restrictions" to Nest A&M before Nest A&M could complete the sale of the securities.

18. The U.K. Residents sent their "performance bond" or other advance-fee funds via wire transfer to the Nest Account. The Nest Account received $366,234.42 from U.K. Residents solicited by Nest A&M. Certain of the U.K. Residents were repaid $47,666.00 from funds provided by other U.K. residents to a company called IMG International Inc., which had a bank account controlled by Pelcowitz.

19. None of the transactions for which the U.K. Residents wired funds to the Nest Account have been completed as promised by Nest A&M and save for the $47,666 referenced above, none of the funds have been repaid to the U.K. Residents.

20. After funds were deposited in the Nest Account, Zuk withdrew the funds and provided Pelcowitz the funds in cash less a fee paid to Zuk in compensation to Zuk for the use of the Nest Account.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

21. By engaging in the conduct described above, Zuk admits and acknowledges that he contravened Ontario securities law and acted contrary to the public interest by trading in securities through participating in acts or conduct directly or indirectly in furtherance of trades by Nest A&M, contrary to subsection 25(1)(a) of the Act as enacted during the Material Time.

PART V – TERMS OF SETTLEMENT

22. Zuk agrees to the terms of settlement listed below.

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

(a) the Settlement Agreement is approved;

(b) trading in any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)2 of the Act;

(c) acquisition of any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)2.1 of the Act;

(d) any exemptions contained in Ontario securities law do not apply to Zuk for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)3 of the Act;

(e) Zuk be reprimanded, pursuant to s. 127(1)6 of the Act;

(f) Zuk is prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8 of the Act;

(g) Zuk is prohibited from becoming or acting as a director or officer of a registrant for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8.2 of the Act;

(h) Zuk is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8.4 of the Act;

(i) Zuk is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, as defined in s. 1(1) of the Act, for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s. 127(1)8.5 of the Act; and

(j) Zuk shall disgorge to the Commission the amount of $36,176.67 obtained as a result of his non-compliance with Ontario securities law to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

24. Zuk undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 23(b) to (i) above.

25. Zuk undertakes to provide Staff with an irrevocable direction to RBC to pay the Frozen Funds to the Commission to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

PART VI – STAFF COMMITMENT

26. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Zuk in relation to the facts set out in Part III herein, subject to the provisions of paragraph 27 below.

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

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

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

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

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

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

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

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

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Zuk leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Zuk; and

(b) Staff and Zuk shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

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

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 4th day of December 2012.

Signed in the presence of:

"Michael Zuk"
Signature of witness

"Robert Zuk"
Robert Patrick Zuk

Michael Zuk
[print name of witness]

Dated this 4th day of December 2012.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

Dated this 4th day of December 2012.

Schedule "A"

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

AND

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

ORDER
(Section 127(1))

WHEREAS on January 18, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against in respect of Robert Patrick Zuk ("Zuk") and others. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated January 18, 2010;

AND WHEREAS Zuk entered into a Settlement Agreement with Staff of the Commission dated _____, 2012 (the "Settlement Agreement") in which Zuk agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated January 18, 2010, subject to the approval of the Commission;

WHEREAS on _____, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Zuk;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Zuk and from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) trading in any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2 of the Act;

(c) acquisition of any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2.1 of the Act;

(d) any exemptions contained in Ontario securities law do not apply to Zuk for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)3 of the Act;

(e) Zuk be reprimanded, pursuant to s.127(1)6 of the Act;

(f) Zuk is prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8 of the Act;

(g) Zuk is prohibited from becoming or acting as a director or officer of a registrant for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.2 of the Act;

(h) Zuk is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.4 of the Act;

(i) Zuk is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, as defined in s. 1(1) of the Act, for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.5 of the Act; and

(j) Zuk shall disgorge to the Commission the amount of $36,176.67 obtained as a result of his non-compliance with Ontario securities law to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED AT TORONTO this _____ day of _____, 2012.

3.1.2 Jory Capital Inc. – s. 28

IN THE MATTER OF
THE REGISTRATION OFJORY CAPITAL INC.

SUSPENSION OF REGISTRATION UNDER SECTION 28
OF THE SECURITIES ACT (ONTARIO)

1. Jory Capital Inc. (**Jory**) is registered under the *Securities Act* (Ontario) (the **Act**) as a dealer in the category of investment dealer.

2. On November 22, 2012, Douglas R. Brown, Director - Registrations of the Manitoba Securities Commission (the **MSC**), wrote a letter (the **Letter**) to Patrick Michael Cooney, who is registered as the ultimate designated person of Jory in the category of investment dealer.

3. The Letter confirmed that Jory's registration had been suspended by the MSC. The MSC is Jory's principal regulator.

4. As a result of the Letter, Jory's registration was also suspended in British Columbia, Alberta and Saskatchewan.

5. The allegations in the Letter raised serious concerns with whether Jory had the requisite solvency of a registered firm under the Act, and whether the directing minds of Jory had the requisite integrity of securities professionals under the Act.

6. It appears to me, in my capacity as Director, that it would be objectionable for Jory to be registered under the Act in light of the allegations raised in the Letter. I am concerned that it would be inconsistent with the OSC's mandate to provide investor protection and to foster fair and efficient capital markets and confidence in capital markets to permit Jory to remain registered in Ontario.

7. On behalf of staff (**Staff**) of the Commission, George Gunn, Manager, Registrant Conduct and Risk Analysis, communicated Staff's recommendation that Jory be suspended in a letter (the **Notice**) to Mr. Cooney dated November 29, 2012.

8. The Notice advised Jory that they were entitled to an opportunity to be heard before the Director decided to accept Staff's recommendation. Jory did not respond to the Notice within the time period set out in the Notice for requesting an opportunity to be heard, and has still not responded to the Notice.

Decision

9. My decision is that the registration of Jory be suspended, effective immediately.

December 6, 2012

"Erez Blumberger"
Deputy Director
Compliance and Registrant Regulation Branch

3.1.3 Shane Suman and Monie Rahman – ss. 127, 127.1

[Editor's Note: These reasons were released on August 22, 2012, but were inadvertently not published at that time. The accompanying Notice from the Office of the Secretary and Order were published on August 30, 2012 at (2012), 35 OSCB 8071 and 35 OSCB 8096 respectively.]

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

AND

IN THE MATTER OF
SHANE SUMAN AND MONIE RAHMAN

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*)

Sanctions Decision:	August 22, 2012		
Sanctions and Costs Hearing:	July 16, 2012		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Counsel:	Cullen Price Carlo Rossi	–	For Staff of the Ontario Securities Commission
	Sara Erskine	–	For Shane Suman and Monie Rahman

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REASONS AND DECISION
ON SANCTIONS AND COSTS

I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") to consider pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") whether it is in the public interest to make an

order with respect to sanctions and costs against Shane Suman ("**Suman**") and Monie Rahman ("**Rahman**") (collectively, the "**Respondents**").

[2] This proceeding was commenced by a Statement of Allegations and a Notice of Hearing dated July 24, 2007. An Amended Statement of Allegations was issued on October 7, 2008 and a Further Amended Statement of Allegations was issued on January 20, 2009.

[3] Staff of the Commission ("**Staff**") alleged that Suman, who was at the time an employee of MDS Sciex ("**MDS Sciex**"), a division of MDS Inc. ("**MDS**"), communicated an undisclosed material fact to his wife, Rahman. The material fact was that MDS was proposing to acquire Molecular Devices Corporation ("**Molecular**"), a public company listed on NASDAQ in the United States (the "**Proposed Acquisition**"). Staff alleged that between January 24, 2007 and January 26, 2007, Suman and Rahman purchased Molecular securities with knowledge of the Proposed Acquisition. The Proposed Acquisition was publicly announced on January 29, 2007.

[4] There was no dispute at the hearing on the merits that the Respondents purchased 12,000 Molecular shares and 900 option contracts entitling the holder to purchase an aggregate of 90,000 Molecular shares (the Molecular shares and options purchased by the Respondents are referred to as the "**Molecular Securities**") between January 24, 2007 and January 26, 2007, and sold them all by March 16, 2007 for a profit of $954,938.07 (USD). Nor was there any dispute that Suman was a "person in a special relationship" with MDS, a reporting issuer, or that the Proposed Acquisition was a material fact with respect to both MDS and Molecular that had not been generally disclosed at the relevant time. The key issues in dispute were whether Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, whether he informed Rahman of it, and whether Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[5] During the hearing on the merits, Suman represented himself. Rahman was represented by Randy Bennett, Sara Erskine and Mario Thomaidis. The decision on the merits was issued on March 19, 2012 (Re Suman (2012), 35 OSCB 2809) (the "**Merits Decision**").

[6] Following the release of the Merits Decision, the Commission held a separate hearing on July 16, 2012 to consider submissions from Staff and counsel for the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff appeared at the Sanctions and Costs Hearing and Sara Erskine represented both of the Respondents at that hearing. Staff provided written submissions with respect to the sanctions and costs Staff proposed in the circumstances. Those written submissions were made prior to the convening of the Sanctions and Costs Hearing. Counsel to the Respondents contacted the Office of the Secretary of the Commission prior to the hearing to inform Staff and the Panel that they were in agreement with Staff's proposed sanctions and costs and therefore would not be providing written submissions. As a result, Staff requested that Staff's written submissions be withdrawn from the record and instead asked the Panel to rely only on their oral submissions at the Sanctions and Costs Hearing.

[7] These are our reasons and decision as to the sanctions and costs to be ordered against the Respondents. A Sanctions and Costs Order giving effect to these reasons is attached as "Schedule A".

II. THE MERITS DECISION

[8] The Merits Decision addressed the following issues:

(a) Did Suman learn of the Proposed Acquisition through his IT role at MDS Sciex?

(b) Did Suman inform Rahman of the Proposed Acquisition?

(c) Did Suman and Rahman purchase the Molecular Securities with knowledge of the Proposed Acquisition?

(d) Did the Respondents act contrary to the public interest?

[9] The Panel concluded in the Merits Decision that:

(a) Suman contravened subsection 76(2) of the Act by informing Rahman of the Proposed Acquisition. That conclusion was based on findings that:

(i) MDS was a "reporting issuer" within the meaning of the Act;

(ii) as an employee of MDS Sciex, a division of MDS, Suman was a person in a special relationship with MDS within the meaning of subsection 76(5)(c) of the Act;

(iii) MDS's proposal to acquire Molecular was a fact that would reasonably be expected to have a significant effect on the market price or value of the MDS shares and options and was therefore a "material fact" with respect to MDS, within the meaning of the Act; and

(iv) Suman informed Rahman, other than in the necessary course of business, of the material fact referred to in paragraph (c) above before that material fact had been generally disclosed;

(b) Suman denied in a Staff interview making purchases of the Molecular Securities;

(c) it is likely that Suman intentionally deleted data and information from his office and home computers after he was expressly warned by Staff not to do so; and

(d) Suman and Rahman acted contrary to the public interest by purchasing the Molecular Securities with knowledge of a material fact with respect to Molecular that had not been generally disclosed.

[10] It is this conduct that we must consider in determining the appropriate sanctions to impose in this matter.

III. THE U.S. JUDGMENT

[11] We were informed at the Sanctions and Costs Hearing that the United States District Court, Southern District of New York, entered a final judgment against Suman and Rahman on March 12, 2010 (the "**U.S. Judgment**"). A copy of the U.S. Judgment was submitted to us in evidence.

[12] The U.S. Judgment resulted from a successful motion for summary judgment brought by the United States Securities and Exchange Commission (the "**SEC**") in a civil enforcement proceeding against Suman and Rahman. The SEC civil enforcement action was commenced on the same day as the issue of the Notice of Hearing in this proceeding and relates to the same underlying misconduct by the Respondents in trading in the Molecular Securities.

[13] The Respondents unsuccessfully appealed the U.S. Judgment to the United States Court of Appeals, which issued a Summary Order on May 5, 2011 affirming the U.S. Judgment.

[14] The U.S. Judgment ordered that:

(a) the Respondents be permanently restrained and enjoined from violating United States securities laws related to securities fraud;

(b) the Respondents pay jointly and severally disgorgement of $1,039,440 (USD), representing the profits gained as a result of the trading in the Molecular Securities alleged in the SEC complaint;

(c) Suman pay a civil penalty in the amount of $2.0 million (USD); and

(d) Rahman pay a civil penalty in the amount of $1.0 million (USD).

[15] Staff requests sanctions, described below, that take into account the sanctions imposed on Suman and Rahman under the U.S. Judgment. But for the U.S. Judgment, Staff submits that they would have sought an order against Suman for full disgorgement of the Respondents' trading profits as found in the Merits Decision ($954,938.07 (USD)) and an administrative penalty of $1,000,000. No disgorgement or administrative penalty can be imposed on Rahman because she was not found in the Merits Decision to have contravened Ontario securities law.

IV. SANCTIONS AND COSTS REQUESTED BY STAFF

[16] Staff requests the following sanctions and costs orders against the Respondents.

Suman

Cease trade and other prohibition orders

[17] Staff seeks an order:

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

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Suman cease permanently; and

(c) pursuant to clause 8 of subsection 127(1) of the Act, that Suman be prohibited permanently from becoming or acting as a director or officer of a reporting issuer.

Administrative Penalty

[18] Staff submits that an administrative penalty of $250,000 against Suman is appropriate in the circumstances. Staff submits that we found in the Merits Decision that Suman breached subsection 76(2) of the Act, a key provision of the Act prohibiting tipping of undisclosed material facts. Staff submits that a substantial administrative penalty is necessary to deter Suman from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants.

Disgorgement

[19] Staff did not seek an order pursuant to clause 10 of subsection 127(1) of the Act requiring Suman to disgorge to the Commission all amounts obtained as a result of his non-compliance with Ontario securities law. Staff submits that but for the order against Suman under the U.S. Judgment that he pay full disgorgement and a substantial civil penalty, Staff would have requested an order for disgorgement of $954,938.07 (USD), the total amount obtained by Suman as a result of his non-compliance with the Act.

Rahman

Cease trade and other prohibition orders

[20] Staff also seeks an order:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Rahman cease for a period of five years, after which she may trade in securities only if any costs awarded against her have been paid in full;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Rahman cease for a period of five years, after which she may acquire securities only if any costs awarded against her have been paid in full;

(c) pursuant to clause 8 of subsection 127(1) of the Act, that Rahman be prohibited permanently from becoming or acting as a director or officer of a reporting issuer.

Staff's Conclusion on Sanctions

[21] Staff submits that the sanctions proposed by Staff are proportionate to the Respondents' serious misconduct and will serve as a specific and general deterrent. An order permanently removing Suman from the capital markets and requiring Suman to pay a significant administrative penalty, will signal both to Suman and to like-minded individuals that the misconduct in this case was serious and that such conduct will result in severe administrative sanctions. Staff takes the same position with respect to the trading and other bans proposed against Rahman.

Costs

[22] Staff also seeks an order for the payment by the Respondents of the Commission's investigation and hearing costs pursuant to section 127.1 of the Act. Staff submits that the Respondents should be ordered to pay costs of $250,000 in the aggregate; $150,000 to be paid by Suman and $100,000 to be paid by Rahman. Staff submits that those costs are only a portion of the total costs of $517,373.48 incurred by Staff in the investigation and hearing of this matter.

Sale of Securities

[23] We note that Rahman has agreed to sell any securities remaining in the trading account which was used by the Respondents to purchase the Molecular Securities. Counsel for the Respondents submits that approximately $30,000 of securities remains in that account. The proceeds from that sale are to be paid forthwith to the Commission and are to be applied against any costs we award against Rahman.

V. THE POSITION OF THE RESPONDENTS

[24] The Respondents agree with the sanctions and costs proposed by Staff.

VI. SANCTIONS

(i) The Law on Sanctions

[25] The Commission's dual mandate is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).

[26] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd.* as follows:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at pp. 1610-1611)

[27] Further, the Supreme Court of Canada has recognized general deterrence as an additional factor that the Commission may consider when imposing sanctions. In *Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court stated that: "… it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative".

[28] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of each respondent. The Commission has previously identified the following as some of the factors that a panel should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

(f) the size of any profit obtained or loss avoided from any illegal conduct;

(g) the size of any financial sanction or voluntary payment;

(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(i) the reputation and prestige of the respondent;

(j) the remorse of the respondent; and

(k) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at p. 7746; and *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 OSCB 1133 ("***Re M.C.J.C.***"))

The applicability and importance of such factors will vary according to the circumstances of each case.

[29] J oint submissions on sanctions and costs are being made by Staff and the Respondents. However, we have discretion to impose the sanctions and costs we consider appropriate in the circumstances. Nonetheless, we give significant weight to the joint submissions of Staff and the Respondents.

(ii) Specific Sanctioning Factors Applicable in this Matter

[30] Overall, the sanctions we impose must protect Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future.

[31] In considering the various factors referred to in paragraph 28, we find the following factors and circumstances to be particularly relevant in this matter:

(a) The Seriousness of the Misconduct

[32] The allegations proven in this case involve very serious misconduct and a significant contravention of the Act, as well as conduct contrary to the public interest. As we noted in the Merits Decision, the Commission generally views insider tipping and insider trading as equally reprehensible. We stated in the Merits Decision that:

> … insider tipping and insider trading are not only illegal under the Act but also significantly undermine confidence in our capital markets and are manifestly unfair to investors. Insider tipping of an undisclosed material fact is a fundamental misuse of non-public information that gives the tippee an informational advantage over other investors and may result in the tippee trading in securities of the relevant reporting issuer with knowledge of the undisclosed material fact, or tipping others.
>
> (*Merits Decision*, *supra*, at paras. 21-23)

[33] The Commission has stated that:

> Illegal insider trading by its very nature is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face. If we do not act in the public interest by sending an appropriate message in appropriate circumstances, then we fail in doing our duty.
>
> (*Re M.C.J.C.*, *supra*, at p. 4; see also *Harper (Re)* (2004), 27 OSCB 3937 at para. 49; *Donnini (Re)* (2002), 25 OSCB 6225 at para. 202)

[34] In this case, we found that Suman breached subsection 76(2) of the Act by tipping Rahman of the Proposed Acquisition and that Suman and Rahman would have breached the insider trading prohibition in subsection 76(1) of the Act if Molecular had been a reporting issuer. While Molecular was not a reporting issuer under the Act, it was a U.S. public company listed on NASDAQ.

[35] Further, we found in the Merits Decision that:

(a) Suman denied in a Staff interview making the purchases of the Molecular Securities, which denial was untrue;

(b) it is likely that Suman intentionally deleted data and information from his office and home computers after having been expressly warned by Staff not to do so;

(c) key aspects of Suman and Rahman's testimony was not credible;

(d) Suman showed consciousness of guilt when he searched for information relating to insider trading and to Martha Stewart on the same day that the Respondents first purchased Molecular securities; and

(e) Suman and Rahman acted contrary to the public interest by purchasing the Molecular Securities with knowledge of a material fact with respect to Molecular that had not been generally disclosed.

[36] The conduct referred to in paragraphs 34 and 35 constitutes serious misconduct by the Respondents that deserves severe sanctions.

(b) The Respondents' Experience and Knowledge

[37] The Respondents each had significant experience in the capital markets as retail investors. Rahman became experienced in day-trading when she took over trading for the Respondents in July 2006.

[38] Further, Suman twice reviewed and certified his compliance with MDS' global business practices policy (prior to his trading in the Molecular Securities) and was aware of the wrongful nature of illegal insider tipping and trading.

[39] Accordingly, the Respondents knew that their actions in purchasing the Molecular Securities with knowledge of an undisclosed material fact were wrongful.

(c) The Sanctions will Deter the Respondents and Like-Minded People from Engaging in Similar Abuses of the Capital Markets

[40] In this case, given the Respondents' serious misconduct, severe sanctions are appropriate to deter the Respondents and like-minded individuals from engaging in similar misconduct. The role of a senior information technology professional within a reporting issuer is a role which places the individual in a position of trust. We must deter others in similar positions from abusing that trust.

(d) The Size of any Profit Made or Loss Avoided from the Illegal Conduct

[41] The size of the profit (almost $1,000,000) made by the Respondents through the wrongful tipping and trading was very substantial.

(e) The Restraint Any Sanctions May Have on the Ability of a Respondent to Participate Without Check in the Capital Markets

[42] The requested prohibitions on trading and acting as a director or officer of a reporting issuer will have the effect of restraining the Respondents' participation in our capital markets in a way that is directly related to the Respondents' misconduct in this matter. That misconduct related directly to trading in securities while the Respondents were in possession of an undisclosed material fact.

(f) Impact on Investors

[43] The informational advantage of the Respondents in purchasing the Molecular Securities with knowledge of an undisclosed material fact related to Molecular was manifestly unfair to other investors in Molecular securities.

(g) The Ability of the Respondents to Pay

[44] At the Sanctions and Costs Hearing, we were not provided with any affidavit or other evidence as to Suman's ability to pay any monetary sanctions (as noted above, no such sanctions can be imposed on Rahman because she was not found to have contravened Ontario securities law). However, counsel for the Respondents submits that the Respondents currently have limited means. Further, counsel submits that Suman is currently unemployed and Rahman is unable to work outside of the home. Rahman testified at the hearing on the merits that the only income she earned was through her day-trading.

[45] Given the seriousness of the Respondents' misconduct and the lack of evidence as to the Respondents' financial resources, we do not consider the Respondents' ability to pay as a significant factor in determining the appropriate monetary sanctions or costs.

(h) The Relevance of the U.S. Judgment in Determining the Appropriate Order for Disgorgement and Administrative Penalty

[46] Staff did not seek an order for disgorgement against Suman given the order for disgorgement made under the U.S. Judgment. That order is for the full amount of the illegal profits made by the Respondents from the trading that was the subject matter of this proceeding.

[47] Further, a civil penalty of $2.0 million (USD) was imposed under the U.S. Judgment against Suman and a civil penalty of $1.0 million (USD) was imposed on Rahman. But for the civil penalty against Suman, Staff advised us that they would have sought the maximum administrative penalty of $1.0 million available under clause 9 of subsection 127(1) of the Act.

[48] Viewed in the context of the U.S. Judgment, Staff submits that a $250,000 administrative penalty against Suman is appropriate and sends a strong general and specific deterrent message.

(iii) Previous Sanctions Decisions

[49] Staff submitted a number of previous Commission decisions with respect to sanctions for our consideration. Staff submits that the following two decisions may provide guidance to us and support Staff's position that significant sanctions are appropriate and necessary in these circumstances. We note that both decisions are approvals of settlements in which a full hearing on the merits did not take place.

Re Thakur

[50] In *Re Thakur* (2009), 32 OSCB 4201, the Commission considered a settlement agreement relating to breaches of subsection 76(1) of the Act. Thakur had gained access to material undisclosed information of a reporting issuer through his sister, who was a technology infrastructure analyst at the reporting issuer. Thakur purchased and sold securities of the reporting issuer, obtaining $642,056.29 in profit. The Commission ordered permanent trading and officer and director bans, disgorgement in the amount of $642,056.29, as well as an administrative penalty of $481,542.22.

Re Kuszper

[51] In *Re Kuszper* (2011), 34 OSCB 9257, the Commission considered settlement agreements relating to breaches of subsections 76(1) and 76(2) of the Act by a mother and her son. Helen Kuszper was an employee of a reporting issuer who had access to material undisclosed information as a result of her position. She tipped her son Paul Kuszper and they both purchased and sold options in securities of the reporting issuer, obtaining approximately $350,000 in profits and losses avoided. The Commission ordered against Helen Kuszper, permanent trading and officer and director bans, disgorgement in the amount of $173,080, as well as an administrative penalty of $361,160, and against Paul Kuszper, a 15-year trading and director and officer ban, disgorgement in the amount of $148,692, and an administrative penalty of $340,530.

(iv) Trading and Other Bans

[52] Staff submits that it would be appropriate for us to order that Suman cease trading in and acquiring securities permanently and that Rahman cease trading for a period of five years and thereafter until payment of the costs awarded against her. In addition, Staff requests an order against each Respondent prohibiting them permanently from being an officer or director of a reporting issuer.

[53] In all of the circumstances, we have concluded that it is in the public interest to make the following orders (on the terms requested by Staff):

Suman

(a) an order pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Suman cease permanently;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Suman cease permanently;

(c) an order pursuant to clause 8 of subsection 127(1) of the Act, that Suman be prohibited permanently from becoming or acting as an officer or director of a reporting issuer;

Rahman

(d) an order pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Rahman cease for a period of five (5) years, after which time Rahman may trade in securities only if the costs ordered against her below have been paid in full to the Commission;

(e) an order pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition by Rahman of any securities cease for a period of five (5) years, after which time Rahman may acquire securities only if the costs ordered against her below have been paid in full to the Commission; and

(f) an order pursuant to clause 8 of subsection 127(1) of the Act, that Rahman be prohibited permanently from becoming or acting as an officer or director of a reporting issuer.

(v) Disgorgement

[54] Clause 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The

disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence.

[55] We have considered the following factors in determining whether to issue a disgorgement order against Suman:

(a) the amount obtained by Suman as a result of his non-compliance with the Act;

(b) the fact that the amount obtained as a result of his non-compliance is reasonably ascertainable;

(c) the seriousness of his misconduct and breach of the Act; and

(d) the deterrent effect of a disgorgement order on Suman and other market participants.

(See, for instance, *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at para. 52)

[56] The U.S. Judgment requires that the Respondents jointly and severally disgorge $1,039,440 (USD) for the trading that was also the subject matter of this proceeding.

[57] In the circumstances, we will order Suman to disgorge $954,938.07. That amount represents the total amount in Canadian dollars that we determined in the Merits Decision was obtained by Suman as a result of his non-compliance with the Act. Because Rahman was not found to have contravened the Act, we have no authority to order disgorgement against her. It would not be fair or appropriate, however, for Suman to have to pay as disgorgement substantially the same amount twice for the same misconduct. Therefore, we order that any amounts paid by Suman or Rahman to satisfy the disgorgement ordered under the U.S. Judgment shall be credited against the disgorgement order we make. Further, so long as the SEC is taking reasonable steps to obtain payment of disgorgement under the U.S. Judgment, there is no need for Staff to attempt to obtain payment of our disgorgement order. This recognises the fact that the improper trading profits obtained by the Respondents came from trading in U.S. capital markets in the securities of a U.S. public company. Notwithstanding, we believe that it is appropriate that we impose a disgorgement order against Suman (even though such an order was not requested by Staff) that can be directly enforced in this jurisdiction if doing so would be efficacious. We understand, however, that the Respondents are no longer residents of Ontario.

(vi) Administrative Penalty

[58] In our view, it is appropriate to impose a substantial administrative penalty against Suman in addition to our disgorgement order. We have accepted the submissions made by Staff and the Respondents as to the appropriate amount of the administrative penalty.

[59] In imposing the following administrative penalty, we have taken into account that the $2.0 million (USD) civil penalty imposed on Suman under the U.S. Judgment is approximately two times the trading profits from his illegal conduct. We also note that a civil penalty of $1.0 million (USD) was ordered against Rahman. That means that the aggregate amount of the civil penalties ordered against the Respondents under the U.S. Judgment are approximately three times the amount of their trading profits. Those are very substantial sanctions for the same misconduct that was the subject matter of this proceeding.

[60] We will order that an administrative penalty of $250,000 be paid by Suman to the Commission. He committed a very serious breach of the Act, he violated his position of trust as an employee of MDS, and he obtained a very substantial financial benefit from his breach of the Act. In our view, a substantial administrative penalty in addition to the monetary penalties imposed under the U.S. Judgment is appropriate and necessary in the circumstances.

VII. COSTS

[61] Section 127.1 of the Act gives the Commission discretion to order a person or company to pay the costs of an investigation and a hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. We held in the Merits Decision that Suman contravened subsection 76(2) of the Act and that the Respondents have not acted in the public interest.

[62] Staff seeks costs of $150,000 from Suman and of $100,000 from Rahman.

[63] Accordingly, Staff seeks an order for an aggregate payment by the Respondents of $250,000 of the costs of the investigation and of the hearing in this matter, including disbursements. Staff has submitted a bill of costs supporting that amount. Staff submits that they have used a reasonable and conservative approach in determining the amount of the requested costs (see **Ochnik (Re)** (2006), 29 OSCB 5917 at paras. 16, 18-19). Staff submits that the costs requested are only a portion of the total costs of $517,373.48 incurred by Staff in the investigation and the hearing of this matter.

[64] The bill of costs submitted by Staff reflects time spent investigating and litigating this matter, and includes copies of weekly timesheets supporting the hourly figures claimed.

[65] Staff submits that the aggregate amount of costs sought (of $250,000) reflects more than a 50% discount of the time spent by two senior professionals at the Commission, as well as a discount of a large disbursement. Staff submits that the large amount of costs incurred in this matter are justified because this proceeding involved a fully contested hearing on the merits over 19 hearing days and included complex expert evidence and several motions brought by the Respondents.

[66] In the circumstances, we order that costs in the amount of $250,000 shall be paid by the Respondents on a joint and several basis. We believe that a joint and several order for costs is appropriate given that both of the Respondents were actively involved in the misconduct that was the subject matter of this proceeding, both traded in the Molecular Securities and both participated actively in the hearing on the merits. As noted above, Rahman has agreed to sell the securities in her trading account and to apply the proceeds against our costs award.

VIII. CONCLUSION

[67] For the reasons discussed above, we have concluded that the sanctions we impose above are proportionate to the respective conduct and culpability of each of the Respondents in the circumstances and are in the public interest. We will issue a sanctions and costs order substantially in the form attached as Schedule “A” to these reasons.

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

“James E. A. Turner”

“Paulette L. Kennedy”

Schedule "A"

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

-AND-

IN THE MATTER OF
SHANE SUMAN AND MONIE RAHMAN

ORDER
(Sections 127 and 127.1 of the Securities Act)

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Suman is prohibited permanently;

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

(e) pursuant to clause 8 of subsection 127(1) of the Act, each of the Respondents shall be prohibited permanently from becoming or acting as a director or officer of any reporting issuer;

(f) pursuant to clause 9 of subsection 127(1) of the Act, Suman shall pay an administrative penalty of $250,000 to the Commission, such amount to be allocated to or for the benefit of third parties;

(g) pursuant to clause 10 of subsection 127(1) of the Act, Suman shall disgorge $954,938.07 to the Commission, such amount to be allocated to or for the benefit of third parties; and

(h) pursuant to section 127.1 of the Act, Suman and Rahman shall jointly and severally pay costs of $250,000 to the Commission.

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

"James E. A. Turner"

"Paulette L. Kennedy"

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
Ecosse Energy Corp.	06 Dec 12	18 Dec 12		
Pure Energy Visions Corporation	06 Dec 12	18 Dec 12		
Preo Software Inc.	06 Dec 12	18 Dec 12		
Revolution Technologies Inc.	06 Dec 12	18 Dec 12		
Akela Pharma Inc.	27 Nov 12	07 Dec 12	07 Dec 12	
Nortel Networks Corporation	11 Dec 12	24 Dec 12		
Nortel Networks Limited	11 Dec 12	24 Dec 12		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
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		

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Chapter 5

Rules and Policies

5.1.1 Practice Guideline – December 4, 2012 – Commission's Book of Authorities

PRACTICE GUIDELINE – DECEMBER 4, 2012

Commission's Book of Authorities

(Cross-reference: *Ontario Securities Commission Rules of Procedure* (2012), 35 O.S.C.B. 10071)

Preamble

The Ontario Securities Commission (the "Commission" or the "OSC") is issuing the following practice guideline in respect of the use of a Commission's Book of Authorities in adjudicative proceedings before the Commission (the "Practice Guideline").

The Practice Guideline varies the requirement established in Rule 10.9(4) of the *Ontario Securities Commission Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*OSC Rules*") that parties must provide the Commission with copies of all legal authorities referred to in their submissions. Parties will not be required to provide the Commission copies of legal authorities contained in the Commission's Book of Authorities.

The Practice Guideline applies to all proceedings before the Commission where the Commission is required under the *Securities Act*, R.S.O. 1990, c. S.5, as amended and the *Commodity Futures Act*, R.S.O. 1990, c. C.20, or otherwise by law, to hold a hearing or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. The Practice Guideline is issued pursuant to Rule 1.3 of the *OSC Rules*.

The Commission therefore issues the following Practice Guideline which, effective January 1, 2013, will apply to all proceedings before the Commission, including proceedings commenced by a Notice of Hearing issued prior to the issuance of the Practice Guideline:

1. The Commission's Book of Authorities

1.1. A Commission's Book of Authorities containing cases frequently relied on by parties appearing before the Commission (the "Book of Authorities"), has been developed by the Office of the Secretary to the Commission and approved for use in proceedings before the Commission. A copy of the Book of Authorities has been provided to all Commissioners, and additional copies will be maintained in each hearing room used by the Commission.

1.2. An Index to the Book of Authorities, with links to copies of the authorities contained therein, is available on the Commission's website (www.osc.gov.on.ca). An up-to-date copy of the Index is also available from the Office of the Secretary to the Commission. The authorities are listed in the Index under headings which are not in any way intended to provide legal advice.

1.3. There will be additions to, and deletions from, the Book of Authorities from time to time. Any questions or comments concerning the Book of Authorities, including any recommendations for additions to or deletions from the list of cases, should be directed to the Office of the Secretary to the Commission.

2. Relief from the requirement to provide copies of legal authorities to the Panel

2.1. Rule 10.9(4) of the *OSC Rules* states that "A party referring to any court decision, legal article or authority shall provide a copy for each member of the Panel and each party."

2.2. Notwithstanding Rule 10.9(4) or any other requirement in the *OSC Rules* to the contrary, a party relying on an authority that is contained in the Book of Authorities need not reproduce the authority as part of the materials filed for matters before the adjudicative panels of the Commission.

2.3. A party relying on an authority from the Book of Authorities in written submissions should identity the case by name and citation, with reference to the Tab Number of the authority as it appears in the Index to the Book of Authorities.

3. Relief from the requirement to provide copies of legal authorities to each party

3.1. Notwithstanding Rule 10.9(4) of the *OSC Rules* or any other requirement in the *OSC Rules* to the contrary, where a party is relying on an authority from the Book of Authorities, the party is not required to provide copies of the authority to each party to the proceeding if the authority has been identified in the party's written submissions as an authority contained in the Book of Authorities and the written submissions have been served on each party to the proceeding not later than 10 days prior to the hearing.

Chapter 6

Request for Comments

6.1.1 CSA Discussion Paper and Request for Comment 81-407 Mutual Fund Fees

CANADIAN SECURITIES ADMINISTRATORS
DISCUSSION PAPER AND REQUEST FOR COMMENT 81-407
MUTUAL FUND FEES

December 13, 2012

Table of Contents

CANADIAN SECURITIES ADMINISTRATORS
DISCUSSION PAPER AND REQUEST FOR COMMENT 81-407
MUTUAL FUND FEES

I. INTRODUCTION

The Canadian Securities Administrators (CSA or we) are examining the mutual fund fee structure in Canada in order to see whether there are investor protection or fairness issues, and to determine whether any regulatory responses are needed to address any issues we find. This paper is intended to be a platform to begin a discussion on the current mutual fund fee structure in Canada.

This discussion paper is the first step in the CSA's public consultations about this project. It:

- provides an overview of the roles of the market participants in the mutual fund industry (mutual fund manufacturers and advisors who distribute the funds)
- provides an overview of the current mutual fund fee structure
- identifies some investor protection and fairness issues we think arise from the current fee structure
- provides an overview of global regulatory reforms
- describes some regulatory options the CSA could potentially consider, either alone or in combination.

Some of the options would impact mutual funds or mutual fund manufacturers directly, and others would impact those who sell the product.

While the focus of this paper is on mutual funds, we recognize that there are other investment fund products whose fee structure may raise similar investor protection and fairness issues for investors. Accordingly, we anticipate that any regulatory initiative we might ultimately undertake would assess whether the same initiative should also apply to other investment funds and comparable securities products.

Before considering any of these regulatory options further, we intend to consult extensively with investors and industry participants, and will continue to closely monitor and assess the effects of related regulatory reforms in Canada and around the world. In particular, the CSA recognize this paper raises some novel and difficult issues. It will be important for the CSA to consider the unique features of the Canadian market as we examine what, if any, changes could or should be made.

We welcome comments from investors, participants in the mutual fund and financial services industries, and all other interested parties on the issues raised and regulatory options set out in this paper. We also invite suggestions for other possible regulatory responses to these issues. The comments will help inform a roundtable the CSA plans to hold with investors and industry participants in 2013. The comments and roundtable discussions will help the CSA determine what, if any, regulatory responses might be appropriate.

Please see Part VIII for information on how to submit comments. The comment period closes on April 12, 2013.

II. BACKGROUND

Mutual funds are a cornerstone investment for many Canadian investors. At the end of 2011, the mutual fund industry managed $762 billion in assets on behalf of Canadians. Those assets accounted for 73.8% of all Canadian investment fund industry assets under management.[1]

Mutual funds are the most commonly held investment product, with 62% of Canadians with savings or investments set aside holding this product in their investment portfolios.[2] In addition, mutual funds make up the largest share of investable assets for the typical Canadian household. At June 2011, the average Canadian household held 36.1% of its investable assets in mutual funds.[3]

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1 The remaining 26.2% of Canadian investment fund industry assets under management is made up of the following investment fund assets: hedge funds (1.7%), closed-end funds (3.1%), segregated funds (3.5%), exchange-traded funds (4.2%), pooled funds (4.6%) and insurance company pools (9.1%). The source for this data is Investor Economics at December 2011. 'Wrapped assets' have been removed to control for double-counting.

2 See Innovative Research Group, Inc., *2012 CSA Investor Index* (October 2012), prepared for the CSA. That survey finds that the three most commonly held investment products are mutual funds (62% of those with savings or investments set aside), term deposits or GICs (45%) and individually held stocks (33%).

3 Source: Ipsos Reid Canadian Financial Monitor. For advised Canadian households, this figure increases to 41.7%. Ipsos Reid defines investable assets as including chequing and savings accounts, GICs, stocks, bonds and mutual funds.

In Canada, most mutual funds are purchased through an advisor. At the end of 2011, 91% of investment fund assets were acquired and held by investors through distribution channels involving the intermediation of an advisor,[4] and over 80% of mutual fund investors said their last purchase was made through an advisor.[5]

Mutual fund investors in Canada primarily incur two kinds of fees and expenses to invest in and own mutual funds: sales charges and ongoing fund fees. Sales charges are transaction-based fees that investors pay directly either when they buy the fund or when they sell or redeem from the fund. Ongoing fund fees, which include the management fees and fund expenses (expressed together as the management expense ratio or MER), are paid from fund assets, which means that investors pay these fees indirectly. Embedded within the management fees of most Canadian mutual funds are ongoing trailing commissions paid to advisors.

