The Ontario Securities Commission

OSC Bulletin

December 20, 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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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

December 20, 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:

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

SCHEDULED OSC HEARINGS

January 7, 2013 10:00 a.m.	**Ernst & Young LLP** s. 127 and 127.1 A. Clark in attendance for Staff Panel: MGC
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: JEAT
January 14, 2013 9:00 a.m.	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
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: MGC
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: MGC
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: MGC
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: JEAT

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: MGC
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 1, 2013 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
March 13, 2013 10:00 a.m.	**New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting** s. 127 A. Heydon/S. Horgan in attendance for Staff Panel: JDC
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: JDC
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 **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 **Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)**

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov**

s. 127

C. Watson in attendance for Staff

Panel: TBa

TBA **New Hudson Television LLC & Dmitry James Salganov**

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA **Knowledge First Financial Inc.**

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA **Heritage Education Funds 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

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

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

1.1.2 CSA Staff Notice 13-315 (Revised) – Securities Regulatory Authority Closed Dates 2013

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-315 (Revised)
Securities Regulatory Authority Closed Dates 2013*

December 20, 2012

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the OSC has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

A dealer may solicit expressions of interest in a non-principal jurisdiction only after a receipt has been issued by that jurisdiction. In addition, an issuer may distribute its securities in the non-principal jurisdiction only at that time.

The following is a list of the closed dates of the securities regulatory authorities for 2013. These dates should be noted by issuers in structuring their affairs.

1. Saturdays and Sundays (all)
2. Tuesday January 1 (all)
3. Wednesday January 2 (QC)
4. Monday February 11 (BC)
5. Monday February 18 (AB, SK, MB, ON, PE)
6. Friday February 22 (YT)
7. Monday March 18 (NL)
8. Friday March 29 (all)
9. Monday April 1 (all except AB, SK, ON, NL)
10. Monday April 22 (NL)
11. Monday May 20 (all)
12. Friday June 21 (NT)
13. Monday June 24 (QC, NL)
14. Monday July 1 (all)
15. Tuesday July 9 (NU)
16. Monday July 15 (NL)
17. Friday August 2 (SK)
18. Monday August 5 (all except QC, NL, PE, YT)
19. Wednesday August 7 (NL**)
20 Friday August 16 (PE)
21. Monday August 19 (YT)
22. Monday September 2 (all)
23. Monday October 14 (all)
24. Monday November 11 (all except AB, ON, QC)
25. Tuesday December 24 (QC, NT)
26. Tuesday December 24 after 12:00 p.m. (AB, NB, NS, PE), after 1:00 p.m. (BC, MB, YT), after 3:00 p.m. (NU)
27. Wednesday December 25 (all)
28. Thursday December 26 (all)
29. Tuesday December 31 (QC, NT)
30. Tuesday December 31 after 12:00 p.m. (NB), after 1:00 p.m. (BC), after 3:00 p.m. (NU)
31. Wednesday January 1, 2014 (all)
32. Thursday January 2, 2014 (QC)

*Bracketed information indicates those jurisdictions that are closed on the particular date.

**Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

1.1.3 CSA Staff Notice 23-314 – Frequently Asked Questions about National Instrument 23-103 Electronic Trading

CANADIAN SECURITIES ADMINISTRATORS
STAFF NOTICE 23-314

FREQUENTLY ASKED QUESTIONS ABOUT NATIONAL INSTRUMENT 23-103 *ELECTRONIC TRADING*

The purpose of this notice is to answer some of the frequently asked questions (FAQs) regarding National Instrument 23-103 *Electronic Trading* (the rule or NI 23-103). NI 23-103 is effective on March 1, 2013 and sets out requirements that apply to marketplace participants, marketplaces and the use of automated order systems in order to address the risks of electronic trading.

The list of FAQs below is not exhaustive, but it includes key issues and questions market participants have posed to us. Staff of the Canadian Securities Administrators (CSA or we) may update these FAQs from time to time as necessary.

Some terms we use in this notice are defined in NI 23-103, National Instrument 21-101 *Marketplace Operation* (NI 21-101) or in National Instrument 23-101 *Trading Rules*.

A. SCOPE OF NI 23-103

A-1 Q: Does NI 23-103 apply to all securities trading activity on Canadian marketplaces, including debt and derivatives?

A: The scope of NI 23-103 is set out in subsection 1.1(2) of Companion Policy 23-103CP (CP). The rule applies to the electronic trading of securities, including debt securities, on marketplaces in Canada. NI 23-103 requires marketplace participants to ensure compliance with marketplace and regulatory requirements.

As set out in NI 21-101 and incorporated in NI 23-103, in Québec, standardized derivatives are considered to be securities and therefore the electronic trading of standardized derivatives on a marketplace in Québec would be subject to the requirements of NI 23-103. NI 23-103 and the CP also provide interpretations of "security" in Alberta, British Columbia and Ontario.

A-2 Q: Does NI 23-103 apply to all orders executed on a marketplace or only to orders generated by an automated order system?

A: The rule applies to the electronic trading of securities on marketplaces in Canada. Therefore, NI 23-103 applies to all orders sent electronically to a marketplace whether generated by an automated order system or not. This means that NI 23-103 applies to orders manually handled by a marketplace participant but sent electronically to a marketplace.

B. PRE-TRADE RISK MANAGEMENT AND SUPERVISORY CONTROLS

B-1 Q: What, if any, automated pre-trade controls are required for orders intermediated by a marketplace participant?

A: Subsection 3(3) of NI 23-103 sets out the minimum requirements regarding pre-trade risk controls including those relating to capital, credit, price and volume. Subsection 3(4) of the CP provides further guidance on minimum risk management and supervisory controls, policies and procedures.

It is important to note that each marketplace participant must examine its own business model to manage its financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace. This examination will drive the specific controls that the marketplace participant will have to establish.

B-2 Q: Do pre-trade credit checks apply to proprietary order flow?

A: The requirement under subparagraph 3(3)(a)(i) of NI 23-103 is that a marketplace participant's risk management and supervisory controls, policies and procedures must be reasonably designed to prevent the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds of the marketplace participant. Therefore, all order flow that is sent electronically by a marketplace participant to a marketplace, including proprietary order flow, would be subject to pre-trade capital or credit checks as applicable.

B-3 Q: Where should pre-trade risk controls be placed with respect to smart order routers?

A: NI 23-103 does not specify where the mandatory pre-trade risk controls should be placed with respect to a smart order router and therefore it is up to the marketplace participant to determine the optimal location of its pre-trade risk controls. Under section 3(2) of the rule, orders must pass through automated pre-trade risk filters that are under the control of the marketplace participant before being entered on a marketplace. Therefore, if orders do not pass through automated controls that have been

set by the marketplace participant prior to entry to a smart order router, the automated controls would have to be placed at the smart order router level.

We also note that under subsection 5(1) of NI 23-103, a marketplace participant must take all reasonable steps to ensure that the use of an automated order system, including a smart order router, by itself or any client, does not interfere with fair and orderly markets. Therefore, a marketplace participant must have a way to monitor if a smart order router used by itself or any client malfunctions and erroneously sends orders to a marketplace.

B-4 Q: If a client is a DEA client and also sends orders to trading desks of the same firm, does the marketplace participant need to enforce an aggregated pre-trade capital limit on all of its client's trading with the firm, whether by DEA, telephone or orders sent to a sales trader?

A: If a marketplace participant does not enforce a pre-trade capital limit aggregated in real-time on all of its client's trading with the firm, a marketplace participant should establish separate limits for the various trading channels (both electronic and non-electronic) the DEA client uses at the firm. We emphasize that these limits need to be established in light of the marketplace participant's total financial exposure that can result from its client's order flow. A marketplace participant must first have a good understanding of its total exposure with respect to a specific client and then set pre-trade capital limits for each trading channel accordingly. The limits do not need to be electronically linked, but do need to consider the total exposure the marketplace participant faces with respect to its client.

B-5 Q: Is it acceptable for a marketplace participant to place separate pre-trade limits on each electronic marketplace access channel used by a client and continue to assess the aggregate risk posed by that client on a post-trade basis?

A: Yes. Pre-trade credit and capital limits may be applied to different electronic marketplace access channels separately but need to be determined in the aggregate as discussed in the answer to question B-4. We emphasize that it is important when setting limits in this manner that the limits be established in order to manage the total financial exposure of the marketplace participant that might result from its client.

B-6 Q: Must a marketplace participant's pre-trade risk controls take into account the threshold limits applicable to marketplaces established under section 8 of NI 23-103?

A: IIROC is currently consulting industry participants regarding the manner and levels at which the marketplace thresholds should be set. We note that the obligation in section 8 of NI 23-103 to not execute orders that exceed the price and volume thresholds as set by a regulation services provider or a marketplace that directly monitors the conduct of its participants rests with the marketplace, not the marketplace participant. Therefore, a marketplace participant is not obligated under NI 23-103 to specifically prevent sending orders that exceed a set marketplace threshold.[1]

B-7 Q: Are pre-determined capital or credit thresholds to be based on: (i) all outstanding open orders in the marketplace, (ii) all orders staged to go out to the marketplace, open on the marketplace, and executed or (iii) executed orders only?

A: Guidance regarding the setting of pre-determined credit or capital thresholds is found in subsection 3(5) of the CP. Specifically, the CP notes that pre-determined credit or capital thresholds may be set based on different criteria, such as per order, per trade account, trading strategies or using a combination of these factors. The CP also states that the marketplace participant may also consider measuring compliance with set credit or capital thresholds on the basis of orders entered rather than executions obtained. In general, it is up to the marketplace participant to determine the best method as to how to set the pre-determined capital or credit threshold in order to manage the risks associated with marketplace access or providing clients with access to a marketplace. Regardless of how the marketplace participant measures compliance with its thresholds, the marketplace participant should consider whether to take into account the existence of executed but unsettled trades, including those from previous days. We expect that this consideration would be driven by the marketplace participant's assessment of its business model's risks.

B-8 Q: Please clarify what aggregate margin and capital limits would be required.

A: We are of the view that a one-size-fits-all approach with respect to limits for capital thresholds would not best serve our markets and therefore there are no specific capital limits that are mandated under NI 23-103. The rule uses a principles based

[1] However, if the trading of the marketplace participant is subject to the Universal Market Integrity Rules, IIROC will expect that the parameters be set to prevent an order exceeding the marketplace thresholds applicable to the marketplace on which the order is intended to be entered to the extent that such marketplace thresholds are publicly disclosed and readily ascertainable. See IIROC Notice 12-0364 - Rules Notice – Guidance Note – UMIR – *Guidance Respecting Electronic Trading* (December 7, 2012). At this time, IIROC has not established guidance on acceptable marketplace thresholds.

approach that provides a marketplace participant with flexibility in setting limits that are appropriate to its business model and risk tolerance. This approach is also in line with current global standards.

B-9 Q: Is a marketplace participant required to set risk controls to avoid price movements that trigger the single stock circuit breakers (i.e. reject orders that may impact price by greater than 10%)?

A: No. NI 23-103 does not require a marketplace participant to set risk controls that would prevent price movements that trigger the single stock circuit breakers; however, this would not preclude a marketplace participant from doing so if it thought important to manage its risks associated with marketplace access or providing clients with access to a marketplace.[2]

B-10 Q: As noted in the introduction of the CP, the intent of NI 23-103 is to focus on the gate-keeping functions of the executing broker. It is also noted that the clearing broker bears some responsibility in managing its risks under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). Are executing and clearing brokers required to share client information for the purposes of managing the pre-trade risk settings under NI 23-103?

A: There is no requirement under NI 23-103 for executing and clearing brokers to share client information for the purposes of managing pre-trade risk thresholds; however, a clearing broker may choose to require this information before continuing to provide its clearing services in order to meet its requirement under NI 31-103 to manage the risks of its business in accordance with prudent business practices.

B-11 Q: Since each ATS is also registered as a dealer, will an ATS be responsible for assigning limits for its subscribers?

A: No. The marketplace participant is obligated under section 3(1) of NI 23-103 to establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage the risks associated with marketplace access or providing clients with access to a marketplace.

Third parties, including marketplaces, may provide the automated pre-trade risk controls required under section 3(2); however, as set out in section 3(5) of NI 23-103, a marketplace participant must directly and exclusively set and adjust the risk management and supervisory controls, policies and procedures, including those provided by third parties.

B-12 Q: May a third-party vendor set or adjust pre-trade risk limits at the specific written request of a marketplace participant?

A: Yes. A third-party vendor would be able to effect the setting or adjusting of a specific risk management or supervisory control, policy or procedure for a marketplace participant but only if the marketplace participant solely determines the specific threshold for each pre-trade risk control. We note that a third-party vendor may especially need to perform the actual setting or adjusting of risk limits in the case when there are connectivity issues or other outages between the vendor's system and the marketplace participant's system.

C. MONITORING OF TRADING ACTIVITY

C-1 Q: Does the requirement under subparagraph 3(3)(b)(iv) of NI 23-103 for compliance staff of a marketplace participant to receive immediate order and trade information refer to the compliance department of the firm or the business supervisors that have a compliance function?

A: The reference to "compliance staff" in subparagraph 3(3)(b)(iv) is meant to be interpreted broadly as the arrangements and set-up of compliance departments can widely vary among marketplace participants. The required order and trade information should go to the individual or group that has the main responsibility to review the compliance of those orders and trades with securities laws and IIROC requirements for the marketplace participant.

C-2 Q: What types of same-day reviews of order and trade information are required under NI 23-103 given that prescribed capital and other risk checks will be applied automatically in real time? Are there any specific criteria that should be reviewed same day?

[2] However, if the trading of the marketplace participant is subject to the Universal Market Integrity Rules, IIROC will expect that the parameters be set to prevent an order exceeding the limits publicly disclosed by IIROC for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR. See IIROC Notice 12-0364 – Rules Notice – Guidance Note – UMIR – *Guidance Respecting Electronic Trading* (December 7, 2012). For the limits on price movement before IIROC will consider regulatory intervention see IIROC Notice 12-0040 - Guidance Note – UMIR – *Guidance Respecting the Implementation of Single-Stock Circuit Breakers* (February 2, 2012) and IIROC Notice 12-0258 – Guidance Note – UMIR – *Guidance on Regulatory Intervention for the Variation or Cancellation of Trades* (August 20, 2012).

A: Order and trade information is to be reviewed regularly, in part to ensure that the automated pre-trade risk checks are functioning appropriately and also to identify any anomalous trading behaviour that cannot be identified merely through automated pre-trade risk controls. No specific criteria have been listed in NI 23-103 or the CP as to what must be reviewed on a same-day basis; rather, it is left up to the marketplace participant's discretion to determine what the relevant criteria should be and how often these criteria should be reviewed in order to prudently manage the risks of its business.

C-3 Q: In circumstances where introducing brokers know their clients best and set pre-trade risk thresholds for their clients, must a carrying broker also set pre-trade limits notwithstanding the introducing broker's pre-trade risk limits?

A: Section 4 of the CP explains that a participant dealer may, on a reasonable basis, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on the participant dealer's behalf by written contract and after a thorough assessment of the investment dealer's risk management or supervisory control, policy or procedure. However, the participant dealer that is the executing dealer must also have reasonable controls in place to manage the risks it incurs by executing orders for other dealers. While an executing dealer may not need to set the limits for specific risk management or supervisory controls, policies or procedures for the ultimate client because it has authorized the introducing broker to do so, the executing dealer will need to ensure it sets limits for the flow it receives from the introducing broker as a whole.

Authorizing an investment dealer to set or adjust a risk management or supervisory control, policy or procedure does not relieve the participant dealer of its obligations under section 3 of NI 23-103. We note that subsection 4(d) of NI 23-103 requires the participant dealer to regularly assess the adequacy and effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure by the investment dealer.

D. AUTOMATED ORDER SYSTEMS

D-1 Q: Section 5(1) of NI 23-103 provides that a marketplace participant must ensure that the use of an automated order system by any client does not interfere with fair and orderly markets. What does this entail? For example, does this require an average daily volume check on client orders since a large market order can freeze a symbol? Does this apply equally to equity as well as equity options and other asset classes?

A: The requirement for a marketplace participant to take all reasonable steps to ensure that the use of an automated order system by any client does not interfere with fair and orderly markets is an overarching principle that obliges a marketplace participant to monitor and manage the use of each automated order system by a client.[3] There is no requirement to conduct an average daily volume check under NI 23-103, but if a marketplace participant is of the view that this would be a useful tool to manage its risks and help ensure that the use of an automated order system by a client does not interfere with the fair and orderly functioning of the markets, the marketplace participant may choose to institute such a check.

The requirement under section 5(1) of the rule applies to each instance where a client uses an automated order system to trade a security, as that term is defined in each CSA jurisdiction. For the scope of NI 23-103, see our response to question A-1.

D-2 Q: Subsection 5(3)(b) of NI 23-103 requires that every automated order system used by a marketplace participant or any client is tested in accordance with prudent business practices. Can a marketplace participant rely on a third-party vendor for the testing of these systems and applications?

A: Section 5 of the CP outlines that a participating dealer does not necessarily have to conduct tests on each automated order system used by its clients itself but must be satisfied that these automated order systems have been appropriately tested.

A marketplace participant should consider how it documents the testing that has been conducted on an automated order system used by itself or any client.

D-3 Q: Subparagraph 5(3)(c)(ii) of NI 23-103 requires a marketplace participant to have controls in place to immediately prevent orders generated by an automated order system used by the marketplace participant or any client from reaching a marketplace. Would a reasonable process involving human interaction be considered to "immediately" stop orders from an automated order system from being entered on a market? For example, would a process where a marketplace participant calls a vendor or marketplace in order to terminate access for a third-party smart order router be considered to meet that standard?