A number of published research studies have compared mutual fund ownership costs globally, each concluding that Canadian mutual fund fees are among the highest in the world.[6] Some members of the Canadian mutual fund industry and other commentators[7] have challenged these studies, saying that they provide inaccurate comparisons or do not consider the value to investors of the advice that advisors provide.[8]

Over the last few years, there has been a wave of regulatory reforms and proposals in other major international jurisdictions that fundamentally change the way retail investors buy investment funds and other financial products, as well as how they pay for financial advice. These include:

- the ban in the United Kingdom (U.K.) and Australia of advisor commissions set by financial product providers or embedded in financial products,
- the imposition in Australia of a statutory best interest duty on advisors who sell financial products, and
- the consideration of similar reforms by regulators in Europe and the United States (U.S.).

These global regulatory changes, together with the comparative studies on fund fees, have prompted calls for greater scrutiny of fund fees in Canada.

The CSA have to date focused their regulatory efforts on enhancing transparency of fund fees for investors, including the cost of embedded trailing commissions, through such initiatives as the Point of Sale disclosure project and Client Relationship Model project (each discussed later in this paper). While we continue to move forward to implement these initiatives to help investors make more informed investment decisions, we are now examining whether the current mutual fund fee structure raises investor protection concerns that require additional regulatory action. As such, the CSA are looking at all aspects of the current mutual fund fee structure and regulatory framework to determine what changes could or should be made, to enhance investor protection and to foster confidence in our market.

In Annex I to this paper, we include an overview of the mutual fund fee structures that exist in other major jurisdictions, namely the U.S., the U.K. and Australia, and highlight certain aspects of their fund industries including differences in their mutual fund regulatory framework that could influence average fund fees in those jurisdictions. The data we set out and the observations we make in Annex I are intended to provide context for our examination of Canada's mutual fund fee structure and current regulatory framework.

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4 Investor Economics, *Household Balance Sheet (update and rebased forecast)* (June 2012), pages 156, 160 and 161. This total includes the Branch Direct, Branch Advice, Financial Advisors, Full-service Brokers and Private Investment Counsel distribution channels, each of which provide varying forms of advice and services through the intermediation of advisors. See "**2. The advisors**" in Part III for a description of the various distribution channels.

5 POLLARA, *Canadian Investors' Perceptions of Mutual Funds and The Mutual Fund Industry – 2011*, Report prepared for the Investment Funds Institute of Canada (IFIC). The percentage of investors using an advisor for their last purchase has varied between 81% and 85% since IFIC began conducting this survey in 2006.

6 Examples of such studies include: B.N. Alpert, J. Rekenthaler, *Morningstar Global Fund Investor Experience 2011* (March 2011); J. Rekenthaler, M. Swartzentruber, C. Tsai, *Morningstar Global Fund Investor Experience 2009* (May 2009); and A. Khorana, H. Servaes, P. Tufano, *Mutual Fund Fees Around the World* (July 23, 2007); and K. Ruckman, *Expense ratios of North American mutual funds*, Canadian Journal of Economics (February 2003) p. 192-223.

7 Mackenzie Financial, *Canadian Mutual Fund Ownership Costs: Competitive Relative to the U.S.* (September 2010); D. Yanchus, *A cross-border perspective on MERs* (May 18, 2011) available at: http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=381595; and Investor Economics, *Attribution analysis of MERs explains cross-border gap*, Investor Economics Insight Monthly Update (July 1996).

8 The Canadian mutual fund industry has commissioned several reports supporting the value of advice and what a relationship with an advisor can mean to Canadians' wealth accumulation and overall financial health. These reports include: IFIC, *The Value of Advice: Report* (July 2010); IFIC, *The Value of Advice: Report* (November 2011); C. Montmarquette, N. Viennot-Briot, *Econometric Models on the Value of Advice of a Financial Adviser*, (Montreal: the Centre for Interuniversity Research and Analysis on Organizations (CIRANO)) (July 2012).

Defined terms

In this paper:

- The term "advisor" is a plain language term that is used in the same way that mutual fund industry participants and members of the public commonly use this term to refer to a mutual fund salesperson. The term "advisor" is not indicative of a mutual fund salesperson's category of registration with Canadian securities regulators. Mutual fund salespersons that are registered with Canadian securities regulators to trade in mutual fund securities are, in most cases, registered as dealing representatives of mutual fund dealers or investment dealers. Unless otherwise specifically indicated in this paper, the term "advisor" should not be taken to imply registration as an advising representative of a portfolio manager firm with authority to trade for clients on a discretionary basis.

- The term "mutual fund manufacturer" means the entity that produces and promotes the mutual fund and that is also the registered investment fund manager responsible for directing the business, operations and affairs of the mutual funds.

III. CANADIAN MUTUAL FUND INDUSTRY PARTICIPANTS

The participants in the Canadian mutual fund industry include the mutual fund manufacturers who produce and promote mutual fund products and advisors who distribute those products to investors.

1. The mutual fund manufacturers[9]

There are currently 103 mutual fund manufacturers in Canada. They fall into the following four categories:

i. Canadian banks/deposit-takers

The fund management arms of 7 Canadian chartered banks together with the Mouvement Desjardins in Québec currently account for 43% of mutual fund assets under management. These manufacturers largely distribute their mutual funds through their branch networks, full-service and discount brokerage networks. Most of them also distribute a separate series of securities of their mutual funds, known as the *Advisor* series, through third party advisors.

These manufacturers typically offer their mutual funds on a no-load basis (i.e. without a sales commission) when sold through their bank branches. Their *Advisor* fund series, distributed through third party advisors and through their own full-service brokerage networks, is sold on a load basis (i.e. subject to a sales commission) under various purchase options.[10]

ii. Life insurers

While Canadian life insurance companies primarily produce and promote segregated fund products, they are also involved in manufacturing mutual funds. These manufacturers currently represent 4.6% of mutual fund assets under management. Their mutual funds are largely sold on a load basis under various purchase options through their own licensed insurance agents who are typically dually licensed to sell both segregated funds and mutual funds.

iii. Independents

Independent mutual fund manufacturers are those that are not a subsidiary of one of the large deposit-taker institutions. These independents manage the largest share of industry assets and currently represent 49.4% of mutual fund assets under management. Their mutual funds are typically sold on a load basis through third party advisor distribution networks that include the registered distribution arms of deposit-takers, life insurers and independent dealers. Some independents also have their own dealer network that typically focuses on their own funds.

A very small subset of the independent mutual fund manufacturers category consists of "direct sellers" who typically make their mutual funds available for sale on a no-load basis directly to the investor, without using a third party advisor. In this case, the direct seller or a related entity will be a registered dealer firm through which the direct seller may sell securities of its mutual

[9] The source for the data on mutual fund manufacturers provided in this section is Investor Economics. The data is as of December 2011. See Figure 1.

[10] In Part IV under "**1. Current mutual fund fees**", we describe the various purchase options under which mutual fund manufacturers sell their funds.

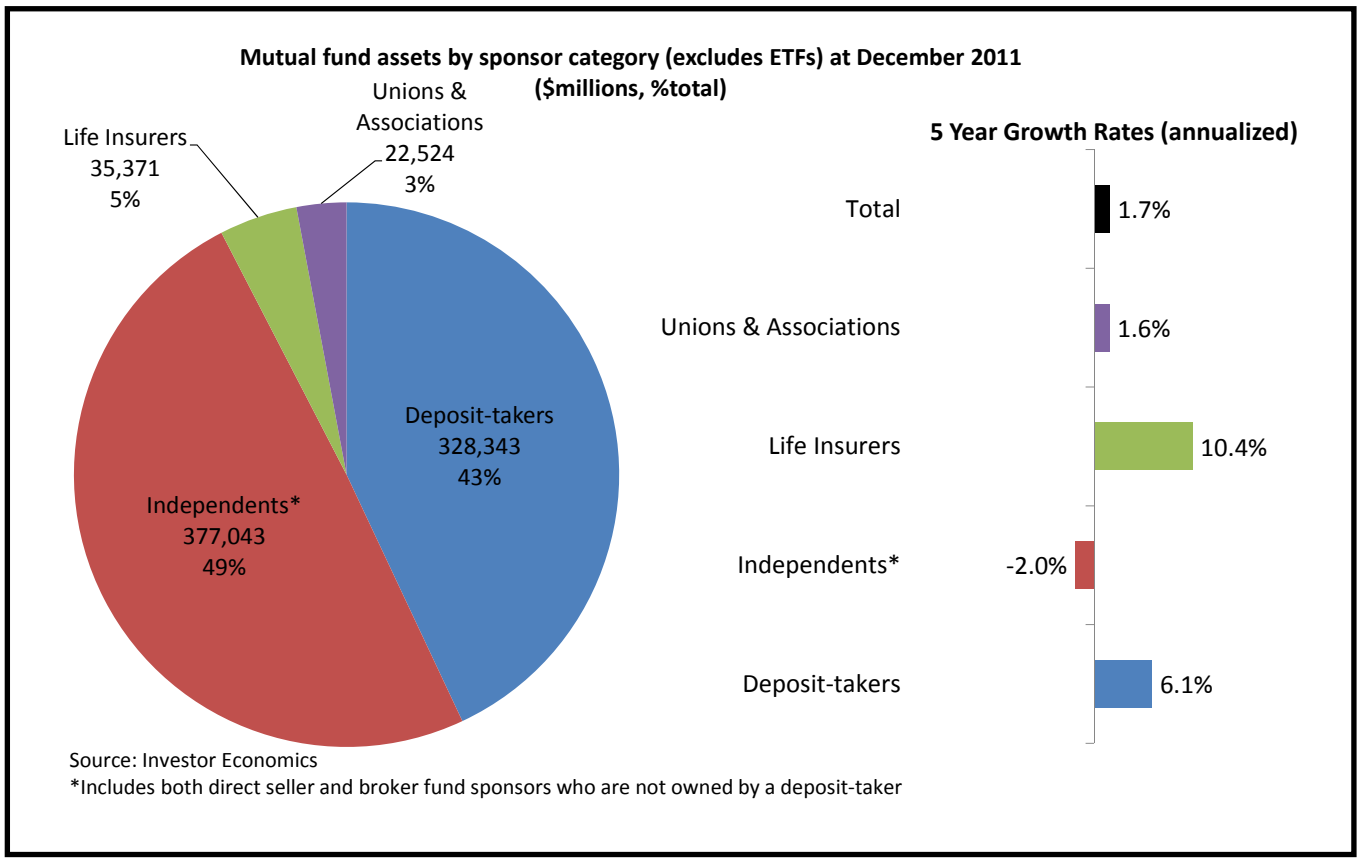
funds to investors.[11] Direct sellers typically maintain websites and telephone service centres for their direct investors. Independent direct sellers currently account for 1.2% of mutual fund assets under management.

iv. Unions and Associations

The remaining 3% of mutual fund industry assets are managed by unions and associations. Mutual funds produced and promoted by these manufacturers are generally organized for specific target groups (e.g. teachers, physicians) and generally only members of those groups can buy them. These mutual funds are typically sold on a no-load basis and often, are managed and priced on a cost recovery basis.

Figure 1 illustrates the share of Canadian mutual fund assets under management that each mutual fund manufacturer category currently holds, along with the categories' growth rates over the last 5 years.

Figure 1: Mutual fund assets by mutual fund manufacturer category



2. The advisors[12]

The number of dealer firms involved in the distribution of investment funds includes 10 deposit-takers, 825 credit unions, 305 insurance distributors and hundreds of independent fund dealers and full service brokerages.[13] These firms employ tens of thousands of individual advisors, who must each satisfy prescribed registration requirements in order to deal in mutual fund securities.[14]

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[11] In many cases however, mutual funds of direct sellers may be sold through other distribution channels as well, including the discount brokerage and full service brokerage channels, where loads or other fees may be applicable.

[12] All data in this section refers to investment funds of which mutual funds make up the largest subset of assets under administration. See note 1.

[13] Investor Economics, *Retail Brokerage and Distribution Advisor Service*, Spring 2012.

[14] Anyone who deals in mutual fund securities must be registered with Canadian securities regulators in an appropriate category of registration or be exempted from registration. Most often, they will be registered as dealing representatives of firms registered in the "mutual fund dealer" or "investment dealer" categories under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). In addition, under NI 31-103, all investment dealer firms must be members of the Investment Industry Regulatory Organization of Canada (IIROC) and, except in Québec, all mutual fund dealer firms must be members of the Mutual

The types of products the advisor may sell and the scope of the services that advisor may provide, can vary widely across the various distribution channels. Some advisors may be registered to sell only mutual funds, while others may be registered to sell a broader range of securities. Some advisors may also be licensed to sell other financial products whose distribution is generally not regulated by the Canadian securities regulators. These include term deposits, life insurance and segregated funds, among others.[15] In addition, some advisors may hold certain designations[16] qualifying them to provide a range of financial services, including financial planning and estate planning.

Distribution channels:

i. Branch direct

This distribution channel is made up of front line advisors at bank branches who are available to 'walk-in' clients. Generally, these advisors only sell mutual funds and traditional deposit products as demand arises. As a result, their services are primarily transaction focused. The dealer firms in this channel are registered as mutual fund dealers with the provincial securities regulators.

ii. Branch advice

This distribution channel is made up of bank branch advisors who are actively engaged in providing investment recommendations and financial planning to the bank's clients. These advisors typically sell proprietary mutual funds and deposit products. However, in some cases, they may also sell other types of financial products and non-proprietary investment funds. The dealer firms in this channel are generally registered as mutual fund dealers with the provincial securities regulators, although some may be registered as investment dealers.

iii. Online/discount broker

This distribution channel serves the do-it-yourself (DIY) investor with a full shelf of securities products that includes equity and fixed income securities, options, exchange-traded funds (ETFs) and mutual funds. Advisors in this channel are primarily order-takers and generally do not offer investment recommendations or advice. Products in this channel are delivered largely through centrally managed technology platforms and call centres. The dealer firms in this channel are registered as investment dealers with the provincial securities regulators.

iv. Direct to public

This distribution channel is made up of mutual fund manufacturers that sell investment funds directly to the investor.[17] In this case, the mutual fund manufacturer or a related entity will itself be registered as a mutual fund dealer with the provincial securities regulators. The services the advisor provides in this channel are primarily transaction focused.

v. Financial advisors

This distribution channel serves investors looking for a more comprehensive range of investment services. It administers the largest share of investment fund assets.[18] It includes a wide range of dealer firms with varying degrees of independence and variety in their product shelves. Advisors in this channel typically offer their clients mutual funds and deposit products, as well as segregated funds and life insurance.[19] The dealer firms in this channel are registered as mutual fund dealers with the provincial securities regulators, although some are registered as investment dealers.

Fund Dealers Association of Canada (MFDA). Under NI 31-103 and the rules of IIROC and the MFDA, all dealing representatives are subject to business conduct requirements, including know-your-client and suitability requirements. Unless they are registered as an advising representative of a firm registered in the "adviser" category, the advice they may provide to clients is limited to suitability advice that is incidental to their dealing activities.

15 The Autorité des marchés financiers and the Financial and Consumer Affairs Authority of Saskatchewan regulate the distribution of certain of those financial products in their respective jurisdictions.

16 These designations are earned through programs that are administered by various financial industry organizations or associations.

17 Note that while the constituents of the *direct to public* group would be the same as those included in the *direct to client* group in Figure 7 set out in Part IV of this paper under "**2. Evolution of fund fees in Canada – a. Sales charges trends**", the assets under administration cited here are lower than the assets under management cited there. This is due to the fact that some of the assets sold by mutual fund manufacturers in the *direct to client* group will be sold through fee-based accounts and discount brokerages as well as being sold directly to the investor.

18 See Figure 2. Source: Investor Economics.

19 If dually licensed.

vi. Full-service brokers

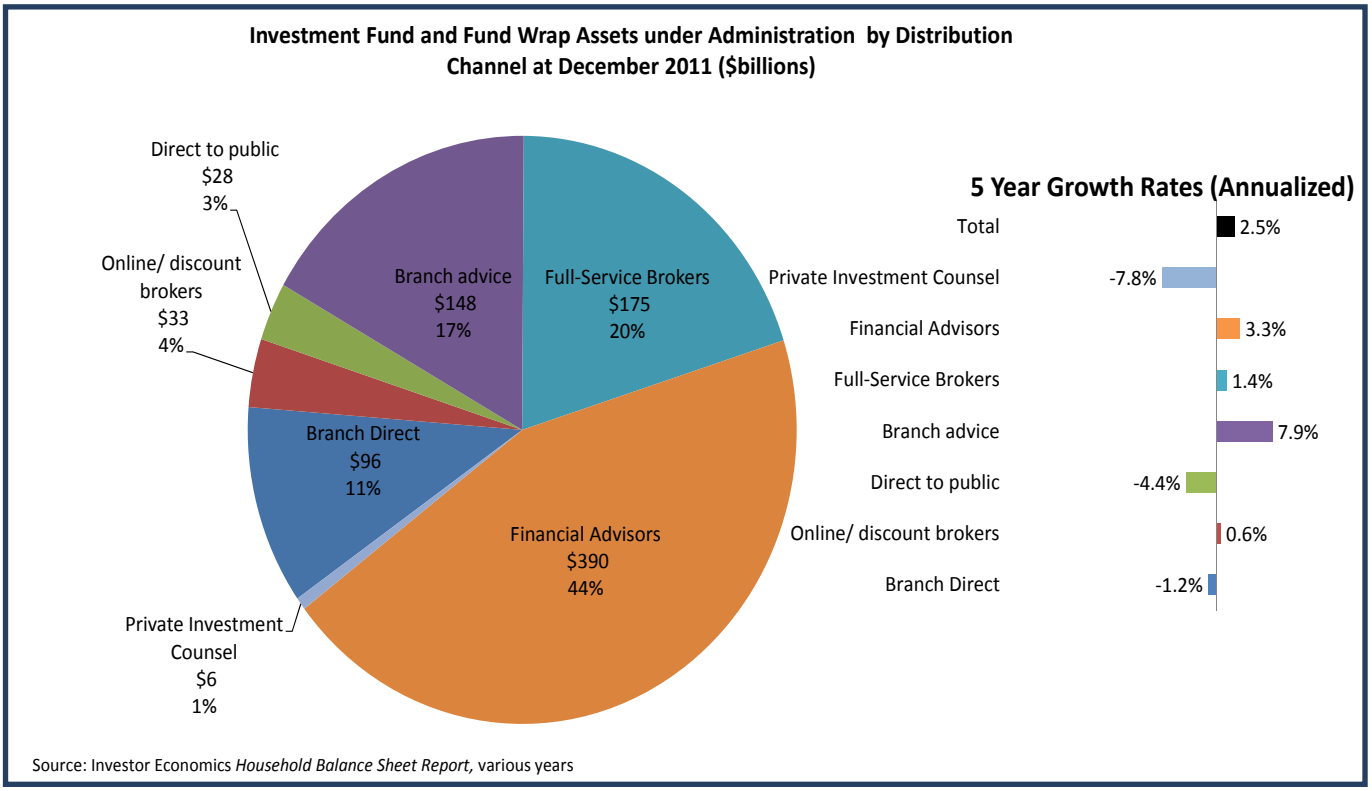
Like financial advisors, full-service brokers tend to serve investors looking for the full range of investment services. They may also provide discretionary investment management.[20] This channel administers the second largest share of investment fund assets.[21] Advisors in this channel typically offer the full shelf of financial products including equity and fixed income securities, options, ETFs, mutual funds, segregated funds and life insurance.[22] The dealer firms in this channel are registered as investment dealers with the provincial securities regulators.

vii. Private Investment Counsel

The Private Investment Counsel channel typically serves high net worth individuals and institutions. Investment funds make up a very small part of the offerings in this channel because the focus tends to be on separately managed accounts and estate management. The firms in this channel are generally registered as portfolio managers with the provincial securities regulators.

Figure 2 shows each distribution channel's share of investment fund assets under administration along with the channels' growth rates over the last five years. Figure 3 highlights the predominant services and the core financial products typically offered to clients in each distribution channel.

Figure 2: Retail investment fund assets under administration by distribution channel



[20] An advisor in this channel may provide discretionary account management if its firm is a member of IIROC and the advising activities are conducted in accordance with the rules of IIROC.

[21] See Figure 2. Source: Investor Economics.

[22] If dually licensed.

Figure 3: Services and core products per distribution channel

Distribution channel	Services	Core product shelf
Branch direct	Transaction-based services	Mutual funds Deposits
Branch advice	Investment recommendations Financial planning	Mutual funds Deposits
Online/discount brokerage	Order taking only	Equity and fixed income securities Mutual funds ETFs Deposits Options/Futures
Direct to public	Transaction-based services	Mutual Funds
Financial advisor	Investment recommendations Financial planning Insurance and estate planning	Mutual funds Segregated funds Life insurance Deposits
Full-service brokerage	Investment recommendations Discretionary investment management Financial Planning Insurance and estate planning Holistic wealth management	Equity and fixed income securities Mutual funds ETFs Life insurance Segregated Funds Deposits Options/Futures
Private Investment Counsel	Discretionary investment management Private wealth management	Separately managed accounts Pooled funds

IV. MUTUAL FUND FEE STRUCTURE IN CANADA

Mutual fund investors in Canada incur primarily two kinds of fund fees when investing in mutual funds: sales charges and ongoing fund fees.

Sales charges are transaction-based fees paid directly by investors either at the time they buy the fund or at the time they exit or redeem from the fund.

Ongoing fund fees, which include management fees (in which are embedded trailing commissions paid to advisors) and fund expenses, are paid from fund assets. This means that investors pay these fees indirectly.

1. Current mutual fund fees

a. Sales charges

Most Canadian mutual fund manufacturers sell funds under several different purchase options. The options relate generally to the method in which the sales charges are paid. The mutual fund manufacturers set the rate of sales charges that may be payable under the various purchase options.[23]

[23] The purchase options available for a mutual fund, along with the sales charge applicable under each option and the compensation the advisor may receive under each option, must be disclosed in the mutual fund simplified prospectus and the Fund Facts document required under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. Disclosure of the advisor's compensation in these documents must include disclosure of the trailing commission rate applicable to a mutual fund. We discuss trailing commissions paid to advisors later in this Part under "**b. Ongoing fund fees**".

The different purchase options are:

i. Front-end sales charge

Under this option, investors pay a sales commission directly to the advisor at the time they buy securities of the mutual fund. This is often referred to as a "front-end load". The advisor's sales commission is deducted from the total amount paid by the investor, which means only the remaining amount is invested in the fund.

While the sales commission set by the mutual fund manufacturer may be up to 5% of the purchase amount, investors may typically negotiate a lower sales commission with their advisor. Over the last few years, we understand that Canadian advisors have increasingly been waiving the front-end sales charge altogether or charging 1% or less.[24] This is further discussed below under "**2. Evolution of fund fees in Canada**".

At the end of 2011, front-end load mutual fund assets accounted for approximately 23% of the Canadian mutual fund industry's asset base.[25]

ii. Deferred sales charge (DSC)

Under this option, investors pay a sales charge at the time they redeem from the mutual fund, rather than at the time of purchase. This is often called a "back-end load". This allows the entire amount paid by the investor to be invested in the mutual fund at the time of purchase.

The rate of the DSC payable by investors when they redeem declines the longer they hold the investment and becomes nil after a specified holding period. This is known as the "redemption schedule". The DSC paid by an investor is typically around 6% in the first year, declining by about 1% each year down to 0% after holding for 5 to 7 years. Mutual fund manufacturers generally offer investors the opportunity to redeem up to 10% (non-cumulative) of their DSC securities annually at no charge.

Depending on the mutual fund manufacturer's DSC policy, the amount of the DSC an investor pays on a redemption can be based either on the original purchase price of the mutual fund securities or their current market value when they are redeemed.

Investors can avoid DSCs by holding their mutual investment until the end of the redemption schedule or redeeming no more than 10% of their DSC securities annually. Mutual fund manufacturers also often permit investors to switch from one mutual fund to another within the same fund family without a charge.[26]

While the investor does not directly pay a sales commission to the advisor at the time of purchase, the advisor typically receives a commission from the mutual fund manufacturer equivalent to 5% of the amount purchased. The mutual fund manufacturer will generally borrow the money necessary to pay these advisor commissions and therefore will incur financing costs. These costs are recouped by the mutual fund manufacturer through ongoing management fees charged to the fund. See the discussion of management fees below under "**b. Ongoing fund fees**".

DSCs paid by investors who redeem before the end of the redemption schedule are not paid to the advisor or the mutual fund, but rather to the mutual fund manufacturer or third party financing services provider that paid the advisor's sales commission at the time of purchase.

At the end of 2011, DSC mutual fund assets accounted for approximately 19% of the Canadian mutual fund industry's asset base.[27]

iii. Low-load sales charge

Many mutual fund manufacturers offer a low-load sales charge option, which works like the DSC option described above, but on a shorter redemption schedule, typically three years or less.[28] The rate of the DSC ranges from 2% to 3% in year one, declining by 1% each year, down to 0% after a holding period of 2 or 3 years. The commission paid by a mutual fund manufacturer to the

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24 See note 54.

25 Investor Economics, *Investor Economics Insight Monthly Update* (March 2012) at p.3.

26 Usually, DSCs are only incurred if the investor leaves the 'fund family', not the fund. For example, a switch from mutual fund A to mutual fund B, both offered by the same fund manufacturer typically will not be considered a redemption triggering the application of the DSC. It may however be considered a disposition for tax purposes.

27 Investor Economics, *supra* note 25.

28 The low-load sales charge option in Canada varies more widely among mutual fund manufacturers who offer it than does the traditional DSC option. The length of the redemption schedule, the upfront commission paid to the advisor by the mutual fund manufacturer, the sales charges payable by the investor at any point along the redemption schedule, and the trailing commissions payable to advisors can be very different between manufacturers.

advisor at the time the investor purchases securities of a fund on a low-load basis typically ranges from 2% to 3% of the purchase amount.

At the end of 2011, low-load mutual fund assets accounted for approximately 5% of the Canadian mutual fund industry's asset base.[29]

iv. No-load

Funds sold on a no-load basis do not offer any sales commission to advisors (either one paid by the investor or the mutual fund manufacturer), nor do they charge a fee at the time the investor redeems.

Mutual funds purchased on a no-load basis in Canada are generally bought directly from the mutual fund manufacturer or an affiliate, either of which must be a registered dealer firm.

No-load mutual funds are offered by:

- direct sellers[30]
- Canadian banks/deposit takers[31], and
- certain special no-load mutual fund series offered exclusively through online discount brokerages/e-banking platforms.[32]

No-load mutual funds accounted for approximately 31% of the Canadian mutual fund industry's asset base as at the end of 2011.[33]

v. Fee-based

Some mutual fund manufacturers also offer a series of mutual fund securities, typically known as "Series F", intended for purchase through fee-based accounts with advisors. Investors who select this option do not pay a sales charge to buy into or exit the mutual fund. In addition, they pay reduced ongoing management fees because there are no embedded trailing commissions. (See our discussion of management fees and trailing commissions below under "**b. Ongoing fund fees**".)

Instead of sales commissions and embedded trailing commissions, the advisor's compensation consists of a fee paid directly by the investor for the services rendered in connection with the account. This fee is typically calculated as a percentage of the investor's assets under administration in the fee-based account.

At the end of 2011, fee-based mutual fund assets accounted for approximately 2.6% of the Canadian mutual fund industry's asset base.[34]

vi. High Net Worth/Institutional

Many mutual fund manufacturers also offer series of mutual fund securities specifically intended for purchase by high net worth or institutional investors. These series are generally not sold through traditional retail distribution channels. Minimum account size is usually much larger than for the average retail account, tending to start at $100,000, with minimums for some mutual funds as high as $1 million or more.

Eligible investors who purchase under this option typically pay no or reduced sales charges to buy into the mutual fund. Buying under this option is typically possible only if the investor enters into a series account agreement directly with the mutual fund manufacturer, which specifies the fees applicable to the account. Investors buying under this option typically negotiate their own

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29 Investor Economics, *supra* note 25.

30 See description of 'direct sellers' in Part III above under "**1. The mutual fund manufacturers –** *iii. Independents*". In addition to those direct sellers that are independent, there is currently one direct seller that is owned by a Canadian bank. Mutual fund assets of direct sellers made up 4% of the total 31% of no-load mutual fund assets as at the end of 2011. See 'Direct-to-client' category in Figure 4.

31 See Part III under "**1. The mutual fund manufacturers –** *i. Canadian banks/deposit takers*". Mutual fund assets of the Canadian bank no-load funds made up approximately 27% of the total 31% of no-load mutual fund assets as at the end of 2011. See 'Retail no-load' category in Figure 4.

32 Such online discount offerings typically use the D or E series designation and are currently available on select mutual funds offered by a few of the Canadian banks through their online/discount brokerage or e-banking platforms. Mutual fund assets of these series made up 0.3% of the total 31% of no-load mutual fund assets as at the end of 2011. See 'Discount/E-banking category in Figure 4.

33 No-load assets data supplied by Investor Economics and obtained by them through various surveys.

34 Investor Economics, *Investor Economics Insight Monthly Update* (March 2012) at pages 11-12.

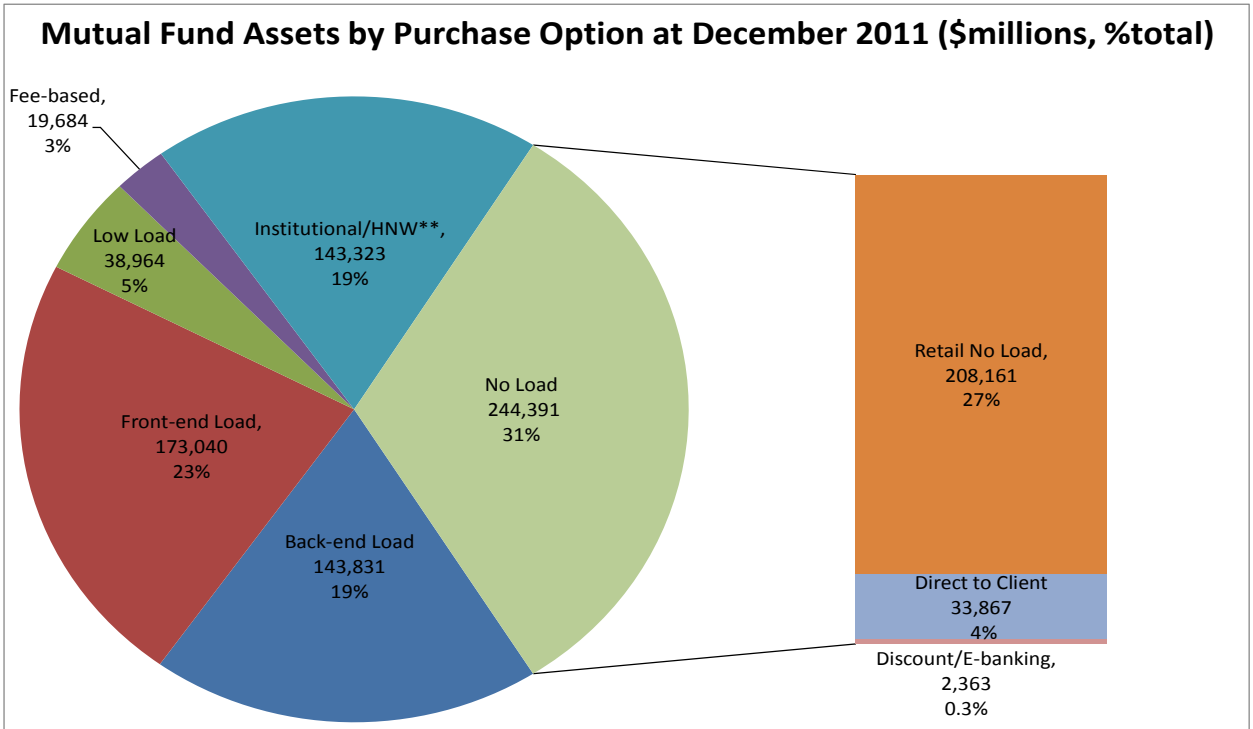
management fee (described below under "**b. Ongoing fund fees**") as well as an advisory fee[35] that they pay directly to the mutual fund manufacturer.

Overall fund ownership costs for these series are much lower than for the retail mutual fund, largely due to the economies of scale that their sizeable minimum investments provide, as well as the greater bargaining power that their more sophisticated investors and larger investments often command.

As at the end of 2011, high net worth/institutional mutual fund assets accounted for approximately 19% of the Canadian mutual fund industry's asset base.[36]

Figure 4 shows the respective share of Canadian mutual fund assets under management by purchase option as at December 2011.

Figure 4: Mutual fund assets by purchase option at December 2011



Source: Investor Economics (various surveys)
Load assets estimated from survey data collected from 19 fund companies representing 76% of industry assets
**This category is reported as a residual to remove double-counting of the assets used in fund-of-fund products. Due to data constraints, assets held by high net worth investors cannot be broken out from assets held by true institutional investors.

b. Ongoing fund fees

In Canada, mutual funds pay ongoing fees and expenses that are intended to cover the costs of their operation and distribution. These ongoing costs are paid from fund assets and as a consequence reduce investors' net returns. When mutual funds disclose their fund performance, the performance information is net of these ongoing fees and expenses.

A mutual fund's management expense ratio or MER tells investors the costs of operating and distributing a mutual fund. The MER is the total of a mutual fund's annual operating costs (except brokerage commission paid by the fund for buying and selling securities the fund owns),[37] expressed as a percentage of the fund's average assets for that year.

[35] This is a distinct fee for investment advisory services. Accordingly, trailing commissions (discussed below under "**b. Ongoing fund fees**"), are not paid to advisors under this option.

[36] High net worth/institutional assets data supplied by Investor Economics and adjusted to remove double counting from fund-of-fund investments in stand-alone funds.

[37] In order to determine the total operating costs of a mutual fund, the trading expense ratio (TER) must be added to the MER. The TER represents total commissions and other portfolio transaction costs expressed as a percentage of the fund's average net assets for the year. Based on data from Investor Economics, the average TER for long-term mutual funds (Series A) was 0.14 as at December 2011. The TER

In Canada, the MER is made up of two major components:

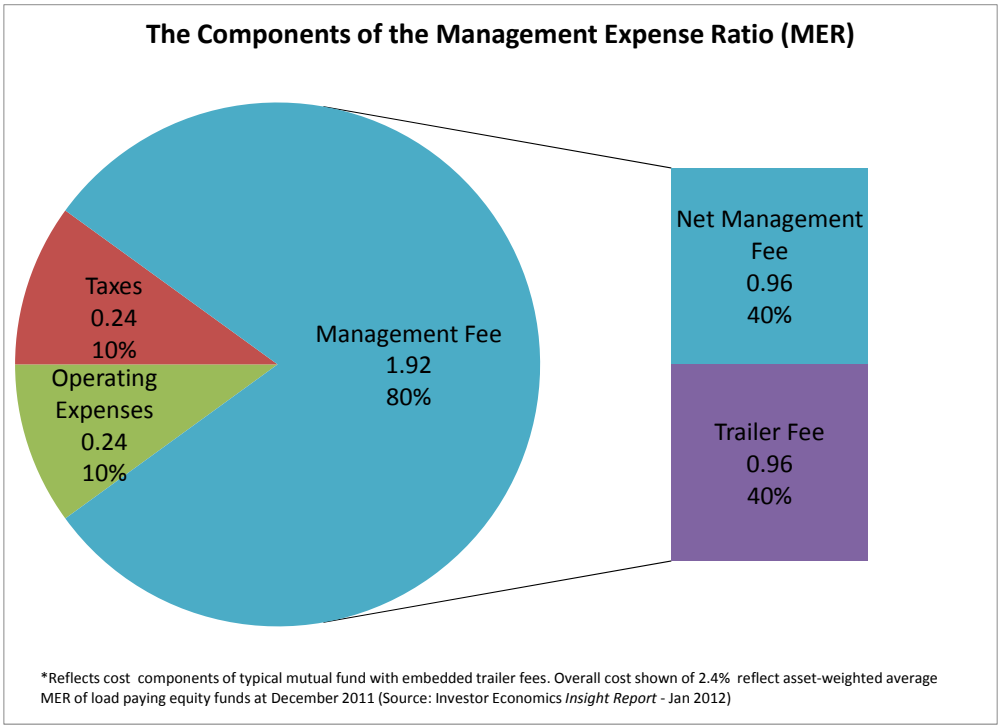
i. management fees, and

ii. operating expenses.

Taxes, such as the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST), apply to those components and consequently factor into the overall MER.

Figure 5 shows the two components of the MER and the extent to which each of them typically factors into the MER. It also shows the effect that taxes on those components have on the MER.

Figure 5: The components of the Management Expense Ratio



i. Management fees

In Canada, mutual fund manufacturers charge a management fee to each of their funds, typically to cover the following services or costs:

- administration of fund operations;
- portfolio advisory services;
- marketing and promotion;
- financing costs of commissions paid to advisors for mutual fund securities sold on a DSC/low-load sales charge basis;
- trailing commissions (discussed further below under "*Trailing commissions*") paid to advisors.

and MER of a mutual fund are disclosed in the annual and interim management reports of fund performance required under National Instrument 81-106 *Investment Fund Continuous Disclosure* and in the mutual fund's Fund Facts disclosure document required under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

Management fees are charged and calculated as a percentage of the net assets of a mutual fund. They are subject to the GST and HST in certain jurisdictions of Canada.[38]

The typical management fee rate varies depending on:

i. the type of mutual fund (i.e. money market, fixed income, balanced, equity)

ii. the portfolio management strategy utilized for the fund (i.e. passive vs. active management) [39] and

iii. the fund's distribution costs (i.e. the trailing commission payable to the advisors who distribute the fund).

For example, for an actively managed mutual fund distributed through a commission-based advisor (as opposed to fee-based), the median management fee rate may range from 1.00% a year for a money market fund to 2.00% a year for an equity fund.[40] Figure 6 sets out the typical management fee charged per type of mutual fund.

Figure 6: Typical management fee per mutual fund type

Typical Management Fee (with Embedded Trailers)		
Type	Median	Asset-Weighted Average
Money Market	1.00	0.89
Fixed Income	1.50	1.38
Balanced	1.95	1.82
Equity	2.00	1.91

Source: Morningstar Direct at August 14, 2012

In addition to the management fee, some mutual funds may pay incentive or performance fees.[41]

– *Trailing commissions*

A significant portion of the management fees earned by most Canadian mutual fund manufacturers on the mutual funds they manage is used to pay an ongoing commission to dealer firms. This payment was originally intended to compensate dealer firms for the ongoing services their advisors provide to investors after the mutual fund purchase, including investment advice. This is generally referred to as the "trailer fee" or "trailing commission".

The impact of this is that trailing commissions in Canada are generally embedded in the management fee charged by the mutual fund manufacturer rather than a separate fee charged to the mutual fund.[42]

As illustrated in Figure 5 above, trailing commissions make up about half of the management fees charged to a mutual fund. For example, out of a management fee of 2.00%, half of that amount or 1.00% of average net assets of the mutual fund is generally allocated by the mutual fund manufacturer to the payment of trailing commissions to dealer firms and their advisors.[43] Mutual

[38] Most mutual funds are sold nationally, however the GST/HST rate that applies is based on the residency of the investor. To deal with this issue, the majority of mutual fund manufacturers have opted to use a "blended rate" approach (one overall 'residency weighted' tax rate applied to all fund assets) to applying these taxes to the fund, although a small minority of mutual fund manufacturers have chosen to offer a separate series for non-harmonized and harmonized provinces.

[39] Passively managed funds, such as index funds (i.e. mutual funds that aim to track the performance of a market index by mirroring the components of that index in their portfolio) are typically less costly to manage because they involve less research and less trading. They consequently tend to have lower management fees than actively managed funds who strive to outperform specific benchmarks.

[40] Source: Morningstar Direct at August 14, 2012. Funds with minimum investments above $10,000 have been excluded from the sample.

[41] These fees, where applicable, are paid as an incentive to the mutual fund manufacturer, the amount of which depends on the performance of the mutual fund, relative to a benchmark or index. A mutual fund manufacturer may charge an incentive fee to a mutual fund provided that fee is calculated in accordance with the requirements of Part 7 of National Instrument 81-102 *Mutual Funds* and the method of calculation of the incentive fee and details of the composition of the benchmark or index are described in the prospectus of the mutual fund.

[42] This is different than in the U.S. where trailing commissions, known there as "12b-1 fees", are charged as a separate fee to the mutual fund, and are therefore a distinct component of the MER.

[43] In *Investor Economics Insight Monthly Update* (March 2012), Investor Economics states at p. 14 that "*[t]oday advisor compensation typically represents more than one-half of the management fees collected by load funds.*"

See also article by Rob Carrick, *Shedding light on a hidden mutual fund fee*, Globe and Mail (June 29, 2012) at http://m.theglobeandmail.com/globe-investor/personal-finance/shedding-light-on-a-hidden-mutual-fund-fee/article4382237/?service=mobile.

fund manufacturers must disclose to the public the portion of earned management fees that was allocated to the payment of trailing commissions.[44]

Trailing commissions are usually paid by mutual fund manufacturers to dealer firms quarterly for as long as their clients hold investments in the manufacturers' mutual funds. Each dealer firm then pays out a portion of those trailing commissions to its advisors according to the firm's own compensation grid. Generally, under this compensation grid, the more commission or fee revenue the advisor generates for the firm, the greater the portion of that revenue the advisor gets to keep.[45]

The amount of the trailing commission payment is determined by applying the specified trailing commission rate to the value of a fund investment held by the advisor's clients at the calculation date. The mutual fund manufacturer sets the trailing commission rate applicable to each of its mutual funds and must disclose the rate in the mutual fund's simplified prospectus and Fund Facts[46] document in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

The trailing commission rate typically varies depending on:

i. the type of mutual fund (i.e. money market, fixed income, balanced, equity) and

ii. the purchase option under which the fund investment is made.

For example, the trailing commission rate typically ranges from 0.25% a year for a money market fund, to as much as 1.50% a year for an equity fund sold under a front-end sales charge.[47] The trailing commission rate on mutual funds sold under a front-end sales charge is generally double that paid to advisors for mutual funds sold under the DSC option.[48]

Even mutual funds sold on a no-load basis pay trailing commissions, which can be as high as 1.50% a year.[49]

ii. Operating expenses

In Canada, each mutual fund pays its own operating expenses, including:

- registrar and transfer agency fees
- safekeeping and custodial fees
- accounting, audit and legal fees
- fund valuation costs
- administration costs and trustee services relating to registered tax plans
- fees and expenses payable in connection with the independent review committee

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[44] A mutual fund investor may determine the portion of management fees that a mutual fund manufacturer allocates to the payment of trailing commissions by reviewing the mutual fund's simplified prospectus and its management report of fund performance. A mutual fund must disclose in its simplified prospectus required under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* the approximate percentage of management fees paid by mutual funds in the same family as the mutual fund that were used to fund commissions to advisors in the most recently completed financial year of the manager of the mutual fund. Similarly, in its management report of fund performance required under National Instrument 81-106 *Investment Fund Continuous Disclosure*, the mutual fund must provide a breakdown of the major services paid for out of the management fees, including trailing commissions and sales commissions, as a percentage of management fees.

[45] See note 98 and related discussion in Part V under "**2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels** – *ii. Advisor*".

[46] The Fund Facts is a summary document that is designed to give investors key information about a mutual fund. We further discuss the Fund Facts, and its ongoing implementation under the CSA Point of Sale project, in Part VII under "**1. Regulatory initiatives in Canada**".

[47] Typically, equity funds sold on a front-end load and no-load basis carry trailing commissions of around 1%, fixed income funds carry trailing commissions of around 0.50%, and money market funds carry trailing commissions of 0.25%. In *Investor Economics Insight Monthly Update* (February 2010) at p.11, Investor Economics reports that in the case of Canadian equity, Canadian balanced and international equity funds, 70%-85% of the funds in those categories pay trailing commissions of 1%. For the Canadian long-term bond category, close to two-thirds of funds carry a trailer of 0.50%. An additional 30% of funds in the long-term bond category pay trailing commissions higher than the standard.

[48] For example, while the trailing commission rate on an equity fund sold under the front-end sales charge option is typically around 1%, the trailing commission rate on that same fund sold under the DSC option will typically be around 0.50%.

[49] The simplified prospectuses of mutual funds offered by some of the Canadian bank-owned mutual fund manufacturers disclose trailing commission rates as high as 1.50% payable on both mutual funds sold on a no-load basis through bank branches and mutual funds sold on a load basis through third party advisors (i.e. the *Advisor* series). One can encounter load paying funds offered for sale by non-bank owned mutual fund manufacturers with trailing commission rates as high as this as well.

- costs of preparing and distributing prospectuses, financial reporting, and other types of investor communications
- regulatory filing fees
- bank and interest charges
- taxes, such as GST/HST, applicable to the operating expenses of the fund.

Operating expense costs are usually allocated to a mutual fund as they are incurred, and can fluctuate from one year to the next. Over the last several years, some mutual fund manufacturers have capped operating expenses with a view to bringing stability and predictability to their mutual funds' expenses and potentially reducing their MERs. They implemented the cap on operating expenses by charging a fixed rate "Administration Fee", calculated as a percentage of net assets of the mutual fund, intended to cover most of the expenses of the mutual fund.[50] The Administration Fee is paid to the mutual fund manufacturer in exchange for the manufacturer bearing the operating expenses of the mutual fund. Any operating expenses incurred by the mutual fund in any one year over and above the amount of the Administration Fee are absorbed by the mutual fund manufacturer.[51] While the fixed rate Administration Fee can bring stability and predictability to the level of a mutual fund's operating expenses, it can also effectively prevent mutual fund expenses from declining as a percentage of assets as the fund grows.

2. Evolution of fund fees in Canada[52]

a. Sales charges trends

Trending away from transaction-based sales commissions

In the early 1980s, advisors selling mutual fund securities were typically compensated by a front-end sales charge, then ranging between 8%-9% of the purchase amount, paid by the investor at the time of the purchase transaction. In the late 1980s, mutual fund manufacturers introduced the DSC option at about the same time they introduced trailing commissions. Both developments rapidly changed the dynamics of the fund industry and how the cost of distribution was funded. When a sale occurred under the DSC option, the mutual fund manufacturer, rather than the investor, paid the advisor a sales commission of generally 5% of the purchase amount at the time of the purchase, followed by an ongoing trailing commission of 0.5% per year based on the value of the investment for as long as the investor held the mutual fund. The mutual fund manufacturer funded the cost of both the sales and trailing commissions it paid on DSC sales from the management fees it earned on mutual fund assets. Consequently, the ongoing cost of trailing commissions was embedded in the management fee charged to a mutual fund.

The DSC option, together with the trailing commission, quickly became the popular alternative to the front-end sales charge option as it offered advisors a similar level of compensation, albeit paid in instalments. It also addressed investors' growing aversion to the front-end sales charge which had the effect of reducing an investor's initial investment in the mutual fund.

Mutual fund manufacturers eventually changed the commission structure of the front-end sales charge option. They decreased the front-end sales charge to a maximum of around 5% of the purchase amount, negotiable between the investor and the advisor, and added an ongoing trailing commission at double the rate paid on mutual funds sold under the DSC option.

Following the market crash of the late 1990s, the DSC option began to fall out of favour with investors, as mutual funds faced unsettled market conditions and a prolonged period of poor performance. The prospect of paying a sales charge to exit a mutual fund at that time became unpalatable to many investors, particularly as no-load funds became more widely available through the Canadian bank branches, thus presenting an attractive option for investors.

In response, the mutual fund industry began offering DSC funds with shortened redemption schedules (typically between two and four years), as a new 'low-load' sales charge option. This purchase option, first introduced by a mutual fund manufacturer in 1999, was quickly adopted by others in the first half of the 2000s. Under this purchase option, the advisor's sales commission (paid by the mutual fund manufacturer at the time of the investor's purchase) was reduced to between 2% and 3%. However, the accompanying trailing commission was typically set at the higher front-end load rate of around 1% per year.[53]

At the same time, the fund management arms of Canadian banks sought to expand their distribution network beyond their own branches and full-service dealers by permitting third party advisors to sell their mutual funds. To interest these third party

[50] The Administration Fee often does not cover the fund's independent review committee costs, taxes on fees and expenses paid by the fund, interest charges on borrowing, or certain governmental or regulatory costs.

[51] Where the actual expenses incurred by the fund total less than the Administration Fee, the mutual fund manufacturer keeps the difference.

[52] Information for our overview of the evolution of fund fees in Canada was largely sourced from the following *Investor Economics Insight Monthly Updates*: January 2003, January 2006, February 2010, September 2010 and March 2012.

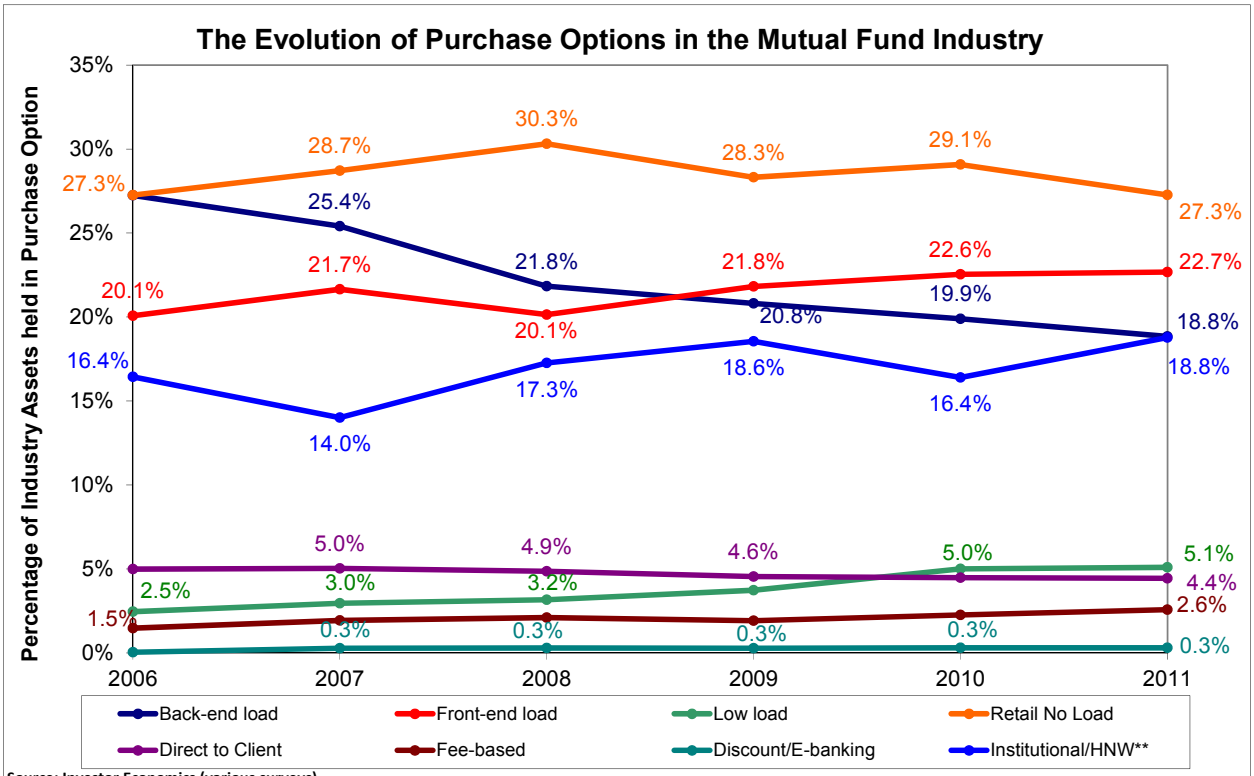
[53] See note 28. The trailing commission rate payable to advisors on mutual funds sold under the low-load sales charge option often varies from one mutual fund manufacturer to another.

advisors in their funds, Canadian banks introduced their *Advisor* fund series, a load equivalent of their no-load fund series, that pays sales and trailing commissions to those who sell them.

Investors' increasing avoidance of the cost of sales commissions, together with the Canadian banks' inroads into the third-party distribution channel, put increasing competitive pressure on independent 'load only' mutual fund manufacturers and those selling their funds. This led many advisors to offer a 'quasi no-load' alternative to their clients in the form of a front-end sales charge option where the advisor agreed to waive the sales commission they would normally charge. This option continues to be offered today.[54]

Figure 7 shows the extent to which the use of the various purchase options has changed since 2006. It shows that, since 2006, the mutual fund industry has seen a steady decline in the use of the DSC option and an expansion in the use of both the low-load sales charge and high net worth/institutional purchase options. The front-end sales charge, retail no-load (i.e. bank no-load funds) and DSC purchase options continue to dominate the market however, and together, make up close to 70% of industry assets. Although growth rates in certain years may be high, the use of the fee-based series is still relatively low by market share. Use of the discount/e-banking purchase option is essentially unchanged since 2006, while the direct-to-client purchase option has declined slightly since that time.[55]

Figure 7: The evolution of purchase options in the mutual fund industry



Source: Investor Economics (various surveys)
Load assets estimated from survey data collected from 19 number of fund companies represented 76% of industry assets
**This category is reported as a residual to remove double-counting of the assets used in fund-of-fund products. Due to data constraints, assets held by high net worth investors cannot be broken out from assets held by true institutional investors.

[54] See IFIC, *Understanding Management Expense Ratios*, (April 2011), at p.10 where IFIC states: "*typically, 90% or more of the trades made **[under the front-end load]** purchase option each year incur no front end commission at all (the commission is waived by the advisor).*". Also see *Investor Economics Insight Monthly Update* (March 2012) at p.6 where Investor Economics reports, based on their interviews with a few fund manufacturers and survey data by themselves and by the Investment Funds Institute of Canada, that anything between two-thirds to three-quarters of front-end sales reportedly take place at 0% load. In the remaining cases when an investor is charged an upfront commission, the fee typically falls at 1% or less.

[55] The discount/e-banking purchase option and direct-to-client purchase option are subsets of the broader no-load purchase option discussed above under "**1. Current mutual fund fees – a. Sales charges** – *iv. No-load*". Also see Figure 4 for a breakdown of the no-load category in terms of assets under management.

b. Ongoing fund fees trends

i. MERs trending down

At the end of 2011, the asset-weighted average MER[56] of all Canadian mutual funds was 1.93%.[57]

Figure 8 shows the asset-weighted MER trend since 1990 for long-term mutual funds[58] (both no-load and load paying funds) and the market share for load paying funds over time.[59] The graph also shows the asset-weighted MER trend for load paying and no-load series mutual funds individually.

Figure 8: Trends in MERs 1990-2011 – Long term funds only

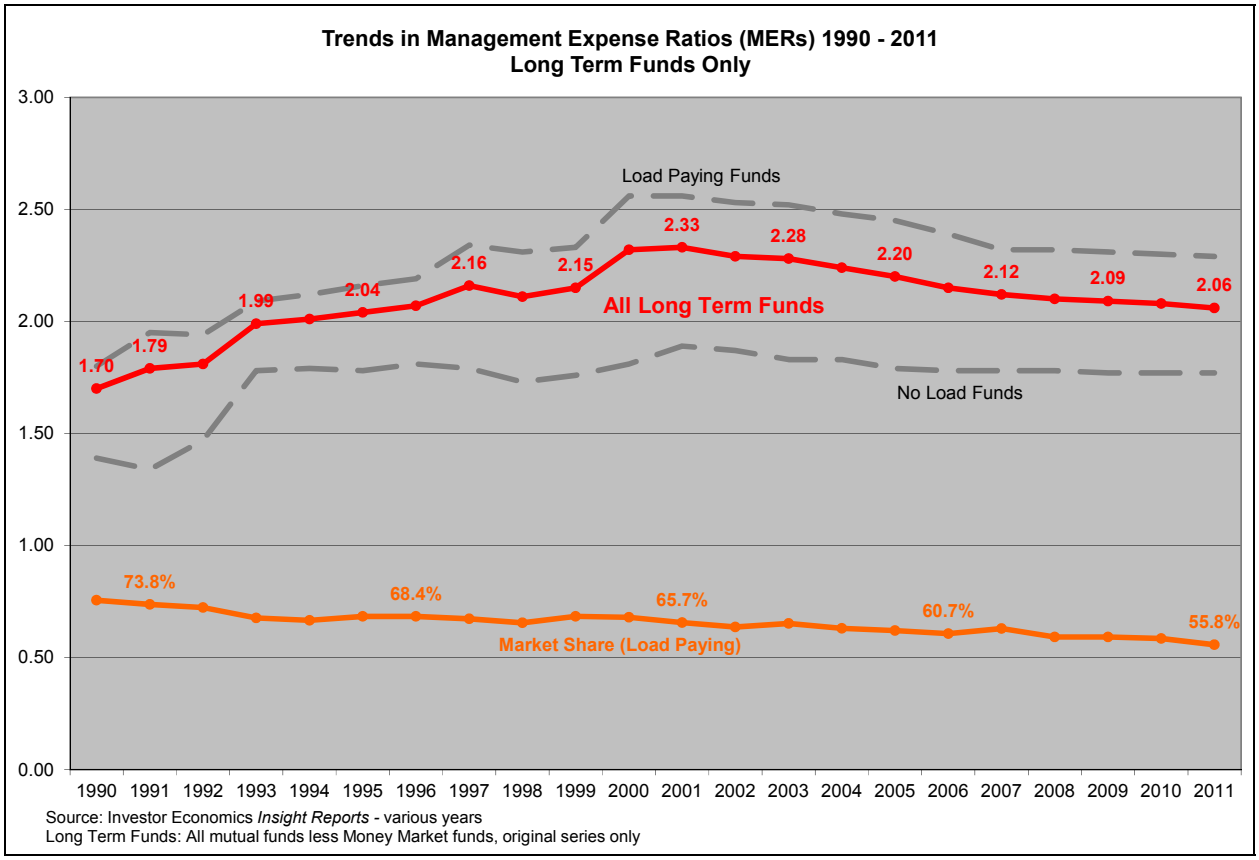


Figure 8 shows that overall MERs for long term mutual funds rose over the period from 1990 to 2001 but have been declining incrementally since 2001 due to a number of factors, which generally include:[60]

- tax changes (GST decline in 2006 and 2007, but application of HST in 2010 subsequently increased taxes on fund fees);
- changes in asset mix resulting in a lower weighting in higher MER equity funds and a higher weighting in lower MER fixed income funds (particularly after the financial crisis of 2007-2008);
- the popularity of no-load funds, which tend to have lower MERs than load mutual funds, and whose assets account for a substantial portion of mutual fund assets under management (see Figure 4);

56 An asset-weighted average MER is calculated by weighting each fund's MER by its market share.

57 Investor Economics, *Investor Economics Insight 2012 Annual Industry Review* (January 2012) at p. 77.

58 Long-term mutual funds are all funds less money market funds.

59 Note that market share here refers to the share of the market for *original series* (i.e. not including fee-based, institutional or other newer series such as T or D series funds). Long term mutual funds are all funds less money market funds.

60 See Investor Economics, *Investor Economics Insight Monthly Update* (September 2011) for a discussion of factors triggering changes in the level of MERs.

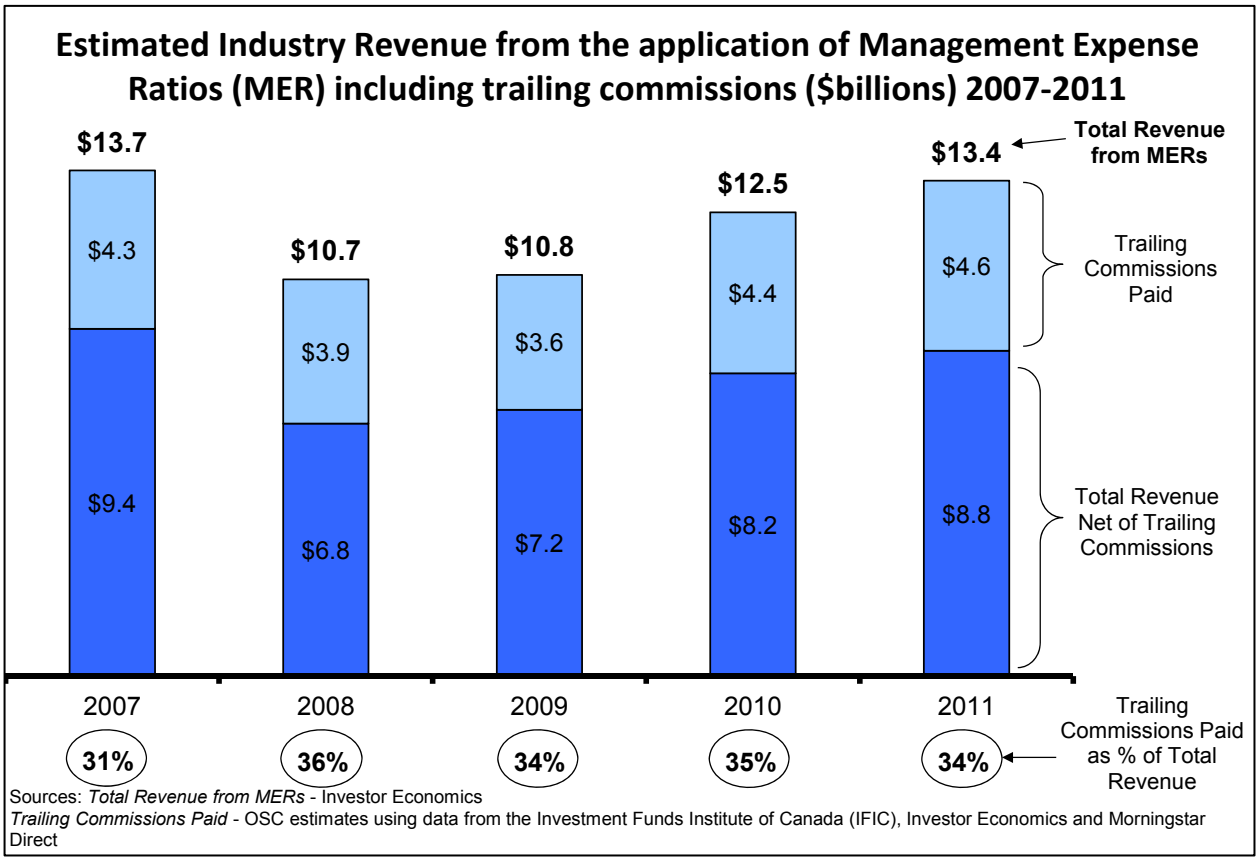
- downward adjustments to management fee levels by some mutual fund manufacturers;
- the fixing of expenses on certain mutual funds through the introduction of the fixed rate Administration Fee.[61]

Load paying funds have seen a steeper decline in MERs since 2001 than have no-load funds.

Figure 9 shows the estimated mutual fund industry revenue generated from the application of MERs since 2007. In 2011, MERs generated an estimated $13.4 billion in revenue for mutual fund manufacturers. Over the last five years, MERs generated an estimated $12.2 billion in revenue for mutual fund manufacturers each year on average.[62]

The increase in revenue from MERs since 2009 is largely due to the rebound of the equity markets in 2009, which increased assets under management for the mutual fund industry.

Figure 9: Estimated Mutual Fund Industry Revenue from MERs and Trailing Commissions Paid 2007-2011



Sources: *Total Revenue from MERs* - Investor Economics
Trailing Commissions Paid - OSC estimates using data from the Investment Funds Institute of Canada (IFIC), Investor Economics and Morningstar Direct

ii. Trailing commissions generally remaining steady or increasing

Figure 9 above shows that, in 2011, mutual fund manufacturers paid an estimated $4.6 billion in trailing commissions to advisors and their firms, representing 34% of total revenue from MERs for that year.[63] Over the last five years, trailing commissions paid by mutual fund manufacturers to advisors represented 34% of total revenue from MERs each year on average, thus remaining a relatively constant component of the MER throughout those years.

Figure 10 below shows that, since 2006, trailing commissions for stand-alone mutual funds[64] have risen slightly. The trend appears to be towards higher average trailing commissions for both bank and non-bank mutual funds and across asset classes.

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61 See discussion of the fixed rate Administration Fee above under "**1. Current mutual fund fees – b. Ongoing fund fees** – *ii. Operating Expenses*".

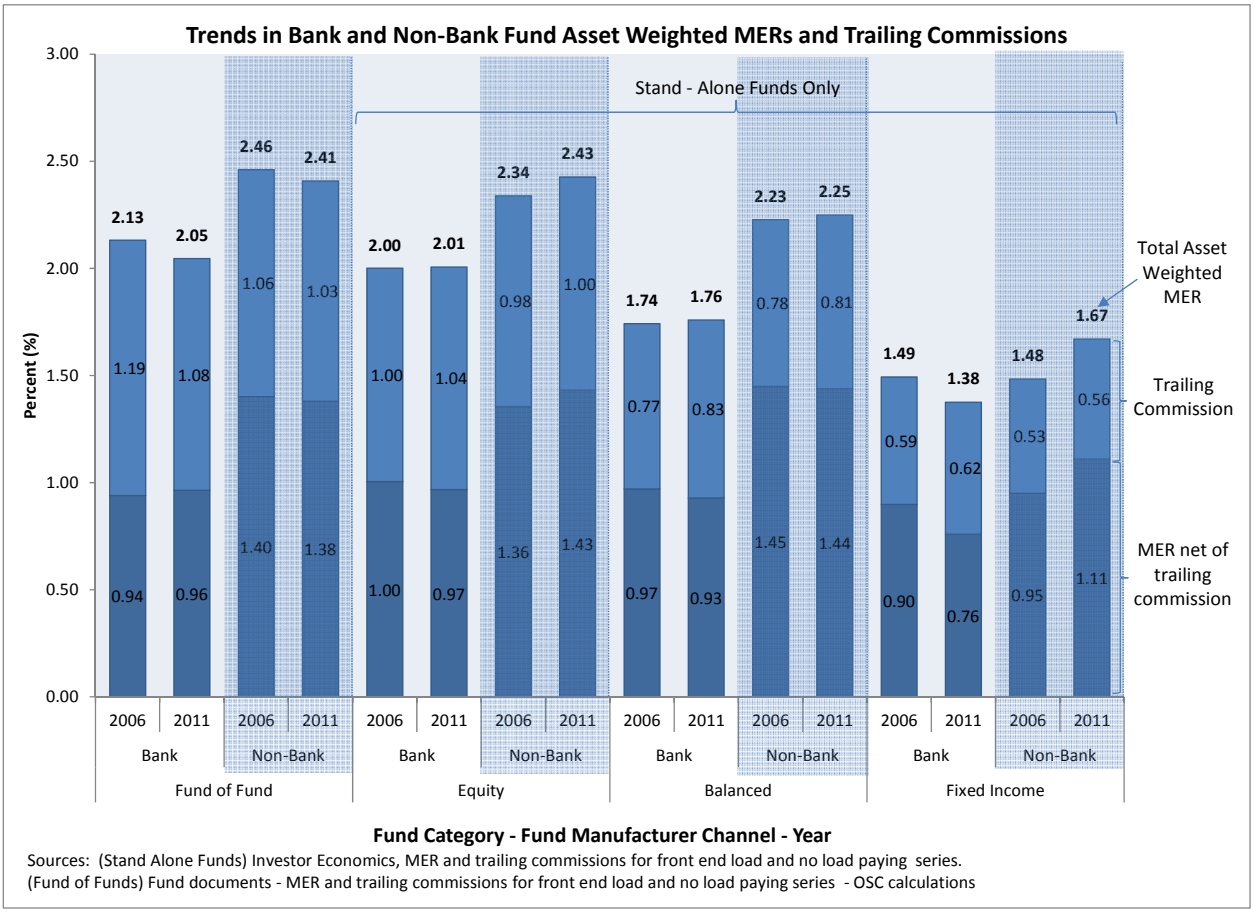
62 According to estimates obtained from Investor Economics.

63 OSC estimates based on data from Investor Economics, IFIC and Morningstar Direct.

64 A stand-alone mutual fund is a mutual fund that invest in stocks, bonds and/or money market instruments.

For fund-of-fund products[65], there has been a decrease in average trailing commissions; however they remain well above the amounts paid on stand-alone mutual funds. This suggests the payment of a premium to the advisor on the distribution of fund-of-fund products.

Figure 10: Trends in Asset-Weighted MERs and Trailing Commissions



Sources: (Stand Alone Funds) Investor Economics, MER and trailing commissions for front end load and no load paying series.
(Fund of Funds) Fund documents - MER and trailing commissions for front end load and no load paying series - OSC calculations

The Canadian banks appear to be paying higher average trailing commissions relative to the non-bank mutual fund manufacturers, retaining less of the management fee and lowering or maintaining average MERs for their mutual funds in all categories with the exception of funds-of-funds where average MERs net of trailing commission have increased slightly.

The non-bank mutual fund manufacturers appear to be increasing average fund MERs in all stand-alone fund categories, increasing average trailing commissions and maintaining or increasing average MERs net of trailing commission. Average fund-of-fund MERs and trailing commissions have fallen, though both remain well above the amounts paid on similarly invested stand-alone funds.[66]

iii. Advisors increasingly relying on trailing commissions as source of revenue

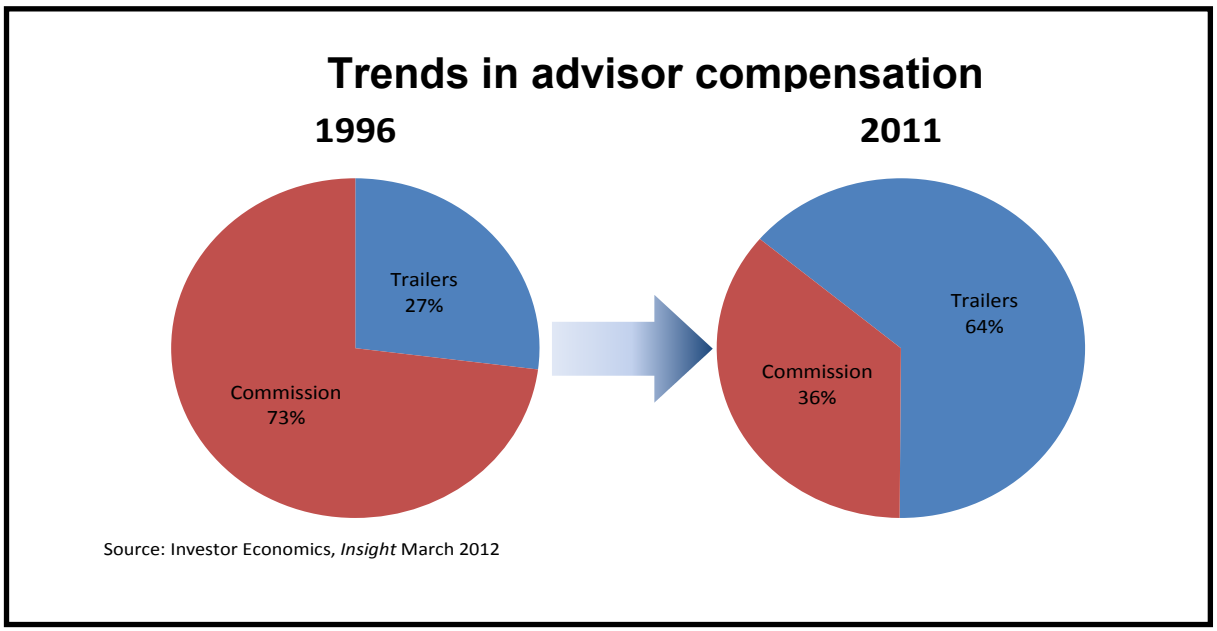
The importance of trailing commissions as a source of revenue for advisors appears to have substantially increased over the years. As shown in Figure 11, in 1996, trailing commissions accounted for slightly more than one quarter of the advisor's book of business. In 2011, their share is 64%.[67]

65 A fund-of-fund is a mutual fund that invests in other mutual funds.

66 The average asset-weighted MER of funds-of-funds and stand-alone funds categorized as equity funds offered by non-bank mutual fund manufacturers was 2.72% and 2.43% respectively at 2011.

67 Investor Economics, *Investor Economics Insight Monthly Update* (March 2012), at p. 9.

Figure 11: Share of advisor's compensation coming from sales commissions and trailing commissions in 1996 and 2011



This trend away from transaction-based sales commissions[68] has resulted in advisors today being compensated largely through trailing commissions in connection with the distribution of mutual funds. An important outcome of this trend is that the majority of retail investors today are 'seeing' less and less of the cost of distribution.

V. CURRENT ISSUES ARISING FROM THE MUTUAL FUND FEE STRUCTURE IN CANADA

1. Investor understanding of fund costs and control of advisor compensation

i. Investor understanding of fund costs

The gradual shift in the Canadian mutual fund market away from transaction-based sales commissions paid directly by investors to a greater reliance by advisors on trailing commissions and sales commissions funded from mutual fund management fees seems to have led many of today's investors to mistakenly believe there is no cost to purchasing or owning a mutual fund. This is despite disclosure in the prospectus, and more recently in the summary disclosure document, Fund Facts, for mutual funds.

A study on performance reporting and cost disclosure prepared for the CSA (the CSA Study) shows that mutual fund investors tend not to review disclosure documents for cost information and instead primarily rely on advisors to tell them about costs.[69] However, further research indicates that many advisors do not tell their clients about costs. In a study on advisor relationships and investor decision-making prepared for the Investor Education Fund[70] (the IEF Study), only 64% of investors indicated that their advisor told them about costs before asking them to buy.[71] In addition, only 45% of investors indicated their advisor told them how much compensation he or she would receive for the investments they made.

A study commissioned by the Investment Funds Institute of Canada similarly reports that only 54% of investors recalled that their advisor discussed his/her compensation when they last purchased a mutual fund.[72] The same study found that only 64% of investors recalled that mutual fund fees such as front-end sales charges and DSCs were discussed.

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68 See note 54.

69 The Brondesbury Group, *Report: Performance Reporting and Cost Disclosure*, prepared for: Canadian Securities Administrators (September 17, 2010) at p.17. That study found that only 1 out of 6 investors obtain cost information about a mutual fund by reading the prospectus. This level however rises to 1 out of 3 for the more sophisticated investors (with $500K+ under management).

70 The Investor Education Fund develops and promotes unbiased, independent financial information, programs and tools to help consumers make better financial and investing decisions. It was established as a non-profit organization by the Ontario Securities Commission (OSC) and is funded by settlements and fines from OSC enforcement proceedings.

71 The Brondesbury Group, *Investor behaviour and beliefs: Advisor relationships and investor decision-making study*, a report prepared for the Investor Education Fund, 2012, at p.16, available at: http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf

72 POLLARA, *Canadian Investors' Perceptions of Mutual Funds and The Mutual Fund Industry – 2011*, Report Prepared for the Investment Funds Institute of Canada.

Consequently, investors have limited understanding of the different kinds of mutual fund costs. The CSA Study found that the fees that investors understand the most appear to be those that are most visible, such as transaction-based commissions and account fees[73], which were understood by two-thirds of investors who participated in the study. Only 4 out of 10 respondents indicated they understood DSCs, and only one-third of respondents indicated they were aware of trailing commissions.[74]

Research also shows that investors have little to no idea of how advisors can get paid. In the IEF Study, only one-third of investors were able to recognize several common compensation arrangements. Furthermore, out of the one-third of respondents who indicated they were aware of trailing commissions, about 4 out of 10 respondents agreed that the amounts of these commissions may vary depending on the type of mutual fund and the mutual fund manufacturer that offers the fund.[75]

To date, advisors have not been required to disclose all forms of compensation they receive from their clients' mutual fund investments.[76] Rather, the rules of the self-regulatory organizations (SROs) that govern the business conduct of advisors only require the advisor to inform the client of any sales or other charges that are to be deducted from the amount of a mutual fund trade prior to the acceptance of any order.[77] Similarly, the confirmation of the trade need only disclose a commission where that commission is charged on, or deducted from, the amount of the trade.[78]

While this requires the advisor to tell mutual fund investors about applicable front-end sales charges on a purchase and DSCs on a redemption, it does not require the advisor to tell mutual fund investors about trailing commissions or sales commissions on DSC/low-load sales paid to them by the mutual fund manufacturer as neither of these are deducted from the amount of the mutual fund trade but rather are paid out of management fees earned on mutual fund assets. The limitations in these disclosures contribute to investors' limited awareness and understanding of these mutual fund costs.

It also means that these costs do not figure significantly into investor decision-making. The IEF Study found that the cost of buying is a factor for just 2 out of 10 investors and is almost never a decisive factor. Management fees are treated similarly. Costs deter only 1 out of 6 investors from buying.[79] This suggests that very few investors are aware of the impact costs have on net returns. This may mean that investors are not trying to choose lower-cost mutual funds, which could influence their returns.

ii. Investor control of advisor compensation

The embedded nature of advisor compensation costs limits the ability of mutual fund investors to control or influence these costs. Under current mutual fund rules, a proposed increase in certain discrete fees and expenses charged to a mutual fund, such as a proposed increase in the management fee rate, must be put to a security holder vote.[80] Since trailing commissions are generally embedded in management fees as opposed to charged as a discrete fee to the mutual fund, trailing commission rates can be increased without security holder approval.

At present, mutual fund manufacturers may fund increased trailing commissions to advisors by simply allocating a greater portion of the management fees they earn to the payment of these commissions. While overall fund costs do not increase in this scenario, investors have no say in the extent to which their mutual fund assets are used to pay for advisor compensation.

Currently, the only means a mutual fund investor has to express disapproval with an increase in a mutual fund's trailing commission rate is to exit the mutual fund. However, a redemption could be detrimental to the investor if tax consequences and/or sales charges are triggered under the DSC or low-load option. Faced with these potential costs, an investor may opt to remain invested in the mutual fund.