[3] If the trading of the marketplace participant is subject to the Universal Market Integrity Rules, Rule 10.9 of UMIR allows IIROC to delay, halt or suspend trading in a security at any time and for such period of time as IIROC may consider appropriate in the interest of a fair and orderly market. IIROC has issued guidance on when trading activity may be considered to be interfering with a "fair and orderly market". In particular, see IIROC Notice 12-0040 – Guidance Notice – UMIR – *Guidance Respecting the Implementation of Single-Stock Circuit Breakers* (February 2, 2012) and IIROC Notice 12-0258 – Guidance Note – UMIR – *Guidance on Regulatory Intervention for the Variation or Cancellation of Trades* (August 20, 2012).

A: The overarching requirement of this provision is that a marketplace participant's risk management controls, policies and procedures are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace. It is therefore up to the marketplace participant, based on its business model, the type of order flow that it handles, and the speed at which a malfunctioning automated order system can harm market integrity, to determine whether an automated function or manual process to stop orders from reaching a marketplace is appropriate.

Implementation of NI 23-103

Further to Multilateral CSA Staff Notice 23-313 *Blanket Orders Exempting Marketplace Participant from Certain Provisions of National Instrument 23-103 Electronic Trading and Related OSC Staff Position*[4], we note that New Brunswick has also issued a blanket order, effective March 1, 2013, that provides temporary relief from paragraph 3(3)(a) of NI 23-103 to marketplace participants that are testing the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013. The blanket order grants relief until May 31, 2013.

If you have any questions about these FAQs or NI 23-103 generally, please contact any of the following CSA staff:

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December 20, 2012.

[4] (2012) 35 OSCB 11134

1.2 Notices of Hearing

1.2.1 Systematech Solutions Inc. et al. – ss. 127, 127.1

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

AND

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

AMENDED NOTICE OF HEARING
(Sections 127 and 127.1)

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

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

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

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

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

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

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

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

(e) the Respondents be reprimanded;

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

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

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

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

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

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

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

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

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

DATED at Toronto this 13th day of December, 2012

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 Investor Alert – Emerging World Pharma, Inc.

FOR IMMEDIATE RELEASE
December 12, 2012

INVESTOR ALERT – EMERGING WORLD PHARMA, INC.

TORONTO – The Ontario Securities Commission (OSC) is warning Ontario investors to exercise caution in any dealings with representatives of Emerging World Pharma, Inc. ("Emerging World").

While Emerging World represents itself to be headquartered in Sunyani, Ghana, its officers and director are residents of Ontario and its shares were traded on the over-the-counter market in the United States.

On December 6, 2012, the U.S. Securities and Exchange Commission (SEC) suspended trading in the shares of Emerging World , noting that "*questions have arisen concerning the adequacy and accuracy of press releases and other public statements concerning Emerging World's business operation and financial condition.*"

Trading in the shares of Emerging World has been suspended for a period of 10 days, ending at 11:59 p.m. EST on December 19, 2012.

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

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

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1.3.2 OSC Announces Registrant Advisory Committee Members

FOR IMMEDIATE RELEASE
December 13, 2012

OSC ANNOUNCES REGISTRANT ADVISORY COMMITTEE MEMBERS

TORONTO – The Ontario Securities Commission (OSC) announced today the membership of its new Registrant Advisory Committee (RAC), which will serve as a forum to discuss issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including registration and compliance related matters.

The Committee will also play a consultative role by providing feedback to the OSC on the development and implementation of policy and rule making initiatives that promote investor protection and fair and efficient capital markets.

Debra Foubert, who joined the OSC as Director of the Compliance and Registrant Regulation Branch in October 2012, will lead as Chair of the RAC.

The RAC is composed of members representing the different registration categories and business models overseen by the OSC. The Committee will meet approximately four to six times per year, in addition to possible ad hoc meetings as required, with members serving two-year terms. The committee members are:

Matthew Brady	Mutual Fund Dealers Association of Canada
Julie Cordeiro	Portfolio Management Association of Canada
Kevin Cohen	AUM Law Professional Corporation
Matthew Campbell	IA Clarington Investments Inc.
Rossana Di Lieto	Investment Industry Regulatory Organization of Canada
Stephen Jakob	Osprey Capital Partners Inc.
Peter Moulson	CIBC Asset Management Inc.
Ian Pember	Hillsdale Investment Management Inc.
Geoffrey G. Ritchie	BMO Asset Management Inc. and Exempt Market Dealers Association of Canada
Prema K. R. Thiele	Borden Ladner Gervais LLP
Mary D. Throop	Summerhill Capital Management Inc.

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1.3.3 OSC Seeks Comment on Review of Capital-Raising Prospectus Exemptions

FOR IMMEDIATE RELEASE
December 14, 2012

OSC SEEKS COMMENT ON REVIEW
OF CAPITAL-RAISING PROSPECTUS EXEMPTIONS

TORONTO – The Ontario Securities Commission (OSC) today published Consultation Paper 45-710 *Considerations For New Capital Raising Prospectus Exemptions*, which discusses concepts for new prospectus exemptions in Ontario. The objective is to facilitate capital raising in the exempt market, while continuing to deliver strong investor protection.

The Consultation Paper explores and describes four concept ideas on which the OSC is seeking feedback:

- an exemption to allow crowdfunding subject to limits for issuers and retail investors;
- an offering memorandum exemption;
- an exemption based on an investor's investment knowledge; and
- an exemption based on an investor receiving advice from a registrant.

"Given the importance of the exempt market to Ontario, this Consultation Paper is a vital step in soliciting meaningful feedback from stakeholders on concept ideas to appropriately address exempt market capital raising concerns and continue to deliver strong investor protection," said Howard Wetston, Q.C., Chair and CEO of the OSC.

In November 2011, the Canadian Securities Administrators (CSA) initiated a review of the accredited investor and minimum amount exemptions. In June 2012, the OSC expanded on the CSA's review, broadening the scope to consider whether new prospectus exemptions should be introduced that may assist capital raising for business enterprises, while protecting investors. The OSC continues to examine the accredited investor and minimum amount exemptions, along with the concept ideas presented in today's Consultation Paper.

During the comment period, the OSC plans to hold public consultation sessions, conduct investor research and solicit feedback from interested stakeholders. The comment period for this Consultation Paper closes February 12, 2013.

OSC Consultation Paper 45-710 published today can be found on the OSC's website at www.osc.gov.on.ca. All feedback will be considered and will inform the OSC's next steps.

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1.4.1 Notices from the Office of the Secretary

1.4.1 Systematech Solutions Inc. et al.

FOR IMMEDIATE RELEASE
December 13, 2012

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

AND

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

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing in the above named matter pursuant to Sections 127 and 127.1.

A copy of the Amended Notice of Hearing dated December 13, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.2 Global RESP Corporation and Global Growth Assets Inc.

FOR IMMEDIATE RELEASE
December 14, 2012

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

AND

IN THE MATTER OF
GLOBAL RESP CORPORATION AND
GLOBAL GROWTH ASSETS INC.

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to section 127 of the Act the hearing is adjourned to January 14, 2013 at 9:00 a.m.

A copy of the Order dated December 13, 2012 is available at **www.osc.gov.on.ca**.

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1.4.3 Systematech Solutions Inc. et al.

FOR IMMEDIATE RELEASE
December 14, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order is extended until the conclusion of the proceeding, including the sanctions hearing, if any; and a confidential pre-hearing conference shall take place on February 20, 2013 at 9:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties.

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

A copy of the Order dated December 11, 2012 is available at **www.osc.gov.on.ca**.

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1.4.4 Frederick Johnathon Nielsen, previously known as Frederick John Gilliland

FOR IMMEDIATE RELEASE
December 17, 2012

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

AND

IN THE MATTER OF
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

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

(a) Staff's application to proceed by way of written hearing is granted;

(b) Staff's material in respect of the hearing shall be served and filed no later than December 17, 2012; and

(c) Nielsen's responding materials, if any, shall be served and filed no later than January 15, 2013.

A copy of the Order dated December 14, 2012 is available at **www.osc.gov.on.ca**.

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1.4.5 Eda Marie Agueci et al.

FOR IMMEDIATE RELEASE
December 17, 2012

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued its Reasons and Decisions On Disclosure and Confidentiality Motions following the hearing held on November 13, 2012 in the above named matter.

A copy of the Reasons and Decisions On Disclosure and Confidentiality Motions dated December 14, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 New Found Freedom Financial et al.

FOR IMMEDIATE RELEASE
December 18, 2012

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

AND

IN THE MATTER OF
NEW FOUND FREEDOM FINANCIAL, RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY, DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING

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

The Commission also issued an Order which provides that the hearing to determine sanctions and costs will be held at the office of ASAP Reporting Services Inc. at the Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, commencing on March 13, 2013 at 10:00 a.m. Written submissions to be filed with the Secretary of the Commission no later than (5) business days of the scheduled sanctions hearing.

A copy of the Reasons and Decision and the Order dated December 17, 2012 are available at **www.osc.gov.on.ca**.

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1.4.7 Merax Resource Management Ltd. et al.

FOR IMMEDIATE RELEASE
December 18, 2012

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

AND

IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.,
carrying on business as CROWN CAPITAL PARTNERS,
RICHARD MELLON and ALEX ELIN

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated December 17, 2012 are available at **www.osc.gov.on.ca**.

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1.4.8 Peter Sbaraglia

FOR IMMEDIATE RELEASE
December 18, 2012

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

AND

IN THE MATTER OF
PETER SBARAGLIA

TORONTO – The Commission issued an Order in the above named matter which provides that a hearing will be held on January 9, 2013 at 10:00 a.m. for the purpose of considering any motion to review the issuance of the summonses in accordance with subrule 4.7(2) of the Rules.

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 POCML 1 Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – decision granting relief from requirement to file financial statements for mining claims – mining claim dormant – mining claim to be acquired in an arm's length transaction – no other assets or liabilities with mining claim acquired – historical financial statements for mining claims not previously prepared – relief granted from subsection 4.10(2)(a)(ii) of National Instrument 51-102 – Continuous Disclosure Obligations, subject to condition that filing statement is filed on SEDAR.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 4.10(2)(a).

October 11, 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
POCML 1 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 an exemption from the requirements of section 4.10(2)(a) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and Item 5.2 of Form 51-102F3 *Material Change Report* to file financial statements for the Property (defined below) (the **Requested Relief**).

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

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

(ii) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of Alberta and British Columbia (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

1. The Filer was incorporated on March 15, 2011. The Filer is a capital pool company whose common shares (**Shares**) are listed on the TSX Venture Exchange (**TSXV**). As a result, the principal business of the Filer to date has been to identify and evaluate businesses and assets with a view to completing a Qualifying Transaction, as that term is defined in Policy 2.4 of the TSXV Corporate Finance Manual.

2. The head office of the Filer is located at 130 King Street West, Suite 2210, Toronto, Ontario.

3. The Filer is a reporting issuer under the Legislation in each of Ontario, Alberta and British Columbia.

4. The Filer is not in default of securities legislation in any Jurisdiction.

– Mason Graphite

5. Mason Graphite Corp. (**Mason Graphite**) was incorporated on March 14, 2012. Mason Graphite is a privately held company and is not a reporting issuer in any jurisdiction in Canada.

6. On April 5, 2012, Mason Graphite acquired the claims that comprise the Lac Gueret property (the **Property**) from Quinto Mining Corporation (**Quinto**), a subsidiary of Cliffs Natural Resources Inc. (**Cliffs**), for aggregate consideration of $15,000,000 (to be paid in instalments upon the occurrence of certain events) and the issuance of 2,041,571 warrants of Mason Graphite to Quinto. Mason Graphite's acquisition of the Property from Quinto was conducted at arm's length.

7. The Property is Mason Graphite's sole asset. Mason Graphite did not acquire any entity that held claims, but rather acquired the claims directly.

– Qualifying Transaction

8. On July 16, 2012, the Filer announced that it had entered into an amalgamation agreement (the **Amalgamation Agreement**) with its wholly-owned subsidiary, 2331417 Ontario Inc. and Mason Graphite. Pursuant to the Amalgamation Agreement, Mason Graphite will amalgamate with 2331417 Ontario Inc. and all of the outstanding common shares of Mason Graphite will be exchanged for Shares on a one for one basis (the **Transaction**). As a result, 56,896,645 Shares will be issued by the Filer to former Mason Graphite shareholders, on a non-diluted basis, and the Transaction will be treated as a "reverse takeover" of the Filer.

9. The Transaction will constitute the Filer's "qualifying transaction" for the purposes of TSXV Policy 2.4. The Transaction is an arm's length transaction, and as a result the Filer will prepare a filing statement (the **Filing Statement**) in accordance with Form 3B2 of the TSXV Corporate Finance Manual.

10. The Filing Statement will include audited financial statements for the Filer for the period ending March 31, 2011 and for the year ended March 31, 2012, and unaudited comparative interim financial report for the Filer for the interim period ended June 30, 2012. In addition, the Filing Statement will also include audited financial statements for Mason Graphite for the period from its incorporation to May 31, 2012, which statements will reflect the acquisition of the Property by Mason Graphite.

11. The Filing Statement will not contain financial statements for the Property as such financial statements have not historically been prepared for the Property. However, the Filing Statement will contain disclosure with respect to the recommended work program on the Property together with an estimate of corporate and administrative expenses.

12. The Filing Statement will be filed on SEDAR, together with a technical report for the Property prepared in compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**).

13. Subsection 4.10(2)(a) of NI 51-102 provides that if a reporting issuer completes a reverse takeover, it must file the following financial statements for the reverse takeover acquirer, unless the financial statements have already been filed:

    (i) financial statements for all annual and interim periods ending before the date of the reverse takeover and after the date of the financial statements included in an information circular or similar document, or under Item 5.2 of the Form 51-102F3 *Material Change Report*, prepared in connection with the transaction; or

    (ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a

> prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction. [emphasis added].

14. Item 5.2 of Form 51-102F3 *Material Change Report* requires a material change report filed in respect of a closing of the Transaction to include, for each entity that results from the Transaction, disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use.

15. The financial statement requirements for a prospectus are found in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**). Item 32 of Form 41-101F1 requires a prospectus of an issuer to include financial statements of a business acquired by an issuer within three years before the date of the prospectus if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business acquired. Paragraph 5.3(1) of the Companion Policy to NI 41-101 notes that both a reverse takeover and a qualifying transaction for a Capital Pool Company are examples of when a reasonable investor might regard the primary business of the issuer to be the acquired business.

16. Paragraph 8.1(4) of the Companion Policy to NI 51-102 provides guidance regarding the meaning of the term "business". It notes that the term "business" should be evaluated in light of the facts and circumstances involved:

> *We generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:*
>
> *(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and*
>
> *(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.*

17. Accordingly, absent the Requested Relief, the Filer will be required to file financial statements for the Property.

18. Mason Graphite acquired the Property through an arm's length transaction. Neither Cliffs nor Consolidated Thompson Iron Mines Limited (**Consolidated Thompson**), the previous owner of the Property, prepared financial statements for the Property. In addition, Cliffs did not attribute any value to the Property in its financial statements when it acquired the Property through its acquisition of Consolidated Thompson.

19. Mason Graphite acquired only an interest in the mineral claims comprising the Property, and did not assume any corporate entity, facilities, employees, machinery or other tangible or intangible assets, nor assume any liabilities of the Property. Furthermore, the acquisition of the Property by Mason Graphite was not accounted for as a continuity of interests.

20. The Property does not currently generate any revenue, and is not expected to generate revenue for some time. The Property constitutes an exploration property that does not have proven or probable reserves. It is not an operating mine. Furthermore, since 2006, no exploration or other activities have been carried on by Cliffs or Consolidated Thompson with respect to the Property that would be relevant for an income statement or a cash flow statement. As a result, the Filer submits that the Property should be considered as "dormant".

Decision

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

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

(a) prepared in accordance with paragraphs 10 and 11, and

(b) filed by the Filer on SEDAR within the time period prescribed by section 4.10(2)(b) of NI 51-102 following acceptance by the TSXV.

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

2.1.2 Artis Real Estate Investment Trust and Canaccord Genuity Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into equity distribution agreement to make "at the market" (ATM) distributions of trust units to investors through the facilities of the Toronto Stock Exchange (TSX) – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreement on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – standard certification by issuer does not work in an ATM distribution since no other supplement to be filed in connection with ATM distribution – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71(1), 71(2), 133, 147.

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, Part 8; and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, Part 9; and s. 1.1 of Appendix A.

November 29, 2012

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

AND

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

AND

IN THE MATTER OF
ARTIS REAL ESTATE INVESTMENT TRUST
(the "Issuer")

AND

CANACCORD GENUITY CORP.
(the "Agent" and, together with the Issuer, the "Filers")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions ("**Decision Makers**") has received an application (the "**Application**") from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for the following exemptive relief (the "**Exemptive Relief**"):

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the "**Delivery Requirement**") does not apply to the Agent or any other Toronto Stock Exchange ("**TSX**") participating organization or other marketplace participant acting as selling agent for the Agent (each such other organization or other marketplace participant, a "**Selling Agent**") in connection with any at-the-market

distributions ("**ATM Distributions**") within the meaning of National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**") to be made by the Issuer pursuant to an amended and restated equity distribution agreement to be dated as of September 18, 2012 (the "**Equity Distribution Agreement**") and to be entered into by the Issuer and the Agent; and

(b) that the requirements that (i) a forward-looking issuer certificate included in a prospectus supplement be in the form specified in section 2.1 of Appendix A to NI 44-102 and (ii) a statement concerning purchasers' statutory rights of withdrawal and remedies for rescission or damages be included in a short form prospectus in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus* (such prescribed statement, the "**Statement of Purchasers' Rights**") (collectively, the "**Form Requirements**") do not apply to the prospectus supplement of the Issuer to be filed in respect of the sale of voting participating trust units ("**Units**") of the Issuer pursuant to ATM Distributions under the Equity Distribution Agreement (the "**Prospectus Supplement**"), provided that the alternative form of certificate and disclosure regarding a purchaser's statutory rights described below are included in the Prospectus Supplement.

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

(a) The Manitoba Securities Commission is the principal regulator for this application,

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

(c) the decision is the decision of the principal regulator and evidences the decision of the Ontario Securities Commission.

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.

Representations

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

The Issuer

1. The Issuer is an unincorporated real estate investment trust constituted under and governed by the laws of the Province of Manitoba. The head office of the Issuer is located in Winnipeg, Manitoba.

2. The Issuer is currently a reporting issuer or the equivalent under the securities legislation of each of the provinces and territories of Canada and is in compliance in all material respects with the applicable requirements of such legislation.

3. The Units, two series of convertible debentures of the Issuer and two series of preferred trust units of the Issuer are listed on the TSX.

4. The Issuer has previously filed and received a receipt under the Legislation for a short form base shelf prospectus dated June 15, 2012 providing for the distribution from time to time of Units, preferred trust units, debt securities, warrants and subscription receipts in an aggregate initial offering price of up to $2,000,000,000 (the "**Shelf Prospectus**"). The Shelf Prospectus constitutes an "unallocated shelf" within the meaning of Part 3 of NI 44-102.

5. The Shelf Prospectus contains a forward-looking issuer certificate of the Issuer in the form prescribed by method 1 as set forth in section 1.1 of Appendix A to NI 44-102. The Shelf Prospectus also contains a Statement of Purchasers' Rights in substantially the form prescribed in Item 20 of Form 44-101F1.

The Agent

6. The Agent is a corporation continued under the laws of the Province of Ontario with its head office in Vancouver, British Columbia.

7. The Agent is registered as an investment dealer under the securities legislation of each of the provinces and territories of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX.

Renewal of Previous ATM Distribution Arrangement

8. The Filers entered into an equity distribution agreement dated September 17, 2010 providing for the periodic sale of Units by the Issuer through the Agent, as agent, pursuant to ATM Distributions under the shelf procedures prescribed by Part 9 of NI 44-102. The Issuer filed a prospectus supplement dated September 17, 2010 qualifying the periodic sale of Units by the Issuer through the Agent, as agent, pursuant to ATM Distributions made pursuant to such equity distribution agreement. No sales of Units were made pursuant to such equity distribution agreement. The Issuer and the Agent applied for and obtained a decision document dated September 10, 2010 issued by The Manitoba Securities Commission which provided for the same exemptive relief requested herein with respect to ATM Distributions made pursuant to the equity distribution agreement.

9. The Filers have agreed to enter into the Equity Distribution Agreement and to make it effective on September 18, 2012, which is the day immediately prior to the date that the original equity distribution agreement was intended to expire in accordance with its terms. The Issuer's previous short form base shelf prospectus dated August 19, 2010 and the previous exemptive relief granted by The Manitoba Securities Commission both expired on September 19, 2012. The Equity Distribution Agreement amends and restates the original equity distribution agreement dated September 17, 2010 to continue the Issuer's ATM Distribution program.

10. Prior to making any ATM Distributions, the Issuer will file the Prospectus Supplement to qualify the sale of Units under the Equity Distribution Agreement in each of the provinces and territories of Canada. The Prospectus Supplement will describe the Equity Distribution Agreement and otherwise supplement the disclosure in the Shelf Prospectus.

11. Upon obtaining the relief requested herein, the Issuer will file the Prospectus Supplement and the Equity Distribution Agreement on SEDAR and issue a news release to announce the same. The news release will indicate that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR, and will specify where and how purchasers may obtain copies. A copy of the news release will also be posted on the Issuer's website. The news release will serve as the news release contemplated by section 3.2 of NI 44-102 for an expected distribution of equity securities under an unallocated shelf.

12. The Equity Distribution Agreement will limit the number of Units that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Units calculated in accordance with section 9.2 of NI 44-102.

13. The Issuer will sell Units in Canada through methods constituting ATM Distributions, including sales made on the TSX or any other recognized Canadian "marketplace" within the meaning of National Instrument 21-101 – *Marketplace Operation* upon which the Units are listed or quoted or otherwise traded (a "**Marketplace**"), through the Agent, as agent, directly or through a Selling Agent.

14. The Agent will act as the sole agent on behalf of the Issuer in connection with the sale of Units on the TSX or any other Marketplace pursuant to the Equity Distribution Agreement, and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales. The Agent will sign an agent's certificate in the Prospectus Supplement.

15. The Agent will effect ATM Distributions on the TSX or any other Marketplace, either itself or through a Selling Agent. If sales are effected through a Selling Agent, the Selling Agent will be paid a customary seller's commission for effecting the trades on behalf of the Agent. A purchaser's rights and remedies under the Legislation against the Agent, as agent of an ATM Distribution through the TSX or any other Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.

16. The number of Units sold on the TSX or any other Marketplace pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on the TSX and any other Marketplace on that day.

17. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the "**Prospectus**"), contains full, true and plain disclosure of all material facts relating to the Issuer and the Units being distributed. The Issuer will therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Units.

18. If, after the Issuer delivers a notice to the Agent directing the Agent to sell Units on the Issuer's behalf pursuant to the Equity Distribution Agreement (a "**Sell Notice**"), the sale of the Units specified in the Sell Notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer will be required to suspend sales under the Equity Distribution Agreement until either (i) it has filed a material change report or amended the

Prospectus, or (ii) circumstances have changed so that the sales would no longer constitute a material fact or material change.

19. In determining whether the sale of the number of Units specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Units proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Units that the number of Units proposed to be sold pursuant to the Sell Notice represents, (iii) trading volume and volatility of the Units, (iv) recent developments in the business, affairs and capital structure of the Issuer, and (v) prevailing market conditions generally.

20. The Agent will monitor closely the market's reaction to trades made on the TSX or other Marketplace pursuant to an ATM Distribution in order to evaluate the likely market impact of future trades. The Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices. If the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, the Agent will recommend against effecting the trade at that time. It is in the interest of both the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution.

21. The agent's certificate to be signed by the Agent and included in the Prospectus Supplement will be in the form specified in section 2.2 of Appendix B to NI 44-102.

Disclosure of Units Sold

22. For each month during which Units are distributed on the TSX or any other Marketplace by the Issuer pursuant to ATM Distributions under the Prospectus, the Issuer will file on SEDAR a report disclosing the number and average price of Units so distributed during that month, as well as total gross proceeds, commission and net proceeds, within seven calendar days after the end of such month.

23. The Issuer will also disclose the number and average price of Units sold pursuant to ATM Distributions under the Prospectus, as well as total gross proceeds, commission and net proceeds, in the ordinary course in its annual and interim financial statements and management discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

24. Pursuant to the Delivery Requirement, a dealer effecting a trade of securities under a prospectus-based offering is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

25. However, the delivery of a prospectus is not practicable in the circumstances of an ATM Distribution through the TSX or any other Marketplace, as neither the Agent nor any Selling Agent effecting the trade will know the purchaser's identity.

26. Although purchasers under an ATM Distribution would not physically receive a printed Prospectus, the Prospectus (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR. Moreover, the Issuer will issue a news release that specifies where and how copies of the Prospectus can be obtained.

27. The liability of an issuer or an agent (and others) for misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Delivery Requirement, as a purchaser of the securities offered by a prospectus during the period of distribution has a right of action for damages or rescission if there is a misrepresentation in the prospectus, without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right

28. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if the dealer of the securities receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the "**Withdrawal Right**").

29. The Withdrawal Right is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Right of Action for Non-Delivery

30. Pursuant to the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Delivery Requirement (the "**Right of Action for Non-Delivery**").

31. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Prospectus Form Requirements

32. Exemptive relief from the Form Requirements is required with respect to the Issuer's forward looking certificate in the Prospectus Supplement to reflect the fact that no pricing or other supplement to the Prospectus will be filed subsequent to the Prospectus Supplement. Accordingly, the Issuer will file the Prospectus Supplement with the following forward-looking issuer certificate which will supersede and replace, solely with respect to ATM Distributions contemplated by the Prospectus Supplement, the forward-looking issuer certificate contained in the Shelf Prospectus:

> The short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus, as required by the securities legislation of each of the provinces and territories of Canada.

33. Exemptive relief from the Form Requirements is required in order to allow the Prospectus Supplement to accurately reflect the relief granted from the Delivery Requirement. Accordingly, the Issuer will include the following language in the Prospectus Supplement in replacement of the language prescribed by the Form Requirements:

> Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Units under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Units and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment will not be delivered as permitted under a decision dated ●, 2012 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.
>
> Securities legislation in certain of the provinces and territories of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Units under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the Units purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery and the decision referred to above.
>
> Purchasers should refer to the applicable provisions of the securities legislation and the decision referred to above for the particulars of their rights or consult with a legal advisor.

34. The modified disclosure of purchasers' rights set forth in paragraph 33 above will be explicitly disclosed in the Prospectus Supplement and, solely as regards to ATM Distributions contemplated by the Prospectus Supplement, supersede and replace the statement of purchasers' rights contained in the Shelf Prospectus.

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 is granted provided that:

(a) as it relates to the Delivery Requirement, the representations made in sections 11, 13, 14, 15, 16, 17, 18 and 20 are complied with;

(b) as it relates to the Form Requirements, the disclosure described in sections 22, 32, 33 and 34 is made; and

(c) this decision will terminate 25 months after the issuance of a receipt for the Shelf Prospectus under the Legislation.

"Chris Besko"
Deputy Director Legal
The Manitoba Securities Commission

2.1.3 Inter-Citic Minerals Inc. – s. 1(10)

Headnote

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

Ontario Statutes

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

December 12, 2012

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attn: Derrick Guo

Dear Sirs/Mesdames:

Re: Inter-Citic Minerals Inc. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta and Manitoba (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.4 The Catalyst Capital Group Inc. and Callidus Capital Management Inc. – s. 15.1 of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

Headnote

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 Filers are affiliated entities and the individual will have sufficient time to adequately serve both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

Applicable Legislative Provisions

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

December 13, 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
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS
(NI 31-103)

AND

IN THE MATTER OF
THE CATALYST CAPITAL GROUP INC. (Catalyst),
ND CALLIDUS CAPITAL MANAGEMENT INC.
(Callidus) (collectively, the Filers)

DECISION
(Section 15.1 of NI 31-103)

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filers for a decision pursuant to section 15.1 of NI 31-103 (the **Legislation**) to exempt Mr. Newton Glassman from the requirements of section 4.1(1)(b) of NI 31-103 to permit him to be dually registered as an advising representative of Catalyst and as a dealing representative of Callidus (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 Alberta, British Columbia and Québec (collectively with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. Catalyst is currently registered as a portfolio manager under the *Securities Act* (Ontario) (the **Act**).

2. Callidus has applied to become registered as an investment fund manager and exempt market dealer under the Act and as an exempt market dealer under securities legislation in Alberta, British Columbia and Québec.

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

4. Mr. Glassman is currently registered as the ultimate designated person (**UDP**), the chief compliance officer (**CCO**) and an advising representative of Catalyst in Ontario and is a permitted individual of Catalyst.

5. Mr. Glassman has applied to become registered as the UDP, CCO and a dealing representative of Callidus in Ontario, Alberta, British Columbia and Québec and to become approved as a permitted individual of Callidus.

6. Callidus and Catalyst are affiliates as Mr. Glassman is the sole indirect shareholder of the voting securities of Catalyst and Callidus is ultimately controlled by Mr. Glassman.

7. Catalyst's business primarily consists of providing advice to and offering various private equity funds, which are not investment funds (as such term is defined in the Act) (the **Non-Investment Funds**), to qualified investors.

8. Callidus's business will primarily consist of offering one or more investment funds (as such term is defined in the Act) (the **Investment Funds**) to qualified investors that will give such investors an opportunity to indirectly participate in a portfolio of asset-backed loans. The current intention is to limit the activities of Callidus to such products, which is a market segment that is not serviced by Catalyst.

9. As the business focus of Catalyst and Callidus is different, the intent of Mr. Glassman's dual registration is to allow him to provide investment advice to the Non-Investment Funds that Catalyst offers to qualified investors, and at the same time to be able to sell the Investment Funds that Callidus will offer to other qualified investors.

10. Mr. Glassman has the necessary proficiency requirements to be registered in his various capacities at Catalyst and Callidus, and has sufficient time to adequately perform his duties and meet his obligations for each company.

11. As Catalyst and Callidus are affiliates, the dual registration of Mr. Glassman is not expected to give rise to any conflicts of interest.

12. Although no conflicts of interest are expected to occur, Catalyst and Callidus each have policies and procedures in place to address any potential conflicts of interest that may arise in the future as a result of Mr. Glassman's dual registration, and believe that they will be able to adequately deal with any such conflicts of interest at that time.

13. The dual registration of Mr. Glassman will be appropriately disclosed to the clients of both Catalyst and Callidus.

14. In the absence of the Exemption Sought, Mr. Glassman would be prohibited under paragraph 4.1(1)(b) of NI 31-103 from acting as an advising representative of Catalyst while also acting as a dealing representative of Callidus.

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.

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.5 Bridgewater Associates, LP

Headnote

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

Applicable Legislative Provisions

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

December 14, 2012

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

AND

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

AND

IN THE MATTER OF
BRIDGEWATER ASSOCIATES, LP
(the Filer)

DECISION

Background

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

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in each of British Columbia and Québec (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a limited partnership established under the laws of the State of Delaware in the U.S. with its head office located in Westport, Connecticut.

2. The Filer is registered as an adviser in the category of portfolio manager in each of the Jurisdictions and is not a reporting issuer in any Jurisdiction.

3. The Filer is engaged in advising in respect of the buying and selling of securities, primarily to institutional investors. The Filer is registered with the U.S. Securities and Exchange Commission (the **SEC**) as an investment adviser under the U.S. *Investment Advisers Act of 1940*, as amended (the **1940 Act**), a commodity trading adviser and commodity pool operator with the U.S. Commodity Futures Trading Commission. The Filer also provides financial services in Australia, and relies on an exemption from the requirement to hold an Australian financial services license under the Australian Financial Services licensing regime in respect of the financial services it provides. In Canada, the Filer is registered as an adviser in the category of portfolio manager in Ontario, British Columbia and Québec and as an adviser in the category of commodity trading manager in Ontario.

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

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

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

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

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

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

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

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

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

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

   (iii) the Filer would need to develop the necessary relationships with Canadian money market fund issuers;

   (iv) investment in U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada would be more costly than investment in U.S. money market mutual funds that are qualified for sale by prospectus in the U.S; and

(v) the Filer could be subject to cross-border tax issues if it were to invest in U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada as a U.S. entity.

9. The regulatory oversight and the quality of investments held by a money market mutual fund qualified for sale by prospectus in each of the U.S. and a province or territory of Canada is similar. In particular, Rule 2a-7 sets out requirements dealing with portfolio maturity, quality, diversification and liquidity, which are similar to requirements under National Instrument 81-102 Mutual Funds (NI 81-102).

Decision

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

The Decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted so long as:

(a) any money market mutual fund invested in by the Filer is qualified for sale by prospectus in the U.S. as a result of being a registered investment company under the Investment Company Act, and complies with Rule 2a-7;

(b) the requirements for money market mutual funds under Rule 2a-7 or any successor rule or legislation are similar to the requirements for Canadian money market funds qualified for sale by prospectus under NI 81-102 or any successor rule or legislation; and

(c) the Filer is registered with the SEC as an investment adviser under the 1940 Act.

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.6 TD Securities Inc. and TD Waterhouse Canada Inc.

Headnote

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 Filers are affiliated entities and have valid business reasons for the individuals to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition for current and future dealing representatives.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

December 17, 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
TD SECURITIES INC. (TDSI)

AND

TD WATERHOUSE CANADA INC.
(TD Waterhouse, and, together with TDSI, 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**) for relief, pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), from the requirement in paragraph 4.1(1)(b) of NI 31-103 to permit current and future individuals (collectively, the **Representatives**) to each be registered as both a dealing representative of TDSI and a

dealing representative of TD Waterhouse (the **Dual Registration**) (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 by the Filers in each jurisdiction of Canada outside of Ontario (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. TDSI is a corporation incorporated under the laws of the Province of Ontario. The head office of TDSI is located in Toronto, Ontario.

2. TDSI is wholly-owned subsidiary of The Toronto-Dominion Bank (**TD Bank**).

3. TDSI is registered as a dealer in every jurisdiction of Canada in the category of investment dealer; it is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange; it is an approved participant of the Montreal Exchange (**ME**) and it is a participation organization of The Toronto Stock Exchange (**TSX**).

4. TD Waterhouse is a corporation incorporated under the laws of the Province of Ontario. The head office of TD Waterhouse is located in Toronto, Ontario.

5. TD Waterhouse is a wholly-owned subsidiary of TD Bank.

6. TD Waterhouse is registered as a dealer in every jurisdiction of Canada in the category of investment dealer. It is a member of IIROC and it is an approved participant of the ME.

7. As members of IIROC, and affiliates of each other, each of TD Waterhouse and TDSI has cross-guaranteed the obligations of the other to their respective clients in accordance with IIROC Rule 6.6.

8. For various business and other reasons, TD Bank has historically caused, and continues to require, its securities brokerage business to be conducted through two registrants, whereby its retail brokerage business is conducted through TD Waterhouse and its institutional brokerage business is conducted through TDSI.

9. TDSI has a client base that is currently limited to institutional customers as defined in IIROC Rule 1 which includes very sophisticated clients that do not include natural persons.

10. TD Waterhouse has a client base that is generally limited to retail customers as defined in IIROC Rule 1, specifically meaning a customer that is not an “institutional customer”.