The potential or perceived benefit of an increase in trailing commissions to the mutual fund manufacturer is the potential to attract increased sales, which in turn would increase assets under management resulting in greater management fees. The

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73 These fees would show up on trade confirmations and/or account statements.

74 *Supra* note 69, at pages 15-16.

75 *Supra* note 71, at pages 25-27.

76 Regulatory reforms underway by the CSA under the Client Relationship Model (Phase 2) project discussed in Part VII of this paper propose to require advisors to disclose to a client all compensation they receive in connection with the client's account. Please refer to Part VII for details of that initiative.

77 See section 2.4.4 of the Mutual Fund Dealers Association (MFDA) Rules. For those advisors who are however governed by the Investment Industry Regulatory Organization of Canada (IIROC), new IIROC Dealer Member Rule 3500.5(2)(g), to be in effect as of March 26, 2013, will require IIROC Dealer Members to provide investors with "a description of all charges the client may incur in making, disposing and holding investments by type of investment product.". In IIROC Rules Notice 12-0108 issued March 26, 2012, IIROC advises that this relationship disclosure should include a discussion of transaction fees/charges a client may incur in the course of acquiring, selling or holding an investment product position, including amounts to be paid indirectly to the Dealer Member by the client. This would include a discussion of the management fees that are deducted from fund performance by the mutual fund manufacturer and the types of fees/charges, such as trailing commissions, that may be paid to the Dealer Member by the mutual fund manufacturer from these collected management fees.

78 See, for e.g., paragraphs 5.4.3(h) and (i) of the MFDA Rules and IIROC Dealer Member Rule 200.1(h).

79 *Supra* note 71, at p. 22.

80 Section 5.1 of National Instrument 81-102 *Mutual Funds*.

potential or perceived benefit to investors of an increase in the trailing commission is less clear. While investors might reasonably expect a commensurate increase in services and advice from their advisor, or some other observable benefit, there is currently no evidence to substantiate that this is what occurs. This lack of a clear benefit to investors gives rise to the conflict of interest issues we discuss below.

2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels

The use of mutual fund assets to pay for trailing commissions may give rise to actual or perceived conflicts of interest at both the mutual fund manufacturer and advisor levels.

i. Mutual fund manufacturer

The shift towards trailing commissions in Canada as the primary source of advisor compensation for mutual fund sales appears to have given rise to increased pressure on mutual fund manufacturers to attract distribution on the basis of the trailing commissions they pay.[81] As a result, while overall MERs have incrementally trended down over the last several years, the cost of distribution has remained steady or increased during this time.[82] This means that mutual fund manufacturers seem to be using a greater proportion of the management fees they earn to pay for trailing commissions.

Using fund assets to pay for trailing commissions could encourage additional sales of the fund. This could increase the fund's assets under management, which would increase the management fees payable. This creates an actual or a perceived conflict of interest between the mutual fund manufacturer and the fund's investors.[83] This practice could put the mutual fund manufacturer at odds with its statutory duty to act in the best interest of the mutual fund[84] to the extent the mutual fund manufacturer, rather than the fund and its investors, is the primary beneficiary of the fund's asset growth. The mutual fund manufacturer must be able to demonstrate that it is acting in the best interests of the mutual fund and its investors, and not itself, when engaging in this practice.[85]

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81 See G. Stromberg, *Regulatory Strategies for the Mid-'90s, Recommendations For Regulating Investment Funds in Canada*, January 1995, at p. 16, where Stromberg states: "*The comment has been consistently made that virtually all aspects of the investment fund industry are being driven today by distribution and the competition for distribution. This is not an overstatement. Independent investment fund organizations that do not have their own sales force must secure distribution channels in order to build the critical mass of assets under administration that is required to make their operations viable and profitable. This has resulted in intense competition by independent investment fund organizations for "shelf space" with distributors and in the costs of securing this distribution continually increasing.*";

See also *Investor Economics Insight Monthly Update* (March 2012) at page 13 where Investor Economics states: "*Not only are trailers a relatively unaffected ingredient of the advisor fund compensation formula, some companies are recognizing their growing importance and strategically pushing the envelope on the trailer levels.*". Also see their discussion of "Compelling Compensation" on pages 13 and 14. In addition to this commentary, we have seen examples where advertisements by mutual fund manufacturers targeting advisors present no quantitative information about a mutual fund product other than the trailing commission payable to the advisor – see *Investment Executive* (July 2012) at p. B2 and *Investment Executive* (November 2012) at p.32 for examples.

82 See the data we present in Part IV of this paper under "**2. Evolution of fund fees in Canada – b. Ongoing fund fees trends**". Also see *Investor Economics Insight Monthly Update* (March 2012) at p. 14, *Investor Economics Insight Monthly Update* (February 2010) at p. 9, and *Investor Economics Insight Monthly Update* (September 2011) at p. 5. At p.16 of the September 2011 Update, Investor Economics states: "*The final frontier for upcoming changes in MERs in the future lies in the cost of distribution. While MER levels have trended down, changes in the past several years can be characterized as incremental rather than sweeping. The embedded cost of distribution remains a key obstacle to a significant reduction in the MER levels.*"

83 G. Stromberg, *supra* note 81, at pages 16-17, comments on this conflict of interest as follows: *"A result of this perspective is that independent investment fund organizations have increasingly become marketing companies, more focussed on gaining market share than on being investment management companies focussed on managing investment funds for the benefit of the investors in these funds. The major concern that arises from the focus on marketing considerations is whether marketing considerations are prevailing over investment management decisions and resulting in conflicts of interest between the fund manager and the fund investors."*

84 See s. 2.1 of National Instrument 81-107 *Independent Review Committee for Investment Funds*, which requires the manager of the investment fund to (a) act honestly and in good faith, and in the best interests of the investment fund, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Securities Acts of most of the CSA jurisdictions also contain a similar provision.

85 A mutual fund manufacturer could demonstrate this, for example, by reducing the management fees and expenses it charges to a mutual fund as its assets grow, thus yielding a benefit to the fund and its investors. Interestingly however, U.S. studies on trailing commissions, known in the U.S. as "12b-1 fees", have concluded that trailing commissions don't yield the expected benefit for investors. When 12b-1 fees were originally adopted in the U.S., mutual funds were experiencing net redemptions. The belief was that if fund flows could be attracted through the use of 12b-1 fees, existing investors would benefit through lower expense ratios as assets under management increased. Subsequent U.S. experience has shown this not to be the case with 12b-1 fees increasing expense ratios on a one-for-one basis even as assets under management increase. See S. Collins, *The Effect of 12b-1 Plans on Mutual Fund Investors, Revisited* (March 2004) ICI working paper, and L. Walsh, *The Costs and Benefits to Fund Shareholders of 12b-1 Plans: An Examination of Fund Flows, Expenses and Returns* (June 2004) SEC discussion paper available at: http://www.sec.gov/rules/proposed/s70904/lwalsh042604.pdf.

The perceived practice of mutual fund manufacturers competing for distribution on the basis of trailing commissions also raises a perception that mutual fund manufacturers may consider the advisor, rather than the investor, to be their customer, which could lead them to favour the needs of the advisor over the interests of the investors in their mutual funds.[86]

Examples of potential conflicts:

1. mutual fund pricing model

As mentioned in Part IV, management fees, and the trailing commissions paid from those fees, vary based on the type of mutual fund. They are generally highest on equity funds and balanced funds, lower on fixed income funds, and lowest on money market funds. This gives rise to the perception that the pricing model favours the manufacturing and distribution of higher cost mutual funds, in order to maximize the mutual fund manufacturer's profitability.

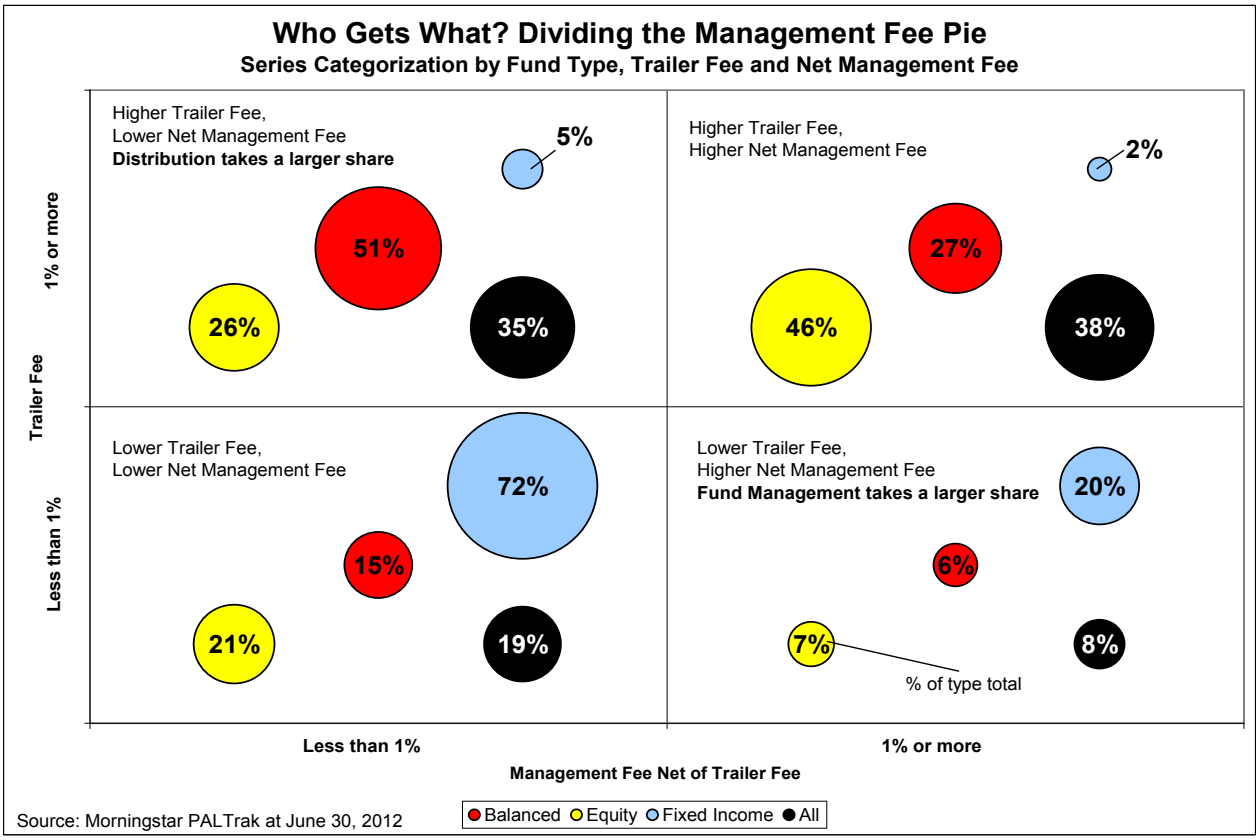
Figure 12 below illustrates the potential conflict of interest that the current mutual fund fee pricing model raises for the mutual fund manufacturer. The graph suggests a number of pricing strategies that may align the interests of the advisor with those of the mutual fund manufacturer.[87] Explanations for the graph are provided below.

[86] G. Stromberg, *supra* note 81, at pages 17-18, discusses this concern as follows: *"Another result that has flowed from the need to secure distribution channels is that independent investment fund organizations no longer appear to regard the investors in their sponsored investment funds as being their "customers" in terms of such investors being the persons whose needs, expectations and interests that their operations are intended to serve. Instead, these organizations regard the distributors – i.e. mutual fund dealers, mutual fund specialists, financial planners, investment dealers and, in some cases, the individual sales representatives that are employed by these firms – as being their "customers" and their immediate focus is on satisfying the needs of these people instead of the needs of the investors in their sponsored investment funds."*

We note that the U.K.'s Financial Services Authority (FSA) also made similar observations in the work leading up to its Retail Distribution Review reforms discussed in Part VI of this paper. In a speech entitled "*Is the present business model bust?*" (http://www.fsa.gov.uk/library/communication/speeches/2006/0916_cm.shtml) given on September 16, 2006, the Chairman of the FSA stated the following: *"And one of the key questions that must be addressed is this: who is the real customer of the provider – is it the policyholder who invests their money in the hope of seeing a decent return? Or is it the distributor, who in the main, secures access to the end-consumer for the provider? If, as many commentators would have it, it is indeed the distributor who is the actual customer of the provider, this raises all manner of difficulties which further perpetuate the shortcomings of the current model – particularly with regard to treating the real customer fairly. I understand well that many are frustrated by what they describe as the "commission stranglehold" that the advisory community enjoys, but so long as providers continue to compete over the attractiveness of their commission proposition, the fundamental flaws in the present business model will remain."*

[87] For purposes of Figure 12, we used management fee and trailer fee data for over 4500 front-end load and no-load sales charge fund series from Morningstar.

Figure 12: Who Gets What? Dividing the Management Fee Pie



In the graph above, fund series are sorted along two dimensions - by the rate of the trailer fee and by the rate of the management fee net of trailer fees. Typically, trailer fees and net management fees go up and down together – funds that pay higher(lower) trailer fees, pay higher(lower) net management fees. For most asset classes, where mutual fund manufacturers have tended to deviate they have chosen to pay a higher trailer fee and forgo their net management fees.

In the graph, all mutual funds are categorized along two dimensions – the fund's management fee *net of trailer fee*[88] and the fund's trailer fee. Mutual funds are then grouped into one of four quadrants.

The first group in the upper left quadrant is made up of mutual funds with trailer fees that are greater than or equal to 1% and net management fees that are less than 1%. Payments made to advisors and their firms make up the majority of the overall management fee paid.

The second group, located in the lower right quadrant, is made up of mutual funds with trailer fees that are less than 1% and net management fees greater than or equal to 1%. The majority of the overall management fee paid is retained by the mutual fund manufacturer.

The third group, in the upper right quadrant, is made up of mutual funds with both trailer fees and net management fees greater than or equal to 1%. These funds have relatively higher overall management fees – total management fees are greater than or equal to 2%.

The fourth group of funds, located in the lower left quadrant, is made up of mutual funds with both trailer fees and net management fees that are less than 1%. These funds have relatively lower overall management fees - total management fees are less than 2%[89].

[88] The management fee *net of trailer fee* is computed by subtracting the series trailer fee from the series total management fee. We acknowledge that this may not represent the actual amount the mutual fund manufacturer has retained from the fund's management fee or equivalently, what has been charged by the mutual fund manufacturer to the fund for distribution costs (see note 44). Rather, it represents the cash flow of what has been charged in total management fees to the fund versus what has been allocated back (from the total pool of management fees collected from all funds managed by the manufacturer) to the payment of trailing commissions to advisors.

In addition to showing the percentage of all mutual funds in each quadrant, Figure 12 illustrates the percentage of each fund type – equity, balanced, fixed income – in each quadrant. It shows that the majority of fixed income funds, 72%, are in the lower trailer fee/lower net management fee group but only 21% of equity funds and 15% of balanced funds are in this group. Similarly, only 2% of fixed income funds reside in the higher trailer fee/higher net management fee group versus 27% for balanced funds and 46% for equity funds.

For 57% of the funds in the total sample, compensation to distribution appears aligned with the mutual fund manufacturer's compensation – lower fund manufacturer compensation is associated with lower compensation for distribution and higher fund manufacturer compensation is associated with higher compensation for distribution[90].

In the scenarios where the net management fee and trailer fee do not align – the lower right and upper left quadrants – overall, the industry practice seems to be to pay a higher trailer fee and undercut the net management fee. Only 8% of mutual funds in the sample are in the lower trailer fee/higher net management fee group versus 35% in the higher trailer fee/lower net management fee group. This industry pricing model seems to be most prevalent for balanced funds, the category which contains the bulk of fund-of-fund products in the industry, since 51% of balanced funds in the sample have a trailer fee that is greater than or equal to 1% and a net management fee that is less than 1%.[91]

This approach by mutual fund manufacturers of retaining less in net management fee in order to allocate a greater portion of the overall management fee to the payment of high trailing commissions on fund-of-fund products may be a significant contributing factor to the growth of those products.

Over the last several years, fund-of-fund products have grown in popularity, now accounting for approximately 47% of long-term mutual fund assets under management, up from 37% in 2006.[92] Industry data shows that in four out of the last five years, the majority of new money flowing into the mutual fund industry through long-term mutual funds has come through fund-of-fund products.[93]

Funds-of-funds may hold substantial appeal for advisors since they are pre-packaged mutual fund investment portfolios which relieve the advisor from having to do the fund selection and asset allocation they may previously have been expected to do on their own for a client. In the case of a fund-of-funds, the advisor need only assess the suitability of the top fund rather than assess the suitability of every fund in the portfolio. Notwithstanding the efficiencies that funds-of-funds may provide for advisors, the trailing commissions payable on funds-of-funds are the same or higher than on stand-alone equity mutual funds.[94]

While the higher trailing commission payable on funds-of-funds appears to result in a lower net management fee to the mutual fund manufacturer, the manufacturer benefits from the fact that the funds-of-funds help to fuel the growth of its proprietary stand-alone funds, as these are generally the underlying investments held by the funds-of-funds.[95] This increases the manufacturer's overall assets under management which in turn increases total management fees payable to the manufacturer.

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89 Note that mutual funds that equally split the trailer fee and net management fee will be grouped in third and fourth group, however not all of the funds in these groups equally split the overall management fee.

90 It's interesting to note here that 73% of all passively managed funds in the sample are in the lower net management fee, lower trailer fee group, which highlights another potential barrier (and potential conflict) to a more widespread use of passively managed funds in the industry.

91 Note that the funds-of-funds in this group would seem to contradict the argument that fund-of-fund management fees are higher than the asset-weighted average costs of their underlying fund because of the added rebalancing and asset allocation management costs.

92 Investor Economics, *Investor Economics Insight Monthly Update* (April 2012), Exhibit 1.

93 Net sales into funds-of-funds and long-term stand-alone funds were as follows over the five years ending 2011:

Net Sales -excl. reinvested dist. ($billions)	2007	2008	2009	2010	2011
Long-term stand-alone funds	11.1	-17.0	12.1	10.6	6.5
Fund-of-funds	20.4	3.2	9.6	18.6	19.5
Total Net Sales	**33.4**	**-11.8**	**23.7**	**31.2**	**28.1**

Source: Investor Economics, net sales have been adjusted to remove double-counting

94 See Figure 10 in Part IV.

95 The industry trend for funds-of-funds has been towards the use of related (proprietary) mutual funds as underlying funds and away from the use of mutual funds offered by other mutual fund manufacturers (third-party funds). At the end of 2011, assets under management (AUM) for funds-of-funds that invest in proprietary mutual funds totalled $150.2 billion, while AUM for funds-of-funds that invest in third party mutual funds totalled $17.5 billion. The AUM of funds-of-funds that invest in proprietary mutual funds grew an average of 10.5% per year between 2007 and 2011, compared to the AUM of funds-of-funds that invest in third-party funds which declined by 0.1% per year. (Source: Investor Economics). Because of the popularity of fund-of-fund products generally and the preference towards the use of proprietary funds as the underlying investments, we now see many cases where investments by related mutual funds account for as much as 70% to 90% of the total assets of a mutual fund.

2. automatic conversion arrangements

These are arrangements under which mutual fund manufacturers facilitate the automatic conversion of DSC mutual fund securities to front-end load securities of the same fund. Under these arrangements, the 10% free DSC securities that an investor in a mutual fund is entitled to redeem without penalty each year are automatically converted into securities of the same fund carrying a 0% front-end sales charge. These arrangements may further provide for the automatic conversion of matured securities at the end of the DSC redemption schedule (when the DSC has fallen to zero) into securities of the same fund carrying a 0% front-end sales charge.[96] Since trailing commissions on mutual funds sold under a front-end sales charge are generally twice as high as trailing commissions on mutual funds sold under a DSC,[97] the conversion yields a 100% increase in trailing commission compensation for the advisor without any consent from or disclosure to the client at the time of the conversion.

We understand that these conversion arrangements are intended to provide a disincentive for advisors to churn their clients' free/matured DSC investments into new mutual fund investments in order to generate new sales commissions. While arrangements intended to mitigate the potential for churning by advisors are beneficial for investors, at the same time they can create an actual or perceived conflict of interest between the mutual fund manufacturer and investors. This is because these arrangements, which create a perceived incentive for the advisor to keep the client invested in the mutual fund for the longer term, in turn satisfy the mutual fund manufacturer's perceived need to preserve assets under management. While longer term mutual fund investments yield economic benefits for the mutual fund manufacturer and the advisor, they may not yield the same benefits for the investor.

These conversion arrangements therefore appear to display an alignment of interests between the mutual fund manufacturer and the advisor that could be detrimental to mutual fund investors.

ii. Advisor

Sales commissions and trailing commissions embedded in mutual fund management fees may:

- incent or be perceived to incent advisors to sell a particular mutual fund to investors over another comparable mutual fund or comparable financial product with lower compensation to the advisor,
- cause the advisor to promote a particular purchase option with investors, or
- incent the advisor to keep them invested in a particular mutual fund.

Generally, the higher is the compensation, the greater is the perceived incentive.

This perceived incentive for advisors to recommend the sale of mutual funds that pay higher sales commissions and trailing commissions may be made even greater by the 'compensation grid', the mechanism that dealer firms use to determine the pay of an advisor.[98] Under this grid, the more commission or fee revenue the advisor generates for the firm, the greater the portion of that revenue the advisor gets to keep. Some dealer firms impose a minimum amount the individual advisor is expected to generate.

These compensation incentives can potentially result in a misalignment of the advisor's interests with those of investors.[99] For example, because trailing commissions on equity mutual funds and balanced/asset allocation funds (as discussed above) are

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[96] The MFDA addresses this practice in member regulation notice MR-0041 (June 8, 2005). Under that notice, in order for automatic conversion programs to comply with MFDA rules, members must ensure that appropriate disclosure is provided and the consent of the client is obtained prior to engaging in an automatic conversion program. The disclosure/consent form should include the following:

- a signature line to evidence client consent to the conversion;
- disclosure of any increased remuneration, including trailer fees;
- disclosure of any tax implications; and
- reference to the applicable fund prospectus.

However, according to the notice, the above disclosure/consent requirement need not be complied with if the mutual fund has included the above information in the fund prospectus.

[97] See note 48.

[98] See the following articles which describe the compensation grid: Investor Education Fund, *How your adviser is paid*, Globe and Mail (March 31, 2009), available at: http://www.theglobeandmail.com/globe-investor/investor-education/investor-education-fund/getting-financial-advice/how-your-adviser-is-paid/article4203756/; and Barrie McKenna, *The flaws in Canada's financial adviser system*, Globe and Mail (February 17, 2012), available at:

http://www.theglobeandmail.com/globe-investor/the-flaws-in-canadas-financial-adviser-system/article4171749/?page=all.

[99] See article by Rob Carrick, *Rogue sales reps or Standard thinking?; E-mail to investment advisers, disavowed by insurance company, lists seven ways to make more money from clients*, Globe and Mail (July 5, 2012) available at http://www.theglobeandmail.com/globe-

typically higher than trailing commissions on fixed income and money market mutual funds, advisors may be incentivized to favour such mutual funds in portfolio allocations. Similarly, since trailing commissions on mutual funds sold under a front-end sales charge are generally twice as high as trailing commissions on mutual funds sold under a DSC, an advisor may be induced to favour the front-end sales charge option over other available purchase options.

On the other hand, advisors who are new to the business and who don't yet have a large trailer fee-paying fund book of business may be more incented to favour mutual funds sold under a DSC, despite their lower trailing commissions, in order to receive the 5% sales commission payable by the mutual fund manufacturer at the time of sale.

Similarly, the automatic DSC conversion arrangements facilitated by certain mutual fund manufacturers (see related discussion above) which yield a 100% increase in trailing commission compensation for advisors on free or matured DSC securities, may incent advisors to recommend to investors that they remain invested in a mutual fund over a longer term. All of these perceived compensation incentives carry the potential to influence the quality of an advisor's investment advice to the investor.

The advisor's standard of conduct under the securities legislation may not sufficiently mitigate these perceived compensation incentives.[100] Under current securities legislation, the prevalent standard in the common law jurisdictions[101] is that advisors must deal fairly, honestly and in good faith with clients.[102] The CSA are not aware of any court or regulatory decision that has concluded that this duty creates, or is equivalent to, a statutory fiduciary duty requiring the advisor to put the client's best interests ahead of his or her personal interests. Canadian courts in the common law jurisdictions, however, can find that an advisor owes a fiduciary duty to his or her client depending on the nature of the advisory relationship.[103]

Complementing the fundamental duty of an advisor to deal fairly, honestly and in good faith is the duty of an advisor to make suitable investment recommendations for the client, along with the obligation to identify and respond to conflicts of interests.[104] Based on current rules and related SRO guidance, whether or not a particular investment is suitable for a client must generally be determined having regard to the client's investment needs and objectives, financial circumstances, risk tolerance, and time horizon.[105] The sales commissions and ongoing costs associated with a mutual fund investment may not be a primary consideration in the advisor's suitability process.

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investor/personal-finance/mixed-message-rogue-sales-reps-or-standard-thinking/article4391164/?cmpid=rss1. The article describes an email that sales representative of a Canadian insurance company sent to advisors to suggest ways of generating maximum commission and fee revenue from the sale of mutual funds. Suggestions included selling mutual funds under the DSC option (as this yields an up-front commission to the advisor of up to 5%) or that offer trailing commissions of 1.25%.

100 The CSA recently identified key investor protection concerns with the advisor's current standard of conduct in CSA Consultation Paper 33-403: *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (October 25, 2012), available on the websites of members of the CSA. Among concerns identified are: (i) that advisor compensation arrangements can create a conflict of interest between the interests of advisors and their clients (see Concern 1: Principled foundation), and (ii) that the advisor's current suitability obligation may result in investors acquiring a "suitable" investment but at an inflated price, and this can have a significant impact on the value of a client's investment portfolio over the long term (see Concern 4: Recommendation of suitable investments versus investments in the client's best interests). We refer you to CSA Consultation Paper 33-403 for a full discussion of these and other identified investor protection concerns with the advisor's current standard of conduct.

101 Excludes Québec which follows civil law. In Québec, according to both the *Securities Act* (Québec) and the general civil law under the *Civil Code of Québec*, advisors are subject to a duty of loyalty and a duty of care and must act in the client's best interest. See sections 1309, 2138 and 2100, respectively, of the *Civil Code* and sections 160 and 160.1 of the *Securities Act* (Québec).

102 Rules governing the conduct of advisors in Canada are set out under the various Securities Acts and related rules enacted by each province and territory of Canada. The prevalent standard for advisors across the CSA jurisdictions is that advisors must deal honestly, fairly and in good faith with their clients. In Ontario, for example, that standard is set out in section 2.1 of OSC Rule 31-505 – *Conditions of Registration.* The securities legislation of several other Canadian provinces and territories sets out the same (or virtually the same) requirement for advisors. See also section 2.1.1 of the MFDA Rules. It is worth noting, however, that a statutory 'best interest' standard may apply to advisors in the context of certain advisory relationships under the legislation of four provinces. Specifically, Alberta, Manitoba, New Brunswick and Newfoundland and Labrador have a statutory requirement that when an advisor has discretionary authority over a client's investments, the advisor must act in the client's best interests. See subsection 75.2(2) of the *Securities Act* (Alberta), section 154.2 of the *Securities Act* (Manitoba), section 54 of the *Securities Act* (New Brunswick) and subsection 26.2(2) of the *Securities Act* (Newfoundland and Labrador).

103 Canadian courts note that advisors fall into a continuum in providing advice, with discount brokers at one end (who provide no advice but simply execute transactions on a client's express instructions and who therefore are not subject to a common law fiduciary standard) and advisors with clients in discretionary accounts at the other end (who have complete discretionary trading authority and who therefore would be subject to a common law fiduciary duty). Whether a common law fiduciary duty applies to a relationship that falls somewhere in this continuum is a question of fact to be determined based on the nature of the client relationship in all the circumstances. See *Kent v. May* (2001), 298 A.R. 71 (Alta Q.B. at paragraphs 51-53). See also: *875121 Ontario Ltd. V. Nesbitt Burns Inc.*, [1999] O.J. No. 3825 (Sup.Ct.); *Hunt v. TD Securities Inc.* (2003), 66 O.R. (3d) 481 (Ont. C.A.); and *Young Estate v. RBC Dominion Securities* (2008), [2008] O.J. No. 5418 (Ont. S.C.J.).

104 National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) imposes suitability and conflict of interest requirements on advisors and their firms. See Part 13, Divisions 1 and 2 of NI 31-103. The rules of the SROs similarly impose suitability and conflict of interest requirements on their members. See MFDA Rules 2.1.4 and 2.2.1, IIROC Dealer Member Rule 1300.1, paragraphs (p) and (q), and IIROC Dealer Member Rule 42.

105 See NI 31-103, sections 13.2 and 13.3. See also MFDA Member Regulation Notice MR-0069 – *Suitability Guidelines* (April 14, 2008) and IIROC Notice 12-0109 – *Know your client and suitability – Guidance*, (March 26, 2012).

Similarly, conflict of interest requirements do not specifically identify compensation for advisors as being conflicts of interests that should be resolved in the best interests of the client. This would seem to allow the advisor to recommend investments in higher fee (and correspondingly, higher trailer fee) mutual funds over other less costly, comparable and equally suitable investment options, potentially to the detriment of the investor's best interests.

While advisors may not be fiduciaries under securities legislation, most Canadian investors trust their advisor to provide recommendations that put the client first. The IEF Study reports that 7 out of 10 investors believe their advisor has a legal duty to put the client's best interests ahead of his or her own. They rely on their advisor to select the best investment for them and most believe the advisor will recommend what is best for the client even at the expense of their own commission. In addition, half the respondents in this study (51%) had no view as to whether commissions could potentially create a conflict of interest. Among the half of investors with an opinion on conflict of interest, three-quarters believe that their advisor would look out for their best interest regardless of how the advisor was paid.[106] With this belief, investors may not be prone to question their advisor's investment recommendations and the compensation incentives that potentially influence them.

3. The potential for cross-subsidization of commission costs

As discussed, part of the management fees earned by a mutual fund manufacturer on the assets of a mutual fund are typically used to pay for some of the costs of financing the payment of sales commissions to advisors on sales of the mutual fund's securities under the DSC or low-load sales charge option.[107]

The prevalent practice in Canada is that all investors in the mutual fund bear the financing costs equally, irrespective of the purchase option under which they made their mutual fund investment. This is because, with very few exceptions, mutual funds in Canada generally do not offer a different class or series, each bearing a different management fee, for each of the various purchase options available. As a result, investors who purchase mutual fund securities under the front-end sales charge option bear the same management fee (out of which the financing costs of the DSC and low-load sales commissions are paid) as those who purchase under the DSC and low-load sales charge options. This is known as "cross-subsidization".[108]

Cross-subsidization by investors may also occur to a certain extent if different trailing commissions are paid on different purchase options. As discussed, the trailing commission on mutual fund securities sold under a front-end sales charge is typically double the trailing commission on mutual fund securities sold under a DSC. That higher trailing commission is similarly applied to any free or matured DSC securities that are converted to the front-end sales charge under the automatic DSC conversion arrangements discussed above.[109] Since the different trailing commissions payable on the different purchase options are generally funded from the same management fee, investors in the mutual fund who purchased under the DSC option may be subsidizing the payment of the higher trailing commission payable under the front-end sales charge option.

This potential cross-subsidization by a mutual fund's investors of the various costs associated with different purchase options may result in certain mutual fund investors unknowingly paying a higher management fee than would otherwise apply if investors were segregated in a separate class or series for each purchase option.

4. Alignment of advisor compensation and services

As discussed in Part IV, trailing commissions were originally intended to compensate the dealer firms for the ongoing services their advisors provide to investors after the mutual fund purchase.

Currently, however, there are no rules or guidance that articulate the purpose of trailing commissions or define the services that an advisor is expected to provide in exchange for a trailing commission.[110]

In the absence of relevant rules relating to trailing commissions, one could presume that the higher the trailing commission rate is, the greater the service an investor would expect to receive from the advisor.

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106 *Supra* note 71, at pages 17 and 28.

107 In addition to commission costs, the DSC and low-load purchase options require complex record keeping systems to keep track of maturity dates and 10% free allotments. They also draw more on the call centre staff of the mutual fund manufacturer to address investor and advisor inquiries about schedule, date of maturity and estimated redemption costs, etc.

108 See article by Rudy Luukko, *Most mutual funds with front-end loads sell investors short*, The Toronto Star (March 21, 2002) at page D06, which discusses this cross-subsidization issue.

109 We discuss the automatic conversion arrangements in this Part under "**2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels** – *i. Mutual fund manufacturer*".

110 While National Instrument 81-105 *Mutual Fund Sales Practices* imposes conditions around the calculation of the amount of the trailing commission (see section 3.2), it does not define what is a trailing commission, nor does it mandate the provision of any services by the advisor in exchange for the payment of such commission.

Based on industry practice, trailing commission rates typically vary based on the following factors:

- the type of mutual fund (i.e. they are higher on equity funds and balanced funds and lower on fixed income funds and money market funds) and
- the purchase option under which the fund investment is made (i.e. they are higher on mutual fund investments made on a front-end load basis and lower on mutual fund investments made on a DSC basis).

In addition to those factors, we have observed trailing commission rates that:

- increase in steps with each year the investor continues to hold the investment, reaching a specified maximum after a certain number of years;
- double at the expiration of a DSC redemption schedule under automatic conversion arrangements;[111] and
- vary depending on the dealer firm distributing the mutual fund.[112]

Furthermore, under a dealer firm's compensation grid, the amount of the trailing commission paid out to an advisor may vary based on:

- the fee revenue the advisor generates for the firm;[113]
- the tenure of the advisor with the dealer firm;[114]
- whether the mutual funds sold are proprietary or third party mutual funds.[115]

Considering all these factors, there is not a clear correlation between the rate or amount of the trailing commissions payable and the level of services the advisor may provide to investors in exchange for those commissions.

Investor research shows that the level of service expected by investors is independent of the products they choose or the manner in which they purchase them. Service expectations instead tend to vary by age, life event (divorce, death of a spouse, etc.) and by the amount invested.[116] Asset mix and financial planning are the services that investors most frequently seek, followed closely by recommendations for specific stocks or funds to buy.

Investor research further shows a variance in the extent to which investors rely on the recommendations or advice they receive. Some investors are comfortable giving their advisors certain discretion in the investment decision-making process, while others prefer to remain more hands-on.[117]

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111 See our discussion of automatic conversion arrangements in this Part under "**2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels** – *i. Mutual fund manufacturer*".

112 This occurs where a mutual fund manufacturer establishes specific series of mutual fund securities with a view to distributing each individual series through a specific full-service dealer firm. The different management fees applicable to each series reflect the different trailing commissions that each of the dealer firms command for distributing securities of the mutual fund.

113 Typically, the greater the fee revenue the advisor generates for the firm, the greater the portion of that revenue the advisor gets to keep.

114 This may be a factor where the mutual fund manufacturer has a captive sales force. For example, in the case of one such manufacturer, the manufacturer pays a base trailing commission to all advisors, plus an additional trailing commission to those advisors who have been with the business for less than 3 years. Disclosure in the prospectus of this manufacturer's mutual funds states that this bonus amount is intended to help the advisor establish their practice.

115 Advisors may receive greater trailing commissions for the sale of proprietary mutual funds (i.e. mutual funds offered by a mutual fund manufacturer that is related to the dealer firm) than for the sale of third party mutual funds.

116 See The Brondesbury Group, *supra* note 71. This research shows that there are differences in service expectations by age. **Advice on types of investments to buy** is one of the top two services for all age groups. **Building a financial plan** is one of the top two up through age 59, but **Regular reports on progress** is the second choice for 60+. For those with less than $50k invested, the most critical need is **Help in figuring out financial needs for the long term**. As the amount increases to the $50-99k range, the top service shifts to **Building a financial plan**. After that, **Advice on types of investments to buy** (not specific stocks or funds) is the leading choice of service expected. See also POLLARA, *supra* note 72. This research similarly finds that the use of advisors for services other than simply purchasing mutual funds increases with income and the total amount each individual has invested. According to this research, 54% of people with total investments under $25,000 use their advisors for other purposes, compared to 70% of investors with total values of $75,000 or more. This research further finds that two-thirds (66%) of mutual fund investors say that they receive other services such as investment advice, budgeting, or planning for future expenses. One-third of investors (33%) do not.

117 See POLLARA, *supra* note 72. That research finds that 51% of mutual fund investors discuss options and make a decision with their advisor while another 40% make the final decision themselves based on information from their advisor. Similarly, The Brondesbury Group study referenced in note 71 finds that about one-quarter of investors prefer an advisor to decide what to buy on their behalf, and then buy it either with or without explicit permission for that single decision. For those people who want to talk about what to do, the advisor typically

The current mutual fund embedded trailing commission structure, which offers a "one size fits all" approach, seems potentially misaligned with the current practice of providing services tailored to an investor's personal circumstances, expectations and preferences. It also does not recognize the different range of services that may be provided by the various types of advisors and their dealer firms. The trailing commission that applies to a mutual fund investment is payable regardless of whether the advisor performs basic suitability requirements only or provides a broader range of investment services.

Absent a clear relationship between the level of trailing commission compensation paid to the advisor and the level of services received by an investor in exchange, the payment of trailing commissions may be perceived to be tied to the sale of the mutual fund as opposed to the provision of ongoing services. In that instance, the trailing commission may be seen to function more like a sales commission that is paid to advisors over time.

This perceived disconnect between the compensation received by advisors and the services provided to investors is further evidenced by the fact that do-it-yourself investors who consciously decide to forego investment advice from advisors by opting to purchase mutual funds through a discount broker are, with few exceptions, paying the same trailing commission (through the management fee of the mutual fund) as that paid by investors purchasing the mutual funds through full-service advisors. This issue is further discussed below.

5. Low-cost options for do-it-yourself (DIY) investors

In Canada, DIY investors wishing to purchase mutual fund securities without having to pay for the services of an advisor have few options available. Current options are:

i. Directly-sold mutual funds

Investors may look for direct sellers who make their mutual funds available for sale on a no-load basis directly to the investor.[118] There are currently only a handful of direct sellers in Canada, and the number has been decreasing over the last several years as some have been acquired by larger fund manufacturers whose distribution remains primarily focused on full-service advisor distribution channels. Direct sellers generally pay no or reduced trailing commissions, resulting in below-average MERs. As of December 2011, the average asset-weighted MER of mutual funds offered by direct sellers was 1.00%[119], while the industry average asset-weighted MER was 1.93%.[120] The mutual funds offered by direct sellers typically have a substantial initial investment requirement (at least $5,000 and up) which may potentially impede access to those funds for certain investors. These mutual funds represented approximately 4.4% of mutual fund industry assets as at the end of December 2011.[121]

ii. Mutual funds offered through discount brokerages/online

Many mutual fund manufacturers make their mutual funds available for sale through discount brokerages. As discussed in Part III, discount brokerages are primarily order-takers and generally do not offer investment advice. Investors may typically purchase mutual funds offered on these platforms on a commission-free basis, which allows investors to save on transaction costs. However, with few exceptions, the mutual fund series that fund manufacturers offer through the discount brokerage channel is typically the same trailer fee-bearing series that is sold through advisors. The embedded trailing commission component of the management fee is not discounted. This results in DIY investors who hold mutual fund securities through discount brokerages potentially paying for services or advice that they never receive and do not want.