11. TD Waterhouse operates an Institutional Services division (**TDWIS**) that provides brokerage and custody services to certain institutional customers that meet the definition of “institutional customer” in IIROC Rule 1. TDWIS provides brokerage services to approximately 200 registered portfolio managers and provides custody services to their managed accounts and the segregated accounts of their clients which these portfolio managers manage on a fully discretionary and segregated basis.

12. TDSI operates a fixed income distribution desk that offers fixed income products and trade execution services to institutional customers including registered portfolio managers and other registered investment dealers for their retail customers. TDSI proposes to dually register certain TDSI Representatives with TD Waterhouse so that they can act on behalf of the TDWIS clients. Such Representatives have, or will have, extensive experience providing fixed income products and trade execution services to institutional customers. The Representatives will only deal with TDWIS’ institutional customers; all of which are registrants of IIROC and/or CSA jurisdictions. There are no high net worth individuals or other institutional corporate accounts which qualify as institutional within TDWIS. TDSI will also not provide trade execution services directly to individual retail customers.

13. The Representatives are, or will be, approved by IIROC solely as registered representatives, as defined by IIROC, with the product type of “securities” and customer type of “institutional only”.

14. The Representatives are, or will be, under the direct supervision and control of both Filers and they are, or will be, subject to all securities-related conflicts of interest policies and procedures of both Filers.

15. The Dual Registration will not be a source of any client confusion or conflicts of interest because:

(a) when acting on behalf of TD Waterhouse, the Representatives will only trade with the institutional customers of TDWIS;

(b) when acting on behalf of TD Waterhouse, the Representatives do not, and will not, provide advice, and all trading orders received by the Representatives will be unsolicited;

(c) when acting on behalf of TDSI, the Representatives do not, and will not, provide advice, and the trading orders received by the Representatives will be unsolicited;

(d) prior to conducting dealing activities on behalf of a TD Waterhouse client, the Representatives will provide written notice to the TD Waterhouse client of their dual registration with both TDSI and TD Waterhouse; and

(e) the Representatives shall act in the best interests of both their TDSI clients and their TD Waterhouse clients and deal fairly, honestly and in good faith.

16. TDWIS' institutional customers have requested access to the products and trade execution services offered by the Representatives on the TDSI fixed income distribution desk. TDSI's competitors, which conduct both retail and institutional brokerage services within a single registered dealer, currently provide such brokerage and custody services without requiring an exemption from the dual registration restriction.

17. TDSI's fixed income distribution desk is dedicated to providing fixed income products and trade execution services to institutional customers and is, and will be, staffed by a sufficient number of Representatives to handle expected trade volumes at all times. Accordingly, the Representatives will have sufficient time to adequately serve each firm and its clients.

18. TDSI and TD Waterhouse currently have individuals dually registered as representatives with both registrants having previously received an exemption in connection with TDSI offering prime brokerage services to accredited investor clients of TD Waterhouse. Pursuant to the grandfathering provision in section 4.1(2) of NI 31-103, the dual registration restriction in section 4.1(1)(b) does not apply to these dually registered employees.

19. In the absence of the Exemption Sought, the Filers would be prohibited from permitting a Representative to act as a dealing representative of TD Waterhouse while the individual is a dealing representative of TDSI even though TD Waterhouse is an affiliate of TDSI.

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) each Representative, when acting as a dealer by trading securities on behalf of TD Waterhouse, is limited to acting as a dealer for the institutional customers of TDWIS only;

(b) each Representative will not act as a dealer by trading securities for any retail customer; and

(c) Institutional clients of TDWIS will never be clients of both TDWIS and TDSI.

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.7 National Bank Financial Inc.

Headnote

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

Statutes Cited

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

Instruments Cited

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

December 14, 2012

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(the Filer)

DECISION

Background

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

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

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

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

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

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

(d) the decision with respect to the First Coordinated Exemption from the Statement of Account Requirement evidences the decision of the securities regulatory authority or regulator in Newfoundland and Labrador; and

(e) the decision with respect to the Second Coordinated Exemption from the Trade Confirmation Requirement evidences the decision of each Coordinated Exemption Decision Maker.

Interpretation

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

Representations

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

1. The Filer is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission

merchant under the *Commodity Futures Act* (Ontario) and *The Commodity Futures Act* (Manitoba) and as a derivatives dealer under the *Derivatives Act* (Québec).

2. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the Montréal Exchange and a participating organization of the Toronto Stock Exchange.

3. The head office of the Filer is located in Montréal, Québec.

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

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

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

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

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

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

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

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

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

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

    (b) would not be required to establish an audit trail or to facilitate reconciliation of

Give-up Transactions as between the Filer and a clearing broker.

Decision

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

The decision of the Dual Exemption Decision Makers under the legislation of the Dual Exemption Decision Makers is that the Dual Exemption is granted, the decision of the securities regulatory authority or regulator in Newfoundland and Labrador under the legislation of that jurisdiction is that the First Coordinated Exemption is granted, and the decision of the Coordinated Exemption Decision Makers under the legislation of the Coordinated Exemption Decisions Makers is that the Second Coordinated Exemption is granted, provided that:

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

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

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

For the Commission:

"Glenda Campbell, QC"
Vice-Chair

"Stephen Murison"
Vice-Chair

2.1.8 Audiotech Healthcare Corporation – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

Citation: Audiotech Healthcare Corporation, Re, 2012 ABASC 528

December 17, 2012

Getz Prince Wells LLP
Suite 1810, 1111 West Georgia Street
Vancouver, BC V6E4M3

Attention: Zahra H. Ramji

Dear Madam:

Re: Audiotech Healthcare Corporation (the Applicant) – Application for a decision under the securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Blaine Young"
Associate Director, Corporate Finance

2.1.9 R.N. Croft Financial Group Inc. and the Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus for 66 days – additional time needed for renewal of a prospectus due to ongoing review – extension of lapse date will not impact currency of disclosure relating to the mutual funds.

Applicable Legislative Provisions

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

December 14, 2012

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

AND

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

AND

IN THE MATTER OF
R.N. CROFT FINANCIAL GROUP INC.
(the Filer)

AND

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

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (**Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Funds be extended as if the lapse date of the simplified prospectus and annual information form of the Funds dated December 15, 2011, is February 19, 2013 (the **Requested Relief**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* is intended to be relied upon in British Colombia, Alberta, Saskatchewan and Manitoba (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

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

2. The Filer is a corporation existing under the laws of the Province of Ontario and is registered in each of the Jurisdictions as a portfolio manager and investment fund manager.

3. Units of the Funds are currently qualified for distribution in each of the Jurisdictions under the current simplified prospectus of the Funds dated December 15, 2011, as amended by Amendment No. 1 dated August 23, 2012 (the **Current Prospectus**) and the Funds are reporting issuers in each of the Jurisdictions.

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

5. On August 15, 2012, the Filer announced that it had entered into an agreement with Pro-Financial Asset Management Inc. (**PFAM**) to assign management of the Funds to PFAM (**Change of Manager**), subject to the receipt of the approval of the Funds' independent review committee, shareholder approval, regulatory approval and the satisfaction of certain closing conditions (and together with Other Matters Requiring Shareholder Approval as defined below, the **Transaction**). A press release and amendments to the simplified prospectus, annual information form and fund facts for the Funds were filed in connection with the announcement of the Change of Manager.

6. Subject to approval of the shareholders of the Funds or series of a Fund, as necessary, and effective upon the Change of Manager, the following changes are also expected to occur (i) the fundamental investment objective of each Fund, other than for Class F-1 Alternative Strategies, will change; and (ii) the management fees applicable to the series A shares of Class E-1 Emerging Markets and Class F-1 Alternative Strategies will increase (the **Other Matters Requiring Shareholder Approval**). The proposed changes to the Funds are described in more detail in the management information circular, which was mailed to shareholders of the Funds and copies thereof were filed on SEDAR in accordance with applicable securities legislation.

7. In connection with the Transaction,

   (a) The Filer referred the Transaction to the independent review committee of the Funds which reviewed the proposed changes in connection with the Transaction and determined that such changes would achieve a fair and reasonable result for the Funds;

   (b) shareholder approval for the Change of Manager, and the Other Matters Requiring Shareholder Approval was obtained at special meetings of shareholders of each of the Funds held on September 26, 2012;

   (c) on September 24, 2012, the Filer, on behalf of the Funds, applied for regulatory approval for the Change of Manager as contemplated under section 5.5(1)(a) of NI 81-102 such that PFAM could become the new manager of the Funds.

8. The Filer expected that regulatory approval for Change of Manager would be granted by the OSC by November 15, 2012, which is 30 days prior to the Current Lapse Date. Upon receipt of such approval, the Filer and PFAM expected to close the Transaction and that PFAM would file a preliminary and pro forma simplified prospectus, annual information form and fund facts for the Funds in its capacity as the new manager of the Funds by November 15, 2012.

9. On November 15, 2012, the OSC advised that regulatory approval for the Change of Manager had been delayed. Accordingly, a preliminary and pro forma simplified prospectus and annual information form for the Funds could not be filed on November 15, 2012.

10. The Filer understands that PFAM is working diligently with the OSC to address all of the outstanding inquiries that the OSC may have in connection with the Change of Manager.

11. If regulatory approval for Change of Manager is not obtained, the Filer may, among other possibilities, consider termination of the Funds subject to necessary notice requirements to securityholders of the Funds and to the regulator under applicable securities laws.

12. Pursuant to the Legislation, the lapse date for the Current Prospectus is December 15, 2012 (the **Current Lapse Date**). Accordingly, under the Legislation, distribution of the securities of the Funds would cease on December 17, 2012 given that December 15, 2012, the Current Lapse Date is a Saturday unless (i) the Funds filed a pro forma prospectus for the Funds at least 30 days prior to the Current Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after the Current Lapse Date i.e. by December 27, 2012 given that December 25, 2012 and December 26, 2012 are statutory holidays; and (iii) a receipt for the final simplified prospectus is obtained within 20 days of the Current Lapse Date.

13. Since a pro forma prospectus for the Funds was not filed by November 15, 2012, absent the Requested Relief, continued distribution of the securities of the Funds would cease on December 17, 2012.

14. The requested extension date of February 19, 2013 takes into account that (i) the time required by the OSC to complete its review on the regulatory approval for the Change of Manager; and (ii) the time required by the OSC to review and issue comment letter(s) for the preliminary and pro forma simplified prospectus of the Funds. The Filer submits that the requested extension under the circumstances is not prejudicial to the public interest.

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

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

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted.

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

SCHEDULE A

Class A-1 Income
Class B-1 Canadian Equity
Class C-1 U.S. Equity
Class D-1 International Equity
Class E-1 Emerging Markets Equity
Class F-1 Alternative Strategies
shares of

PIE Portfolio Index Evolution Corporation

(collectively, the "Funds")

2.1.10 Unipex International S.A.S. and SISMUX 2 S.A.S.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus and Registration Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through a special purpose entity – Canadian participants already own shares of the parent company of their employer and will transfer these shares to a special purpose entity in exchange for shares of the special purpose entity – Canadian participants will receive disclosure documents – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are *de minimis* – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 74.
National Instrument 45-106 Prospectus and Registration Exemptions, s. 2.24.

December 12, 2012

TRANSLATION

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

AND

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

AND

IN THE MATTER OF
UNIPEX INTERNATIONAL S.A.S. ("Unipex Intl") AND
SISMUX 2 S.A.S. ("SISMUX 2" and, collectively
with Unipex Intl, the "Filers")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a "**Decision Maker**") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the prospectus requirements do not apply to SISMUX 2 and the Employee Shareholders (as defined below) in connection with the SISMUX 2 Transfer (as defined below) (the "**Exemption Sought**").

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

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

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* and Regulation 11-102 respecting 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 Filers:

The Filers

1. Unipex Intl is a simplified joint stock company (*société par actions simplifiée*) formed under the laws of France. Unipex Intl's head office is located in France. It is not and has no current intention of becoming a reporting issuer under the Legislation. Unipex Intl is not in default under the Legislation. None of Unipex Intl's securities are currently listed on a stock exchange, and Unipex Intl has no current intention of listing any of its securities on a stock exchange.

2. SISMUX 2 is a simplified joint stock company (*société par actions simplifiée*) under the laws of France. SISMUX 2's head office is located in France. It is not and has no current intention of becoming a reporting issuer under the Legislation. SISMUX 2 is not in default under the Legislation. None of SISMUX 2's securities are currently listed on a stock exchange, and SISMUX 2 has no current intention of listing any of its securities on a stock exchange.

3. Unipex Intl was established by UPX International 2 S.à.r.l. ("**Luxco**"), a limited liability company (*société à responsabilité limitée*) formed under the laws of Luxembourg and controlled directly or indirectly by IK Investment Partners ("**IK**") and/or European investment funds managed by it, for the purposes of completing the Sale Transaction (as defined below). IK is a Pan-European private equity firm founded in 1989.

4. Groupe Unipex S.A.S. ("**Unipex Group**") is a simplified joint stock company (*société par actions simplifiée*) formed under the laws of France and

wholly-owned indirectly by Unipex Intl. Unipex Group's head office is located in France.

5. Unipex Group specializes in the development, production, marketing and distribution of active ingredients, specialty chemicals and other chemical products in the cosmetics, pharmaceutical, nutrition and industrial sectors. It counts six offices across North America and Europe.

6. Unipex Group carries on business in Canada through Lucas Meyer Cosmetics Canada Inc. (formerly Unipex Innovations Inc.) and Unipex Solutions Canada Inc., two wholly-owned subsidiaries of Unipex Group, and through Debro Pharma Inc., a wholly-owned subsidiary of Unipex Solutions Canada Inc. (collectively, the "**Canadian Affiliates**").

The 2009 Purchase Plan

7. SISMUX S.A.S. ("**SISMUX**") is a simplified joint stock company (*société par actions simplifiée*) formed under the laws of France. It was created for the purposes of receiving subscriptions from participants under the 2009 share purchase plan for employees of Unipex Group (the "**2009 Purchase Plan**"), including a number of employees of the Canadian Affiliates who resided in Québec, Ontario and Alberta, and using subscription funds to acquire securities of Unipex Group and subsequently holding, managing and disposing of such securities.

8. Under a decision dated December 22, 2009, the Decision Makers granted to Unipex Group an exemption from the prospectus and registration requirements so that they did not apply to the distribution of shares of SISMUX pursuant to the 2009 Purchase Plan to qualifying employees of Canadian Affiliates who resided in Québec, Ontario and Alberta and who elected to participate in the 2009 Purchase Plan, provided that such requirements would apply to first trades in SISMUX shares acquired by Canadian participants, unless such trades were made in accordance with the terms of the 2009 Purchase Plan, and either between qualifying employees, with the then-majority shareholder of Unipex Group, with SISMUX or pursuant to the terms and conditions of an offer made by a third-party to purchase all of Unipex Group's securities, in compliance with Unipex Group's shareholders' agreement.

9. As a result of the Sale Transaction (as defined below) and the subsequent corporate reorganization, SISMUX has become a wholly-owned subsidiary of Unipex Intl.

The Sale Transaction

10. On September 20, 2012, Unipex Intl completed the acquisition of all the securities of Unipex Group and of SISMUX (the "**Sale Transaction**"). In the context of the Sale Transaction, shareholders of SISMUX could elect to receive in exchange for all or a portion of his/her SISMUX shares a number of newly issued shares of Unipex Intl having an equivalent value (the "**Share Consideration Election**"). A total of 20 SISMUX shareholders (of which 11 reside in France, seven reside in Québec and two reside in Ontario) made the Share Consideration Election.

11. In connection with the Sale Transaction, Unipex Intl established the 2012 share purchase plan for employees of Unipex Group (the "**2012 Purchase Plan**") under which employees of Unipex Intl and its affiliates, including the Canadian Affiliates, were offered the opportunity to acquire shares of Unipex Intl.

12. A total of 27 employees (of which 18 reside in France, seven reside in Québec and two reside in Ontario) agreed to subscribe to shares of Unipex Intl under the 2012 Purchase Plan. Nine of these employees were SISMUX shareholders and also made the Share Consideration Election as part of the Sale Transaction.

13. Participation in the 2012 Purchase Plan was on a voluntary basis, and employees were not induced to participate in the 2012 Purchase Plan by expectation of employment or continued employment. Participation by a Canadian employee to the 2012 Purchase Plan was not funded through payroll deductions but was made through a single payment in Euros.

14. Employees who had indicated their interest in participating in the 2012 Purchase Plan were provided with a document entitled "Groupe Unipex / Unipex International – Programme d'investissement" dated September 2012 containing a summary description of the terms and conditions of an eventual investment in Unipex Intl (the "**Disclosure Document**"). The Disclosure Document was also provided to SISMUX shareholders who had indicated their interest in making the Share Consideration Election. The English and French versions of the Disclosure Document were filed with the Autorité des marchés financiers pursuant to section 37.2 of the *Securities Regulation* (Québec) on October 1, 2012.

15. The subscriptions by participants under the 2012 Purchase Plan were completed on October 10, 2012.

16. The distribution of Unipex Intl shares to employees of the Canadian affiliates who have elected to participate in the 2012 Purchase Plan

was exempt from the prospectus requirement under the Legislation pursuant to section 2.24 of *Regulation 45-106 respecting Prospectus and Registration Exemptions*.

17. The shareholders of Unipex Intl and certain other parties have entered into a shareholders' agreement (pacte d'associés) dated September 20, 2012 (the "**Shareholders' Agreement**") which, among other things, prohibits the 38 employees of Unipex Group who have acquired their shares of Unipex Intl in exchange for their SISMUX shares pursuant to the Sale Transaction and/or in connection with the 2012 Purchase Plan (the "**Employee Shareholders**") from selling their shares of Unipex Intl for a period of 10 years (subject to certain exceptions), and, at the request of Luxco, requires the Employee Shareholders to sell their shares of Unipex Intl in connection with a change of control of Unipex Intl.

The SISMUX 2 Transfer

18. The Disclosure Document and the Shareholders' Agreement state that, following completion of the Sale Transaction, not more than 30 days following the issuance of Unipex Intl shares to the Employee Shareholders, such Employee Shareholders will be required to transfer their shares of Unipex Intl to SISMUX 2 in exchange for common shares of SISMUX 2 (the "**SISMUX 2 Transfer**"). In the case of Employee Shareholders who reside in Québec or Ontario, the SISMUX 2 Transfer will be subject to the grant of the Exemption Sought.

19. SISMUX 2 was created solely for the purposes of acquiring the Unipex Intl shares held by the Employee Shareholders pursuant to the SISMUX 2 Transfer and holding, managing and disposing of such Unipex Intl shares. SISMUX 2 is not, and will not be, an affiliate of Unipex Intl. It is not an investment fund under the Legislation. There are no tax advantages derived from the SISMUX 2 Transfer, but it would allow Unipex Intl to limit the number of its shareholders and to group together all of its Employee Shareholders in one corporate entity, thereby replicating the structure that was in place prior to the Sale Transaction following the grant of an exemptive relief by the Decision Makers in 2009.

20. Each common share of SISMUX 2 entitles the holder thereof to earnings, corporate assets and liquidation bonus. It also entitles the holder thereof to one vote on the collective decisions of the shareholders.

21. The provisions of the Shareholders' Agreement will apply *mutatis mutandis* to the ownership of SISMUX 2 shares by the Employee Shareholders. In addition, the constating documents of SISMUX 2 contain specific provisions governing and restricting the transferability of the shares of SISMUX 2.

22. The President of SISMUX 2 will be Mr. Patrice Barthelmes as long as he remains the President of Unipex Intl. The President of SISMUX 2 will be the sole representative of SISMUX 2, including in connection with any matter related to the Shareholders' Agreement.

23. The Filers will provide copies of the Disclosure Document, the Shareholders' Agreement and the articles of SISMUX 2 and Unipex Intl to employees of Unipex Intl or of one of its affiliates who become shareholders of SISMUX 2 as a result of subsequent trades in the common shares of SISMUX 2 issued pursuant to the SISMUX 2 Transfer.

24. Following the SISMUX 2 Transfer, the Employee Shareholders will receive, in connection with annual general meetings of SISMUX 2, the President's Report on the activities of SISMUX 2 for the previous year, which must include, under applicable French law, information on the companies in which SISMUX 2 holds an interest. As such, the Employee Shareholders will be provided with financial information on Unipex Intl and will be provided upon request with the annual audited financial statements of Unipex Intl for the previous year.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the prospectus requirements will apply to the first trade in the common shares of SISMUX 2 subscribed by an Employee Shareholder who resides in Québec or Ontario pursuant to this decision, unless such trade is made:

a) to a shareholder of SISMUX 2 or an employee of Unipex Intl or of one of its affiliates;

b) to Unipex Intl, SISMUX 2 or Luxco; or

c) pursuant to the terms and conditions of an offer made by a third party to purchase all of Unipex Intl's securities in compliance with the Shareholders' Agreement.

Signed in Montréal, December 12, 2012.

"Louis Morisset"
Superintendant, Securities Market
Autorité des marchés financiers

2.2 Orders

2.2.1 Global RESP Corporation and Global Growth Assets Inc. – s. 127(1)

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

AND

IN THE MATTER OF
GLOBAL RESP CORPORATION AND
GLOBAL GROWTH ASSETS INC.

ORDER
(Subsection 127(1))

WHEREAS on July 26, 2012, the Ontario Securities Commission ("the "Commission") ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") that the terms and conditions ("Terms and Conditions") set out in schedules "A" and "B" of the Commission order be imposed on Global RESP Corporation ("Global RESP") and Global Growth Assets Inc. ("GGAI") (collectively, the "Respondents") (the "Temporary Order");

AND WHEREAS on August 10, 2012, the Commission extended the Temporary Order against Global RESP and GGAI until such further Order of the Commission and adjourned the hearing until November 8, 2012;

AND WHEREAS the Terms and Conditions required Global RESP and GGAI to retain a consultant (the "Consultant") to prepare and assist them in implementing plans to strengthen their compliance systems and require Global RESP to retain a monitor (the "Monitor") to contact all new clients as defined and set out in the Terms and Conditions;

AND WHEREAS Global RESP retained Sutton Boyce Gilkes Regulatory Consulting Group Inc. as its Consultant and Monitor;

AND WHEREAS Global RESP brought a motion on November 2, 2012 to vary the Terms and Conditions imposed on Global RESP on July 26, 2012;

AND WHEREAS on November 7, 2012, the Commission ordered that: (i) paragraphs 5, 6 and 7 of the Terms and Conditions be deleted and replaced with new terms; (ii) the hearing be adjourned to December 13, 2012 at 10:00 a.m.; and (iii) the appearance date on November 8, 2012 shall be vacated;

AND WHEREAS on December 13, 2012, Staff filed the Affidavit of Lina Creta sworn December 13, 2012 and counsel for the Respondents filed the Affidavit of Clarke Tedesco sworn December 12, 2012, updating the Commission on the work completed to date by the Monitor and the Consultant;

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

AND WHEREAS counsel for the Respondents has advised that the Respondents consent to 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 the hearing is adjourned to January 14, 2013 at 9:00 a.m.

DATED at Toronto this 13th day of December, 2012.

"James E. A. Turner"

2.2.2 Systematech Solutions Inc. et al. – ss. 127(1), 127(7), 127(8)

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

AND

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

ORDER
(Subsections 127(1), (7) & (8) of the Securities Act)

WHEREAS on December 15, 2011, 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") with respect to Systematech Solutions Inc. ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively, the "Respondents") ordering that:

1. pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by the Respondents shall cease; and

2. pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities of Systematech shall cease;

AND WHEREAS on December 22, 2011, the Commission extended the Temporary Order to January 31, 2012 and adjourned the hearing to consider the extension of the Temporary Order to January 30, 2012;

AND WHEREAS on January 30, 2012, the Commission extended the Temporary Order to March 8, 2012, on consent of all the parties, and adjourned the hearing to consider the extension of the Temporary Order to March 7, 2012;

AND WHEREAS on March 8, 2012, the Commission extended the Temporary Order to June 8, 2012, on consent of all the parties, and adjourned the hearing to consider the extension of the Temporary Order to June 7, 2012;

AND WHEREAS on June 7, 2012, the Commission extended the Temporary Order to September 12, 2012, on consent of all the parties, and adjourned the hearing to consider the extension of the Temporary Order to September 11, 2012;

AND WHEREAS on September 11, 2012, the Commission extended the Temporary Order to December 12, 2012, on consent of all the parties, and adjourned the hearing to consider the extension of the Temporary Order to December 11, 2012;

AND WHEREAS on October 31, 2012, the Commission issued a Notice of Hearing in connection with a Statement of Allegations dated October 31, 2012, filed by Staff of the Commission ("Staff") in respect of the Respondents, which Notice of Hearing provided that a hearing would be held at the offices of the Commission on December 11, 2012;

AND WHEREAS on December 11, 2012, Staff and counsel for the Respondents appeared before the Commission and made submissions;

AND WHEREAS on December 11, 2012, counsel for the Respondents advised that he accepted service of the Notice of Hearing and the Statement of Allegations dated October 31, 2012 on behalf of the Respondents and consented to extension of the Temporary Order;

AND WHEREAS Staff submitted that it provided electronic disclosure to counsel for the Respondents on November 21, 2012;

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 extended until the conclusion of the proceeding, including the sanctions hearing, if any; and

IT IS FURTHER ORDERED that a confidential pre-hearing conference shall take place on February 20, 2013 at 9:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties

DATED at Toronto this 11th day of December, 2012.

"Edward P. Kerwin"

2.2.3 Frederick Johnathon Nielsen, previously known as Frederick John Gilliland – s. 127

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

AND

IN THE MATTER OF
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

ORDER
(Section 127)

WHEREAS on November 23, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Frederick Johnathon Nielsen, previously known as Frederick John Gilliland ("Nielsen");

AND WHEREAS on November 22, 2012, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on December 14, 2012, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Nielsen did not appear, although properly served;

AND WHEREAS Nielsen entered into a settlement agreement with the British Columbia Securities Commission dated March 25, 2011 ("Settlement Agreement");

AND WHEREAS in the Settlement Agreement, Nielsen consented to any securities regulator in Canada relying on the facts admitted in his Settlement Agreement for the purpose of making a similar order;

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) Staff's application to proceed by way of written hearing is granted;

(b) Staff's material in respect of the hearing shall be served and filed no later than December 17, 2012; and

(c) Nielsen's responding materials, if any, shall be served and filed no later than January 15, 2013.

DATED at Toronto this 14th day of December, 2012.

"James E. A. Turner"

2.2.4 National Bank Financial Inc. – s. 80 of the CFA

Headnote

Application for an order pursuant to section 80 of the Commodity Futures Act granting relief from sections 42, 43, 44 and 45 which contain requirements to deliver confirmations and statements to customers in the context of "give-up" transactions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 42, 43, 44, 45, 80.

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

AND

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(the Filer)

ORDER
(Section 80 of the CFA)

UPON the application by the Filer to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA granting relief from sections 42, 43, 44 and 45 of the CFA which contain the requirements to deliver certain confirmations and statements of trade to customers (the **Delivery Requirements**) in respect of trades in commodity futures contracts and commodity futures options in the context of trade "give-ups";

AND WHEREAS the Filer has represented to the Commission that:

1. The Filer is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission merchant under the CFA and *The Commodity Futures Act* (Manitoba) and as a derivatives dealer under the *Derivatives Act* (Quebec).

2. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the Montreal Exchange and a participating organization of the Toronto Stock Exchange.

3. The head office of the Filer is located in Montréal, Québec.

4. The Filer acts as an executing and clearing broker for give-up transactions that involve, among other things, the purchase and sale of commodity futures contracts and commodity futures options (**Futures Contracts**).

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

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

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

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

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

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

11. The Filer is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions. The Filer is not in default of securities, futures or derivatives legislation in any jurisdiction.

12. Section 42 of the CFA requires that a registered dealer that has acted as an agent in connection with a trade in a commodity futures contract promptly send customers a written confirmation of the trade.

13. Section 43 of the CFA requires that a registered dealer that has acted as an agent in connection with a liquidating trade in a commodity futures contract promptly send customers a written statement of purchase and sale.

14. Section 44 of the CFA requires that registered dealers send customers a written monthly statement.

15. Section 45 of the CFA requires that a registered dealer that has acted as an agent in connection with a trade in a commodity futures option promptly send customers a written confirmation of the trade.

16. Application of the Delivery Requirements to the Filer when it provides only trade execution services in respect of Give-up Transactions would:

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

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

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

THIS ORDER of the Commission is that the Filer is exempt from the requirements of sections 42, 43, 44 and 45 of the CFA for the purpose of acting as executing broker for Give-up Transactions provided that:

1. the Filer provides trade execution services in respect of Give-up Transactions only for Institutional Customers;

2. the Filer enters into a Give-up Agreement with the clearing broker and the Institutional Customer; and

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

December 11, 2012.

"Christopher Portner"
Commissioner
Ontario Securities Commission

"James Turner"
Commissioner
Ontario Securities Commission

2.2.5 New Found Freedom Financial et al. – s. 127, 127.1

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

AND

IN THE MATTER OF
NEW FOUND FREEDOM FINANCIAL,
RON DEONARINE SINGH,
WAYNE GERARD MARTINEZ, PAULINE LEVY,
DAVID WHIDDEN, PAUL SWABY AND
ZOMPAS CONSULTING

ORDER
(Section 127 and 127.1 of the Securities Act)

WHEREAS on November 2, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, in connection with the allegations set out in the Statement of Allegations filed by Staff of the Commission ("Staff") on November 1, 2011;

AND WHEREAS on July 26, 2012, the Commission approved a settlement agreement between Staff and Paul Swaby and Zompas Consulting;

AND WHEREAS on September 7, 2012, the Commission approved a settlement agreement between Staff and David Whidden;

AND WHEREAS on September 24, 2012, the hearing on the merits began and continued thereafter periodically until its conclusion on November 23, 2012;

AND WHEREAS on December 17, 2012, the Commission released its Reason and Decision on the merits in this matter and concluded that the matter shall proceed to a sanctions hearing on a date set by the Office of the Secretary;

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

IT IS ORDERED that the hearing to determine sanctions and costs will be held at the office of ASAP Reporting Services Inc. at the Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, commencing on March 13, 2013 at 10:00 a.m. Written submissions to be filed with the Secretary of the Commission no later than (5) business days of the scheduled sanctions hearing;

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

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

"James D. Carnwath"

2.2.6 Merax Resource Management Ltd. et al. – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.,
carrying on business as CROWN CAPITAL PARTNERS,
RICHARD MELLON and ALEX ELIN

ORDER
(Sections 127(1) and 127.1 of the Securities Act)

WHEREAS on November 29, 2006, the Ontario Securities Commission (the "**Commission**") issued and filed a Notice of Hearing returnable December 5, 2006 to consider the allegations made by Staff of the Commission ("**Staff**") in the Statement of Allegations dated November 21, 2006;

AND WHEREAS on November 21, 2006, the Commission issued an Amended Statement of Allegations and on November 3, 2010, the Commission issued an Amended Amended Statement of Allegations;

AND WHEREAS on January 26, 2011, Staff filed a Notice of Withdrawal which provided that Staff withdrew the allegations against the Respondent, Merax Resource Management Ltd., carrying on business as Crown Capital Partners;

AND WHEREAS the hearing on the merits with respect to Staff's allegations against the remaining respondents to the proceeding, Richard Mellon ("**Mellon**") and Alex Elin ("**Elin**") (together, the "**Respondents**") commenced on January 17, 2011 and concluded on March 1, 2011(the "**Merits Hearing**");

AND WHEREAS the Respondents were self-represented throughout the Merits Hearing;

AND WHEREAS the Commission issued its Reasons for Decision on the merits on December 12, 2011, finding that the Respondents contravened sections 25(1)(a), 38(3), and 53(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**");

AND WHEREAS the Commission ultimately directed that a sanctions and costs hearing in respect of the Respondents be scheduled for May 22, 2012 (the "**Sanctions Hearing**");

AND WHEREAS the Respondents attended and were self-represented at the Sanctions Hearing;

AND WHEREAS having considered the written and oral submissions of Staff, the oral submissions of the Respondents, and the supplementary submissions of Staff

and the Respondents, the Commission is of the opinion that it is in the public interest to make the following order;

IT IS ORDERED THAT:

1. The Respondents cease trading in securities permanently pursuant to clause 2 of section 127(1) of the Act, except that each of them is permitted to trade securities for the account of a registered education savings plan (as defined in Part I of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)) in trust for any children, over which he has sole legal ownership, provided that:

   a) The securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

   b) He does not own legally or beneficially more than one percent of the outstanding securities of a class or series of a class;

   c) He carries out any permitted trading through a registered dealer and through trading accounts in his name only (and he must close any trading accounts that are not in his name only); and

   d) He gives a copy of the Merits Decision, the Sanctions and Costs Decision, and the Sanctions and Costs Order to any registered dealer through which he will trade in advance of any trading.

2. The Respondents resign all positions that they hold as a director or officer of any issuer pursuant to clause 7 of section 127(1) of the Act;

3. The Respondents be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of section 127(1) of the Act;

4. The Respondents be prohibited permanently from becoming or acting as a registrant, an investment fund manager, or a promoter pursuant to clause 8.5 of section 127(1) of the Act;

5. Elin shall pay an administrative penalty of $300,000 and Mellon shall pay an administrative penalty of $400,000 for failure to comply with Ontario securities law pursuant to clause 9 of section 127(1) of the Act;

6. The Respondents shall disgorge to the Commission the sum of $353,229.19 on a joint and several basis pursuant to clause 10 of section 127(1) of the Act; and

7. All amounts received by the Commission in respect of the administrative penalty and the disgorgement ordered herein are to be allocated in accordance with section 3.4(2)(b) of the Act as the Commission in its absolute discretion shall decide.