Mutual fund securities available for purchase through certain online discount brokerages may however offer DIY investors some savings relative to the traditional discount brokerage. Currently, one independent online discount brokerage offers rebates of the trailing commissions embedded in the management fees charged by the mutual funds offered on their platform. This rebate service is provided in exchange for a set monthly fee. In addition, each fund trade is subject to a trading fee. Clients of the service realize a net benefit provided the amount of the mutual fund investment they hold through the brokerage is sufficiently high for the quarterly trailing commission rebates to offset the monthly fee.

An alternative to this rebate process is to invest in discount online/e-series securities which are currently available on select no-load mutual funds offered by a few of the Canadian banks through their online/discount brokerage or e-banking platforms.[122] Most, but not all, of the trailing commission is typically stripped out of the management fee charged on this series, resulting in a reduced MER relative to the original series of that fund distributed through the bank branches. The reduced pricing is intended to reflect the fact that investors in this series of the mutual fund make their own investment decisions, and therefore do not

gives them several choices to discuss and they jointly come to a decision. Those who don't want to talk will either call the advisor to tell the advisor what to buy for them, or alternatively, listen to what the advisor wants to buy on their behalf and give them an okay.

118 See description of direct sellers in Part III under "**1. The mutual fund manufacturers –** *iii. Independents*".

119 Source: Morningstar Direct, OSC calculations.

120 Source: Investor Economics.

121 See Figure 4 in Part IV.

122 See note 32.

receive nor want recommendations, but are still being serviced by a dealer firm. The average asset-weighted MER of the discount online/e-series currently stands at approximately 0.91%,[123] versus the industry average asset-weighted MER of 1.93%.

At the end of 2011, there were 66 discount online/e-series available for purchase. However, these assets represented just 0.3% of mutual fund industry assets under management.[124] At this time, the discount online/e-series segment remains dominated by the Canadian bank-owned mutual fund manufacturers. None of the independent 'load only' mutual fund manufacturers have similar discounted offerings.[125]

VI. GLOBAL REGULATORY REFORMS

Regulators in major international jurisdictions, in particular, the U.K., Australia, Europe and the U.S., have implemented or proposed regulatory reforms aimed at addressing some of the issues identified in this paper, including conflicts of interest that exist in the embedded compensation structure and improving transparency of the cost of advisors.

1. U.K. – FSA Retail Distribution Review

In March 2010, the Financial Services Authority (FSA) published final rules and guidance on the implementation of an 'Adviser Charging' system, as part of its Retail Distribution Review (RDR).[126] These new rules, to be in effect as of January 1, 2013, end the current commission-based system of advisor remuneration in the U.K.

The rules require advisors to set their own charges for their services in agreement with their clients. Advisors may no longer receive commission set by product providers or otherwise embedded in the cost of the product. Their charging structures will therefore have to be based on the level of service they provide, rather than the particular provider or product they recommend. Whether the charging structure is based on a fixed fee, an hourly rate or a percentage of funds invested will be up to the advisor to decide together with the client, provided the advisor always bears in mind its duty to act in the client's best interests.[127] Ongoing fees will only be permitted where a client is paying for an ongoing service that has been properly disclosed or where the product is one in which the client makes regular payments, and may be cancelled by the client at any time without penalty.

The new rules under the RDR also aim to ensure that investors understand the services they receive by requiring advisors to clearly describe their services as either 'restricted' or 'independent'. A 'restricted' advisor[128] would offer advice limited to proprietary products or a small range of products. An 'independent' advisor would not be restricted by product provider, but rather would objectively consider a broad range of retail investment products, and provide unbiased and unrestricted advice based on a comprehensive and fair analysis of the relevant market. In all cases, individual advisors will be required to adhere to consistent professional standards, including a code of ethics.[129]

2. Australia – Financial Advice reforms

In April 2010, the government of Australia announced its *Future of Financial Advice* (FoFA) reforms which came into effect July 1, 2012.[130] Compliance with the new rules will be voluntary in the first year of operation, becoming compulsory from July 1,

123 *Investor Economics Insight Monthly Update* (July 2012) at p.12. We note that the lower MER of this mutual fund series may not only be on account of the reduced trailing commissions, but may also reflect the passive management strategy utilized by many of the mutual funds on which this online/e-banking series is offered.

124 See Figure 4 in Part IV.

125 In *Investor Economics Insight Monthly Update* (July 2012), Investor Economics states at p.3: "*Despite their rapid growth, only three sponsors currently offer D-series. The limiting factor is the lack of access to distribution. The series is currently used mostly by proprietary bank delivery conduits, notably the fast-expanding online/discount brokerage channel. Major independent fund companies have to date eschewed this "stripped-down" management fee version to avoid any potential conflict with their advice channels.*"

126 For an overview of the FSA Adviser Charging rules, see *FSA Factsheet for Financial Advisers – Improving your understanding of the Retail Distribution Review (RDR) – Adviser Charging*, available at: http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/pdf/rdr_adviser.pdf.

127 Currently, all UK securities firms (whether advising or dealing) are subject to a statutory requirement to "*act honestly, fairly and professionally in accordance with the best interests of its clients*". See FSA Conduct of Business Sourcebook, COBS 2.1.1. This seems to constitute a qualified best interest standard.

128 The new rules under RDR provide that 'restricted' advice may include 'basic' advice. Basic advice is a short, simple form of financial advice where advisors use pre-scripted questions to identify the investor's financial priorities and decide whether a product from within their range of low-cost, highly regulated saving and investment stakeholder products is suitable for the investor. While advisors providing 'basic' advice will need to disclose that they are providing 'restricted' advice, they will not be subject to the new Adviser Charging rules, and may therefore continue to be compensated by way of commissions on the sale of financial products.

129 From December 31, 2012, every financial advisor will:

- subscribe to the FSA code of practice;
- hold a higher standard qualification for giving financial advice;
- spend at least 35 hours a year learning as part of continuing professional development requirements; and
- hold a Statement of Professional Standing (SPS) as evidence they are meeting the standards, issued by an accredited body.

130 See overview of FoFA reforms at: http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=home.htm

2013. The reforms include a ban on commissions that may allow product providers to influence advisor recommendations, such as sales commissions and trailing commissions.

Consistent with the FSA's Adviser Charging regime, advisor firms in Australia will be required to negotiate fees for advice directly with their retail clients. Also similar to the FSA's reforms, the rules under FoFA allow advisor firms to charge ongoing fees only if the client has agreed to a payment plan, or if the ongoing charges relate to the provision of an ongoing service. The Australian reforms further stipulate that an advisor must renew their advice agreements every two years if clients are paying ongoing fees. A client may cancel an arrangement in which ongoing fees are paid at any time.

In order to ensure that financial advice will be within the reach of a wider range of Australians, the FoFA reforms introduce a new form of advice called "scaled advice". Scaled advice would not have to be comprehensive and could be tailored to the client's expressed needs, thereby reducing the cost to the client. It would allow investors to obtain simple advice rather than a complete financial plan, and incur advice costs commensurate with the scale of the advice provided.

An additional change to be introduced under FoFA is the introduction of a statutory best interest duty, which will require that advisors act in the best interests of their retail clients and place clients' interests ahead of their own when developing and providing personal advice. This duty will include a 'reasonable steps' qualification, so that advisors will only be required to take reasonable steps to discharge the duty. This would include making reasonable inquiries to obtain client information and conducting a reasonable investigation into relevant financial products for the client. Similarly, compliance with this duty will be measured according to what is reasonable in the circumstances in which the advice is provided. What is reasonable in the circumstances is commensurate and scalable to the client's needs. Accordingly, if the client's needs indicate that only limited advice is necessary, the advisor is not obligated to provide holistic advice.

3. Europe

i. UCITS IV - Key Investor Information Document

Under the UCITS[131] IV Directive implemented July 1, 2011, fund manufacturers in each of the European Union (EU) member states are required, as at June 30, 2012, to prepare, distribute, update and maintain a Key Investor Information Document (KIID) for all their UCITS funds and their share classes.

The KIID is a two-page fact-sheet style document, written in plain language, which constitutes the pre-contractual information which must be provided to investors prior to investment. It contains concise descriptions of key fund information, including information about one-time sales charges and ongoing fund costs that an investor needs to know in order to make an informed investment decision. The KIID must follow a standardized format to allow easy comparison of funds from different providers. The KIID must be written in the local language of each country in which a fund is sold.

The KIID provides standardized data on fund charges for UCITS funds sold across the EU. The ongoing fund charges shown in the KIID represent the annualized ratio of total costs related to the assets of the fund. The calculation is based on a standardized methodology which identifies specific items for inclusion and exclusion.[132]

ii. Markets in Financial Instruments Directive II

In October 2011, the European Commission published legislative proposals[133] to reform the overall Markets in Financial Instruments Directive (MiFID) framework that currently governs capital markets in the European Economic Area.[134] The draft legislation (MiFID II), expected to be implemented in 2015, proposes various reforms designed to enhance investor protection. These include a proposal for more stringent disclosure standards, which will require that advisors clearly explain to investors the

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131 The Undertakings for Collective Investment in Transferable Securities (UCITS) Directive was created in 1985 to form a single EU market for investment funds. This initial Directive laid down a set of regulatory requirements which collective investment schemes must comply with to be eligible to be sold across borders within the EU. The UCITS IV Directive, implemented July 1, 2011, constitutes the latest amendment to the Directive.

132 All fees paid to the fund manager, the custodian, Directors of the UCITS or portfolio managers have to be accounted for. In addition, all fees paid in relation to specific delegated activities (fund administration, accounting, valuation, distribution, legal and regulatory fees, etc.) also have to be accounted for.

133 See European Commission, *Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council* (Oct. 20, 2011), available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0656:FIN:EN:PDF. On September 26, 2012, the European Parliament's Committee on Economic and Monetary Affairs voted to amend the October 2011 draft legislation which initially proposed a Europe-wide ban on third party commissions for advisors. The vote supported softer rules requiring disclosure of all inducements and commission.

134 The European Economic Area consists of the 27 member states of the EU (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom), as well as the three EEA/EFTA States, Iceland, Liechtenstein and Norway.

existence, nature and amount of commissions at the point of sale, as well as enhanced obligations upon advisors to ensure product recommendations are suited to their clients' personal characteristics on an ongoing basis.

iii. ESMA Guidelines on remuneration policies and practices

On September 17, 2012, the European Securities and Markets Authority (ESMA) published draft compensation guidelines for firms in the European Union providing investment services, including investment firms, credit institutions and fund management companies.[135] The guidelines aim to prevent the use of distorting compensation incentives that can result in the mis-selling of financial products which are not appropriate for investors, or investment choices which are sub-optimal. The key elements of the guidelines include the following general obligations:

- Firms should design and monitor their remuneration policies and practices to take account of the conduct of business and conflicts of interest risks that may arise;
- Firms should set up adequate controls on the implementation of their remuneration policies and practices to ensure that they deliver the intended outcomes;
- Firms should ensure that remuneration is not paid in a way that aims at circumventing the rules and guidelines.

The consultation period for the draft guidelines on remuneration closes on December 7, 2012. The final guidelines are expected to be published by the second quarter of 2013.

4. U.S.

i. Rule 12b-2 proposal

On July 21, 2010, the Securities and Exchange Commission (SEC) proposed new Rule 12b-2 under the *Investment Company Act of 1940* with the objective of reforming the payment of trailing commissions, currently known as "12b-1 fees" in the U.S. Rule 12b-2 would cap the aggregate sales charges that could be charged to an individual investor.

The proposal is borne out of a recognition that trailing commissions have gradually come to function like a sales commission that is paid to advisors over time.[136] Given this current use of trailing commissions, new rule 12b-2 proposes to permit a "marketing and service fee" of up to 0.25% to be charged on mutual fund assets to pay for distribution related activities, including the payment of trailing commissions to advisors for ongoing services and advice they provide to investors. Any amount charged in excess of 0.25% of mutual fund assets would be labelled an "ongoing sales charge", but rather than deducting this for as long as the investor holds the mutual fund shares, it will be subject to certain cumulative limits. The limit would be determined by reference to the front-end sales charge on the mutual fund described in the prospectus, or if none, the maximum sales charge allowed under Financial Industry Regulatory Authority (FINRA) limitations.[137] Upon reaching the maximum sales charge limit, the individual investor's shares would have to be automatically converted to a share class of the mutual fund without an "ongoing sales charge".

Rule 12b-2 would require disclosure of the "marketing and service fee" and "ongoing sales charge" as separate line items in the mutual fund prospectus, expressed as a percentage of net asset value. It would further require disclosure of such fees in the trade confirmation as follows: (i) annual amount of each fee, expressed as a percentage (%) of net asset value, (ii) the aggregate amount of the "ongoing sales charges" that may be incurred over time, expressed as a percentage (%) of net asset value, and (iii) the maximum number of months or years that the investor will incur the "ongoing sales charge".

Proposed Rule 12b-2 has been the subject of considerable industry comment and remains to be finalized at this time.

ii. SEC study on best interest standard for investment advisers and broker-dealers

As part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* (the Dodd-Frank Act), staff of the SEC released a report on January 21, 2011, summarizing the findings of a study[138] it conducted of the obligations of investment

[135] European Securities and Markets Authority, *Consultation Paper: Guidelines on remuneration policies and practices (MiFID)*, (September 2012), ESMA/2012/570, available at: http://www.esma.europa.eu/system/files/2012-570_0.pdf.

[136] See Rule 12b-2 proposal at http://www.sec.gov/rules/proposed/2010/33-9128.pdf at p.37.

[137] Under section 2830(d)(2)(A) of NASD Conduct Rules, the front-end and deferred sales charges described in the prospectus of an investment company with an asset-based sales charge (i.e. trailing commission) must not exceed 6.25%.

[138] SEC, *Study on Investment Advisers and Broker-Dealers* (January 2011), available at http://www.sec.gov/news/press/2011/2011-20.htm

advisers[139]and broker-dealers[140]. Broker-dealers in the U.S. have similar duties and obligations as registered dealers in Canada, which we informally call "advisors" in this paper.

The study is meant to inform the SEC's decision whether to introduce a statutory, uniform best interest standard on broker-dealers and investment advisers when providing personalized investment advice about securities to retail investors.

Currently, all U.S. investment advisers are subject to a fiduciary standard under the *Investment Advisers Act of 1940* (the Advisers Act).[141] In contrast, broker-dealers are generally subject to a suitability standard, along with a broader duty of fair dealing and other requirements.[142] While broker-dealers are generally not subject to a fiduciary duty under federal securities laws, U.S. courts have found broker-dealers to have a fiduciary duty under certain circumstances. Generally, courts have held that broker-dealers that exercise discretion or control over client assets, or have a relationship of trust and confidence with their clients, owe clients a fiduciary duty.[143]

In the study, SEC staff notes that investment advisers and broker-dealers are regulated extensively under different regulatory regimes. However, many retail investors do not understand and are confused by the roles played by investment advisers and broker-dealers. SEC staff notes that many investors are also confused by the standards of care applying to investment advisers and broker-dealers when providing personalized investment advice about securities. The study further states that retail investors should not have to parse through legal distinctions to determine the type of advice they are entitled to receive. Instead, retail investors should be protected uniformly when receiving personalized investment advice about securities regardless of whether they choose to work with an investment adviser or a broker-dealer.

SEC staff recommends in the study that the SEC establish a fiduciary standard for broker-dealers that is at least as stringent as the current fiduciary standard applicable to investment advisers under the Advisers Act. Specifically, SEC staff recommends that the uniform fiduciary standard of conduct:

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

At the same time, however, SEC staff notes that retail investors should continue to have access to the various fee structures, account options, and types of advice that investment advisers and broker-dealers provide. SEC staff's recommendations are intended to minimize cost and disruption and assure that retail investors continue to have access to various investment products and choice among compensation schemes to pay for advice.

The SEC has not at this time released a draft fiduciary rule for comment.

iii. SEC study regarding financial literacy among investors

On August 30, 2012, staff of the SEC published the results of a study identifying the existing level of financial literacy among retail investors as well as methods and efforts to increase financial literacy of investors.[144] Mandated by the Dodd-Frank Act, the study also identifies methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end mutual funds.

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139 An "investment adviser" is anyone who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. This excludes any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation as a result thereof.

140 The *Securities Exchange Act of 1934* defines the terms "broker" and "dealer". A "broker" is anyone engaged, as agent, in the business of effecting transactions in securities for the account of others. A "dealer" is anyone engaged, as principal, in the business of buying and selling securities for a person's own account through a broker or otherwise. The term "broker-dealer" is often used because of the frequent overlap of their duties.

141 Although the Advisers Act does not use the word "fiduciary" or the phrase "best interest" to apply to the standard of conduct to which an investment adviser is held, the U.S. Supreme Court has held that an investment adviser in fact has a fiduciary duty. For additional detail, see Michael V. Seitzinger (Congressional Research Service), *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Standards of Conduct of Brokers, Dealers, and Investment Advisers* (August 19, 2010), available at: www.fas.org/sgp/crs/misc/R41381.pdf.

142 SEC, *supra* note 138 at pages 46-83. We note that the fair dealing obligation on broker-dealers is not statutory in that it is derived from the antifraud provisions of the U.S. federal securities laws. This suggests that there are technically no equivalent statutory provisions to the statutory provisions currently in place in Canada.

143 *Ibid*, pages 54-55.

144 SEC, *Study Regarding Financial Literacy Among Investors* (August 2012), available at: http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf

The study finds that U.S. retail investors lack basic financial literacy, and are not fully aware of investment costs and their impact on investment returns. The study further identifies investor perceptions and preferences regarding a variety of investment disclosures. The study shows that investors prefer to receive investment disclosures before investing, rather than after, as occurs with many investment products purchased today. The study specifically identifies information that investors find useful and relevant in helping them make informed investment decisions. This includes information about fees, investment objectives, performance, strategy, and risks of an investment product, as well as the professional background, disciplinary history, and conflicts of interest of a financial professional. Investors also favour investment disclosures presented in a visual format, using bullets, charts, and graphs.

Possible methods to increase the transparency of expenses suggested in the study include disclosure in the trade confirmation of the composition of a financial intermediary's total compensation, including types of compensation, and an explanation in a point-of-sale disclosure of how the financial intermediary is paid in connection with the client's account. Possible methods to increase the transparency of conflicts of interests suggested in the study include disclosure of whether a financial intermediary stands to profit if a client invests in certain types of products, whether the financial intermediary would earn more for selling certain specific products instead of other comparable products, and whether the financial intermediary might benefit from selling financial products issued by an affiliated company.

VII. CURRENT REGULATORY INITIATIVES AND TOPICS FOR CONSIDERATION

1. Regulatory initiatives in Canada

To date, the CSA have focused on initiatives aimed at improving the transparency of mutual fund fees and embedded commissions, as a way to enable investors to better understand the costs of investing in mutual funds and to make more informed investment decisions. Key CSA initiatives include point of sale disclosure for mutual funds and cost disclosure and performance reporting for advisors.

i. Point of Sale

The first stage of the CSA Point of Sale (POS) project, which was completed on January 1, 2011, requires mutual funds to produce and file a Fund Facts document and make it available on the mutual fund's or mutual fund manufacturer's website.

The Fund Facts improves fee transparency by disclosing, in summary form, the costs of buying, owning and selling the mutual fund. Under "Fund expenses", an investor will find disclosure of the fund's MER, trading expense ratio and fund expenses. Trailing commissions are also highlighted there, with an explanation of their purpose. The range of the rates of the trailing commissions must be shown for each purchase option in percentages, along with the equivalent dollar amount of such commissions on each $1000 investment.

The CSA expect the Fund Facts will more likely be read by investors than the current lengthy fund prospectus.[145] The short, easy-to-read and standardized format of the Fund Facts is expected to improve investors' overall awareness and understanding of mutual fund fees and ongoing costs. The Fund Facts should better enable investors to compare the costs of investing in one mutual fund over another, which should enhance investors' ability to manage the impact of fund costs on their individual returns. The CSA also anticipate that the heightened transparency of trailing commissions provided by the Fund Facts may cause investors to discuss with their advisors the services that their advisors provide in exchange for the payment of trailing commissions.

The CSA continue to move forward with a staged approach to implementation of the project. On June 21, 2012, the CSA published for a second comment period proposed rules that would implement Stage 2 of the framework, which would require delivery of the Fund Facts document instead of the prospectus within existing delivery timeframes under securities legislation.[146] As part of this publication, the CSA have proposed additional disclosure in the Fund Facts that identifies that trailing commission payments may create a conflict of interest by influencing the advisor to recommend the fund over another investment.

In Stage 3, the CSA will publish for further comment any proposed requirements that would require delivery of the Fund Facts document to the investor at the point of sale. As part of Stage 3, the CSA will consider the applicability of a summary disclosure document and point of sale delivery for other types of comparable investment fund products.

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[145] Research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer to be offered a concise summary of key information. A list of the research, studies and other sources that the Joint Forum of Financial Market Regulators reviewed and relied on in developing the POS disclosure framework may be found in Appendix 4 to the proposed framework, published in June 2007. The proposed framework was published in the OSC Bulletin at (2007) 30 OSCB (Supp-4) and may be accessed at http://www.osc.gov.on.ca/en/13146.htm.

[146] See CSA Notice and Request for Comment: Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds, Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosur*e, Form 81-101F3 and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* and Consequential Amendments (2nd Publication) (21 June 2012). The publication is available on the websites of members of the CSA.

ii. Client Relationship Model (Phase 2)

The CSA, through their Client Relationship Model Project, phase 2 (CRM2), have a mandate to develop enhanced cost disclosure and new performance reporting requirements for advisors. Initial proposals were published for comment in June 2011, followed by a second publication for comment on June 14, 2012.[147] Among other things, the CRM2 proposals would require advisors to provide to each client:

- at account opening, a description of charges that the client might pay in the course of holding an investment, including trailing commissions, and
- annually, a summary of all charges incurred by the client and all the compensation received by the registered firm that relates to the client's account.

If the advisor received trailing commissions on mutual funds held by a client during the 12 month period, the CRM2 proposals would require the advisor to include in the annual summary of charges the dollar amount of trailing commissions received on those mutual fund investments held by the client during the year.[148] This disclosure would be accompanied by a statement that trailing commissions reduce the amount of the mutual fund's return to the investor.

The CSA expect that this trailing commission disclosure, if implemented, will help mutual fund investors understand and assess the costs and benefits of the services their advisors provide and in so doing, become more informed consumers of those services. This may in turn encourage more effective competition among mutual fund industry participants.

2. Topics for consideration

We intend to monitor the impact of POS and CRM2, and in particular in those areas still to be implemented, to determine whether these initiatives appreciably improve investors' awareness and understanding of mutual fund costs, make them more informed consumers of investment fund products and advice services, and promote effective competition among financial industry participants.

We will also closely monitor the global regulatory reforms discussed in Part VI and their practical effects on financial industry participants in those markets. We appreciate that the full effects of these reforms, particularly the ban on commissions set by financial product providers in the U.K. and Australia, may not be known for several years. These will need to be fully understood and thoughtfully considered.

While this monitoring is underway, we intend to use this paper as a platform to begin a discussion on the current mutual fund fee structure with mutual fund industry participants and other financial industry stakeholders to determine whether regulatory responses are needed in Canada to enhance investor protection and foster confidence in our markets.

There may be some changes that mutual fund industry participants could initiate themselves to address the issues we have identified under Part V. There may be some changes that the CSA could initiate. Each of these changes would have a varying degree of impact on investors and the mutual fund industry. And while each of them would offer potential benefits to investors, we also recognize that they may at the same time give rise to practical implications and competing considerations.

Certain of the changes discussed below would impact the mutual fund and/or fund manufacturer directly, while others would impact those who sell the product. We anticipate that any initiative undertaken by the CSA would include a consideration of all investment funds and comparable securities products. We welcome views on these and other potential changes which are not discussed in this paper, including your thoughts on the practical implications and the potential positive and negative outcomes of each option.

Some possible changes include:

i. Advisor services to be specified and provided in exchange for trailing commissions

In order to more clearly align the payment of trailing commissions with the provision of specified services to investors, the purpose of trailing commissions could be defined and disclosed, and a minimum level of ongoing services that advisors must provide to investors in exchange for the payment of these commissions by mutual fund manufacturers could be established.

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147 See CSA Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (2nd Publication) (June 14, 2012). The publication is available on the websites of members of the CSA.

148 The cost reporting requirement proposed under CRM2 is not limited to mutual funds. The proposed disclosure would apply to all investment products that pay commissions that are similar in substance to trailing commissions. This would include advisor compensation on fixed-income securities.

Under this option, an advisor would be prohibited from collecting a trailing commission if it was determined that the services were not being delivered to investors. In order to substantiate that the prescribed minimum level of ongoing service is being provided, advisors and their dealer firms would have to record and monitor the nature, extent and frequency of the services provided to mutual fund investors.

Such a change in expectations for advisors and their dealer firms would help a mutual fund manufacturer to show how the use of fund assets to pay trailing commissions to advisors benefits the fund and its investors, consistent with the fund manufacturer's duty to act in the best interest of the fund.

ii. A standard class for DIY investors with no or reduced trailing commission

Every mutual fund could have a low-cost 'execution-only' series or class of securities available for direct purchase by investors. The lower management fees of this series or class would reflect that no or nominal trailing commissions are paid to advisors, in light of the lack of advice sought by DIY investors who purchase and hold securities of this series or class. This low-cost series or class of securities could be made available to investors through a discount brokerage, or alternatively, be distributed directly by the mutual fund manufacturer, in which case the mutual fund manufacturer would need to be registered as a mutual fund dealer.

iii. Trailing commission component of management fees to be unbundled and charged/disclosed as a separate asset-based fee

The trailing commission component of a mutual fund's management fee could be "unbundled" and instead charged and disclosed as a separate asset-based fee to the fund. This would enhance transparency of the cost of distribution. In addition, it would make trailing commissions an expense of the fund and limit what it could be used for.

This would be similar to what is done in the U.S., where investment companies that pay trailing commissions to advisors bear an asset-based "12b-1 fee". This fee is distinct from the management fee and is intended to cover the cost of trailing commissions and other distribution-related services. Rule 12b-1 made under the *Investment Company Act of 1940* permits a "12b-1 fee" to be charged to an investment company subject to compliance with various requirements intended to address the conflicts of interest that arise between an investment company and its fund manager when an investment company bears its own distribution expenses. The rule requires that the investment company adopt a written 12b-1 plan describing all material aspects of the proposed financing of distribution and that this plan be approved initially by the investment company's board of directors and separately by the independent directors. The rule specifically requires that, in their consideration of the plan, the directors conclude "that there is a reasonable likelihood that the plan will benefit the company and its shareholders".[149] There is also a requirement that the board receive quarterly reports of all amounts expended under the plan and the purposes for which the expenditures were made. Plans and related agreements are subject to annual approval by the board/independent directors, and any material increase in amounts payable under a 12b-1 plan must be approved by the board, the independent directors, and the fund's shareholders.

This option would require that future increases in the separate asset-based trailer fee charged to a mutual fund be subject to security holder approval in the same way that an increase in the management fee is subject to such approval under current mutual fund rules.[150] Mutual fund manufacturers would then be required to explain to their investors the potential benefits to them of an increase in trailing commissions and allow them to vote on the proposed increase. There could be additional oversight and governance requirements similar to those in the U.S. Specifically, any increase to the trailer fee rate charged to the mutual fund would be subject to review by the fund's independent review committee.

iv. A separate series or class of funds for each purchase option

Either in conjunction with or as an alternative to option iii above, mutual funds could maintain a separate series or class of securities for each available purchase option (i.e. front-end sales charge, DSC, low-load, and no-load). The specific distribution costs incurred by each series or class of mutual fund securities would be allocated only to investors in that specific series or class rather than be borne equally by all investors in the mutual fund. The management fee of each series or class of a mutual fund would therefore be a reflection of each class' respective distribution costs. This would eliminate any cross-subsidization of commission costs by various investors within a mutual fund.

Under this proposal, the management fee of the DSC and low-load series or classes (each hereinafter referred to as a "DSC" class) should be highest as these classes incur the costs of financing the sales commissions the mutual fund manufacturer pays to advisors at the time of the investor's purchase. As the front-end load and no-load series or classes do not incur these costs, we would expect their respective management fees to be relatively lower.

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149 Rule 12b-1(e).

150 See note 80.

Mutual funds could also provide for the automatic conversion of mutual fund securities held in a DSC series or class to securities of a lower-cost series or class at the end of the prescribed redemption schedule. The rationale for this is that by the end of the redemption schedule, the mutual fund manufacturer has sufficiently recouped the financing costs it incurred to pay the sales commissions to advisors at the time of the investor's purchase of those DSC securities. Accordingly, DSC investors who remain invested in the mutual fund at the end of the redemption schedule should, from then on, benefit from a reduced management fee on their invested assets.[151]

Unlike in Canada, U.S. investment companies are required by law to offer a separate class of securities for each purchase option in order to guard against cross-subsidization between various load-type investors.[152] Furthermore, each class bears its own distinct trailer fee, known as the "12b-1 fee", which is charged separately from the management fee for each class, and which reflects the distinct distribution costs attributable to each class. Because the DSC and low-load sales charge classes in the U.S. bear financing costs, they charge a higher 12b-1 fee, part of which is typically used to defray those financing costs, while the remainder is paid to the advisor. The 12b-1 fee for each of those two back-end classes is typically 1.0%, while the 12b-1 fee for the front-end load class is typically around 0.25%. U.S. regulation effectively caps the 12b-1 fee that may be charged on load classes to 1%[153]and the 12b-1 fee that may be charged on a no-load class to 0.25%.[154]

As a result, each class of investment company shares in the U.S. bears a different MER, with the varying 12b-1 fee accounting for the difference in MER. The no-load and front-end load classes have the lowest MERs, while the DSC and low-load sales charge classes have the highest MERs.

U.S. investment companies also must automatically convert an investor's DSC class securities to the lower-cost front-end load class at the end of the redemption schedule.[155] This automatic conversion recognizes that the financing costs associated with the payment of commissions to advisors have been recouped by that time and that investors should no longer be made to indirectly bear those costs. This action is also consistent with the fiduciary duty that applies to the directors of the board of the investment company under the *Investment Company Act of 1940*.[156]

v. Cap commissions

There could be a maximum limit set on the portion of mutual fund assets that could be used to pay trailing commissions to advisors as a way to mitigate the perceived conflicts of interests and the lack of alignment of advisor compensation and services described in Part V. This could be achieved by imposing a cap on the separate asset-based fee discussed in option iii above. Trailing commissions could further be plainly labelled or described as "ongoing sales commissions" in mutual fund disclosure documents, thus providing greater transparency for investors of their main purpose.

In addition or as an alternative to a cap on trailing commissions at the mutual fund level, there could be a cap imposed on the aggregate sales charge, that is, the sum of any initial sales charge and "ongoing sales commission" that could be paid by an individual investor at the account level over the length of a mutual fund investment. Once the cap is reached, the investor's holdings could be automatically converted to a series or class of securities of the mutual fund not bearing an ongoing asset-based sales charge. This would bring certainty to an investor as to the maximum sales commission payable.

The U.S. imposes caps on commissions paid by mutual fund investors. These caps are imposed through a prohibition on advisors who are members of FINRA from offering or selling shares of any investment company if the sales charges described in the prospectus are excessive. "Excessive" is determined by reference to specific sales charge limits prescribed under

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151 The CSA note that there are currently at least two Canadian mutual fund manufacturers that offer a separate series of mutual fund securities for each purchase option, and further automatically switch investors in their DSC series to a lower-management fee series after the expiration of the redemption fee schedule.

152 Under rule 18f-3 under the *Investment Company Act of 1940*, an open-end investment company may issue more than one class of voting stock, provided that each class has a different arrangement for shareholder services or the distribution of securities or both, and pays all of the expenses of that arrangement. The classes of securities typically offered by U.S. investment companies include Class A (front-end sales charge), Class B (DSC) and Class C (low-load/"level-load" sales charge).

153 Under sections 2830(d)(2)(E) and 2830(d)(5) of NASD Conduct Rules, an advisor is prohibited from offering or selling the shares of an investment company if the trailing commission (known in the U.S. as the "12b-1 fee"), as disclosed in the prospectus, exceeds a total of 1% per annum. This 1% cap includes a cap of 0.75% on distribution reimbursement fees and a cap of 0.25% on service fees.

154 Under section 2830(d)(4) of NASD Conduct Rules, an advisor may not describe an investment company as being "no-load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or pays a trailing commission exceeding 0.25% per annum.

155 Under rule 18f-3 under the *Investment Company Act* of 1940, an investment company may offer a class with a conversion feature providing that shares of one class of the company will be exchanged automatically for shares of another class of the company after a specified period of time, provided that no sales load, fee or other charge is imposed and the total expenses, including 12b-1 fees, for the target class *are not higher* than the total expenses, including 12b-1 fees, for the purchase class.

156 Section 36 of the *Investment Company Act of 1940*.

FINRA's business conduct rules.[157] Those same rules similarly impose limits on trailing commission rates for both load[158] and no-load investment companies.[159]

vi. Implement additional standards or duties for advisors

To assist in mitigating the actual or perceived conflicts of interests that exist in the embedded advisor compensation system and that can result in a misalignment of advisors' interests with those of investors, the CSA could impose a duty on advisors requiring them to put their clients' best interests first, among other things.

As already discussed, investor research shows that most investors assume advisors already have a legal duty to act in their best interests.[160]However, the prevalent regulatory standard in the Canadian common law jurisdictions is that an advisor "shall deal fairly, honestly and in good faith with his or her clients".[161]

The CSA are currently consulting on the appropriateness of introducing a statutory best interest duty for advisors to address potential investor protection concerns regarding the current standard of conduct that advisors owe to their retail clients. We refer you to CSA Consultation Paper 33-403 for a full discussion of the key investor protection concerns that the CSA have identified with the current standard of conduct for advisors in Canada, along with a discussion of the potential benefits and competing considerations in imposing a statutory best interest standard for advisors.[162]

vii. Discontinue the practice of advisor compensation being set by mutual fund manufacturers

In order to address the actual or perceived conflicts of interest that embedded advisor compensation gives rise to, and at the same time improve the transparency, negotiability and fairness of ongoing advisor service costs for investors, measures could be adopted, similar to those being implemented in the U.K. and Australia, under which the payment to advisors of sales and trailing commissions set by mutual fund manufacturers would no longer be permitted. Advisor compensation would no longer be embedded in the management fees charged on mutual funds. Instead, advisors would need to discuss with their client how they will be paid for the sale and ongoing servicing of mutual fund investments and obtain the client's agreement to the proposed fee-for-service model.

Under this model, charges for a mutual fund purchase transaction could be paid in the form of a deduction from the client's investment or separately. Ongoing charges should only be levied where a client is paying for ongoing service, such as a performance review of their investments, or where the client makes ongoing pre-authorized purchases. In each case, the client would be clear on what services he or she is entitled to in return for the agreed upon payment.

Under this option, the MER of a mutual fund would represent the operational costs of the fund independent of advisor compensation costs. Investors could then more easily assess and compare the sales and service costs of advisors and the operating costs of mutual funds.

While this option would have the greatest impact on current business models, it would also be the most straightforward way to align the interests of both the mutual fund manufacturers and the advisors with those of investors. Commissions would no longer be a consideration in the sale of the mutual fund product.

VIII. COMMENT PROCESS

We welcome feedback on the issues raised and the potential regulatory options discussed in this paper. We invite all interested parties to make written submissions. Submissions received by April 12, 2013 will be considered.

While the focus of this paper is on mutual funds, the issues we have identified are not unique to mutual fund products. Consequently, we anticipate that any regulatory options the CSA may consider would include a consideration of all investment funds and comparable securities products. Therefore, we encourage comments from participants in the broader investment fund and financial product industry, and not only the mutual fund segment.

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157 See note 137.

158 See note 153.

159 See note 154.

160 See note 106 and discussion in Part V under "**2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels** – *ii. Advisor*".

161 See notes 101 and 102 and the related discussion in Part V under "**2. Potential conflicts of interests at the mutual fund manufacturer and advisor levels** – *ii. Advisor*".

162 See CSA Consultation Paper 33-403, *supra* note 100.

Because of the importance of the issues raised in this paper and their implications, the CSA intend to convene a roundtable or technical conference to discuss the issues and the submissions received. The discussion will help the CSA to determine what, if any, regulatory options we may proceed with.

Submissions we receive are not confidential. All comments will be posted on the Ontario Securities Commission website at www.osc.gov.on.ca. Thank you in advance for your comments.

Where to Send Your Comments

Please address your comments to all CSA members, as follows:

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

Please send your comments only to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

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Annex I

DIFFERENCES IN MUTUAL FUND FEE STRUCTURE
BETWEEN CANADIAN MUTUAL FUNDS AND MUTUAL FUNDS IN OTHER JURISDICTIONS

The recent research studies and media articles which compare mutual fund costs between jurisdictions have generally focused on MER levels. When comparing average MERs of mutual funds across countries, these studies consistently conclude that mutual fund fees in Canada are among the highest in the world. These conclusions, however, sometimes fail to recognize the unique features of each market and how these features are likely to affect respective mutual fund fee levels in those jurisdictions.

The average mutual fund MER in a country is influenced, in large part, by that country's distinct capital market structure, including the competitive pressures in which mutual fund manufacturers operate and compete, as well as the regulatory framework in which the mutual funds function. Therefore, before a comparison of mutual fund fees can occur, it is important to understand the distinctions between the Canadian market and the markets of major regulatory jurisdictions.

Factors that may influence average fund costs in a jurisdiction include:

- *Fund investment objective/asset class:* Fixed income and money market funds tend to have lower MERs than equity funds. Among equity funds, MERs tend to be higher for funds that specialize in particular industry sectors or those that invest in international equities, because such funds tend to be more costly to manage. Accordingly, a jurisdiction whose mutual fund assets under management tend to be more heavily weighted in equity or other higher MER funds will exhibit a higher overall MER. Conversely, a jurisdiction whose mutual fund assets under management include a significant weighting in money market funds will exhibit a lower overall MER.