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

“Mary G. Condon”

“Sinan O. Akdeniz”

2.2.7 Peter Sbaraglia

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

AND

IN THE MATTER OF
PETER SBARAGLIA

ORDER

WHEREAS on February 24, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on February 24, 2011 with respect to Peter Sbaraglia ("Sbaraglia");

AND WHEREAS on March 31, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to April 28, 2011;

AND WHEREAS on April 28, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to June 7, 2011;

AND WHEREAS on June 7, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to July 27, 2011;

AND WHEREAS on July 27, 2011, the Commission heard submissions from Staff and Sbaraglia and ordered that a pre-hearing conference in this matter take place on October 28, 2011;

AND WHEREAS on October 28, 2011, the Commission held a pre-hearing conference in this matter and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to November 25, 2011 on the consent of the parties;

AND WHEREAS on November 25, 2011, following a pre-hearing conference at which the Commission heard submissions from Staff and counsel for Sbaraglia, the Commission ordered that: Sbaraglia's motion regarding Staff's disclosure, if Sbaraglia determined to bring such a motion, be scheduled for January 24, 2012; the hearing on the merits commence on June 4, 2012 and continue until June 26, 2012, excluding June 5 and 19, 2012; and a pre-hearing conference be held on April 30, 2012;

AND WHEREAS on January 24, 2012, the Commission held a hearing with respect to a disclosure motion brought by Sbaraglia and ordered that the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules") be extended by an additional 10 days;

AND WHEREAS on April 30, 2012, the Commission held a hearing with respect to a motion brought by counsel for Sbaraglia seeking an adjournment of the hearing on the merits, which was opposed by Staff, and the Commission ordered that: the hearing on the merits originally scheduled to commence on June 4, 2012 will commence on October 22, 2012 and continue until November 14, 2012, inclusive, with the exception of October 23, 2012 and November 5 and 6, 2012, on a peremptory basis with respect to Sbaraglia; a pre-hearing conference be held on June 4, 2012; and the extension of the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Rules ordered on January 24, 2012 be set aside;

AND WHEREAS on June 4, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to July 4, 2012;

AND WHEREAS on July 4, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to July 19, 2012;

AND WHEREAS on July 19, 2012, the Commission held a hearing with respect to a motion brought by counsel for Sbaraglia seeking an adjournment of the hearing on the merits, to which Staff consented;

AND WHEREAS counsel for Sbaraglia advised the Commission that there is an appeal and cross-appeal at the Court of Appeal scheduled for October 2, 2012 of Justice Pattillo's decision of May 23, 2012 regarding Sbaraglia's motion to compel production by the Receiver of certain documents alleged by Sbaraglia to be relevant to this matter;

AND WHEREAS the Commission ordered that: the hearing on the merits scheduled to commence on October 22, 2012 will commence on March 18, 2013, on a peremptory basis with respect to Sbaraglia, and shall continue until April 5, 2013, inclusive, with the exception of March 26 and 29, 2013 and further continue on April 24 and 25, 2013; and a pre-hearing conference will be held on November 7, 2012;

AND WHEREAS on November 7, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to December 12, 2012;

AND WHEREAS on December 12, 2012, the Commission held a pre-hearing conference in this matter and heard submissions from Staff and counsel for Sbaraglia;

AND WHEREAS counsel for Sbaraglia advised the Commission that Sbaraglia intends to request the issuance of summonses to a number of individuals, including the Receiver;

AND WHEREAS Staff requested that a hearing be scheduled at which time anyone to whom a summons is issued may bring a motion to have the summons reviewed by the Commission in accordance with subrule 4.7(2) of the Rules;

AND WHEREAS counsel for Sbaraglia undertook to advise the parties to whom summonses are issued of the date of the hearing with respect to any motion to review the issuance of the summonses;

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

IT IS ORDERED that a hearing will be held on January 9, 2013 at 10:00 a.m. for the purpose of considering any motion to review the issuance of the summonses in accordance with subrule 4.7(2) of the Rules.

DATED at Toronto this 12th day of December 2012.

"Christopher Portner"

2.3 Rulings

2.3.1 MEAG New York Corporation – s. 74(1)

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to certain affiliated companies in Ontario only for so long as such affiliates remain affiliates of the Applicant.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3), 74(1).

December 14, 2012

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

AND

IN THE MATTER OF
MEAG NEW YORK CORPORATION

RULING
(Subsection 74(1) of the Act)

UPON the Application (the **Application**) of MEAG New York Corporation (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

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

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

1. The Applicant is a corporation existing under the laws of the State of Delaware, based in the City of New York in the State of New York and is registered as an adviser with the U.S. Securities and Exchange Commission under the United States *Investment Advisers Act of 1940*. The Applicant does not have an office or employees in Canada.

2. The Applicant is an indirect wholly-owned subsidiary of Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München (**Munich Re**), a global re-insurance company headquartered in Germany. The Applicant provides services, including investment advice and portfolio management services, to entities within the Munich Re group of companies. The Applicant does not provide services to any persons or companies other than its affiliated entities. As of September 30, 2012, the Applicant's discretionary client assets under management totalled approximately US$49 billion.

3. The Applicant is an affiliated company of Munich Reinsurance Company of Canada, Temple Insurance Company, The Boiler Inspection and Insurance Company of Canada, Munich Reinsurance America, Inc. (Canadian branch) and Munich Re (Canadian branch) (collectively, the **Insurance Companies**), all of which are insurance companies or branches of foreign insurance companies that carry on business in Canada as Canadian federally licensed insurance companies or branches of foreign insurance companies with their Canadian head offices located in Ontario. The Applicant is also an affiliated company of Munich Holdings Ltd., a holding company established under the laws of Canada with its head office located in Ontario (the **Holding Company**), which, as its sole business activity, holds securities of certain Canadian companies in the Munich Re group, including certain of the Insurance Companies and Munich Life Management Corporation Limited, a services company that provides administrative services to Munich Re (Canadian branch). The Insurance Companies and the Holding Company are collectively referred to as the **Affiliated Companies**.

4. Each of the Affiliated Companies is a direct or indirect wholly-owned subsidiary of Munich Re and, as such, is an affiliate of the Applicant as defined in the Act.

5. Each of the Affiliated Companies is a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

6. The Applicant provides investment advice and portfolio management services to the Affiliated Companies with respect to the portfolio assets of the Affiliated Companies maintained in connection with their respective Canadian businesses and, as such, requires adviser registration under the Act or an exemption from the adviser registration requirements in subsection 25(3) of the Act. For certain of the Affiliated Companies, the provision of these services by the Applicant commenced as early as 1997. The Applicant provided these services to the Affiliated Companies without obtaining adviser registration under the Act on the basis of a good faith determination that it was not providing advice to others with respect to investing in securities or buying or selling securities because it was providing such advice only to affiliates within the Munich Re group of companies. The Applicant seeks to continue to provide investment advice and portfolio management services to the Affiliated Companies on a basis that would not require adviser registration under the Act.

7. Except as indicated in the previous paragraph, the Applicant is not, to the best of its knowledge, in default of any requirements of securities legislation in Ontario.

8. The Applicant is not able to rely on the international adviser registration exemption in section 8.26 of NI 31-103 to continue to provide such services to the Affiliated Companies because the advice provided by the Applicant to the Affiliated Companies on securities of Canadian issuers is not incidental to the advice it is providing on a foreign security, as investments in securities of Canadian issuers are part of the investment objectives of the Affiliated Companies.

9. There is no requirement for employees of a corporation to be registered as advisers under the Act if the employees provide investment advice and portfolio management services to their corporate employers with respect to the portfolio assets of such corporate employers. The Affiliated Companies do not currently employ individuals to provide investment advice and portfolio management services with respect to their portfolio assets, but rather the Affiliated Companies have outsourced this function to the Applicant, an affiliate of the Affiliated Companies. The Insurance Companies are permitted to outsource this function under federal insurance company legislation in Canada.

10. The portfolio assets of the Affiliated Companies managed by the Applicant are owned by each of the respective Affiliated Companies. There are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policyholders) that have any direct or indirect interest in the performance of such portfolios. Accordingly, there are no stakeholders in Ontario or elsewhere other than the Affiliated Companies and their direct and indirect owner, Munich Re, that will be directly affected by the results of the investment advice and portfolio management services provided by the Applicant and, as such, it would not be prejudicial to the public interest to grant the relief requested by the Applicant.

11. Subsection 74(1) of the Act provides that a ruling may be made by the Commission that a person or company is not subject to section 25 of the Act, subject to such terms and conditions as the Commission considers necessary, where the Commission is satisfied that to do so would not be prejudicial to the public interest.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of it acting as an adviser to its affiliates in Ontario, provided that:

1. the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that:

   (a) are licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada or a branch of a foreign insurance company in Canada, or

   (b) are holding companies that have as their principal business activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada; and

2. with respect to any particular affiliate, the investment advice and portfolio management services provided in Ontario are provided only as long as that affiliate remains:

   (a) an “affiliate” of the Applicant as defined in the Act, and

   (b) a “permitted client” as defined in NI 31-103.

December 14, 2012

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Eda Marie Agueci et al.

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

AND

IN THE MATTER OF
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

REASONS AND DECISIONS ON
DISCLOSURE AND CONFIDENTIALITY MOTIONS

Hearing:	November 13, 2012		
Decision:	December 14, 2012		
Panel:	James E.A. Turner	–	Vice-Chair
Counsel:	Sean Horgan Usman Sheikh	–	For Staff of the Ontario Securities Commission
	Peter Daigle Patricia McLean	–	For Dennis Wing
	Ellen Snow Peter Howard	–	For Henry Fiorillo

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REASONS AND DECISION

I. BACKGROUND

[1] On February 7, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing and Statement of Allegations of Staff of the Commission ("**Staff**") in respect of Eda Marie Agueci ("**Agueci**"), Dennis Wing ("**Wing**" or the "**Respondent**"), Santo Iacono ("**Iacono**"), Josephine Raponi, Kimberley Stephany, Henry Fiorillo ("**Fiorillo**"), Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki ("**Gornitzki**") and Pollen Services Limited ("**Pollen Services**") (collectively, the "**Respondents**"). On September 12, 2012, the Commission ordered that the hearing on the merits will commence on September 16, 2013 and continue until December 20, 2013 with the exception of September 24, 2013 and every second Tuesday thereafter, or such other dates as may be agreed to by the parties and fixed by the Office of the Secretary to the Commission.

[2] In the proceeding, Staff makes allegations against a number of the Respondents of illegal insider trading and tipping in respect of five material corporate transactions, contrary to subsections 76(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). Staff has made additional allegations against certain of the Respondents, including allegations of misleading Staff against Agueci and Wing, contrary to section 122 of the Act; breaching the confidentiality of Staff's investigation by Agueci, contrary to section 16 of the Act; and engaging in other conduct contrary to the public interest, such as attempting to circumvent dealer monitoring of trading, facilitating falsified transactions and trading in a secret account.

[3] On February 16, 2012, Staff began to provide disclosure to the Respondents in electronic format on a rolling basis. Within two months, by April 4, 2012, the Respondents had been provided with electronic disclosure in 11 tranches comprising approximately 379,099 records (the "**Database**"). The confidentiality of all that disclosure material is protected by the implied undertaking rule and section 16 of the Act.

[4] On November 13, 2012, Wing brought a motion (the "**Disclosure Motion**") for an order that Staff "make proper and meaningful disclosure in respect of the allegations made against Wing", including:

(i) an order requiring Staff to prepare a disclosure brief for each of the nine categories of allegations, each disclosure brief including the documents in Staff's possession relevant to each category of allegations;

(ii) an order requiring Staff to deliver to Wing the five disclosure briefs relevant to the five categories of allegations against him and to each other Respondent, the disclosure brief relevant to the categories of allegations against such other Respondent; and

(iii) an order requiring Staff to meet its ongoing disclosure obligations by disclosing additional relevant documents and adding those documents to the appropriate disclosure brief and then delivering the amended disclosure brief to the Respondents as set out in clause (ii) above.

[5] Wing also brought a motion (the "**Confidentiality Motion**") for an order that the transcripts of the Disclosure Motion and the parties' motion records and factums be kept confidential.

[6] Gornitzki and Pollen Services did not appear or make submissions on the motion; however, they communicated that they agree with the relief being sought by Wing.

[7] Counsel for Fiorillo made written and oral submissions at the motion hearing described below.

[8] Wing filed written motion materials and we heard his oral submissions at the motion hearing held on November 13, 2012.

II. THE POSITIONS OF THE PARTIES

A. Wing's Submissions

[9] Wing submits that Staff's disclosure obligation is set out in Rule 4.3(2) of the Commission's *Rules of Procedure* (the "***Rules of Procedur***e"), which states:

> In the case of a hearing under section 127 of the *Securities Act* …, Staff of the Commission shall, as soon as is reasonably practicable after service of the notice of hearing, and in any case at least 10 days before the commencement of the hearing, make available for inspection by every other party all other documents and things which are in the possession or control of staff that are relevant to the hearing and provide copies, or permit the inspecting party to make copies, of the documents at the inspecting party's expense.
>
> *Rules of Procedur*e, Rule 4.3(2).

[10] Wing submits that, because of the risk of harm to his reputation as a result of this proceeding, section 8 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, ("***SPPA***") applies. That section states:

> Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.
>
> *SPPA*, section 8.

[11] Rule 4.4 of the *Rules of Procedure* imposes more onerous disclosure obligations where section 8 of the SPPA applies:

> . . . if the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making the allegations shall, as soon as is reasonably practicable after service of the notice of hearing, and in any case at least 20 days before the commencement of the hearing, provide particulars of the allegations and disclose to the party against whom the allegations are made all documents and things in the party's possession or control relevant to the allegations including [witness statements and experts' reports].
>
> *Rules of Procedure*, Rule 4.4.

[12] Wing's main submission is that Staff has failed to make meaningful disclosure of relevant documents and material in accordance with the standard established in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (SCC) ("***Stinchcombe***").

[13] Wing submits that Staff has a broad duty of disclosure akin to the *Stinchcombe* standard. The *Stinchcombe* standard requires the Crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the Crown, which discretion is reviewable by a court. While the Crown must err on the side of inclusion, clearly irrelevant documents should be excluded, and the initial obligation to separate "the wheat from the chaff" rests with the Crown. Documents should not be withheld if there is a reasonable possibility that doing so would impair the right of the accused to make full answer and defence.

> *Stinchcombe*, *supra*, at paras. 20 and 29.
>
> *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713 (SCC), at para. 26, aff'g [2002] O.J. No. 2350 (Ont. CA) ("***Deloitte SCC***"), at para. 39-44.

I agree with that summary of Staff's obligations (see paragraph 29 of these reasons).

[14] Wing submits that Staff has failed to make meaningful disclosure to him such that he may exercise his right to make full answer and defence. He submits that Staff has simply made "dump truck" disclosure of an enormous number of documents, and has not fulfilled their obligation to cull the documents in its possession for relevance. He submits that the obligation is on Staff to conduct relevant searches, electronic or manual, of the documents in its possession and assess which documents or categories of documents identified in this manner may be relevant to the allegations against Wing.

[15] According to Wing, Staff's disclosure is deficient in that:

(a) it contains documents that are irrelevant to the allegations against him;

(b) it contains documents that are irrelevant to any of the issues in this proceeding; and

(c) the coding of the Database for "relevance" is unreliable.

[16] Further, Wing submits that Staff is also required pursuant to *Stinchcombe* to make effective disclosure which is adequate for Wing's use. Staff must provide disclosure in a form that is organized in a manner that renders it reasonably accessible.

B. Submissions of the Other Respondents

[17] Gornitzki and Pollen Services adopt Wing's submissions.

C. Fiorillo's Submissions

[18] To the extent that Wing seeks an order on the Disclosure Motion requiring Staff to produce documents which are separated into the nine categories of allegations set out in the Statement of Allegations, Fiorillo takes no position on that relief.

[19] However, Fiorillo submits that it is neither appropriate nor permissible to limit disclosure in the manner requested by Wing. Fiorillo submits that, if the Commission orders Staff to produce separate categories of documents, all such disclosure should be delivered to all of the Respondents.

[20] Fiorillo submits that Staff's obligation to provide disclosure is a matter of fundamental fairness to the Respondents. Fiorillo submits that full disclosure to each Respondent is necessary in order to facilitate a Respondent's ability to make full answer and defence. If Staff is proceeding on the basis that there was an agreement or a conspiracy amongst some or all the Respondents, then it is important that each Respondent know what evidence is relevant to all of the allegations against other Respondents.

D. Staff's Submissions

[21] Staff submits that it has fully complied with its disclosure obligation to the Respondents by disclosing, through the Database, all relevant documents, whether inculpatory or exculpatory, whether or not Staff intends to rely on them at the hearing on the merits.

[22] Staff submits that the disclosure provided to the Respondents has been very meaningful. The Respondents were provided with an electronic Database of disclosure that is fully accessible, highly organized and fully searchable.

[23] Staff submits that this proceeding involves strikingly similar allegations of repeated insider trading and tipping as well as other related misconduct. The allegations and evidence that Staff intends to rely on is highly interlinked amongst the Respondents, including Wing, rendering the relief that has been requested by Wing entirely inappropriate.

[24] Staff submits (consistent with Fiorillo's submissions) that the request for separate disclosure briefs for each Respondent could prejudice other Respondents to this proceeding and could impair the ability of Staff and the Commission to conduct a fair and efficient hearing.

[25] Staff also submits that the requested order for confidentiality is without evidentiary foundation because no personal information is contained in the motion materials filed by the parties.

[26] Accordingly, Staff requests that I dismiss both the Disclosure Motion and the Confidentiality Motion.

III. ANALYSIS

A. Introduction

[27] The Disclosure Motion requires a consideration of the nature of Staff's obligation to make disclosure of relevant documents to the Respondents.

[28] I should say at the outset that it is challenging for me to make judgements about the disclosure of documents when, necessarily, I have limited knowledge of the nature of those documents. Further, I have not been provided with or searched the Database (see paragraph 56 of these reasons).

B. Staff's Obligation to Disclose

[29] As a matter of law, Staff has an obligation to disclose to the Respondents all documents that are relevant to this proceeding, whether inculpatory or exculpatory, in accordance with principles akin to those articulated in *Stinchcombe*. There is no dispute between Staff and the Respondents with respect to the articulation of that principle; the dispute relates to the application of the principle in the circumstances. Staff's obligation to disclose is a matter of fundamental justice based on fairness to respondents to permit them to make full answer and defence to the allegations against them. In furtherance of that obligation, Staff has provided the Database to the Respondents. As noted above, the Database contains a massive number of records.

[30] As a threshold matter, I find that the documents contained in the Database are reasonably accessible to the Respondents by means of electronic searches. I note that the Respondents are not objecting in principle to electronic disclosure effected by means of the delivery of a database.

C. Delivery of the Database

[31] In my view, by delivering the Database, Staff has taken reasonable steps to satisfy its obligation to disclose relevant documents to the Respondents. The question is whether that disclosure meets Staff's obligations.

[32] Staff appears to have conducted a very wide ranging investigation, has assembled and reviewed a massive amount of material and documents and has made relatively specific allegations against each of the Respondents as reflected in the Statement of Allegations. Staff has an obligation to disclose to the Respondents the documents that Staff considers relevant as a result of those efforts. Staff has an obligation, in the first instance, to separate the "wheat from the chaff."