  Similarly, whether a mutual fund is passively or actively managed can impact MER. Typically, passively managed funds (such as index funds) have lower MERs. Accordingly, a jurisdiction whose mutual fund assets under management include a significant weighting in index funds will exhibit a lower MER;

- *Average fund size and average individual securityholder account size:* Larger mutual funds generally tend to exhibit economies of scale and consequently tend to have lower MERs. In addition, mutual funds with higher average securityholder account balances, such as funds that focus on institutional or higher net worth investors, also tend to have lower MERs than other funds. This reflects the fact that each securityholder account, regardless of its size, requires certain basic services (such as record keeping, account mailings, call centre support, etc.), and the cost of those services tends to be the same per account. Consequently, a fund that primarily serves retail investors, and that therefore has a large number of securityholder accounts with lower average account balances, will typically incur more of these basic costs and therefore have a relatively higher MER than a fund that primarily serves institutional and/or higher net worth investors;

- *Fund distribution channels:* The nature of the distribution channels used to sell mutual fund securities to investors in a jurisdiction can greatly influence MER levels in that jurisdiction. For example:

  - a jurisdiction whose mutual fund manufacturers are largely reliant on advised distribution channels to sell mutual funds will typically have higher MER funds on account of the cost associated with compensating advisors for their services, particularly if these costs are embedded in the funds' MER;

  - a jurisdiction that has a higher incidence of fee-based advisors (which are compensated separately for their services directly by investors rather than through fees embedded in the funds' MER) and thus a lower incidence of embedded fund costs, will tend to have lower MER levels;

  - a jurisdiction that has a developed and unsegregated (in terms of price and product competition) occupational retirement plan market through which mutual funds are distributed to investors will tend to have lower MER levels.

- *Taxation:* Sales taxes may apply to mutual fund management fees and/or expenses in certain jurisdictions (e.g. Canada and Australia) which may inflate overall MERs in those jurisdictions.

- *Regulation:* The regulatory framework in which mutual funds operate in a jurisdiction may have an impact on the overall MER in that jurisdiction. This may be the case where, for example, the legislation imposes specific caps on various fund fees (such as in the U.S.);

- *Competition:* The relative size of the fund industry, the number of mutual fund manufacturers and their respective market share, and the size and number of integrated relative to independent mutual fund manufacturers and dealers, may impact the competitive dynamics in each jurisdiction, which in turn may influence overall MER levels. In addition, whether or not the market in question is open to foreign funds may also enhance competition. Generally, the greater the competition and the greater the choice for the investor, the better the mutual fund fee proposition may be for the investor.

At the end of this Annex, we include a table which provides a snapshot of the respective fund industry in which mutual funds operate and compete in Canada, the U.S., the U.K. and Australia. It highlights some of the factors discussed above, including differences in the regulatory framework, which potentially impact the overall MER level in each jurisdiction. Some of these country-specific factors, as well as other relevant factors that may impact overall MER levels in each jurisdiction, are set out below:

Canada:

- Canada has the smallest mutual fund industry out of the four countries. It has the least number of mutual fund manufacturers, of which the 10 largest hold 75% of all Canadian mutual fund assets under management;
- The average Canadian mutual fund is almost 7 times smaller than the average U.S. fund;
- Distribution of mutual funds in Canada is almost always made through the intermediation of an advisor. At the end of 2011, 91% of investment fund assets were acquired and held by investors through distribution channels involving the intermediation of an advisor, and over 80% of mutual fund investors said their last purchase was made through an advisor;[1]
- Canada's mutual fund industry is primarily focused on the retail investor, with only 7.5% of mutual fund assets sitting in institutional accounts as at the end of 2011;[2]
- The fund industry exhibits a greater reliance on trailing commissions relative to other jurisdictions. Canada's mutual funds carry the highest trailing commission rates of all four countries featured in the table;
- At the end of 2011, equity funds and balanced funds (which have higher MERs than fixed income and money market funds) accounted for 68% of the mutual fund industry's asset base and money market funds (which have the lowest MERs) accounted for approximately 5% of the mutual fund industry's asset base;[3]
- Index mutual funds (which tend to have lower MERs) account for a small portion of assets under management, making up only 1.5% of mutual fund assets under management as at June 2012;[4]
- Relative to other countries, Canada's defined contribution occupational plan market is very small, and consequently does not figure significantly in the distribution of mutual funds to investors.[5] At the end of June 2011, an estimated $49 billion was invested in group RRSPs and $46 billion was invested in defined contribution plans.[6] Collectively, this potential market for fund manufacturers[7] would equal about 10.2% of assets under management in the investment funds industry.[8]

U.S.:

- The U.S. mutual fund market, with $12.8 trillion (CAD) in assets under management at year-end 2011, remains the largest in the world, accounting for 49% of mutual fund assets worldwide;[9]

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1 See notes 4 and 5 in the Discussion Paper.

2 Source: Investor Economics. Investment by mutual fund-of-funds, segregated funds, insurance company pools and private investment counsel into mutual funds has been removed.

3 Source: Investor Economics.

4 Source: Investor Economics, *ETF and Index Funds Report*, Q2, 2012.

5 According to the Organization for Economic Co-operation and Development (OECD) Global Pension Statistics, defined contribution plans made up only 3% of total pension plan assets in Canada in 2011. By contrast, defined contribution plans in the U.S. and Australia made up 39.4% and 89.1%, respectively, of total pension plan assets in those countries.

6 Source: Benefits Canada 2011 CAP Suppliers Directory. Private sector defined contribution plan assets reported.

7 Not all of the assets in group RRSPs and defined contribution plans would be invested in investment funds though the majority would be.

8 Source: OSC calculations based on data from Benefits Canada *2011 CAP Supplier Directory* and Investor Economics *2012 Household Balance Sheet*.

9 Investment Company Institute, *2012 Investment Company Fact Book*, 52nd Edition.

- It has the largest number of mutual fund manufacturers, of which the 10 largest hold 53% of all U.S. mutual fund assets under management;
- U.S. mutual funds are on average very large (average size is $1.58 billion CAD);
- Distribution of U.S. mutual funds is less reliant on advisors than in Canada:
    - Employer-sponsored retirement plans (401(k) plans/defined contribution plans) figure significantly in the distribution of mutual funds to investors. Mutual funds distributed through this channel are typically no-load mutual funds.[10] As at the end of 2011, 21% of U.S. mutual fund assets were held by investors through defined contribution plans;[11]
    - In 2011, of the U.S. households owning mutual funds outside employer-sponsored retirement plans, 54% owned mutual funds purchased through an advisor, and 32% owned mutual funds purchased through the direct market channel (i.e. from the mutual fund manufacturer directly or through a discount broker);[12]
- Outside of employer-sponsored retirement plans, 11% of mutual fund assets as at year-end 2011 were held by institutional investors;[13]
- Trailing commissions (12b-1 fees) on U.S. funds are capped by law to no more than 1% per annum and trailing commissions on no-load funds are capped by law to no more than 0.25% per annum;[14]
- Money market funds (which have low MERs) weigh considerably into the overall asset mix of U.S. mutual funds, accounting for 23% of mutual fund assets under management as at the end of 2011. Equity funds and balanced funds (which have higher MERs) accounted for 54% of mutual fund assets under management at the end of 2011;[15]
- Index funds (which tend to have lower MERs than actively managed funds) accounted for approximately 9% of mutual fund assets under management.[16]

U.K.:

- The U.K has 241 mutual fund manufacturers, of which the 10 largest hold 45% of all U.K. mutual fund assets under management;
- The U.K. fund market is open to UCITS qualified funds.[17] At December 2011, there was €5.6 trillion invested in UCITS qualified funds.[18]
- Distribution of U.K. mutual funds is less reliant on advisors than in Canada:
    - Fund platforms[19] accounted for 41% of gross retail fund sales in 2011.[20]

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10 No-load mutual funds in the U.S. are typically less expensive than no-load mutual funds in Canada as their trailing commissions (12b-1 fees) are capped by law to no more than 0.25% per annum (see note 155 in the Discussion Paper), whereas Canadian no-load funds may pay trailing commissions of up to 1.50%,

11 Investment Company Institute, *supra*, note 9.

12 Investment Company Institute, *Profile of Mutual Fund Shareholders, 2011* (February 2012). Note that mutual funds acquired directly from the mutual fund manufacturer or through a discount broker are typically no-load funds whose trailing commissions (12b-1 fees) are capped by law to no more than 0.25%.

13 Investment Company Institute, *supra*, note 9.

14 See notes 153 and 154 in the Discussion Paper.

15 Investment Company Institute, *supra*, note 9. Note that in the U.S., balanced funds are called hybrid funds.

16 *Ibid*.

17 The U.K. fund market is open to foreign domiciled UCITS funds subject to compliance with UCITS regulation. UCITS funds can be marketed to retail investors within any European Union member state.

18 European Fund and Asset Management Association (EFAMA), Investment Fund Industry Fact Sheet, December 2011.

19 Fund platforms in the U.K. are somewhat akin to discount brokerages in Canada. They typically let you invest online in various products, including mutual funds, normally at a discount. A portion of the trailing commissions that is normally paid out to advisors on mutual funds is paid to the platform which often rebates it back to the customer.

20 Investment Management Association, *Asset Management in the UK 2011-2012, The IMA Annual Survey* (September 2012)

- Direct distributions to investors by mutual fund manufacturers accounted for 13% of gross retail fund sales in 2010.[21]

- Pension funds are the largest U.K. institutional client category, accounting for 50.3% (£1.2 trillion) of U.K. institutional client assets. Defined contribution plans account for approximately 36% of those pension fund assets, and play a role in the distribution of mutual funds;[22]

- Trailing commissions on U.K. mutual funds (pre-RDR reforms) typically don't exceed 1% per annum;[23]

- While equity funds accounted for 53% of U.K. mutual fund assets under management as at the end of 2011, approximately 11% of those equity fund assets (or 6% of all U.K. mutual fund assets under management) were held by passively managed index funds (which tend to have lower MERs).[24]

Australia:

- Australian employers are required to contribute, at least quarterly, 9% of each employee's earnings to a designated superannuation fund.[25]

- Australia has no government sponsored, earnings related, social insurance program equivalent to the Canada Pension Plan. Instead, it relies entirely on superannuation for its funded retirement system, which is why its mutual fund industry is quite large, ranking 3rd in the world by mutual fund assets under management;[26]

- Superannuation funds drive growth in the Australian fund management industry, accounting for approximately 70% of mutual fund assets under management;[27]

- The fund market in Australia is open to foreign-domiciled funds.[28]

- More than half of Australian funds are classified as no-load funds (which generally have lower MERs than load funds);[29]

- Trailing commissions on Australian funds (pre-FoFA reforms) typically don't exceed 0.50% per annum[30], and are the lowest of the four countries featured in the table.

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21 Investment Management Association, *Asset Management in the UK 2010-2011, The IMA Annual Survey* (July 2011)

22 See Investment Management Association, *supra*, note 20. We note that the U.K. Government introduced regulatory reforms in 2012, to be implemented in stages over the next 4 years, that will require employees not currently covered by employer pension plans to make statutory minimum contributions of 8% of gross qualifying earnings. Given the decline in defined benefit plan provision in the U.K. over the past decade, it is expected that the majority of employees being automatically enrolled will become members of defined contribution plans. For those employers who do not wish to use an existing private sector provider, the Government has created a quasi-state universal service provider, the National Employment Savings Trust (NEST). Given these reforms, the role of defined contribution plans in the distribution of mutual funds to U.K. investors is likely to increase in the coming years.

23 This data is based on information provided by staff of the Financial Services Authority. They advise that trailing commissions typically range from 0.50% to 1% per annum.

24 See Investment Management Association, *supra*, note 20.

25 This compulsory contribution rate is expected to increase in steps over the next 8 years, reaching 12% in 2020.

26 Source: International Investment Funds Association, Q2:2012.

27 Source: Australian Bureau of Statistics, as at December 2011.

28 The fund market in Australia is open to foreign domiciled funds that comply with ASIC's Regulatory Guide 178 – Foreign collective investment schemes.

29 B.N. Alpert, J. Rekenthaler, *Morningstar Global Fund Investor Experience 2011* (March 2011).

30 This data is based on information provided by staff of the Australian Securities and Investments Commission. They advise that the trailing commission is typically around 0.50% per annum. The Australian Investors Association also states this. See their website at: http://www.investors.asn.au/education/other-investments/managed-funds/.

PROFILE		CANADA	U.S.	U.K.	AUSTRALIA
Market structure					
Total fund AUM ($billion CAD)		762[1]	12,814.2[3]	902.8[5]	1,585[7]
Number of mutual fund manufacturers		103[1]	713[3]	241[2]	159[2]
Average (median) AUM per mutual fund manufacturer ($million CAD)		7,822 (439)[2]	16,802 (211)[2]	3,499 (208)[2]	4,347 (525)[8]
Share of total AUM held by top 10 firms (%)		75%[4]	53%[3]	45%[5]	56%[2]
Number of mutual funds		2,667[2]	7,637[3]	2,572[6]	3,726[2]
Average (median) fund size ($million CAD)		242 (52)[2]	1,580 (233)[2]	375 (84)[2]	210 (25)[8]
Market open or closed to foreign funds		Closed	Closed	Open	Open
Fund ownership costs					
Asset-weighted average MER (%)		**1.93[9]**	**0.79[3]**	**1.14[10]**	**1.13[11]**
Components of MER		• Management fees (with embedded trailing commissions) • Operating expenses • HST /GST	• Management fees • 12b-1 fees (trailing commissions) • Operating expenses	• Management fees (with embedded trailing commissions pre-RDR) • Operating expenses	• Management fees (with embedded trailing commissions pre-FoFA) • operating expenses • GST (10%)
Typical max. trailer fee rate		1.50%	1.00%	1.00% (pre-RDR reforms)	0.60% (pre-FoFA reforms)
Sales charges	Front-end load	Front-end load: • up to 5%, but often less than 1%, payable by the investor to the advisor • negotiable with the advisor	Front-end load (Class A): • up to 5.75% of purchase amount payable by the investor to the mutual fund manufacturer, who in turn pays all or a portion to the advisor • not negotiable with advisor, but eligible for load reductions in breakpoints	Front-end load: • up to 5% of purchase amount payable by the investor to the mutual fund manufacturer, who in turn pays all or a portion to the advisor • negotiable with the advisor	Front-end load: • up to 6% of purchase amount payable by the investor to the mutual fund manufacturer, who in turn pays all or a portion to the advisor • negotiable with the advisor
	Deferred sales charge	Deferred sales charge: • up to 6% (decreasing by approx. 1% each year) payable by investor to mutual fund manufacturer if redeem within 7 years	Deferred sales charge (Class B): • up to 6% (decreasing by approx. 1% each year) payable by investor to mutual fund manufacturer if redeem within 6 years	Deferred sales charge option rarely offered.	Deferred sales charge: • up to 4% (decreasing by approx. 1% each year) payable by investor to mutual fund manufacturer if redeem within 5 years • 3% paid upfront by the mutual

		• up to 5% paid upfront by the mutual fund manufacturer to the advisor.	• up to 5% paid upfront by the mutual fund manufacturer to the advisor.		fund manufacturer to the advisor.
	Low-load/Level-load	Low-load: • 2% or 3% (decreasing by approx. 1% each year) payable by investor to mutual fund manufacturer if redeem within 3 years • 2% to 3% paid upfront by the mutual fund manufacturer to the advisor	Level-load (Class C): • 1% payable by investor to mutual fund manufacturer if redeem within first year • 1% paid upfront by the mutual fund manufacturer to the advisor	Low-load not available	Low-load not available
	No-Load	No-load: • No front-end load or deferred sales charges	No-load: • No front-end load or deferred sales charges	No-load not available	No-load: • No front-end load or deferred sales charges
Fund Fees Regulation					
Caps on fund fees		None	Yes – under NASD/FINRA Conduct Rule 2830(d) which imposes caps on sales charges and 12b-1 fees (i.e. trailing commissions).	None	None
Other		• ***Disclosure:*** NI 81-101 - requires disclosure of all sales charges and ongoing asset-based fees, including trailing commissions, in simplified prospectus and Fund Facts; • ***Payment of sales and trailing commissions out of management fees:*** NI 81-105 generally permits mutual fund manufacturers to pay commissions, including trailing commissions, to advisors for the distribution of mutual fund securities; • ***Securityholder approval for fee increases:*** NI 81-102 requires securityholder approval of proposed increase in fees or	• ***Disclosure:*** Form N-1A (Registration form for open-end management investment companies) requires disclosure of all sales charges and ongoing asset-based fees, including 12b-1 fees (trailing commissions), in Registration Statement; • ***Rule on multiple classes of shares:*** Rule 18f-3 under the *Investment Company Act of 1940* (ICA) requires the following: o separate classes of shares for each available purchase option; and o automatic conversion of Class B (DSC) shares to shares of lower cost class (Class A) at end of redemption schedule;	• ***Disclosure:*** The Collective Investment Scheme Sourcebook (COLL) requires disclosure in a fund prospectus of all payments made out of the fund's assets and details of applicable front-end sales charges and redemption charges (see COLL 4.2.5). In addition, where the fund is a UCITS fund, a KIID must be prepared which discloses all charges, including ongoing charges, associated with the fund (see COLL 4.7.2 and KII Regulation for form and content of KIID) in COLL Appendix 1EU). • ***Regulation of payments made out of fund assets:*** A mutual fund manufacturer may make	• ***Disclosure:*** Corporations Regulations 2001 (Div 4C and Schedule 10) and Corporations Act 2001 (Part 7.9 (especially section 1017D)) require disclosure of sales charges and ongoing asset-based fees in a mutual fund's Product Disclosure Statement (i.e. prospectus) and in periodic statements to investors; • ***Best interest duty:*** Corporations Act 2001, section 601FC requires the mutual fund manufacturer to act in the best interests of fund securityholders and, if there is a conflict between the securityholders' interests and its own interests, give priority to the securityholders' interests; and treat the securityholders who hold

	expenses charged to the mutual fund or directly to securityholders; • ***Best interest duty:*** NI 81-107 requires investment fund manufacturers to act honestly and in good faith, with a view to the best interests of the investment fund.	• ***Payment of 12b-1 fees:*** Rule 12b-1 under the ICA requires the following: ○ establishment of 12b-1 plan describing financing of distribution (i.e. trailing commissions); ○ Annual approval of 12b-1 plan by the fund's board of directors; ○ Approval of any increase in 12b-1 fees by the fund's board and the fund's securityholders; • ***Board review and re-approval of investment advisory contracts:*** Section 15 of the ICA requires investment company boards to review and re-approve investment advisory contracts annually. The board's basis for approving, or recommending the approval of an investment advisory contract and the associated fees must be disclosed in the investment company's Statement of Additional Information; • ***Best interest duty specific to receipt of fees:*** Section 36(b) of the ICA provides that the investment adviser of a registered investment company is deemed to have a fiduciary duty with respect to the receipt of compensation for services paid by the investment company. This section gives investors ability to bring "excessive fee" claims against investment companies.	payments out of fund assets for the following purposes: (a) to remunerate the parties operating the fund, (b) to cover the administration of the fund and (c) to invest or safekeep the fund's property (see COLL 6.7.4R(1)). No payment under this rule can be made from the fund's assets if it is unfair to (or materially prejudices the interests of) any class of securityholders or potential securityholders (see COLL 6.7.4R(2)); • ***Securityholder approval for new fee paid out of fund assets and securityholder notice requirement for increase in existing fee paid out of fund assets:*** The mutual fund manufacturer must obtain the prior approval from the securityholders for the introduction of any new type of payment out of fund assets and give at least 60-days prior notice of material increases to existing payments out of fund assets (see COLL 4.3.4 and 4.3.5); • ***Regulation of sales charges:*** Under COLL 6.7.7R, the mutual fund manufacturer may impose charges on securityholders or potential securityholders when they buy or sell units which may be (a) a front-end sales charge which must be either a fixed amount or calculated as a percentage of the price of a unit; (b) a redemption charge made in accordance with the prospectus. COLL 6.7.8G provides that the	interests of the same class equally and securityholders who hold interests of different classes fairly.

			redemption charge may be expressed in terms of amount or percentage, and also expressed as diminishing over the time during which the securityholder has held the units or be calculated on the basis of the performance of the units. However, any redemption charge should not be such that it could be reasonably regarded as restricting any right of redemption; • ***Best interest duty:*** The mutual fund manufacturer of a UCITS fund must ensure that the securityholders of any such fund it manages are treated fairly, refrain from placing the interests of any group of securityholders above the interests of any other group of securityholders and, act in such a way as to prevent undue costs being charged to any such fund it manages and its securityholders. (See COLL 6.6A.2).	

Notes:

1. Investor Economics Insight Report (January 2012).
2. OSC calculations based on data from Morningstar Direct at December 31, 2011.
3. Investment Company Institute, *2012 Investment Company Fact Book*, 52nd Edition. Asset values converted to Canadian dollars using U.S./CAD exchange rate from the Bank of Canada at December 2011.
4. OSC calculations based on data from Investor Economics Insight Report and individual fund company annual reports.
5. U.K. Investment Management Association (IMA) website. Asset values converted to Canadian dollars using U.K./CAD exchange rate from the Bank of Canada at December 31, 2011.
6. Number of funds reported in Morningstar Direct at April 30, 2012.
7. Australian Bureau of Statistics. Assets under management of superannuation funds and public offer (retail) unit trusts at December 31, 2011. Asset values converted to Canadian dollars using CAD/U.S. exchange rate from Bank of Canada at December 31, 2011.
8. OSC calculations based on data from Morningstar Direct at December 31, 2011 for superannuation funds and unit trusts only.
9. Investor Economics Insight Report (January 2012).
10. OSC calculations based on MER and share class net assets data (where available) from Morningstar Direct at December 31, 2011.
11. OSC calculations based on MER and share class net assets data (where available) for superannuation and unit trusts from Morningstar Direct at December 31, 2011.

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
11/12/2012	4	3MV Energy Corp. - Units	390,173.13	1,560,693.00
11/19/2012	9	3MV Energy Corp. - Units	362,369.61	1,449,481.00
10/24/2012	20	Abzu Gold Ltd. - Units	581,649.86	5,287,726.00
11/15/2012	7	Alta Pacific Mortgage Investment Corp. - Common Shares	330,400.00	3,304.00
11/19/2012	1	AndeanGold Ltd. - Common Shares	10,000.00	200,000.00
10/17/2012	1	Astro Malaysia Holdings Berhad - Common Shares	193,620.00	200,000.00
11/19/2012	314	Athabasca Oil Corporation - Trust certificates	550,000,000.00	550,000.00
11/05/2012	1	Axela Inc. - Debenture	750,000.00	1.00
11/19/2012	50	BioExx Specialty Proteins Ltd. (formerly, Bi-Extraction Inc.) - Debentures	2,925,000.00	N/A
05/04/2012	6	Biorem Inc. - Units	535,000.00	535.00
11/30/2012	34	Biosenta Inc. - Units	1,262,600.60	6,313,003.00
10/31/2012	2	BIP Enwave AIV LP - Limited Partnership Units	76,037,554.02	76,067,971.21
08/22/2012	1	Black Horse Resources Inc. - Common Shares	0.00	1,074,107.00
11/16/2012	17	BluMetric Environmental Inc. - Common Shares	1,043,998.02	1,588,206.00
05/31/2012 to 06/18/2012	2	BNY Trust Company of Canada, as trustee of MOVE Trust ("Comet Trust") - Notes	18,032,234.30	N/A
09/21/2012	2	Brigadier Gold Limited - Units	20,562.00	411,240.00
11/01/2012	13	Brookfield Renewable Kwagis Holding Inc. - Bonds	175,000,000.00	175,000,000.00
10/30/2012	5	Callinex Mines Inc. - Common Shares	690,000.00	1,725,000.00
11/09/2012	16	Calyx Bio-Ventures Inc. - Units	2,449,199.00	816,399.00
11/09/2012	1	Canadian Horizons First MIC Fund Inc. - Preferred Shares	75,000.00	75,000.00
11/08/2012	38	Canadian Oilfield Solutions Corp. - Units	2,588,550.00	17,257,000.00
11/22/2012	11	Carlisle Goldfields Limited - Common Shares	3,125,050.05	20,833,667.00
11/30/2012	1	Carrie Arran Resources Inc. - Common Shares	3,750.00	25,000.00
08/31/2012	15	Carube Resources Inc. - Common Shares	438,500.00	1,754,000.00
10/26/2012	1	Carube Resources Inc. - Common Shares	60,000.00	240,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/18/2012 to 07/13/2012	4	Coller International Partners VI Feeder Fund L.P. - Limited Partnership Interest	146,653,000.00	N/A
05/08/2012 to 07/11/2012	2	Coller International Partners VI L.P. - Limited Partnership Interest	116,450,500.00	N/A
10/31/2012	1	Corsa Fund 2012, LP - Limited Partnership Interest	999,960.00	1,000,000.00
08/24/2012	10	Creative Wealth Monthly Pay Trust - Trust Units	321,220.00	32,122.00
11/26/2012	6	Cynapsus Therapeutics Inc. - Common Shares	63,100.00	1,262,000.00
11/15/2012	1	Detour Gold Corporation - Common Shares	135,800.00	5,000.00
10/26/2012	1	DFA Five-Year Global Fixed Income Portfolio - Common Shares	999,112.75	88,731.15
10/26/2012	1	DFA Inflation-Protected Securities Portfolio - Common Shares	1,498,837.22	116,279.07
10/31/2012	1	DFA Real Estate Securities Portfolio - Common Shares	1,499,416.20	58,071.89
11/23/2012	241	Element Financial Corporation - Special Warrants	110,174,999.00	19,500,000.00
12/30/2011 to 10/18/2012	8	Emerging Markets Value Portfolio - Common Shares	60,608,463.30	2,339,836.56
11/26/2012	1	Enablence Technologies Inc - Common Shares	1,279,000.00	77,446,927.00
09/19/2012	45	Fire River Gold Corp. - Common Shares	7,065,141.93	108,694,492.00
11/21/2012	56	First Global Data Limited - Common Shares	14,551,579.83	N/A
12/03/2012	1	Fortune Minerals Limited - Flow-Through Shares	50,000.00	100,000.00
11/20/2012 to 11/30/2012	22	Fortune Minerals Limited - Flow-Through Shares	1,950,000.00	3,900,000.00
10/31/2012	2	Gatineau Centre Development Limited Partnership - Units	48,000.00	48,000.00
08/14/2012	36	Global Met Coal Corporation - Units	711,833.97	10,319,057.00
11/20/2012	5	Globex Mining Enterprises Inc. - Common Shares	938,150.00	735,500.00
10/30/2012	24	Gold Reach Resources Ltd. - Units	1,419,381.25	811,075.00
11/16/2012	6	Golden Dawn Minerals Inc - Common Shares	140,500.00	2,590,000.00
10/18/2012	6	Goldeye Explorations Limited - Flow-Through Units	152,100.00	1,014,000.00
10/18/2012	2	Goldeye Explorations Limited - Units	17,500.00	140,000.00
11/02/2012	7	Goldstream Mineerals Inc. - Units	2,324,000.00	7,100,000.00
10/30/2012	92	Gran Colombia Gold Corp. - Investment Trust Interests	99,940,000.00	100,000.00
11/06/2012	25	Greystone Managed Investments Inc. - Common Shares	125,215,000.00	1,404,747.75
10/26/2012	132	Harbour First Mortgage Investment Trust - Trust Units	5,770,000.00	57,700.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
09/24/2012	2	Health Care REIT, Inc. - Common Shares	9,331,300.00	26,000,000.00
11/21/2012	1	HedgeForum BlueCrest Ltd. - Units	517,597.50	N/A
11/21/2012	1	HedgeForum OZF, Ltd. - Units	468,302.50	N/A
11/21/2012	1	HedgeForum Visium Ltd. - Units	443,655.00	N/A
06/08/2012 to 06/18/2012	193	Horn Petroleum Corporation - Units	15,008,640.00	18,750,000.00
10/31/2012	8	Imperial Capital Partners Ltd. - Capital Commitment	1,075,000.00	N/A
11/30/2012	6	Intertainment Media Inc. - Units	904,000.00	4,520,000.00
11/08/2012	2	Invesco Finance PLC - Notes	9,986,000.00	N/A
09/27/2012	7	Jourdan Resources Inc. - Units	85,000.00	1,700.00
07/04/2012	6	Kilkenny Capital Corporation - Common Shares	100,000.00	1,000,000.00
10/29/2012 to 10/31/2012	7	League IGW Real Estate Investment Trust - Units	111,800.00	111,800.00
10/29/2012 to 10/31/2012	15	League IGW Real Estate Investment Trust - Units	684,331.29	281,200.00
10/31/2012	9	Legend Power Systems Inc. - Units	66,666.65	1,333,333.00
11/14/2012	1	Llave Oro Inc. - Units	35,000.00	100,000.00
11/20/2012	1	Macy's Retail Holdings, Inc. - Note	499,310.00	1.00
09/30/2012	2	Manitou Gold Inc. - Common Shares	0.00	50,000.00
09/25/2012	1	Marathon Gold Corporation - Common Shares	300,000.00	410,397.00
10/03/2012	11	MicroPlanet Technology Corp. - Common Shares	33,951.38	3,919,028.00
10/22/2012	5	Newbaska Gold and Copper Mines Ltd/ - Mines D'Or et dec Cuivre Newbaska Itee – Common Shares	53,636.06	357,573.00
09/13/2012	111	Mint Technology Corp - Units	3,200,000.00	3,200,000.00
09/26/2012	34	Mint Technology Corp. - Units	300,000.00	300,000.00
10/31/2012	20	Morrison Laurier Mortgage Corporation - Preferred Shares	1,467,500.00	N/A
11/20/2012	21	Morumbi Resources Inc. - Units	1,005,099.55	2,871,713.00
09/13/2012	15	Naturally Advanced Technologies Inc. - Units	918,026.50	418,429.00
10/24/2012	28	New Klondike Exploration Ltd. - Units	500,000.00	5,000,000.00
11/05/2012	10	Nomad Ventures Inc. - Flow-Through Shares	150,000.00	850,000.00
11/15/2012	93	Nordex Explosives Ltd. - Common Shares	4,284,840.15	9,521,867.00
11/30/2012	21	Pan American Fertilizer Corp. - Units	525,000.00	2,100,000.00
11/26/2012	16	Parlay Entertainment Inc. - Investment Trust Interests	400,000.00	8,000,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/16/2012	3	Probe Mines Limited - Common Shares	61,125.00	37,500.00
10/19/2012	1	Prologis International Funding II S.A. - Note	14,898,000.00	1.00
11/19/2012	13	Prosperity Goldfields Corp. - Units	3,204,750.00	16,125,000.00
11/28/2012	2	QMX Gold Corporation - Notes	17,500,000.00	17.50
09/27/2012	32	Redtail Metals Corp. - Units	1,025,000.00	10,250,000.00
08/24/2012	28	Rio Silver Inc. - Units	550,000.00	6,875,000.00
11/22/2012	2	ROI Capital C/O 2154197 Ontario Inc. & Benjamin Hospitality Inc. - Units	738,756.00	738,756.00
10/17/2012	2	ROI Capital C/O Castlepoint Studio Partners Limited - Units	155,974.67	155,974.67
10/31/2012	2	ROI Capital C/O Castlepoint Studio Partners Limited - Units	24,240.98	24,240.98
10/17/2012	3	ROI Capital C/O Empire Communities Brampton - Units	331,803.28	331,803.28
10/29/2012	2	ROI Capital C/O Reefer Holdings Limited - Units	7,100,000.00	7,100,000.00
10/31/2012	1	ROI Capital C/O Villarboit Markham - Units	1,044,000.00	144,000.00
10/31/2012	1	ROI Capital C/O Villarboit North Bay - Units	280,000.00	280,000.00
11/21/2012	71	Seabridge Gold Inc. - Common Shares	24,038,168.00	1,100,000.00
09/21/2012	4	SENSIO Technologies Inc. - Common Shares	3,449,999.85	10,454,545.00
11/30/2012	13	Shoal Point Energy Ltd. - Units	259,819.98	4,330,333.00
10/01/2012	7	Shoal Point Energy Ltd. (amended) - Units	133,000.00	2,016,664.00
11/13/2012	5	Shpere 3D Inc. - Common Shares	395,655.00	465,476.00
08/20/2012	1	Souche Holding Inc. - Common Shares	0.00	40,000.00
11/22/2012	3	Superior Copper Corporation - Common Shares	9,000.00	180,000.00
11/23/2012	3	Tembo Gold Corp. - Units	225,000.00	450,000.00
10/11/2012	43	Temex Resources Corp. - Units	8,945,600.80	N/A
06/27/2012	1	The CIM Group - N/A	507,500.00	N/A
11/22/2012	11	Tirex Resources Ltd. - Common Shares	1,208,120.00	1,725,886.00
11/22/2012	200	Toscana Energy Income Corporation - Common Shares	10,000,500.00	666,700.00
11/20/2012	2	TransGaming Inc. - Units	175,000.00	875,000.00
11/12/2012 to 11/16/2012	26	UBS AG, Jersey Branch - Certificates	7,499,690.97	26.00
11/05/2012 to 11/09/2012	25	UBS AG, Jersey Branch - Certificates	8,602,125.37	25.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
10/29/2012 to 10/30/2012	28	UBS AG, Jersey Branch - Certificates	8,737,172.97	28.00
11/14/2012	1	UBS AG, Zurich - Certificate	89,594.05	1.00
11/05/2012	1	UBS AG, Zurich - Certificates	502,783.95	300.00
09/13/2012	12	Unigold Inc. - Common Shares	5,040,000.00	11,200,000.00
10/04/2012	15	Urbanimmersive Technologies Inc. (formerly UI Capital Inc.) - Common Shares	2,500,000.00	3,333,333.00
05/29/2012 to 10/31/2012	2	U.S. Core Equity 2 Portfolio - Common Shares	1,605,831.55	135,895.62
08/22/2012	1	Vision Critical Communications Inc. - Common Shares	20,000,000.00	6,095,862.00
11/01/2012	17	Walton GA Yargo Township LP - Units	1,135,512.85	113,574.00
11/01/2012	13	Walton NC Concord Investment Corporation - Common Shares	243,080.00	24,308.00
08/16/2012	16	Walton NC Westlake Investment Corporation - Common Shares	404,860.00	40,486.00
10/25/2012	1	Water Power Group Limited Partnership - Units	100,000.00	2.00
06/11/2012	3	Windfire Capital Corp. - Common Shares	72,000.00	400,000.00
10/17/2012	3	Workday, Inc. - Common Shares	463,546.72	16,900.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Amarok Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 10, 2012
Offering Price and Description:
Minimum $15,000,000 to Maximum $20,000,000
Minimum of 41,666,667 to Maximum of 55,555,556 Offered Shares
Price $0.36 per Offered Share
Underwriter(s) or Distributor(s):
INTEGRALWEALTH SECURITIES LIMITED
DUNDEE SECURITIES LTD.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1996352

Issuer Name:
Argent Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 10, 2012
Offering Price and Description:
$100,021,500.00
10,755,000 Units
Price $9.30 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
FirstEnergy Capital Corp.
Dundee Securities Ltd.
GMP Securities L.P.
Promoter(s):
-
Project #1996356

Issuer Name:
Black Birch Capital Acquisition III Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
Maximum Offering :$1,900,000.00 - 19,000,000 Common Shares
Minimum Offering: $400,000.00 - 4,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Paul Haber
Project #1994530

Issuer Name:
Boyd Group Income Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated December 5, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
$30,000,000.00 Aggregate Principal Amount - 5.75% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Cormark Securities Inc.
CIBC World Markets Inc.
Laurentian Bank Securities Inc.
Octagon Capital Corp.
Promoter(s):
-
Project #1994951

Issuer Name:
BTB Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 2012
Offering Price and Description:
$20,001,300.00 - 4,598,000 Units
Price:$4.35 per Unit
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #1995707

Issuer Name:
Canexus Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 5, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
$75,050,000.00 - 9,500,000 Common Shares
Price: $7.90 per Common Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
BMO NESBITT BURNS INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #1995076

Issuer Name:
Dynamic High Yield Credit Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 30, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
Series A, F, I, O Units
Underwriter(s) or Distributor(s):
GCIC Ltd
Promoter(s):
GCIC, Ltd.
Project #1994869

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 3, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
Cdn$2,000,000,000.00
Subordinate Voting Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1994336

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Based Shelf Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 10, 2012
Offering Price and Description:
Up to $1,500,000,000.00 Credit Card Asset-Backed Notes
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
CANADIAN TIRE BANK
Project #1996137

Issuer Name:
Global Champions Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 6, 2012
NP 11-202 Receipt dated December 6, 2012
Offering Price and Description:
Maximum$ *_* Class A Preferred Shares, Series 1
Price: $25.00 per Series 1 Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Macquarie Private Wealth Inc.
Brookfield Financial Corp.
Promoter(s):
BAM Investments Corp.
Project #1995323

Issuer Name:
Loma Vista Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 6, 2012
NP 11-202 Receipt dated December 7, 2012
Offering Price and Description:
$250,000.00 - 1,666,667 Shares
Price: $0.15 per Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Roy Sebag
Joshua Crumb
Project #1995580

Issuer Name:
Mawson West Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$* - * Ordinary Shares
Price: $* per Offered Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Paradigm Capital Inc.
Clarus Securities Inc.

Promoter(s):
-
Project #1994564

Issuer Name:
Mawson West Ltd.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 5, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
$12,000,000.00 - 20,000,000 Ordinary Shares
Price: $0.60 per Offered Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Paradigm Capital Inc.
Clarus Securities Inc.

Promoter(s):
-
Project #1994564

Issuer Name:
Medical Facilities Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 2012
Offering Price and Description:
Cdn$38,000,000.00 - 5.90% Convertible Unsecured Subordinated Debentures due December 31, 2019
Price: Cdn$1,000 per Debenture
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #1995732

Issuer Name:
OceanaGold Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$93,300,000.00 - 30,000,000 Common Shares
Price: $3.11 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
Citigroup Global Markets Canada Inc.
Cormark Securities Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1994537

Issuer Name:
Painted Pony Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 2012
Offering Price and Description:
$150,017,000.00 - 14,780,000 Common Shares
Price: $10.15 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
FirstEnergy Capital Corp.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
AltaCorp Capital Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
-
Project #1995823

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 10, 2012
Offering Price and Description:
C$ * - * Common Shares
Price: C$ * per Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS, INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
STIFEL NICOLAUS CANADA INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #1996322

Issuer Name:
Russell Global Infrastructure Pool
Russell Global Real Estate Pool
Russell Real Assets Class Portfolio
Russell Real Assets Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 4, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
Series A, B, E, F and O units and
Series B, E, F and O shares
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1994633

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 3, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$1,500,000,000.00 DEBENTURES
(unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1994288

Issuer Name:
CI Canadian Small/Mid Cap Fund (Class A, F and I units)
CI Global Managers® Corporate Class (Class A, AT8, F, I and IT8 shares)
Signature High Yield Bond Fund (Class A, E, F, I and O units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated November 27, 2012 to the Simplified Prospectuses and dated July 26, 2012
NP 11-202 Receipt dated December 6, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1915829

Issuer Name:
Corporate Catalyst Acquisition Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
Minimum Offering: $400,000.00 or 2,000,000 Common Shares
Maximum Offering: $600,000.00 or 3,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
Paul Kelly
Project #1976284

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 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:
Cub Energy Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 2012
Offering Price and Description:
Up to $12,500,000.00 - Up to 31,250,000 common shares $0.40 per common share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
CASIMIR CAPITAL LTD.
Promoter(s):
-
Project #1985380

Issuer Name:
Emera Incorporated
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 7, 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:
Exemplar Timber Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated November 28, 2012 to the Simplified Prospectus dated May 31, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
BluMont Capital Corporation
Promoter(s):
BluMont Capital Corporation
Project #1902177

Issuer Name:
Innergex Renewable Energy Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 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:

[Corrected Copy]
PowerShares FTSE RAFI® Emerging Markets Fundamental Class (Series A and Series F)
(Part of Invesco Corporate Class Inc.)
PowerShares FTSE RAFI® Global+ Fundamental Fund (Series A and Series F)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated November 30, 2012 to the Simplified Prospectuses and Annual Information Form dated July 30, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
INVESCO CANADA LTD.
Project #1916961

Issuer Name:
KEYreit
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$20,000,000.00 -Series 2012 7.00% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
-
Project #1986968

Issuer Name:
KP Tissue Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 5, 2012
NP 11-202 Receipt dated December 6, 2012
Offering Price and Description:
$140,000,000.00 - 8,000,000 Common Shares Price: $17.50 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Genuity Corp.
Promoter(s):
KRUGER INC.
KRUGER PRODUCTS L.P.
Project #1973167

Issuer Name:
Series A and I Securities of
Marquis Institutional Balanced Portfolio (also Series T, G, O, E, and V Securities)
Marquis Institutional Balanced Growth Portfolio (also Series T, G, O, E and V Securities)
Marquis Institutional Growth Portfolio (also Series T, O, E and V Securities)
Marquis Institutional Equity Portfolio (also Series T, O, E and V Securities)
Marquis Institutional Canadian Equity Portfolio (also Series T, O, E and V Securities)
Marquis Institutional Global Equity Portfolio (also Series T, O, E and V Securities)
Marquis Institutional Bond Portfolio (also Series O, E and V Securities)
Marquis Balanced Portfolio (Series T, G and O Securities)
Marquis Balanced Class Portfolio (Series T and E Securities)
Marquis Balanced Growth Portfolio (Series T and O Securities)
Marquis Balanced Growth Class Portfolio (Series T and E Securities)
Marquis Growth Portfolio (Series T, G and O Securities)
Marquis Equity Portfolio (Series T and O Securities)
Marquis Balanced Income Portfolio (Series O and E Securities)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 30, 2012
NP 11-202 Receipt dated December 6, 2012
Offering Price and Description:
Series A, I, E, G, O, T, V and Y Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC Ltd.
Project #1978353

Issuer Name:
NorthWest International Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 10, 2012
Offering Price and Description:
$25,000,000.00 - 12,500,000 Units Price: $2.00 per Offered Unit
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #1987177

Issuer Name:
Peyto Exploration & Development Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$100,021,250.00 - 4,025,000 Common Shares
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
FirstEnergy Capital Corp.
TD Securities Inc.
RBC Dominion Securities Inc.
Peters & Co. Limited
Stifel Nicolaus Canada Inc.
Haywood Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1987607

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated December 4, 2012
NP 11-202 Receipt dated December 4, 2012
Offering Price and Description:
$50,017,500.00 -10,530,000 Units, Price: $4.75 Per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
GMP SECURITIES L.P.
HSBC SECURITIES (CANADA) INC.
M PARTNERS INC.
SORA GROUP WEALTH ADVISORS INC.
Promoter(s):
-
Project #1987861

Issuer Name:
Russell Focused Canadian Equity Pool
(Series A, B, E, F and O Units)
Russell Focused Canadian Equity Class*
(Series B, E, F and O Shares)
(*class of shares of Russell Investments Corporate Class Inc.)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 4, 2012
NP 11-202 Receipt dated December 6, 2012
Offering Price and Description:
Series A, B, E, F and O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1976406

Issuer Name:
Symbility Solutions Inc. (formerly Automated Benefits Corp.)
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 5, 2012
NP 11-202 Receipt dated December 5, 2012
Offering Price and Description:
$10,000,100.00 - 22,727,500 Common Shares
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
PARADIGM CAPITAL INC.
STIFEL NICOLAUS CANADA INC.
SALMAN PARTNERS INC.
Promoter(s):
-
Project #1986871

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	HSBC Global Asset Management (Canada) Limited	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	December 5, 2012
New Registration	Seif Asset Management Inc.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	December 6, 2012
Voluntary Surrender	UP Securities Ltd.	Exempt Market Dealer	December 6, 2012
Consent to Suspension (Pending Surrender)	MFS Institutional Advisors, Inc.	Exempt Market Dealer	December 6, 2012
Consent to Suspension (Pending Surrender)	Linell Capital Inc.	Exempt Market Dealer	December 6, 2012
Change in Registration Category	Tempest Funds General Partnership	From: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager To: Portfolio Manager and Investment Fund Manager	December 11, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 OSC Staff Notice – Notice of Revocation of the 2008 Commission Approval to Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-Law No. 1

NOTICE OF REVOCATION OF THE 2008 COMMISSION APPROVAL TO PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1

MUTUAL FUNDS DEALERS ASSOCIATION OF CANADA

On November 28, 2008, the OSC published a notice of approval on an amended and restated recognition order of the MFDA (amended Recognition Order) and amendments to MFDA By-law No. 1 including proposed amendments to the public director definition (old amendments). The MFDA did not implement the old amendments. As a result, as of November 14, 2012, the BCSC, as a principal regular, and the MFDA's recognition regulators[1] including the OSC revoked or rescinded their non-objection to or approval of[2] these old amendments.

The MFDA subsequently proposed new amendments to sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 (new amendments). The OSC approved the new amendments and published a notice of approval on October 25, 2012.

[1] The Alberta Securities Commission, Saskatchewan Financial Services Commission, Manitoba Securities Commission, Ontario Securities Commission, New Brunswick Securities Commission and Nova Scotia Securities Commission.

[2] Non-objection and approval are the different ways in which the recognizing regulators express their decisions after reviewing proposed MFDA rules.

13.1.2 OSC Staff Notice of Approval – IIROC Rules Notice 12-0363 – Notice of Approval – UMIR – Provisions Respecting Electronic Trading

PROVISIONS RESPECTING ELECTRONIC TRADING

12-0363
December 7, 2012

Executive Summary

On December 7, 2012, the applicable securities regulatory authorities approved amendments ("Amendments") to UMIR respecting certain requirements for electronic trading on Canadian marketplaces.[1]

The Amendments, which are ***effective March 1, 2013***:

- align the requirements of UMIR to National Instrument 23-103 *Electronic Trading* and its Companion Policy ("ETR");
- expand the existing supervisory requirements for trading to specifically include the establishment and maintenance of risk management and supervisory controls, policies and procedures related to access to one or more marketplaces and/or the use of an automated order system;
- permit, in certain circumstances, a Participant to authorize an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control, policy or procedure by a written agreement;
- impose specific gatekeeper obligations on a Participant who has authorized an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control, policy or procedure;
- clarify the circumstances under which a trade may be cancelled, varied or corrected with notice to, or the consent of, a Market Regulator; and
- make several editorial changes or consequential amendments to certain provisions including the incorporation into UMIR of defined terms used in the ETR.

The Amendments are effective March 1, 2013. However, IIROC recognizes that Participants and Access Persons may have significant systems work with respect to the introduction, pursuant to Part 7 of Policy 7.1, of automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:

- ***the Participant or Access Person exceeding pre-determined credit or capital thresholds;***
- ***a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client; or***
- ***the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities.***

While IIROC expects that Participants and Access Persons will use best efforts to comply with the requirements for automated controls on that date, IIROC will allow Participants and Access Persons until May 31, 2013 to complete testing and fully implement such automated controls. All other requirements of the Amendments must be implemented by Participants and Access Persons by March 1, 2013.

The most significant impacts of the Amendments are to:

- ensure that Participants and Access Persons adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed to manage the risks associated with electronic trading and access to marketplaces;

[1] Reference should be made to IIROC Notice 12-0200 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Electronic Trading* (June 28, 2012) with which the proposed amendments were published for public comment (the "Proposed Amendments"). See Appendix B for the summary of comments received on the Proposed Amendments and the responses of IIROC. Column 1 of the table highlights the changes made to the Amendments as approved from the Proposed Amendments.

- ensure that Participants and Access Persons are effectively supervising trading activity and are accounting for the risks associated with electronic access to marketplaces in their supervisory and compliance monitoring procedures; and

- require an appropriate level of understanding, ongoing testing and appropriate monitoring of any automated order systems in use by a Participant, Access Person, or any client of the Participant.

On October 25, 2012, the CSA issued proposed amendments to National Instrument 23-103 *Electronic Trading* regarding aspects of the provision of third-party access to marketplaces, including direct electronic access ("CSA Access Proposal").[2] Concurrent with this CSA initiative, IIROC issued additional proposed amendments to UMIR regarding third-party access to marketplaces ("Proposed UMIR Access Amendments")[3] that will:

- align UMIR with the CSA Access Proposal with provisions related to direct electronic access[4] provided by Participants to certain Canadian registrants and other clients;

- introduce requirements for order routing arrangements[5] entered into by a Participant with investment dealers, foreign dealer equivalents[6] and other Participants; and

- amend or clarify provisions related to order execution services[7] presently offered to a range of client account types.

1. Background to the Amendments

1.1 Electronic Trading Rule

1.1.1 Framework for Regulation of Electronic Trading

The ETR introduces a comprehensive framework designed to address areas of concern and risks brought about by electronic trading. Generally, the ETR places responsibility for managing risks and maintaining supervisory controls, policies and procedures related to electronic trading on:

- a "marketplace participant" (defined as: a member of an exchange; user of a Quotation and Trade Reporting System; or subscriber of an ATS) whether trading is of a proprietary nature or on behalf of clients; and

- a marketplace.

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2 Published at (2012) 35 OSCB beginning at page 9627.

3 IIROC Notice 12-0315 - Rules Notice – Request for Comments – UMIR – *Provisions Respecting Third-Party Electronic Access to Marketplaces* (October 25, 2012), which includes proposed amendments to Dealer Member Rules 1300.1 and 3200 (the "Proposed DMR Amendments) relating to a proposed suitability exemption for clients provided with direct electronic access and a prohibition on allowing clients of an order execution service to use an automated order system or to manually send orders that exceed the volume threshold set by IIROC from time to time.

4 The Proposed UMIR Access Amendments would define "direct electronic access" as an arrangement between a Participant and a client that permits the client to electronically transmit an order containing the identifier of the Participant:

(a) through the systems of the Participant for automatic onward transmission to a marketplace; or
(b) directly to a marketplace without being electronically transmitted through the systems of the Participant.

5 The Proposed UMIR Access Amendments would define "routing arrangement" as an arrangement under which a Participant permits an investment dealer or foreign dealer equivalent to electronically transmit an order relating to a security:

(a) through the systems of the Participant for automatic onward transmission to:
(i) a marketplace to which the Participant has access using the identifier of the Participant, or
(ii) a foreign organized regulated market to which the Participant has access directly or through a dealer in the other jurisdiction; or
(b) directly to a marketplace using the identifier of the Participant without being electronically transmitted through the systems of the Participant.

6 The Proposed UMIR Access Amendments would define a "foreign dealer equivalent" as "a person registered in a category analogous to that of investment dealer in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding".

7 The Proposed UMIR Access Amendments would define "order execution service" as a service that meets the requirements, from time to time, under Dealer Member Rule 3200 – *Minimum Requirements for Dealer Members Seeking Approval under Rule 1300.1 for Suitability Relief for Trades Not Recommended by the Member*.

1.1.2 Requirements Applicable to Marketplace Participants

The ETR builds on the obligations outlined in Section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*[8] ("NI 31-103") under which a registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices.

The ETR requires that these risk management and supervisory controls, policies and procedures must be reasonably designed to:

- ensure that all orders are monitored pre- and post-trade;
- systematically limit the financial exposure of the marketplace participant;
- ensure compliance with all marketplace and regulatory requirements;
- ensure the marketplace participant can stop or cancel the entry of orders to a marketplace;
- ensure the marketplace participant can suspend or terminate any marketplace access granted to a client; and
- ensure the entry of orders does not interfere with fair and orderly markets.

A participant dealer[9] may on a reasonable basis, authorize an investment dealer to perform on its behalf the setting or adjustment of a specific risk management or supervisory control, policy or procedure under certain circumstances where the investment dealer's relationship with an ultimate client would provide them with better access to information, and would thus provide for a more effective setting or adjusting of the control, policy or procedure. Granting such an authorization would require a written agreement between the participant dealer and the investment dealer, and a regular and ongoing assessment of the adequacy and effectiveness of such an agreement.

1.1.3 Requirements Applicable to Use of Automated Order Systems

The ETR establishes requirements surrounding the use of automated order systems.[10] A marketplace participant is required to take all reasonable steps to ensure that any use of an automated order system either by itself or by any client does not interfere with fair and orderly markets. Similarly, any client of a marketplace participant is itself obligated to take reasonable steps to ensure the same.

A marketplace participant must also have a level of knowledge and understanding of any automated order system used by itself or a client that is sufficient to identify and manage any risks associated with its use. A marketplace participant must also ensure that each automated order system is tested prior to use, and at least annually thereafter, and have controls in place to immediately disable and prevent orders generated by an automated order system from reaching a marketplace.

1.1.4 Requirements Applicable to Marketplaces

In addition to marketplace participants, the ETR also recognizes the role of the marketplace in managing the risks associated with electronic trading. The ETR places a requirement on a marketplace to prevent the execution of orders from exceeding price and/or volume thresholds set by the regulation services provider or by a marketplace if it is a recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set pursuant to the CSA Trading Rules.[11]

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8 Published at http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20120228_31-103_unofficial-consolidated.pdf

9 The term "participant dealer" is defined in ETR as "a marketplace participant that is an investment dealer".

10 The term "automated order system" is defined in ETR as "a system used to automatically generate or electronically transmit orders that are made on a pre-determined basis". As set out in section 1.2(1) of National Instrument 23-103 CP, an automated order system would encompass "both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed or used by clients."

11 See section 8 of ETR. IIROC has sought public comment on the approach which should be adopted to the establishment of acceptable marketplace thresholds. See IIROC Notice 12-0162 – Rules Notice – Request for Comment – UMIR – *Request for Comments on Marketplace Thresholds* (May 10, 2012).

The ETR also sets outs specific conditions under which a marketplace may cancel, vary or correct a trade executed on that marketplace. The marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline how a variation, cancellation or correction can occur, and must make these policies and procedures publicly available.

Additionally, the ETR requires a marketplace to provide a marketplace participant with access to its order and trade information on an immediate basis and on reasonable terms, to ensure that marketplace participants can effectively implement the risk management and supervisory controls policies and procedures required by the rule.

1.2 Pre-existing Supervision Obligations for Electronic Trading under UMIR

Currently, Rule 7.1 of UMIR establishes trading supervision obligations which Participants must follow, including:

- adopting written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with UMIR and each Policy; and
- complying, prior to the entry of an order on a marketplace, with:
    - applicable regulatory standards with respect to the review, acceptance and approval of orders,
    - the policies and procedures adopted, and
    - all requirements of UMIR and each Policy.

Policy 7.1 of UMIR elaborates further on the responsibility of Participants for trading supervision and compliance, and certain elements of Policy 7.1 relate more particularly to electronic trading. Specifically, the obligation to supervise applies whether the order is entered on a marketplace:

- by a trader employed by the Participant;
- by an employee of the Participant through an order routing system;
- directly by a client and routed to a marketplace through the trading system of the Participant; or
- by any other means.

The Participant maintains responsibility for any order which is entered on a marketplace without the involvement of a trader employed by the Participant, as an example when the client maintains a “systems interconnect arrangement” in accordance with marketplace requirements. In such circumstances adequate supervision policies and procedures are required to address the potential additional risk exposure with orders not directly handled by the Participant but that remain the Participant’s responsibility.

2. Discussion of the Amendments

The following is a summary of the principal components of the Amendments which are set out in Appendix A of this notice:

2.1 Trading Supervision Obligations

2.1.1 Risk Management and Supervisory Controls, Policies and Procedures

Rule 7.1 currently establishes trading supervision obligations which Participants must follow, including the establishment of written policies and procedures to ensure compliance with UMIR. With the ETR providing a new framework designed to mitigate the risks of electronic trading, the Amendments add several new subsections to align the supervisory requirements of Rule 7.1 with the requirements of the ETR.

The Amendments would require that a Participant or Access Person adopt a system of risk management controls designed to ensure the management of risks specifically associated with electronic trading. Particularly, they should be designed to manage the risks associated with access to one or more marketplaces, and if applicable, the use of any automated order system, by a Participant, a client of the Participant or an Access Person.

Part 7 of Policy 7.1 provides further information regarding the requirements set out in Rule 7.1, and details the expectations in regard to the elements of the risk management and supervisory controls, policies and procedures which must be employed by Participants and Access Persons. These must include:

- automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:
    - the Participant or Access Person exceeding pre-determined credit or capital thresholds,
    - a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or
    - the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities;
- provisions to prevent the entry of an order that is not in compliance with Requirements;[12]
- provisions of immediate order and trade information to compliance staff of the Participant or Access Person; and
- regular post-trade monitoring for compliance with Requirements.

The Amendments require the Participant to review and confirm at least annually, that the risk management and supervisory controls, policies and procedures are adequate, maintained and consistently applied, and that any deficiencies have been documented and remedied promptly.

2.1.2 Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

Given that in certain circumstances, particular controls may be better placed under the direction of another dealer, proposed new subsection (7) of Rule 7.1 would, on a reasonable basis, allow the Participant to authorize an investment dealer to perform on its behalf the setting or adjustment of a specific risk management or supervisory control, policy or procedure.[13] Additionally, the Amendments provide the same flexibility provided by the ETR with respect to the development or implementation of such controls, and thus a Participant would be permitted to use the services of a third party provider that is independent of each client of the Participant, other than affiliates of the Participant. It is important to note that under the ETR, whether or not a third party solution is utilized, only the Participant is permitted to directly and exclusively set and adjust its supervisory and risk management controls.

The new subsection (8) of Rule 7.1 outlines specific requirements if either an authorization is made to an investment dealer or if a third party provider is utilized. Either situation requires a written agreement that will preclude the investment dealer or third party from providing any other person control over any aspect of the control, policy or procedure. Further, unless the investment dealer subject to the authorization agreement is also a Participant, subsection (8) will preclude any authorization with respect to an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest (other than that of commissions received on transactions or a reasonable fee for the administration of the account).

The policy rationale for permitting a Participant to authorize an investment dealer to perform on its behalf the setting or adjusting of a supervisory and risk management control is the recognition that situations exist where a participant dealer may determine that another investment dealer has a relationship with the ultimate client such that the investment dealer, having better access to information relating to the ultimate client, would be in a position to more effectively set or adjust the control, policy or procedure. As such, the Amendments only provide for an authorization with respect to accounts where the investment dealer is in fact trading for an ultimate client, and not in circumstances where there is no ultimate client and the trading is being made on a proprietary basis.

Upon entering into a written agreement pursuant to subsection (8), the Amendments require disclosure of the name and contact information of the investment dealer or third party to the Market Regulator, as well as any change in this information. The provision of this information will allow the Market Regulator to contact the investment dealer or third party to make enquiries

[12] "Requirements" include UMIR, applicable securities regulation, requirements of any self-regulatory organization applicable to the activity of the account and the rules and policies of any marketplace on which the account activity takes place. In particular, a Participant or Access Person that uses an automated order system must have appropriate parameters, policies and procedures to detect, prior to entry, an order that is "clearly erroneous" or "unreasonable" and which would interfere with fair and orderly markets if entered. See "Specific Provisions Applicable to Automated Order Systems".

[13] Under the Amendments, the term "investment dealer" is interpreted as "an investment dealer for the purposes of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations"*.

about the application of the controls, policies or procedures to orders or trades in situations when additional information is needed.

If the Participant has authorized to an investment dealer or has utilized the services of a third party provider, the Participant is also required to review and confirm at least annually by the anniversary date of the written agreement with the investment dealer or third party, that the risk management and supervisory controls, policies and procedures are adequate, maintained and consistently applied, that any deficiencies have been documented and remedied promptly, and that the investment dealer or third party remains in compliance with the written agreement.

2.2 Specific Provisions Applicable to Automated Order Systems

In addition to the trading supervision obligations established by proposed amendments to Rule 7.1 described above, proposed new Part 8 to Policy 7.1 sets out specific supervisory provisions related to the use of automated order systems. As noted earlier, the risk management and supervisory controls, policies and procedures should be designed to manage the risk associated with access to one or more marketplaces, and if applicable, the use of any automated order system, by a Participant, Access Person, or any client.

The Amendments require that each Participant or Access Person have a level of knowledge and understanding of any automated order system used by the Participant, Access Person or a client of either. This level of knowledge should be sufficient to allow the Participant or Access Person to identify and manage risks associated with the use of the automated order system.

The Amendments require each Participant or Access Person to ensure that all automated order systems used by the Participant, any client of the Participant or an Access Person are tested in accordance with prudent business practices both initially before being used for the first time, and at least annually thereafter. This testing must be detailed in a written record in order to clearly demonstrate the testing undertaken by the Participant, Access Person and any third party services utilized to employ the automated order system or the risk management and supervisory controls, policies and procedures.

In establishing the parameters for the monitoring of order flow required under both the ETR and the Amendments, a Participant or Access Person should consider the strategy or strategies being employed by any automated order systems in use, and the potential market impact of defining such parameters inappropriately. In determining the appropriate scope of the order and trade parameters, policies and procedures the Participant or Access Person should, at a minimum, ensure they are set to prevent an order from exceeding:

- the marketplace thresholds[14] applicable to the marketplace on which the order is entered, or
- the limits publicly disclosed by IIROC for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR for the triggering of a single-stock circuit breaker or regulatory intervention for the variation or cancellation of trade.[15]

Generally, it is expected that the risk management and supervisory controls, policies and procedures will be reasonably designed to prevent the entry of orders which would interfere with the operation of fair and orderly markets. The supervision and compliance procedures adopted by a Participant or Access Person should if applicable, contain detailed guidance on how the testing of client orders and trades is to be conducted to ensure that each automated order system is tested assuming various market conditions both initially and on at least an annual basis going forward.

Each Participant or Access Person must also have the capability to immediately disable any automated order system used by themselves or any client of the Participant, and thus prevent any orders generated by such system from reaching a marketplace. This would provide the Participant or Access Person the ability to intervene in the event of a malfunction or a situation where a system was being used improperly. A Participant or Access Person is ultimately responsible for any order entered or any trade executed on a marketplace, and this does not exclude situations where an automated order system malfunctions or is improperly used. Such responsibilities include situations where a malfunction causes a “runaway” algorithm even if the malfunction is attributed to an aspect of the automated order system that could not be accessed by the Participant or Access Person for purposes of testing.

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[14] For further information on “marketplace thresholds” see IIROC Notice 12-0162 - Rules Notice – Request for Comments – UMIR – *Request for Comments on Marketplace Thresholds* (May 10, 2012).

[15] For further information see IIROC Notice IIROC Notice 12-0040 – Rules Notice – Guidance Note – UMIR – *Guidance Respecting Implementation of Single-Stock Circuit Breakers* (February 2, 2012) and IIROC Notice 12-0258 – Rules Notice – Guidance Note – UMIR – *Guidance on Regulatory Intervention for the Variation or Cancellation of Trades* (August 20, 2012).

2.3 Variation, Cancellation and Correction of Trades

Previously, Rule 7.11 prevented the cancellation or variation in price, volume or settlement date of an executed trade except in specific circumstances. Part 4 of the ETR sets out specific rules detailing when a marketplace can cancel, vary or correct a trade, and as such the language of Rule 7.11 has been amended to reflect this new framework. It now provides for the correction of a trade in addition to the cancellation and variation, and also stipulates that a marketplace can only take such actions:

- with the prior consent of the Market Regulator if the variation, cancellation or correction is necessary to correct an error caused by:
  - a system or technological malfunction of the marketplace itself, or
  - an individual acting on behalf of the marketplace; or
- with notice to the Market Regulator immediately following the variation, cancellation or correction:
  - prior to the settlement of the trade by:
  - the marketplace at the request of a party to the trade and with the consent of each Participant or Access Person that is a party to the trade, or
  - the clearing agency through which the trade is or was to be cleared and settled, and
- after the settlement of the trade, by each Participant and Access Person that is a party to the trade.

2.4 Gatekeeper Obligations with Respect to Electronic Trading

Under the Amendments, Rule 7.1 of UMIR would allow for a Participant to authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure, or for a Participant to utilize the services of a third party provider. The Amendments add Rule 10.17 of UMIR which establishes certain gatekeeper obligations, and will require that in either of the above situations, the Participant must notify the Market Regulator if either the written agreement which sets out the terms of such arrangements has been terminated, or if the Participant has reason to believe that the investment dealer or third party has failed to remedy any deficiency identified by the Participant in its regular review.

2.5 Editorial and Consequential Amendments

The Amendments make several editorial or consequential amendments including:

- adding a definition of ETR to Rule 1.1;
- adding clause (c) to Rule 1.2 to note that every term used in UMIR which is defined or interpreted in the ETR (particularly, “automated order system”, “marketplace and regulatory requirements” and “participant dealer”) has the meaning ascribed to it in the ETR;
- deleting phrases in Part 1 of Policy 7.1 to reflect the new rule framework in place under the ETR; and
- adding language to Part 1 of Policy 7.1 to reflect guidance on the use of the “short-marking exempt” designation.[16]

3. Summary of the Impact of the Amendments

The following is a summary of the most significant impacts of the adoption of the Amendments. The Amendments:

- ensure that Participants and Access Persons adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed to manage the risks associated with electronic trading and access to marketplaces;

[16] For further information, see IIROC Notice 12-0300 – Rules Notice – Guidance Note – UMIR – *Guidance on “Short Sale” and “Short-Marking Exempt” Order Designations* (October 11, 2012).

- ensure that Participants and Access Persons are effectively supervising trading activity and are accounting for the risks associated with electronic access to marketplaces in their supervisory and compliance monitoring procedures; and

- require an appropriate level of understanding, ongoing testing and appropriate monitoring of any automated order systems in use by a Participant, any client of the Participant or an Access Person.

Under the Amendments, Access Persons have to specifically introduce risk management and supervisory controls, policies and procedures with respect to their direct trading on a marketplace as an Access Person (and not through a Participant). This parallels a requirement on Access Persons introduced in the ETR. However, Access Persons presently only have access to one marketplace which operates as a "negotiation" dark pool marketplace. The requirement will have little practical impact on an Access Person unless they become a subscriber to a new marketplace that is transparent.

There may be impacts to the market in the form of minimal additional latency on some order flow. Any additional latency will also be dependent on the type of trading strategies in use and the nature of the controls and risk management filters already in place. To the extent that additional latency may result, it is not expected to have a significant impact on the majority of trading. Persons employing trading strategies that rely on ultra-low latency connections may have to re-evaluate how they obtain access to a marketplace.

4. Technological Implications and Implementation Plan

The Amendments impose obligations on Participants and Access Persons to ensure that the risks associated with electronic trading are appropriately addressed through the establishment of reasonably designed risk management and supervisory controls, policies and procedures. The Amendments require pre-trade automated controls to prevent the entry of orders which would result in either the Participant or Access Person, or any client, exceeding pre-determined thresholds which would include credit or capital, as well as limits on the value or volume of unexecuted orders for a particular security or class of securities.

It is expected a Participant would already establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices as required both under section 11.1 of NI 31-103 and under Rule 7.1 and Policy 7.1. Additionally, those firms providing clients with electronic access to marketplaces would already be subject to similar requirements under the access rules of the various marketplaces to which the Participant or Access Person directs orders. Technology work and associated costs will likely be required, but the extent of these costs will vary dependent on the level of sophistication of current practices, and the nature of the business activities of the Participant or Access Person.

On the publication of the Proposed Amendments, IIROC expected that the amendments would become effective on the date IIROC publishes notice of approval of the amendments and that the implementation date would be the later of:

- March 1, 2013, the date the ETR becomes effective; and

- 120 days following the publication of notice of approval of the amendments.

As most of the Amendments are designed to align the requirements of UMIR to those of the ETR, IIROC concluded that, to avoid confusion in the industry, the Amendments should be effective with the introduction of ETR on March 1, 2013. IIROC and the CSA conducted a survey of members of the Investment Industry Association of Canada ("IIAC") on implementation of ETR and the Amendments. That survey indicated that there were no unique requirements of the Amendments (as compared with the requirements that aligned UMIR to the ETR) that could not be implemented on March 1, 2013. However, the results of the IIAC survey indicated that a limited number of Participants had concerns regarding their ability to complete systems testing by March 1, 2013.

IIROC recognizes that Participants and Access Persons may have significant systems work with respect to the introduction, pursuant to Part 7 of Policy 7.1, of automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:

- ***the Participant or Access Person exceeding pre-determined credit or capital thresholds;***

- ***a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client; or***

- ***the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities.***

While IIROC expects that Participants and Access Persons will use best efforts to comply with the requirements for automated controls on March 1, 2013, IIROC will allow Participants and Access Persons until May 31, 2013 to complete testing and fully implement such automated controls. All other requirements of the Amendments must be implemented by Participants and Access Persons by March 1, 2013.

The CSA has followed a comparable approach in respect of the implementation of the requirements for automated controls under ETR. Reference should be made to Multilateral CSA Staff Notice 23-313 issued by the CSA regarding the implementation date for certain aspects of ETR.[17]

[17] Published at http://www.osc.gov.on.ca

Appendix A - Text of Provisions Respecting Electronic Trading

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by adding the following definition of "Electronic Trading Rules":

> **"Electronic Trading Rules"** means National Instrument 23-103 *Electronic Trading* as amended, supplemented and in effect from time to time.

2. Rule 1.2 is amended by:

   (a) deleting the word "and" at the end of clause (b);

   (b) renumbering clause (c) of subsection (1) as clause (d), and

   (c) inserting the following as clause (c) of subsection (1):

   > (c) defined or interpreted in the Electronic Trading Rules has the meaning ascribed to it in that National Instrument.

3. Rule 7.1 is amended by adding the following subsections:

   > (6) Notwithstanding any other provision of this Rule, a Participant or an Access Person shall adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to ensure the management of the financial, regulatory and other risks associated with:
   >
   > (a) access to one or more marketplaces; and
   >
   > (b) if applicable, the use by the Participant, any client of the Participant or the Access Person of an automated order system.
   >
   > (7) A Participant may, on a reasonable basis:
   >
   > (a) authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure; or
   >
   > (b) use the services of a third party that provides risk management and supervisory controls, policies and procedures.
   >
   > (8) An authorization over the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retaining the services of a third party under subsection (7) must be in a written agreement with the investment dealer or third party that;
   >
   > (a) precludes the investment dealer or third party from providing any other person control over any aspect of the specific risk management or supervisory control, policy or procedure;
   >
   > (b) unless the authorization is to an investment dealer that is a Participant, precludes the authorization to the investment dealer over the setting or adjusting of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; and
   >
   > (c) precludes the use of a third party unless the third party is independent of each client of the Participant other than affiliates of the Participant.
   >
   > (9) A Participant shall forthwith notify the Market Regulator:
   >
   > (a) upon entering into a written agreement with an investment dealer or third party described in subsection (8), of:
   >
   > (i) the name of the investment dealer or third party, and

(ii) the contact information for the investment dealer or the third party which will permit the Market Regulator to deal with the investment dealer or third party immediately following the entry of an order or execution of a trade for which the Market Regulator wants additional information; and

(b) of any change in the information described in clause (a).

(10) The Participant shall review and confirm:

(a) at least annually that:

(i) the risk management and supervisory controls, policies and procedures under subsection (6) are adequate,

(ii) the Participant has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and

(iii) any deficiency in the adequacy of a control, policy or procedure has been documented and promptly remedied;

(b) if the Participant has authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retained the services of a third party, at least annually by the anniversary date of the written agreement with the investment dealer or third party that:

(i) the risk management and supervisory controls, policies and procedures adopted by the investment dealer or third party under subsection (6) are adequate,

(ii) the investment dealer or third party has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and

(iii) any deficiency in the adequacy of a control, policy or procedure has been documented by the Participant and promptly remedied by the investment dealer or third party, and

(iv) the investment dealer or third party is in compliance with the written agreement with the Participant.

4. Rule 7.11 is amended by:

(a) inserting in the title the words " and Correction" after the word "Cancellation";

(b) inserting in clause (b) the phrase "or corrected" immediately following the word "varied";

(c) deleting clause (d) and inserting the following clauses:

(d) with the prior consent of the Market Regulator, if the variation, cancellation or correction would be necessary to correct an error caused by a system or technological malfunction of the marketplaces systems or equipment or caused by an individual acting on behalf of the marketplace; or

(e) with notice to the Market Regulator immediately following the variation, cancellation or correction of the trade in such form and manner as may be required by the Market Regulator and such notice shall be given, if the variation, cancellation or correction is made:

(i) prior to the settlement of the trade, by:

(A) the marketplace on which the trade was executed at the request of a party to the trade and with the consent of each Participant and Access Person that is a party to the trade, or

(B) the clearing agency through which the trade is or was to be cleared and settled, and

(ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.

5. Part 10 is amended by adding the following as Rule 10.17:

Gatekeeper Obligations with Respect to Electronic Trading

(1) A Participant that has, under Rule 7.1, authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure or the provision of risk management or supervisory controls, policies and procedures to a third party shall forthwith report to the Market Regulator the fact that:

(a) the written agreement with the investment dealer or third party has been terminated; or

(b) the Participant knows or has reason to believe that the investment dealer or third party has failed to promptly remedy any deficiency identified by the Participant.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:

1. Part 1 of Policy 7.1 is amended by:

(a) replacing at the start of the seventh paragraph the word “Where” with the word “When”;

(b) deleting in the seventh paragraph the phrase “(for example by a client with a systems interconnect arrangement in accordance with Policy 2-501 of the Toronto Stock Exchange)”;

(c) adding at the end of the third bullet of the eight paragraph the phrase “other than a client required to use the “short-marking exempt” designation” ; and

(d) deleting at the end of the fourth bullet of the eighth paragraph the phrase “(unless the trading system of the Participant restricts trading activities in affected securities”.

2. Part 2 of Policy 7.1 is amended by:

(a) deleting the phrases “Participants are reminded that”, “the entry of”, and “(For example, for Participants that are Participating Organizations of the TSE, reference should be made to the Policy on “Connection of Eligible Clients of Participating Organizations)”; and

(b) adding the word “entered” immediately before the phrase “must comply”.

3. Part 3 of Policy 7.1 is amended in respect of the table of Minimum Compliance Procedures for Trading Supervision UMIR and Policies by:

(a) adding reference to “Electronic Access to Marketplaces”, “Rule 7.1” and “Securities Legislation” and associated compliance review procedures;

(b) amending the term “restricted list” to “restricted security”;

(c) amending the term “firm restricted list” to “firm trading restriction”; and

(d) deleting references to Rule 7.8 and Rule 7.9 and substituting reference to Rule 7.7 in regard to “restricted issues”.

4. Policy 7.1 is further amended by adding the following Parts:

Part 7 – Specific Provisions Applicable to Electronic Access

Trading supervision related to electronic access to marketplaces must be performed by a Participant or Access Person in accordance with a documented system of risk management and supervisory controls,

policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with electronic access to marketplaces.

The risk management and supervisory controls, policies and procedures employed by a Participant or Access Persons must include:

- automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:
    - the Participant or Access Person exceeding pre-determined credit or capital thresholds,
    - a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client, or
    - the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities;
- provision to prevent the entry of an order this is not in compliance with Requirements;
- provision of immediate order and trade information to compliance staff of the Participant or Access Person; and
- regular post-trade monitoring for compliance with Requirements.

A Participant or Access Person is responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*.

Supervisory and compliance monitoring procedures must be designed to detect and prevent account activity that is or may be a violation of Requirements which includes applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place. These procedures must include "post-order entry" compliance testing enumerated under Part 1 of Policy 7.1 to detect orders that are not in compliance with specific rules, and by addressing steps to monitor trading activity, as provided under Part 5 of Policy 7.1, of any person who has multiple accounts, with the Participant and other accounts in which the person has an interest or over which the person has direction or control.

Part 8 – Specific Provisions Applicable to Automated Order Systems

Trading supervision by a Participant or Access Person must be in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with the use of an automated order system by the Participant, the Access Person or any client of the Participant.

Each Participant or Access Person must have a level of knowledge and understanding of any automated order system used by the Participant, the Access Person or any client of the Participant that is sufficient to allow the Participant or Access Person to identify and manage the risks associated with the use of the automated order system.

The Participant or Access Person must ensure that every automated order system used by the Participant, the Access Person or any client of the Participant is tested in accordance with prudent business practices initially before use and at least annually thereafter. A written record must be maintained with sufficient details to demonstrate the testing of the automated order system undertaken by the Participant, Access Person and any third party employed to provide the automated order system or risk management or supervisory controls, policies and procedures.

The scope of appropriate order and trade parameters, policies and procedures should be tailored to the strategy or strategies being pursued by an automatic order system with due consideration to the potential market impact of defining such parameters too broadly and in any event must be set so as not to exceed the marketplace thresholds applicable to the marketplace on which the order is entered or would otherwise exceed the limits publicly disclosed by the Market Regulator for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR.

The Market Regulator expects the risk management and supervisory controls, policies and procedures to comply with the Electronic Trading Rules and be reasonably designed to prevent the entry of any order that would interfere with fair and orderly markets. This includes adoption of compliance procedures for trading by clients, if applicable, containing detailed guidance on how testing of client orders and trades is to be conducted to ensure that prior to engagement and at least annually thereafter, each automated order system is satisfactorily tested assuming various market conditions. In addition to regular testing of the automated order systems, preventing interference with fair and orderly markets requires development of pre-programmed internal parameters to prevent or "flag" with alerts on a real-time basis, the entry of orders and execution of trades by an automated order system that exceed certain volume, order, price or other limits.

Each Participant or Access Person must have the ability to immediately override or disable automatically any automated order system and thereby prevent orders generated by the automated order system from being entered on any marketplace.