[33] I agree that Staff should apply a low threshold of relevance in deciding what to disclose to the Respondents. Staff does not know what positions the Respondents and their counsel may take in response to the allegations. However, Staff must apply some judgment in determining which documents or categories of documents in the Database are relevant to the allegations against each of the Respondents. Staff does not, however, have to review all of the individual documents and may address documents by category.

D. The Meaning of "Relevance"

[34] With respect to determining relevance, I adopt the following statement from the Court of Appeal decision in *Deloitte & Touche LLP v. Ontario Securities Commission)*, [2002] OJ No. 2350 (Ont. CA) ("***Deloitte CA***"):

> Relevant material in the *Stinchcombe*, *supra*, sense includes material in the possession or control of Staff and intended for use by Staff in making its case against the [Philip] respondents. Relevant material also includes material in Staff's possession which has a reasonable possibility of being relevant to the ability of the [Philip] respondents to make full answer and defence to the Staff allegations. This latter category includes material that the [Philip] respondents could use to rebut the case presented by Staff; material they could use to advance a defence; and material that may assist them in making tactical decisions.
>
> *Deloitte CA*, *supra*, at para. 44.

[35] The Court's reasoning in *Deloitte CA* suggests a low threshold for relevance, a view confirmed by the Supreme Court's statement that the "right to disclosure of all relevant material has a broad scope and includes materials which may have only a marginal value to the ultimate issues at trial" (*R v. Dixon*, [1998] S.C.J. No. 17 (SCC) at para. 23). I take this to mean that while Staff should not produce information or documents that are "clearly irrelevant", it nevertheless must "err on the side of inclusion" (*Stinchcombe*, *supra*, at para. 20).

[36] A summary of the *Stinchcombe* principles was set out by the Supreme Court of Canada in *R. v. Taillefer* [2003], S.C.J. No. 75 (SCC) and was repeated by the Commission in *Berry (Re)* (2008), 31 OSCB 5441 ("***Berry***"):

> After a period during which the rules governing the Crown's duty to disclose evidence were gradually developed by the provincial appeal courts in recent decades, those rules were clarified and consolidated by this Court in *Stinchcombe*. The rules may be summarized in a few statements. The Crown must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the Crown's discretion to refuse to disclose information that is privileged or plainly irrelevant. Relevance must be assessed in relation both to the charge itself and to the reasonably possible defences. The relevant information must be disclosed whether or not the Crown intends to introduce it in evidence, before election or plea (p. 343). Moreover, all statements obtained from persons who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses (p. 345). This Court has also defined the concept of "relevance" broadly, in *R. v. Egger*, [1993] 2 S.C.R. 451, at p. 467:
>
> > One measure of the relevance of information in the Crown's hands is its usefulness to the defence: if it is of some use, it is relevant and should be disclosed – *Stinchcombe*, *supra*, at p. 345. This requires a determination by the reviewing judge that production of the information can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence.
>
> As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will be exempt from the duty that is imposed on the prosecution to disclose evidence. [page335] As this Court said in *Dixon*, *supra*, "the threshold requirement for disclosure is set quite low ... The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence" (para. 21; see also *R. v. Chaplin*, [1995] 1 S.C.R. 727, at paras. 26-27). "While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant" (*Stinchcombe*, supra*,* at p. 339).
>
> *Berry*, *supra*, at para. 69.

[37] The Supreme Court held that the *Stinchcombe* standard was appropriately applied by the Commission in *Deloitte SCC*, *supra*, where the Court stated:

> The OSC reasonably rejected Deloitte's argument that the Staff could not establish relevance with respect to any documents it had not examined on the basis that, given the nature of the allegations made in the s. 127 proceedings and defences, the relevancy of the compelled material was to be determined as a whole. In other words, as the OSC observed, documents which might appear irrelevant to the OSC Staff might have considerable relevance to the defence of Philip and the officers, and documents in isolation may not have relevance but might well have considerable relevance when studied in light of other information possessed by Philip or the officers. This approach also answers the argument of Deloitte for "disclosure by installment"; surely it is reasonable to disclose all the material at once so Philip and the officers can effectively plan and construct their response.
>
> In short, like the Court of Appeal, I find that the decision of the OSC was reasonable and soundly based with respect to the disclosure of all the compelled material to Philip and the officers to allow them in the circumstances to mount a full answer and defence. Also like the Court of Appeal, I agree that the relationship between Deloitte and Philip with respect to financial disclosure in the 1995, 1996 and 1997 audits will be central to the s. 127 proceedings. There is a reasonable possibility that all of the compelled material relating to Deloitte's audit of Philip will be relevant to the allegations against Philip and the officers. Consequently, the application by the OSC of the relevance standard from *Stinchcombe* was reasonable in all the circumstances.
>
> *Deloitte SCC*, *supra*, at para. 26-27.

[38] Accordingly, the standard of relevance is quite low and the relevance of information or documents is not to be determined in isolation but in the overall context of the particular allegations in a proceeding. Disclosure of documents which may have only a marginal value to the ultimate issues is nonetheless appropriate.

E. Perfect Disclosure is Not Required

[39] The use of electronic disclosure to discharge disclosure obligations has been repeatedly endorsed by the courts and particularly preferred for large and complex matters (*R. v. Therrien*, [2005] B.C.J. No. 3145 (BCSC) at paras. 25 and 33 ("***Therrien***")).

[40] The general principle relating to electronic disclosure is that the defence must be able to "reasonably access" the material in order to make full answer and defence (*R. v. Greer*, [2006] B.C.J. No. 3265 at para. 10 ("***Greer***"), Therrien, supra, at paras. 27 and 33). If disclosure is reasonably accessible, the court should not interfere with a prosecutor's discretion as to how the material is organized or presented "just because there may be a different way of doing so" (*Greer*, *supra*, at para. 12).

[41] Accordingly, when providing disclosure, Staff should not be held to a standard of perfection. This proposition applies to any format of disclosure, whether hardcopy or electronic, and holds particularly true in large and complex cases involving a large volume of material. This is such a case. As stated by the Alberta Securities Commission in *Proprietary Industries Inc. (Re)*:

> Disclosure must enable respondents to know and be in a position to answer the case against them... However, disclosure need not be perfect. Nor is perfect disclosure a realistic expectation in complex cases involving large volumes of material. The disclosure requirement will always be subject to the practical limit of what can be found and produced. Therefore, in a complex case, the disclosure standard is unlikely to require production of every paragraph of every document that might conceivably be obtained.
>
> ... After reviewing *Scientology*, Binder J. in *R. v. Trang*, 2002 ABQB 744 noted (at para. 510) that:
>
> > ... 'perfect disclosure' is too high a standard, particularly in the case of a massive investigation. ... Such a standard is likely impossible to achieve, notwithstanding the best efforts on the part of the police and Crown. It follows that an accused is not entitled to a perfect trial, but rather a fair trial...
>
> *Proprietary Industries Inc. (Re)* 2005 LNAB ASC 810 (Alta. Sec. Comm.) at para. 44-46.

[42] A similar view was expressed by Justice McLachlin (as she then was) in *R. v. O'Connor*. In that case, a criminal matter in which rights to natural justice are at their highest, Her Honour stated that the criminal discovery process is always a compromise and that an accused is not entitled to "perfect justice, but fundamentally fair justice":

> ... The key to achieving [an appropriate balance] lies in recognition that the *Canadian Charter of Rights and Freedoms* guarantees not the fairest of all possible trials, but rather a trial which is fundamentally fair: *R. v. Harrer*, [1995] 3 S.C.R. 562. What constitutes a fair trial takes into account not only the perspective of the accused, but the practical limits of the system of justice and the lawful interests of others involved in the process, like complainants and the agencies which assist them in dealing with the trauma they may have suffered. Perfection in justice is as chimeric as perfection in any other social agency. What the law demands is not perfect justice, but fundamentally fair justice.
>
> Perfect justice in the eyes of the accused might suggest that an accused person should be shown every scintilla of information which might possibly be useful to his defence. From the accused's perspective, the catalogue would include not only information touching on the events at issue, but anything that might conceivably be used in cross-examination to discredit or shake a Crown witness. When other perspectives are considered, however, the picture changes. The need for a system of justice which is workable, affordable and expeditious; the danger of diverting the jury from the true issues; and the privacy interests of those who find themselves caught up in the justice system – all these point to a more realistic standard of disclosure consistent with fundamental fairness. That, and nothing more, is what the law requires.
>
> *R. v. O' Connor*, [1995] S.C.J. No. 98 (SCC) at paras. 192-194.

[43] This principle has also been applied in several cases expressly dealing with the adequacy of electronic disclosure. In *R. v. Foy*, [2001] OJ No. 617 (SCJ) ("***Foy***"), for example, the accused asserted that the electronic database could not be "perfectly searched" and was "less than perfectly classified." The Court dismissed the application noting that, while not perfect, the organization and classification of the material was adequate. The Court observed that the obligation on the Crown is not one of providing perfect disclosure:

> It might be argued that provision of all the documents in hard copy would be perfect disclosure. This, the applicants manifestly do not wish. It is not possible for the Crown to classify every document as to relevance. The Crown does not know what defences are to be raised; thus it cannot do so. Crown's duty of disclosure does not extend to preparation of defence case [sic]. Crown seems to have done at least an adequate job of organization and classification insofar as it was possible or practicable. At least, applicants have failed to demonstrate that the job was inadequate to meet the Crown's disclosure obligations. It is true that there is a less than perfect glossary of terms that were used as identifiers for the various field codes. Some field codes have not been completely filled out and, undoubtedly some mistakes in identification will have been made. Despite these reservations, I remain unconvinced that the classification was inadequate ...
>
> I am not persuaded that the alleged deficiencies of disclosure could have any meaningful impact on the ability of the defence to elect the forum of their choice for trial. The allegations are fully known as is the evidence in support of them.
>
> *Foy*, *supra*, at paras. 7, 9 and 12.

[44] Accordingly, the Respondents are entitled to disclosure that ensures them a fair hearing. At the same time, Staff's disclosure must be adequate, not perfect. Staff is entitled to disclose all information or documents that it views as potentially relevant to the Respondents' defence. Staff should clearly prefer inclusion. At the same time, our approach to disclosure must be workable particularly in cases such as this where large volumes of documents are potentially relevant.

[45] In my view, this case is distinguishable from the circumstances in *Biovail Corp. (Re)* (2008), 31 OSCB 7161 ("***Biovail***") on two grounds. First, in this case, Staff has taken what I consider to be reasonable steps to provide a searchable Database containing potentially relevant documents and has excluded a number of documents from the Database that are clearly irrelevant. Second, in *Biovail*, Staff was proceeding with a very limited number of the allegations made in the original statement of allegations. That meant that the database in *Biovail* contained an extremely large number of documents that were irrelevant to the allegations that were to proceed.

[46] I would add that it is appropriate for Staff to have made the entire Database available to each of the Respondents. That gives the Respondents the opportunity to conduct their own Database searches and to apply their own standard of relevance to the documents in the Database. They are free, however, to search for and review only those documents that appear to be directly related to the specific allegations against them. By saying that, I am not suggesting that Staff has inappropriately shifted its disclosure obligation to the Respondents.

IV. CONCLUSION

[47] To summarise, Staff has an obligation to make broad disclosure of all relevant documents to the Respondents. The standard of relevance is relatively low, meaning that Staff should err on the side of disclosure. In providing disclosure, Staff should separate the "wheat from the chaff", meaning clearly irrelevant documents should not be included. The objective of these principles is to ensure that the Respondents have adequate notice of relevant documentary evidence and, based on that disclosure, can make full answer and defence to Staff's allegations. Staff's disclosure obligation is intended to ensure that the Respondents receive a fair hearing and are not surprised by the evidence that Staff submits at the hearing on the merits. Staff has an obligation to take reasonable steps to ensure it has provided disclosure of relevant documents to the Respondents; it is not, however, required to provide perfect disclosure.

[48] I note that, while Staff included 379,099 records in the Database, they have coded 5,117 documents as "relevant" and 1,597 documents as "key documents". Staff submits that the Database is searchable by "name, by document type, by issuer, by date, by account number, by telephone number, by key document and by many other parameters that are coded into the database." Staff has also offered to assist the Respondents in demonstrating how the Database can be searched.

[49] Staff has advised Wing that the "majority of the documents that are relevant to your client were identified to Wing and entered at his various examinations". Staff has stated that it also intends to prepare and provide to the Respondents in advance of the hearing on the merits a key document brief separated into the nine different categories of allegations. Those document briefs are proposed to be submitted in evidence at the hearing.

[50] There are aspects of Staff's disclosure in this matter that raise questions in my mind. For instance, it seems unlikely that many of the e-mails between Agueci and Mr. McBirney in the Database are relevant to the allegations. I am not prepared, however, to second-guess Staff's decision that such e-mails could be relevant.

[51] There is no doubt that there is some inconsistency in Staff's use, in the correspondence and the Database, of the term "relevant". That as it may be, on balance, Staff has, through the Database, provided the Respondent with what I consider to be adequate disclosure of relevant documents. In doing so, Staff has applied its mind to the various categories of relevant documents and appears to have made a reasonable attempt to determine which documents are relevant. Staff has provided the Respondents with a Database that appears to be reasonably searchable and accessible.

[52] In addition to providing the Database, Staff identified in its examinations of Wing 53 documents that it considered relevant to those examinations. Wing has those documents. Further, the disclosure being made by Staff to the Respondents is on-going. Staff has an obligation under section 4.4 of the *Rules of Procedure* to deliver to Wing particulars of its allegations and "all documents and things in Staff's possession or control relevant to the allegations …" Staff has stated that it will prepare hearing briefs containing relevant documents related to each of the categories of allegations made in the Statement of Allegations. Staff will submit those briefs in evidence at the hearing on the merits. It is desirable that Staff prepare those briefs expeditiously in order to give the Respondents adequate notice of the relevant documents and material. This is an issue that can be addressed as part of the pre-hearing conference process. I note that disclosure by Staff of relevant documents under Rule 4.3(2) of the *Rules of Procedure*, and of particulars under Rule 4.4, are to be provided "as soon as is reasonably practicable after the Notice of Hearing is served, and, in any case, at least 20 days before the commencement of the hearing."

[53] Staff's disclosure is not inappropriate simply because it has provided in the Database documents that might not be relevant. The documents in the Database appear to be appropriately characterized and different categories of documents can be included or excluded by any electronic searches. It is open to the Respondents to search only "relevant" or "key" documents.

[54] Wing submitted that Staff tendered no evidence on the Disclosure Motion with respect to whether the nine categories of allegations in this matter are related. The Respondent submitted that the only evidence before me is the statement in the affidavit of Donald A. Sheldon that "[t]he separate allegations are unrelated to each other." I do not accept that submission. It is clear based on the Statement of Allegations that the nine categories of allegations are linked in some respects. Those categories of allegations involve: (i) parties alleged to have some relationship with each other and to the trading involved; (ii) trading in securities of issuers involved in specified corporate transactions; (iii) alleged similar fact evidence or conduct; or (iv) alleged actions to disguise the relevant trading or to mislead Staff in its investigation.

[55] Because of the elements referred to in paragraph 54 of these reasons, it is important that all Respondents receive disclosure related to all nine categories of allegations. Whether a Respondent wishes to search or examine documents unrelated to allegations made against that Respondent is their decision. In coming to that conclusion, I recognise that Wing is not named in four of the nine categories of allegations in the Statement of Allegations.

[56] I note that, in connection with this motion, I was not provided with the Database and I have not reviewed documents or categories of documents in the Database or attempted to search that Database using the key terms Staff submits can be used to do so. If there are further issues not identified or raised on this motion that affect the Respondents' ability to identify

documents relevant to the allegations made against them, those issues can be raised as part of the pre-hearing conference process or with the Panel hearing this matter on the merits.

[57] It is up to the Panel hearing this matter on the merits to determine how that hearing will be conducted and what documents it will accept in evidence.

Motion for Confidentiality

[58] Wing has also requested an order that the transcripts of this motion and the parties' motion records and factums be kept confidential or be redacted with respect to personal information of investors, witnesses and other third parties. The Commission's Practice Guideline dated April 24, 2012, entitled "Use and Disclosure of Personal Information in Ontario Securities Commission's Adjudicative Proceedings" requires parties filing documents intended to be part of a hearing record "to use all reasonable efforts to limit the disclosure of personal information of investors, witnesses and other third parties …" It does not appear to me that personal information was disclosed in connection with the motions before me. I expect the parties to comply with the Practice Guideline in tendering documents as evidence in this proceeding. If it becomes necessary to address confidentiality of personal information at a later stage, the parties are free to make submissions. In my view, the Confidentiality Motion is premature and unsupported by the evidence.

Conclusion

[59] Accordingly, the Disclosure Motion and the Confidentiality Motion are dismissed.

DATED at Toronto this 14th day of December, 2012.

"James E. A. Turner"

3.1.2 New Found Freedom Financial et al. – s. 127

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

AND

IN THE MATTER OF
NEW FOUND FREEDOM FINANCIAL,
RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY,
DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING

REASONS AND DECISION
(Section 127 of the Securities *Act*)

Hearing:	September 24, 26-28, 2012 October 1-2, 4-5, 10, 2012 November 23, 2012		
Decision:	December 17, 2012		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Amanda Heydon Sean Horgan	–	For Staff of the Commission
	Ron D. Singh	–	Self-Represented
	Wayne G. Martinez	–	Self-Represented
	Pauline Levy	–	Self-Represented
	New Found Freedom Financial	–	Unrepresented

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I. INTRODUCTION

[1] This matter is yet another example of investors persuaded to advance money for investment in foreign exchange trading ("**Forex**") on the promise of unrealistic returns. As with many such schemes, funds from investors late to the program were used to pay earlier investors and the proponents of the scheme, to their detriment.