Notwithstanding any outsourcing or authorization over of risk management and supervision controls, a Participant or Access Person is responsible for any order entered or any trade executed on a marketplace, including any order or trade resulting from the improper operation or malfunction of the automated order system. This responsibility includes instances in which the malfunction which gave rise to a "runaway" algorithm is attributed to an aspect of the algorithm or automated order system that was not "accessible" to the Participant or Access Person for testing.

Appendix B - Comments Received in Response to
Rules Notice 12-0200 - Request for Comments - UMIR - *Provisions Respecting Electronic Trading*

On June 28, 2012, IIROC issued IIROC Notice 12-0200 requesting comments on proposed amendments to UMIR respecting electronic trading ("Proposed Amendments"). IIROC received comments on the Proposed Amendments from:

CIBC World Markets Inc. ("CIBC")
Investment Industry Association of Canada ("IIAC")
RBC Capital Markets ("RBC")
Scotia Capital Inc. ("Scotia")
TD Securities Inc. ("TD")

A copy of the comment letters received in response to the Proposed Amendments is publicly available on the website of IIROC (www.iiroc.ca under the heading "Notices" and sub-heading "Marketplace Rules – Request for Comments"). The following table presents a summary of the comments received on the Proposed Amendments together with the responses of IIROC to those comments. Column 1 of the table highlights the revisions to the Proposed Amendments on the approval of the Amendments.

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
Definitions **"Electronic Trading Rules"** means National Instrument 23-103 *Electronic Trading* as amended, supplemented and in effect from time to time.		
1.2 Interpretation (1) Unless otherwise defined or interpreted, every term used in UMIR that is: (a) defined in subsection 1.1(3) of National Instrument 14-101*Definitions* has the meaning ascribed to it in that subsection; (b) defined or interpreted in the Marketplace Operation Instrument has the meaning ascribed to it in that National Instrument; (c) defined or interpreted in the Electronic Trading Rules has the meaning ascribed to it in that National Instrument; and (d) a reference to a requirement of an Exchange or a QTRS shall have the meaning ascribed to it in the applicable Marketplace Rule.		
7.1 Trading Supervision Obligations … (6) Notwithstanding any other provision of this Rule, a Participant or an Access Person shall adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to ensure the management of the financial, regulatory and other risks associated with: (a) access to one or more marketplaces; and	**Scotia –** Seeks clarification on whether a procedure where a third party vendor sets or adjusts risk limits at the specific written request of the Participant would be considered acceptable.	The Amendments require that the Participant establish a system of risk management and supervisory controls, policies and procedures. The Amendments permit the Participant to authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure. If the Participant uses a third party to provide the supervisory controls, policies and procedures, the Participant or an authorized investment dealer must

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(b) if applicable, the use by the Participant, any client of Participant or the Access Person of an automated order system. (7) A Participant may, on a reasonable basis: (a) authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure; or (b) use the services of a third party that provides risk management and supervisory controls, policies and procedures. (8) An authorization over the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retaining the services of a third party under subsection (7) must be in a written agreement with the investment dealer or third party that; (a) precludes the investment dealer or third party from providing any other person control over any aspect of the specific risk management or supervisory control, policy or procedure; (b) unless the authorization is to an investment dealer that is a Participant, precludes the authorization to the investment dealer over the setting or adjusting of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; and (c) precludes the use of a third party unless the third party is independent of each client of the Participant other than affiliates of the Participant.		be the only persons that may set or adjust the controls even though the setting or adjustment will be effected by the third party provider. IIROC has revised the Guidance on Electronic Trading to clarify this point.
(9) A Participant shall forthwith notify the Market Regulator: (a) upon entering into a written agreement with an investment dealer or third party described in subsection (8), of: (i) the name of the investment dealer or third party, and (ii) the contact information for the investment dealer or the third party which will permit the Market Regulator to deal with the investment dealer or		

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
third party immediately following the entry of an order or execution of a trade for which the Market Regulator wants additional information; and (b) of any change in the information described in clause (a).		
(10) The Participant shall review and confirm: (a) at least annually that: (i) the risk management and supervisory controls, policies and procedures under subsection (6) are adequate, (ii) the Participant has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented and promptly remedied; (b) if the Participant has authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or retained the services of a third party, at least annually by the anniversary date of the written agreement with the investment dealer or third party that: (i) the risk management and supervisory controls, policies and procedures adopted by the investment dealer or third party under subsection (6) are adequate, (ii) the investment dealer or third party has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented by the Participant and promptly remedied by the investment dealer or third party, and		

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(iv) the investment dealer or third party is in compliance with the written agreement with the Participant.		
7.11 Variation, Cancellation and Correction of Trades No trade executed on a marketplace shall, subsequent to the execution of the trade, be: (a) cancelled; or (b) varied or corrected with respect to: (i) the price of the trade, (ii) the volume of the trade, or (iii) the date for settlement of the trade, except: (c) by the Market Regulator in accordance with UMIR; (d) with the prior consent of the Market Regulator, if the variation, cancellation or correction would be necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or caused by an individual acting on behalf of the marketplace; or (e) with notice to the Market Regulator immediately following the variation, cancellation or correction of the trade in such form and manner as may be required by the Market Regulator and such notice shall be given, if the variation, cancellation or correction is made: (i) prior to the settlement of the trade, by: (A) the marketplace on which the trade was executed at the request of a party to the trade and with the consent of each Participant and Access Person that is a party to the trade, or (B) the clearing agency through which the trade is or was to be cleared and settled, and (ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.	**IIAC –** Not clear why consent from the Market Regulator is required to vary, cancel or correct a trade when the error is caused by a system or technological malfunction of the marketplace systems or an individual acting on behalf of the marketplace. Would support a notice requirement.	UMIR imposes a number of obligations which are measured across marketplaces (e.g. provisions related to the prevention of trade-throughs under the Order Protection Rule). While a marketplace may look at activity on its own marketplace when making a decision to vary, cancel or correct, IIROC as the Market Regulator must ensure that the overall result is consistent with a "fair and orderly market" (such as ensuring that trades that may have been triggered or followed on from the "erroneous" trade on the one marketplace have been dealt with at the same time and in the same fashion. In the view of IIROC, a notice requirement would lead to uncertainty and confusion with respect to the disposition of "affected" trades that occurred on other marketplaces.

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
10.17 Gatekeeper Obligations with Respect to Electronic Trading (1) A Participant that has, under Rule 7.1, authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or the provision of risk management or supervisory controls, policies and procedures to a third party shall forthwith report to the Market Regulator the fact that: (a) the written agreement with the investment dealer or third party has been terminated; or (b) the Participant knows or has reason to believe that the investment dealer or third party has failed to promptly remedy any deficiency identified by the Participant.		
Policy 7.1 – Trading Supervision Obligations **Part 1 – Responsibility for Supervision and Compliance** … In performing the trading supervision obligations, the Participant will act as a "gatekeeper" to help prevent and detect violations of applicable Requirements. When an order is entered on a marketplace without the involvement of a trader, the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by clients than the percentage of orders sampled in other circumstances. In addition, the "post-order entry" compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a direct access client may restrict the ability of the Participant to detect orders that are not in compliance with specific rules. For example, "post-order entry" compliance testing may be focused on whether an order entered by a direct access client: • has created an artificial price contrary to Rule 2.2;		

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is part of a “wash trade” (in circumstances when the client has more than one account with the Participant);
is an unmarked short sale (if the trading system of the Participant does not automatically code as “short” any sale of a security not then held in the account of the client other than a client required to use the “short-marking exempt” designation); and
has complied with other order marking requirements and in particular the requirement to mark an order as from an insider or designated shareholder.

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Policy 7.1 – Trading Supervision Obligations

Part 2 – Minimum Element of a Supervision System

…

The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, in accordance with subsection (2) of Rule 10.1, orders entered (including orders entered by a client, an investment dealer under a routing arrangement or by a client through an order execution services) must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed.

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Policy 7.1 – Trading Supervision Obligations

Part 3 – Minimum Compliance Procedures for Trading on a Marketplace
<table>
<tr><th>Minimum Compliance Procedures</th><th>Compliance Review Procedures</th><th>Potential Information Sources</th><th>Frequency and Sample Size</th></tr>
<tr><td>Restricted Security

Rule 2.2

Rule 7.7</td><td>• review for any trading of restricted issues done by proprietary</td><td>• order tickets

• the diary list

• trading blotters</td><td>• daily</td></tr>
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Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)				Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	or employee accounts	• firm trading restriction • monthly statements			
Electronic Access to Market-places Rules 7.1 Securities Legislation	• pre-trade order review: • prevent entry of orders on an order-by order basis that exceed pre-defined price and size parameters; • prevent entry of orders that do not comply with marketplace and regulatory requirements • systema-tically prevent one or more orders from exceeding pre-determined credit and capital thresholds. • monitor for unauthorized access to trading systems of Participant or Access Person.	• automated pre-trade controls • real-time alert systems • immediate order and trade information including execution reports.	• daily		
Policy 7.1 – Trading Supervision Obligations **Part 7 - Specific Provisions Applicable to ~~Direct~~ Electronic Access** Trading supervision related to electronic access to marketplaces must be performed by a Participant or Access Person in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with electronic access to marketplaces. The risk management and supervisory controls, policies and procedures employed by a Participant or Access Persons must include:				**Scotia –** Concerned that while smart order routers are defined as an automated order system there generally is not any capacity to change an order using the smart order router system directly.	The Amendments will require automated controls to evaluate orders "before entry on a marketplace". The effect of the Amendments is to require orders to have "passed through" filters that are under the control of the Participant or Access Person entering the order. If orders do not pass through automated controls that have been set by the Participant prior to entry to a smart order router, the automated controls would have to be at the level of the smart order router. IIROC recognizes that current smart order routers in use in

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary

• automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:
  • the Participant or Access Person exceeding pre-determined credit or capital thresholds,
  • a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or
  • the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities;
• provision to prevent the entry of an order that is not in compliance with Requirements;
• provision of immediate order and trade information to compliance staff of the Participant or Access Person; and
• regular post-trade monitoring for compliance with Requirements.
 	
A Participant or Access Person is responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*.
 	
Supervisory and compliance monitoring procedures must be designed to detect and prevent account activity that is or may be a violation of Requirements which includes applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place. These procedures must include "post-order entry" compliance testing enumerated under Part 1 of Policy 7.1 to detect orders that are not in compliance with specific rules, and by addressing steps to monitor trading activity, as provided under Part 5 of Policy 7.1, of any person who has multiple accounts, with the Participant and other accounts in which the person has an interest or over which the person has direction or control.
		Canada do not have that capacity. Without this capacity, orders from a client could not be entered directly to a smart order router without passing through automated controls that have been set by the Participant.
		
		IIROC has revised the Guidance on Electronic Trading to clarify this point.

	RBC – Requests that IIROC outline the specific pre-order entry checks that dealers are expected to implement on a real-time basis. Suggests that the requirement be standardized to that provided for under National Instrument 23-103, namely "that must be satisfied on a pre-order entry basis".	The minimum "automated controls" are set out in the three sub-bullets contained in the first bullet. In particular, the automated controls must examine each ***order before entry on a marketplace*** [emphasis added] to prevent the entry of an order which would result in:
		  • the Participant or Access Person exceeding pre-determined credit or capital thresholds,
		  • a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or
		  • the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities.
		
		The second bullet which requires the risk management and supervisory controls, policies and procedures to include provision to prevent the entry of an order that is not in compliance with Requirements is, in effect, for Participants a restatement of an existing UMIR provisions under Rule 7.1. In particular, Rule 7.1(2) requires:
		
		"Prior to the entry of an order on a marketplace by a Participant, the Participant shall comply with:

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		(a) applicable regulatory standards with respect to the review, acceptance and approval of orders; (b) the policies and procedures adopted in accordance with subsection (1); and (c) all requirement of UMIR and each Policy." The inclusion of this bullet in Part 7 of Policy 7.1 has the effect of extending the requirement to Access Persons who have electronic access to a marketplace.
	TD – Would like to confirm that in cases when an order is entered on a marketplace with the involvement of a trader that the trader may continue to perform the trade supervision function rather than relying on automated controls for trade supervision. Believes that it is not feasible to apply an automated pre-trade control to limit a client's settlement risk or margin requirements on a real-time basis across all asset classes or all electronic access channels. Similar problems would be encountered for capital limits for internal traders.	Policy 7.1 must be read in its entirety. Various parts of the Policy deal with different means by which orders are "received" by a Participant and how the Participant enters those orders on a marketplace. Underpinning the Policy is the requirement for enhanced supervision and monitoring of orders that are not inter-mediated by traders or registered employees of the Participant. Orders which are received electronically by a Participant and entered on a marketplace by the Participant electronically without intermediation by a registered employee will be subject to automated pre-entry controls which reflect that fact. Nonetheless, if orders are intermediated, the Amendments will require that there be automated pre-entry controls that are appropriate to the orders being entered by that trader. For example, among the appropriate automated pre-entry controls would be "fat finger" checks and value limits applicable to the trader. The Amendments do not require one aggregate client risk calculation across different electronic access channels or asset classes. The Amendments permit a separate limit to be

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		determined for each channel or asset class. Participants are able to continue to assess the aggregate client risk on a post-trade basis. The Amendments permit capital limits on each access channel independently and Participants are able to continue to assess aggregate market risk on a post-trade basis. IIROC has modified the Guidance on Electronic Trading to clarify these points.
		A drafting error has been corrected by deleting the word "Direct" from the title of Part 7. In IIROC Notice 12-0200, the text of the proposed provision was correct in Appendix B but the draft of the proposed amendments set out in Appendix A contained the word.
Policy 7.1 – Trading Supervision Obligations **Part 8 – Specific Provisions Applicable to Automated Order Systems** Trading supervision by a Participant or Access Person must be in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with the use of an automated order system by the Participant, the Access Person or any client of the Participant. Each Participant or Access Person must have a level of knowledge and understanding of any automated order system used by the Participant, the Access Person or any client of the Participant that is sufficient to allow the Participant or Access Person to identify and manage the risks associated with the use of the automated order system. The Participant or Access Person must ensure that every automated order system used by the Participant, the Access Person or any client of the Participant is tested in accordance with prudent business practices initially before use and at least annually thereafter. A written record must be maintained with sufficient details to demonstrate the testing of the automated order system undertaken by the Participant, Access Person and any third party employed to provide the automated order system or risk management or supervisory controls, policies and procedures.		

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
The scope of appropriate order and trade parameters, policies and procedures should be tailored to the strategy or strategies being pursued by an automatic order system with due consideration to the potential market impact of defining such parameters too broadly and in any event must be set so as not to exceed the marketplace thresholds applicable to the marketplace on which the order is entered or would otherwise exceed the limits publicly disclosed by the Market Regulator for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR. The Market Regulator expects the risk management and supervisory controls, policies and procedures to comply with the Electronic Trading Rules and be reasonably designed to prevent the entry of any order that would interfere with fair and orderly markets. This includes adoption of compliance procedures for trading by clients, if applicable, containing detailed guidance on how testing of client orders and trades is to be conducted to ensure that prior to engagement and at least annually thereafter, each automated order system is satisfactorily tested assuming various market conditions. In addition to regular testing of the automated order systems, preventing interference with fair and orderly markets requires development of pre-programmed internal parameters to prevent or "flag" with alerts on a real-time basis, the entry of orders and execution of trades by an automated order system that exceed certain volume, order, price or other limits. Each Participant or Access Person must have the ability to immediately override or disable automatically any automated order system and thereby prevent orders generated by the automated order system from being entered on any marketplace. Notwithstanding any outsourcing or permitted authorization over risk management and supervision controls, a Participant or Access Person is responsible for any order entered or any trade executed on a marketplace, including any order or trade resulting from the improper operation or malfunction of the automated order system. This responsibility includes instances in which the malfunction which gave rise to a "runaway" algorithm is attributed to an aspect of the algorithm or automated order system that was not "accessible" to the Participant or Access Person for testing.		

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
General Comments	**CIBC –** "Extremely challenging" to meet the March 1, 2013 target implementation date of National Instrument 23-103. Encourages IIROC to allow for a longer implementation period. Points to the fact that it took 13 months to implement Rule 15c3-5 in the US. CIBC sees "risks associated with a poorly designed or poorly implemented solution". In particular, CIBC notes that options and derivatives traded on the Montreal Exchange are subject to NI 23-103 and they seek greater clarity on the implementation of pre-trade credit thresholds for those asset classes. Suggests a phased introduction by either asset class and/or type of pre-trade control. As recognized in the US with the Knight Capital issues, technical changes at the marketplace level can have a severe impact for both the participant and overall market integrity. Believes that there should be a "pause" in allowing marketplaces to introduce enhancements.	Unlike NI 23-103, the UMIR provisions will only apply to a single asset class, namely listed equities (as UMIR is not applicable to the trading of fixed income or derivatives). While the amendments will be effective March 1, 2013, IIROC recognizes that additional time may be required to complete testing of automated pre-trade controls. IIROC expects that Participants will use best efforts to complete testing and implement such controls by March 1, 2013 but IIROC will permit testing to continue until May 31, 2013 at which time IIROC expects testing to be complete and that the automated controls will be fully operational. While IIROC is cognizant of the regulatory burden which is being imposed on marketplaces, Participants and Access Persons as a result of recent initiatives, the initiatives have dealt with developments in the market for which a regulatory response was considered appropriate. As a regulation services provider, IIROC's primary role with respect to "marketplace enhancements" is to ensure they do not interfere with a "fair and orderly" market.
	IIAC – Generally supportive of the objective of the Proposed Amendment but has serious concerns about the implementation period. Notes that IIAC members currently conduct their business using many different systems which are combinations of proprietary and third party systems. Significant work to develop, test and implement.	IIROC, in conjunction with the CSA, conducted a survey of IIAC members on their preparedness for implementation of ETR on March 1, 2013. The responses indicated that additional testing time may be needed or would be desirable. The responses confirmed that there were no specific provisions of the Proposed Amendments that could not be implemented by March 1, 2013. See response to CIBC above regarding the provision of additional time to complete testing of automated pre-trade controls.
	Scotia – Believes that the most reliable place to protect against "flash crash" types of events is at the marketplace level. The planned marketplace thresholds	While marketplaces have a role, the marketplace is not in a position to know if orders from a particular client are a risk to the Participant as well as to the integrity of the

Text of the Provisions Approval of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	are a good step but suggests additional enhancements: • order activity limits (on the number of orders from an individual trading ID or the markets as a whole); • notional limits (on each trading ID as specified by the Participant); and • automated access to disable trading IDs (more flexible functionality to the cancel-on-disconnect service that many marketplaces already offer).	marketplace overall. "Individual" trading IDs often bundle together orders from a number of clients or sources. In the view of IIROC, it is more appropriate for the Participant to enforce these types of limits at the account or client level. This ensures that the Participant is better able to control their own risk to a particular client but the interests of other clients or sources or orders are not compromised if a particular account goes "off side".
	Scotia – Project plans from vendors generally leave approximately two months for testing and deployment. March 1st implementation leaves "no margin for issues or delays and would be considered 'best case' scenarios". Believes that an extension of 3 months is absolutely necessary and that 6 months may be prudent "depending on feedback … from other participants".	The Amendments will be effective March 1, 2013, the same date as the ETR. However, IIROC has acknowledged the significant systems impact of implementing automated controls prior to order entry on a marketplace. IIROC is therefore permitting a period for additional testing, if necessary until May 31, 2013.

13.1.3 OSC Staff Notice of Approval – Amendments to the Universal Market Integrity Rules Respecting Electronic Trading

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO THE UNIVERSAL MARKET INTEGRITY RULES RESPECTING ELECTRONIC TRADING

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved proposed amendments to the Universal Market Integrity Rules (UMIR) respecting the electronic trading (the UMIR Amendments). 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 Nova Scotia Securities Commission and the New Brunswick Securities Commission have approved the UMIR Amendments.

The UMIR Amendments, effective March 1, 2013, will align the requirements of UMIR to National Instrument 23-103 *Electronic Trading*.

The UMIR Amendments were published for comment on June 28, 2012 at (2012) 35 OSCB 6177. Five comment letters were received and a summary of the comments and IIROC's response, as well as a copy of the approved amendments, are included in Chapter 13 of this Bulletin.

13.3 Clearing Agencies

13.3.1 Material Amendments to CDS Rules – Multi-Classification of Limited Purpose Participants – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

MULTI-CLASSIFICATION OF LIMITED PURPOSE PARTICIPANTS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The proposed amendments broaden the categories into which a limited purpose participant may be classified. Currently a limited purpose participant may only be multi-classified into the following two categories – ATON Participant and ACT Participant. With the expansion of the multi-classification categories, limited purpose participants have an increased ability to take on new lines of business.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

Background – full participants cannot be also classified as limited purpose participants

The first limited purpose participant category developed under the CDS Rules was the TA Participant. At that point, a participant was either categorized as a full participant or a TA Participant, but could not be categorized as both. This prohibition was reflected in CDS Rule 11.2.2. However, when CDS Rule 11.2.2 was drafted, it was not contemplated that additional limited purpose categories would be subsequently created. As such, the drafting of CDS Rule 11.2.2 was unintentionally broad. The intent of the prohibition was that full participants could not be likewise classified as a limited purpose participant. It was not intended that a limited purpose participant could not be classified in multiple categories (once these categories were created).

The prohibition against multi-classification in CDS Rule 11.2.2 was then replicated as a precedent for the subsequent development of Rule 12.2.3 for ATON. This was a drafting oversight as multi-classification is in fact permitted under in Rule 2.3.2(c) for ATON Participants and ACT Participants. Furthermore, Rule 12.1.1 provides that ATON may be used by all participants (all participants includes limited purpose participants).

Holding of Securities

In addition to expanding the breadth of multi-classification for limited purpose participants, a further rule amendment would be required for TA Participants. Currently, a TA Participant using ATON would be in contravention of Rule 11.2.4 which provides that a TA Participant may not hold securities credited to its ledger except in its capacity as a CDSX Depositary Agent or Entitlements Processor.[1] In using ATON, a Participant's ledger is credited with securities. However, this holding is only on a temporary basis – these ledgers must be fully transferred to a designated custodial participant on a daily basis [Rule 12.2.7(b)]. In light of the nature of the temporary holding of securities from an ATON instruction, it is acceptable from a risk perspective that TA Participants be permitted to temporarily hold securities in their ledgers when using ATON.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

C.1 Competition

The proposed Rule amendments would eliminate barriers faced by limited purpose participants to take on new lines of business. This would facilitate increased competition.

C.2 Risks and Compliance Costs

There is no increased risk with the elimination of the current CDS Rule barriers against multi-classified limited purpose participants. Limited purpose participants are unable to have a negative funds account (i.e. cash) balance, including multi-classified limited purpose participants. TA Participants would only be permitted to hold securities in their ledgers for limited purposes (and if for ATON, the ledgers are "swept" to a designated custodial participant each day).

[1] Rule 11.2.4 also states that a TA Participant may not effect Settlements (a defined term in the CDS Rules). In using ATON, investment dealer accounts are transferred – ATON does not involve the settling of trades so there would be no breach in this regard.

CDS does not expect that the proposed Rule amendments will result in any compliance costs for CDS, its Participants, or other market participants.

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

The proposed amendments are in alignment with principle 18 of the CPSS-IOSCO Principles for Financial Market Infrastructures, specifically that the criteria for participation be publicly disclosed and transparent. Rule amendments to broaden the multi-classification of limited purpose participants are preferable to ad hoc Board of Director waivers in respect to current rules prohibiting the same.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

A current CDS limited purpose participant has been granted a waiver by the CDS Board of Directors to be classified both as a TA Participant and as an ATON Participant and to hold securities in its ledger when using ATON. The proposed rule amendments will codify the effect of the waiver.

D.2 Rule Drafting Process

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee that includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

These amendments were reviewed and approved by the Board of Directors of CDS Ltd. on November 28, 2012.

D.3 Issues Considered

The iterative manner in which the CDS Rules were developed resulted in an unintended consequence of restricting the multi-classification of limited purpose participants. The current Rules are contradictory in regards to ATON Participants being permitted (or not) to also be classified in another limited purpose participant category and this required rectification. Furthermore, the inclusion of TA Participants to be multi-classified does not import addition risk to CDS, its participants, or other market participants.

D.4 Consultation

As noted earlier, the proposed amendments have been reviewed with the LDG. The proposed amendments are remedial in nature and do not import risk to CDS, its participants, or other market participants. Through advisory via bulletin to all participants of the waiver being granted as noted in section D.1 above, all participants were also advised that CDS planned a rule amendment to broaden multi-classification of limited purpose participants.

D.5 Alternatives Considered

An alternative would be to seek CDS Board of Director waivers regarding the CDS Rules in their present state on an ad hoc basis for limited purpose participants wishing to undertake new lines of business. However, a curative Rule amendment was considered to be a more practical and transparent manner in which to permit multi-classification of limited purpose participants.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act* and by the British Columbia Securities Commission pursuant to s. 24(d) of the British Columbia *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 Autorité des marchés financiers, the Bank of Canada, the British Columbia Securities Commission and the Ontario Securities Commission will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

E. TECHNOLOGICAL SYSTEMS CHANGES

There are no technological systems changes required by CDS, CDS Participants, or other market participants. The proposed amendments pertain to existing CDS services.

F. COMPARISON TO OTHER CLEARING AGENCIES

The limited purpose participant categories are specific to CDS. As such, a comparison with other clearing agencies is not possible.

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 must be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin **[**•Autorité des marchés financiers Bulletin if this is the translated version•**]** to:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

Copies should also be provided to the Autorité des marchés financiers, 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
e-mail: marketregulation@osc.gov.on.ca

Ann Gander
Secretary to the Commission
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C. V7Y 1L2

Fax: 604-899-6506
email: agander@bcsc.bc.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS RULE AMENDMENTS

Appendix “A” contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

APPENDIX "A"
PROPOSED CDS RULE AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
2.3.2 Categories	**2.3.2 Categories**
…	…
(c) Categories of Limited Purpose Participants	(b) Categories of Limited Purpose Participants
~~CDS shall classify each limited purpose Participant that satisfies the requirements set out in Rule 11.2.2 as a TA Participant.~~ CDS shall classify each ~~other~~ limited purpose Participant into one or more ~~both~~ of the following categories:	CDS shall classify each limited purpose Participant into one or more of the following categories:
(i) ATON Participant	(i) ATON Participant
if the Participant satisfies the requirements set out in Rule12.2.3.	if the Participant satisfies the requirements set out in Rule12.2.3.
(ii) ACT Participant	(ii) ACT Participant
if the Participant satisfies the requirements set out in Rule10.12.	if the Participant satisfies the requirements set out in Rule10.12.
(iii) TA Participant	(iii) TA Participant
if the Participant satisfies the requirements set out in Rule11.2.2.	if the Participant satisfies the requirements set out in Rule11.2.2.
2.4.7 Limited Purpose Participants	**2.4.8 Limited Purpose Participants**
(a) ~~A~~ TA Participant~~:~~	(b) TA Participant~~:~~
A TA Participant:	A TA Participant:
(i) may not effect Settlements (including a transfer or Pledge of Securities) or hold Securities credited to its Ledger, except in its capacity as a CDSX Depositary Agent or Entitlements Processor or as permitted when classified under another limited purpose Participant category;	(i) may not effect Settlements (including a transfer or Pledge of Securities) or hold Securities credited to its Ledger, except in its capacity as a CDSX Depositary Agent or Entitlements Processor or as permitted when classified under another limited purpose Participant category;
(ii) may not make Lines of Credit available to other Participants;	(ii) may not make Lines of Credit available to other Participants;
(iii) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant;	(iii) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant;
(iv) may not use any CCP Function;	(iv) may not use any CCP Function;
(v) may not act as the ISIN Activator or Securities Validator for a Security; and	(v) may not act as the ISIN Activator or Securities Validator for a Security; and
(vi) may not act as a Custodian.	(vi) may not act as a Custodian.

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
(b) ATON Participant An ATON Participant: (i) may effect Settlements or hold Securities credited to its Ledger only in connection with the transfer of client accounts; (ii) may not effect Settlements that result in a negative balance in its Funds Account; (iii) may not deposit or withdraw Securities; (iv) may not make Lines of Credit available to other Participants; (v) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant; (vi) may not use any CCP Function; (vii) may not act as the ISIN Activator, Securities Validator, Entitlements Processor or CDSX Depositary Agent for a Security; and (viii) may not act as a Custodian. (c) ACT Participant An ACT Participant that is not also an ATON Participant or a TA Participant may not use CDSX. … **5.1.9 Role of ACT Participant** Notwithstanding the provisions of this Rule 5, an ACT Participant that is not also an ATON Participant or a TA Participant may not use CDSX and accordingly: (a) does not grant nor use a Line of Credit; (b) is not a Member of a Fund Credit Ring; (c) is not a Member of a Category Credit Ring; (d) does not make any Contribution to any Fund or Collateral Pool; (e) does not grant any security interest to CDS; (f) does not have a System-Operating Cap that limits its Transactions; and (g) is not required to satisfy the ACV edit. …	(c) ATON Participant An ATON Participant: (i) may effect Settlements or hold Securities credited to its Ledger only in connection with the transfer of client accounts; (ii) may not effect Settlements that result in a negative balance in its Funds Account; (iii) may not deposit or withdraw Securities; (iv) may not make Lines of Credit available to other Participants; (v) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant; (vi) may not use any CCP Function; (vii) may not act as the ISIN Activator, Securities Validator, Entitlements Processor or CDSX Depositary Agent for a Security; and (viii) may not act as a Custodian. (d) ACT Participant An ACT Participant that is not also an ATON Participant or a TA Participant may not use CDSX. … **5.1.9 Role of ACT Participant** Notwithstanding the provisions of this Rule 5, an ACT Participant that is not also an ATON Participant or a TA Participant may not use CDSX and accordingly: (h) does not grant nor use a Line of Credit; (i) is not a Member of a Fund Credit Ring; (j) is not a Member of a Category Credit Ring; (k) does not make any Contribution to any Fund or Collateral Pool; (l) does not grant any security interest to CDS; (m) does not have a System-Operating Cap that limits its Transactions; and (n) is not required to satisfy the ACV edit. …

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
10.12.2 Eligibility for Participation Any Person who is a Regulated Financial Institution, Foreign Institution or Government Body, TA Participant, or who is an ATON Participant, is eligible to apply to become a limited purpose ACT Participant. A full service Participant ~~or a limited purpose TA Participant~~ is not eligible to apply to become a limited purpose ACT Participant. …	**10.12.2 Eligibility for Participation** Any Person who is a Regulated Financial Institution, Foreign Institution or Government Body, TA Participant, or who is an ATON Participant, is eligible to apply to become a limited purpose ACT Participant. A full service Participant is not eligible to apply to become a limited purpose ACT Participant. …
10.12.3 Participation Qualifications and Standards When requested by CDS, an ACT Participant shall demonstrate to the satisfaction of CDS that it meets the qualifications and standards set out in Rule applicable to the category to which it belongs (Regulated Financial Institution, Foreign Institution, Government Body or other limited purpose participant ~~ATON Participant~~, as the case may be). …	**10.12.3 Participation Qualifications and Standards** When requested by CDS, an ACT Participant shall demonstrate to the satisfaction of CDS that it meets the qualifications and standards set out in Rule applicable to the category to which it belongs (Regulated Financial Institution, Foreign Institution, Government Body or other limited purpose participant, as the case may be). …
11.1.1 General Description The Depository Service is a Service established by CDS by which CDS holds Securities on behalf of Participants and maintains book accounts recording such Securities. CDS and each TA Participant shall co-operate as set out in this Rule to manage the Deposit and Withdrawal of eligible Securities to and from the Depository Service of CDS. A TA Participant shall be a limited purpose Participant as set out herein, and its activities in CDSX shall be limited to (i) managing the Deposit and Withdrawal of Securities as set out in this Rule 11, (ii) at its option, acting as a CDSX Depositary Agent, ~~and~~ (iii) at its option, acting as an Entitlements Processor as set out in this, and (iv) acting in the capacity of another category of limited purpose participant for which it is categorized. …	**11.1.1 General Description** The Depository Service is a Service established by CDS by which CDS holds Securities on behalf of Participants and maintains book accounts recording such Securities. CDS and each TA Participant shall co-operate as set out in this Rule to manage the Deposit and Withdrawal of eligible Securities to and from the Depository Service of CDS. A TA Participant shall be a limited purpose Participant as set out herein, and its activities in CDSX shall be limited to (i) managing the Deposit and Withdrawal of Securities as set out in this Rule 11, (ii) at its option, acting as a CDSX Depositary Agent, (iii) at its option, acting as an Entitlements Processor as set out in this, and (iv) acting in the capacity of another category of limited purpose participant for which it is categorized. …
11.2.2 Eligibility for Participation A Person is eligible to participate in CDSX as a TA Participant if it has been appointed as the Transfer Agent of a sufficient number of CDSX eligible Securities. An Issuer of a CDSX eligible Security who has not appointed a Transfer Agent for that Security is eligible to participate as a TA Participant with respect to that Security, and any references in this Rule 11 to the TA Participant acting as the agent of an Issuer include an Issuer who is a TA Participant acting for itself. A full service Participant ~~that is classified in a category other than that of TA Participant~~ may not act as a TA Participant, even if it is an Issuer of CDSX eligible Securities or the Transfer Agent of such an Issuer. …	**11.2.2 Eligibility for Participation** A Person is eligible to participate in CDSX as a TA Participant if it has been appointed as the Transfer Agent of a sufficient number of CDSX eligible Securities. An Issuer of a CDSX eligible Security who has not appointed a Transfer Agent for that Security is eligible to participate as a TA Participant with respect to that Security, and any references in this Rule 11 to the TA Participant acting as the agent of an Issuer include an Issuer who is a TA Participant acting for itself. A full service Participant may not act as a TA Participant, even if it is an Issuer of CDSX eligible Securities or the Transfer Agent of such an Issuer. …

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
11.2.4 Role of TA Participant A TA Participant: (a) shall confirm or reject the Deposit and Withdrawal of Securities and shall provide a Closing Balance Report to CDS, with respect to all CDSX eligible Securities for which it is the Transfer Agent; (b) may act as a Depositary Agent (including a CDSX Depositary Agent) or Entitlements Processor; (c) may not effect Settlements (including a transfer or Pledge of Securities) or hold Securities credited to its Ledger except in its capacity as a CDSX Depositary Agent or Entitlements Processor or as permitted when classified under another limited purpose Participant category; (d) may not make Lines of Credit available to other Participants; (e) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant; (f) may not use the CNS or FINet Functions; (g) may not act as the ISIN Activator or Securities Validator for a Security; and (h) may not act as a Custodian. **…** **12.2.3 Eligibility for Participation** ~~A Participant that is classified in a category other than that of ATON Participant may not act as a limited purpose ATON Participant.~~ A Person is eligible to apply to become an ATON Participant if it is: (i) a Regulated Financial Institution; (ii) a mutual fund dealer that is a member of the Mutual Fund Dealers Association of Canada; (iii) a mutual fund dealer that is regulated as such by a Regulatory Body that is a provincial securities commission; or (iv) a broker, dealer, bank, savings bank, trust company, loan company or insurance company that trades in Securities or mutual funds and that is incorporated, established or formed under the laws of a jurisdiction situate outside of Canada or that is primarily regulated under the laws of a jurisdiction situate outside Canada.	**11.2.4 Role of TA Participant** A TA Participant: (i) shall confirm or reject the Deposit and Withdrawal of Securities and shall provide a Closing Balance Report to CDS, with respect to all CDSX eligible Securities for which it is the Transfer Agent; (j) may act as a Depositary Agent (including a CDSX Depositary Agent) or Entitlements Processor; (k) may not effect Settlements (including a transfer or Pledge of Securities) or hold Securities credited to its Ledger except in its capacity as a CDSX Depositary Agent or Entitlements Processor or as permitted when classified under another limited purpose Participant category; (l) may not make Lines of Credit available to other Participants; (m) may not use Lines of Credit made available by an Extender of Credit or by the Active Federated Participant; (n) may not use the CNS or FINet Functions; (o) may not act as the ISIN Activator or Securities Validator for a Security; and (p) may not act as a Custodian. **…** **12.2.3 Eligibility for Participation** A Person is eligible to apply to become an ATON Participant if it is: (v) a Regulated Financial Institution; (vi) a mutual fund dealer that is a member of the Mutual Fund Dealers Association of Canada; (vii) a mutual fund dealer that is regulated as such by a Regulatory Body that is a provincial securities commission; or (viii) a broker, dealer, bank, savings bank, trust company, loan company or insurance company that trades in Securities or mutual funds and that is incorporated, established or formed under the laws of a jurisdiction situate outside of Canada or that is primarily regulated under the laws of a jurisdiction situate outside Canada.

For reference, the text of related CDS Participant Rules are reproduced below:

2.4.8 Limitation

Bank of Canada may effect Settlements and make payment without limit as to the amount of such Settlements and payments. A TA Participant or an ATON Participant may effect Settlements provided that such Settlements do not result in a negative balance in its Funds Account, and accordingly neither a TA Participant nor an ATON Participant uses a System-Operating Cap or a Line of Credit. Any Participant other than Bank of Canada may exercise the powers specified for the category into which it is classified only if such Transactions can be effected within its System-Operating Cap, if any, and any Line of Credit established for it.

12.1.1 General Description

ATON (the Account Transfer Online Notification Service) is a service to facilitate the electronic transfer of client account information to assist in the transfer of client assets between Participants. ATON may be used by ATON Participants and by all other Participants.

Chapter 25

Other Information

25.1 Exemptions

25.1.1 First Asset Management Inc. and First Asset DEX Provincial Bond ETF – s. 19.1 of NI 41-101 General Prospectus Requirements

Headnote

Application under National Policy 11-203 Process for Exemptive Relief Applications in Mmultiple Jurisdictions – Extension granted of the time period prescribed under section 2.3(1) of NI 41-101 for filing a final prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1), 19.1, 19.3.

December 4, 2012

First Asset Management Inc. and
First Asset DEX Provincial Bond ETF

Attention: Kenneth Ng

Dear Sirs/Mesdames:

Re: First Asset Management Inc. (the Filer) and First Asset DEX Provincial Bond ETF (the Fund)

Exemptive Relief Application under Section 19.1 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)

Application No. 2012/0730, SEDAR Project No. 1962704

By letter dated November 9, 2012 (the Application), the Filer and the Fund applied pursuant to section 19.1 of NI 41-101 for relief from the operation of section 2.3(1) of NI 41-101, which prohibits an issuer from filing a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter acknowledges for the purposes of section 19.3(2)(ii) of NI 41-101 that, based on the information and representations made in the Application, and for the purposes described in the Application, the requested relief is granted to permit an extension of the time for filing a final prospectus to January 31, 2013, to be evidenced by the issuance of a receipt for the Fund's prospectus, provided the Fund's final prospectus is filed no later than January 31, 2013.

Yours very truly,

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

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