[2] This was a merits hearing before the Ontario Securities Commission (the "**Commission**"), pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***"), to determine whether it is in the public interest to make certain orders against New Found Freedom Financial ("**NFF**"), Ron Deonarine Singh ("**Mr. Singh**"), Wayne Gerard Martinez ("**Mr. Martinez**"), Pauline Levy ("**Ms. Levy**"), David Whidden ("**Mr. Whidden**"), Paul Swaby ("**Mr. Swaby**") and Zompas Consulting ("**Zompas**").

[3] The specific allegations advanced by enforcement staff of the Commission ("**Staff**") are:

(a) Between April 1, 2008 and October 31, 2009 (the "**Material Time**"), the respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to section 25(1)(a) of the *Act* as that section existed at the time the conduct at issue commenced, and contrary to section 25(1) of the *Act* as subsequently amended on September 28, 2009;

(b) During the Material Time, the respondents traded in securities for which no preliminary prospectus or a prospectus had been filed and no receipts had been issued for them by the Director, contrary to section 53(1) of the *Act*;

(c) During the Material Time, NFF, Mr. Singh and Mr. Martinez engaged or participated in acts, practices or courses of conduct relating to securities of NFF that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to section 126.1(b) of the *Act*;

(d) During the Material Time, Mr. Singh and Mr. Martinez authorized, permitted or acquiesced in NFF's non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the *Act*; and

(e) The respondents' conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

[4] The allegations against Mr. Whidden, Mr. Swaby and Zompas were settled by agreement (the "**Settling Respondents**").

[5] Staff produced 12 Hearing Briefs ("**H.B.**") containing part, but not all, of the disclosure made to the respondents. I rejected Staff's attempt to enter the H.B.s as Exhibits when it was clear that not all of the documents in the H.B.s would form part of the evidence. The H.B.'s are divided into Tabs and sub-tabs. For purposes of identification, individual exhibits, whether one document or several documents, will be identified as H.B. Volume #, Tab # and sub-tabs -. Where helpful, a page number or numbers will be added. Nine volumes of transcripts were tendered into evidence. Where evidence is quoted, the reference will be to Tr. Vol. #, p. #, l. #. Exhibits will be referred to as Ex. #.

II. OVERVIEW

[6] The following narrative includes findings of fact which either are not in dispute or which were uncontradicted in any material way by the respondents.

[7] NFF was a partnership formed by Mr. Singh and Mr. Martinez in April, 2008. The partnership created an investment program in which NFF took in money from investors, pooled it and transferred it to Forex traders of their choosing. NFF would receive a percentage return from the traders and it would, in turn, pay a smaller percentage to investors.

[8] The Forex trading was unsuccessful and failed to provide sufficient funds to pay the promised returns to the investors.

[9] NFF continued to raise money from investors after they had ceased making payments to any of the Forex traders or receive payments from those traders. NFF received new investments up until mid-September 2009 but ultimately ran out of money by October 31, 2009 when the program was shut down.

[10] From April 2008 until the end of October 2009, NFF raised approximately $1.8 million from 57 investors. The majority of that money has not been returned to those investors.

[11] Investors entered into written agreements with NFF, the form of which changed over time. At least four different versions of the agreement were put in evidence. The common characteristic of the agreements was that investors gave funds to NFF who in turn pooled those funds and gave them to a Forex trader. Three different traders were used over the course of the period in question. Investors were told that either 80% or 100% of their principal was guaranteed.

[12] None of the respondents was ever registered with the Commission in any capacity. No prospectus was ever filed nor was a prospectus receipt ever issued with respect to the investment. Mr. Singh and Mr. Martinez had signing authority for NFF's bank accounts into which investor funds were deposited and from which funds were transferred to the Forex traders or used for other purposes.

[13] Ms. Levy solicited investors on behalf of NFF. Ms. Levy is a mortgage agent and suggested to some of her clients that they could use the NFF investment to help make their mortgage payments. She assisted clients in making application to NFF and helped with the payment of monthly returns to investors for which she received referral fees.

[14] The first Forex trader retained by NFF was Kevin Harris who operated two companies, Investments International Inc. ("**I3**") and Corporate Developments Limited ("**CDL**"). Mr. Harris operated in the state of Ohio, U.S.A. and NFF transferred funds to him in U.S. dollars. In October 2008, NFF stopped receiving any payments from Mr. Harris and never recovered any of the principal provided to Mr. Harris.

[15] In September 2008, NFF retained a second Forex trader, Sylvan Blackett and his company, 2150129 Ontario Inc. ("**2150129**"). The third Forex trader was the settling respondent, Mr. Swaby.

[16] The last payment NFF made to any of the three traders was on January 23, 2009. Nevertheless, NFF continued to accept new investments in the following months. Of the $1.8 million invested in NFF only $1.1 million was transferred to the three traders. The balance of $700,000 was neither used for trading nor kept on deposit but rather used to fund monthly payments to earlier investors, payments to Mr. Martinez and Mr. Singh, or for other purposes.

[17] The last payment from the three traders was received from the third trader, Mr. Swaby, on July 3, 2009. This coincided with NFF beginning to have difficulty making monthly payments to its investors. These problems continued through July, August and September, 2009. NFF continued to accept new investments until mid-September 2009. From January 24, 2009, when NFF stopped making payments to the traders, until the program was shut down on October 31, 2009, NFF raised over $640,000 from investors. None of this money was ever transferred to a trader but rather used primarily to fund monthly return payments to other investors, and to pay referral fees and other sums to Messrs. Singh and Martinez.

III. STAFF WITNESSES

A. Michael Ho

[18] Michael Ho is a forensic accountant with the enforcement branch of the Commission since June 2005. He is a Chartered Accountant and has a designation of Certified Management Accountant. He was assigned as primary investigator of the NFF matter on September 21, 2010. His evidence may be found in Tr. Vol. 1, pp. 35-205, Tr. Vol. 2, pp. 9-125, Tr. Vol. 4, pp. 80-150 and Tr. Vol. 5, pp. 5-135.

[19] In the course of his responsibility, Mr. Ho summoned and reviewed documents from the financial institutions that NFF dealt with, including TD Bank and the Bank of Montreal. He summoned investor witnesses for interviews; he also summoned and interviewed Mr. Singh, Mr. Martinez and Ms. Levy pursuant to section 13 of the *Act*. He conducted voluntary interviews with a number of investors and conducted a source and application of funds analysis, relying on the banking documents he obtained.

[20] Mr. Ho was referred to H.B. Vol. 1, entitled "Investigation Documents and Correspondence". At Tab A, sub-tabs 1-4 are four s. 39 of the *Act* Certificates confirming that none of the Respondents has ever been registered under the *Act* (Exs. 1-4).

[21] Mr. Ho was referred to H.B. Vol. 1, Tab B, sub-tab 1 which he identified as a Business Names Report issued by the Ministry of Government Services showing NFF as registered under the *Business Names Act*, R.S.O. 1990, c. B.17, with a mailing address of 85 Pilkey Crescent, Scarborough, Ontario, Canada, M1B 2A8 showing Messrs. Singh and Martinez as the partners of NFF (Ex. 5).

[22] Mr. Ho was then referred to H.B. Vol. 2, Tab 1, sub-tab B, a transcript of the compelled examination of Ron D. Singh with attached exhibits (Ex. 6). Similarly, Mr. Ho identified Vol. 2, Tab 2, sub-tab B as the transcript of the compelled examination of Mr. Martinez with exhibits attached (Ex. 7).

[23] Mr. Ho further identified Vol. 2, Tab 3, sub-tab B, a transcript of the compelled examination of Pauline Levy with exhibits attached (Ex. 8).

[24] Mr. Ho was then asked to summarize the information he obtained from Mr. Singh during the compelled examination. Mr. Singh confirmed that NFF was a partnership owned 50-50 by himself and Mr. Martinez. Mr. Singh described the business activities of NFF as raising funds from investors for the purpose of investing in Forex through independent traders. The program was structured so that a Forex trader would provide NFF a return of 10% on a monthly basis and NFF would in turn provide investors a monthly return of 5.28%. He identified the three traders used by NFF as I3 and CDL, Sylvan Blackett and Paul Swaby. Mr. Singh told investors that 100% of their principal would be guaranteed. He acknowledged that NFF started to hold back funds given by investors late to the program and using some of those funds to make monthly interest payments to previous investors.

[25] Mr. Ho summarized Mr. Martinez's evidence as very consistent with what Mr. Singh had told him. Mr. Martinez did confirm that NFF had no other business activities than the Forex investment program and that the company had no other revenue than the return paid by the traders. He also represented that the principal of investors would be guaranteed 100%.

[26] During Mr. Ho's examination of Ms. Levy, she told him that she introduced 10 different investors to NFF and for doing so she was entitled to a referral fee of 3% to 5%. She arranged to receive those referral payments through one J.B., her business partner, because she was planning to file for personal bankruptcy. Ms. Levy explained the program to the investors that she introduced, assisted them in filling out the application forms and provided informational documents about the program to those clients. For approximately three months, she received payments from NFF which included interest payments owing to the client and her referral fee. Ms. Levy would deduct her referral fee and send the balance to those clients. This was done through J.B.'s bank account.

[27] Mr. Ho was referred to Vol. 3, entitled Investor Documents. During the course of his investigation, Mr. Ho obtained a wealth of documents from various investors in the program. These investors must be referred to by their initials in order to meet privacy requirements. The documents they provided to Mr. Ho were remarkably similar although not exactly the same in every instance. The usual sequence of documents included a document entitled NFF terms and condition of participation, an investment account application, description of the NFF Forex investment strategies, a confirmation letter, a welcome letter, etc. The following is a list of those investors and where the documents they provided to Mr. Ho may be found:

(a) D.B. – H.B. Vol. 3, Tab 1, sub-tabs A-F (Exs. 9-14);

(b) E.E. – H.B. Vol. 3, Tab 2, sub-tabs A-F (Exs. 15-20);

(c) D.F. – H.B. Vol. 3, Tab 3, sub-tabs A-C (Exs. 21-23);

(d) R.G. – H.B. Vol. 3, Tab 4, sub-tabs A-B (Exs. 24-25);

(e) J.J. and two sons – H.B. Vol. 3, Tab 5, sub-tabs A-O (Exs. 26-40);

(f) L.K. – H.B. Vol. 3, Tab 6, sub- tabs A-E (Exs. 41-45);

(g) M.Mc. – H.B. Vol. 3, Tab 7, sub-tabs A-B (Exs. 46-47);

(h) M.M. – H.B. Vol. 3, Tab 8, sub-tabs A-I (Exs. 46-56); and

(i) H.S. and family – H.B. Vol. 3, Tab 9, sub-tabs A-S (Exs. 57-75).

[28] Ms. Levy supplied documents and information about the clients she referred to NFF. These documents can be found in H.B. Vol. 3, Tabs 10-20 (Ex. 76-77).

[29] Mr. Ho's attention was then drawn to H.B. Vol. 1, Tab C, sub-tabs 1-16. These tabs contained correspondence, mainly from NFF addressed to specific investors or to investors in general, explaining or attempting to explain why investors were not receiving their funds. Some of the documents were furnished by Ms. Levy; others were provided by individual investors. The theme of the correspondence from NFF to the investors is "trust us and your principal will be returned to you."

[30] Mr. Ho then identified the volumes containing the bank statements and supporting documents for several accounts in the name of NFF and others:

(a) H.B. Vol. 4 contains documents relating to Toronto-Dominion Bank ("**TD**") Acct. no. 5232283, in the name of NFF and contains bank statements and supporting documents for the period May 28, 2008 to August 31, 2010 (Ex. 104).

(b) H.B. Vol. 5 contains documents relating to TD Bank Acct. 523283, a US dollar bank account, in the name of NFF and contains bank statements and supporting documents for the period beginning May 29, 2008 to February 11, 2010 (Ex. 105).

(c) H.B. Vol. 6 contains banking documents relating to a Bank of Montreal ("**BMO**") bank account at Tab C, sub-tabs 1-4 (Ex. 106).

(d) H.B. Vol. 6 contains banking documents from the Royal Bank of Canada ("**RBC**") Financial Group at Tab A, sub-tabs 1-3 (Ex. 107).

(e) H.B. Vol. 6 contains documents from NFF and DCR Strategies ("**DCR**") at Tab B, sub-tabs 1-6 (Ex. 108).

(f) H.B. Vol. 6 contains documents from ICICI Bank Tab D, sub-tab 1 (Ex. 109).

[31] The preceding documents form the basis for Mr. Ho's creation of a document entitled source and application of funds entered as Ex. 114. In preparing his source and application of funds by way of an Excel spreadsheet, Mr. Ho analysed four bank accounts and one account with DCR, the latter used for the purchase of "loaded" debit cards which were transmitted to investors to satisfy interest payments owing to them. Tab 1 of Exhibit 114 is the source and application of funds for NFF from the period of April 4, 2008 to October 31, 2009. It shows investors contributed $1,844,725 to NFF, the three traders contributed $305,313 and Messrs. Martinez and Singh each contributed $4,000. "Other" contributions totalled $70,500. The overall sum received by NFF was $2,228,538. From this total, investors received $702,107 by way of interest. The three traders received a total of $1,092,119. Payments to Messrs. Martinez and Singh, cash withdrawals and VISA payments accounted for $173,890. Payments to Pauline Levy and J.B. totalled $63,849. "Other" payments accounted for $196,556, for a total of $2,228,521. The closing balance on October 31, 2009 of $17.00.

[32] Tab 2 of Exhibit 114 is a source and application of funds from January 24, 2009 to October 31, 2009. It will be recalled that Mr. Ho's evidence was that last payment NFF made to any of the Forex traders was January 23, 2009. Funds transferred to NFF by investors after that date were never applied to Forex trading. The opening balance on January 24, 2009 shows a credit balance of $23,837. To that sum is added investors' money of $641,830, transfers from the Forex traders of $84,252 and "other" deposits of $35,813, for a total source of funds for the period of $785,732. From this latter amount $503,676 was applied by payments to investors. $74,392 was paid to Messrs. Martinez and Singh, cash withdrawals amounted to $7,960 and VISA payments of $22,080 were made. "Other" applications of funds totalled $177,607. The outgoing funds totalled $785,715, leaving a closing balance on October 31, 2009 was $17.00.

[33] Tab 3 of Exhibit 114 shows deposits made by investors for the period April 4, 2008 to October 31, 2009, identified by amount and date. After conversion of USD to CAD the total came to $1,844,725.71. Tab 3 also breaks out the amounts invested by Ms. Levy's clients, ten in all, of $283,262.14.

[34] Tab 4 of Exhibit 114 shows payments to investors who received funds from NFF in the period of January 24, 2009 to October 31, 2009. The total amount came to $503,675.93 after conversion of USD. This figure is confirmed in Mr. Ho's preparation of the source and application of funds for NFF for that period found at Tab 2 of Exhibit 114.

[35] Tab 5 of Exhibit 114 is an Excel spreadsheet of transactions connected with NFF for the period April 4, 2008 to October 31, 2009. The document also separately shows transactions from January 24, 2009 to October 31, 2009, the period when no funds were transferred to traders. The document further identifies the bank accounts into which and from which payments were made and contains a consolidated total that differentiates the overall period from the period January 24, 2009 to October 31, 2009.

[36] Tab 6, sub-tab A of Exhibit 114 is a detailed record of transactions in the TD Bank Canadian bank account, showing debits, credits and balances for each day of the period and identifying details from the supporting documents. Tab 6, sub-tab B is a similar document for the USD account. Tab 7, sub-tab A is a source and application of funds for the TD Bank Canadian bank account for the entire period May 29, 2008 to October 31, 2008 with details supplied from supporting documents. Tab 7, sub-tab B is a similar document for the TD USD account for the same period.

[37] Tab 8 of Exhibit 114 is the source and application of funds for the NFF BMO account for the period April 4, 2008 to May 30, 2008 when the account was closed. Tab 9 is a source and application of funds for the NFF BMO USD account for the period April 4, 2008 to May 30, 2008 when the account was closed. Tab 10 of Exhibit 114 is the source and application of funds for the NFF DCR account, being the company which issued the "loaded" debit cards transferred to investors to pay interest owing to

them. The document contains transactions, identifies the investor and maintains a running balance. In addition, the payments made to Mr. Martinez, Ms. Levy/J.B., David Whidden and Mr. and Mrs. G. are broken out with their respective totals.

[38] Ms. Heydon, for Staff, completed her examination-in-chief of Mr. Ho by asking him to explain various entries contained in the tabs Exhibit 114. This period of his examination-in-chief lasted for a considerable time, giving Mr. Ho an opportunity to demonstrate that he had a complete mastery of the figures entered in each of the tabs, whether a source and application of funds or a record of banking transactions, regardless of which bank account. It was in this period that Mr. Ho testified that the VISA payments in Tabs 1 and Tabs 2 were payments made to VISA accounts in the name of either Mr. Singh or Mr. Martinez.

[39] Mr. Singh's cross-examination of Mr. Ho demonstrated Mr. Singh had not fully appreciated why Mr. Ho had created two periods, one from April 4, 2008 to October 31, 2009 and the other from January 24, 2009 to October 31, 2009. Mr. Ho explained to Mr. Singh that the second period was a period in which no payments were made by NFF to any traders despite the fact that funds continued to be received from investors. These funds, as identified earlier in Mr. Ho's examination-in-chief, were applied to other purposes including payments to Mr. Singh and Mr. Martinez, or for their benefit, such as payments on their VISA accounts.

[40] Mr. Singh asked Mr. Ho if he had ever heard the term "roll-over documents" used by himself and Mr. Martinez. Mr. Ho replied that he believed the phrase was used in relation to Mr. Blackett's arrangement with NFF, that NFF would no longer receive payments from him. In place of payments, Messrs. Singh and Martinez agreed to put the amount of interest supposedly due to them on a form of promissory note which recited that Mr. Blackett owed NFF the amount agreed upon. That concluded Mr. Singh's cross-examination of Mr. Ho.

[41] Mr. Martinez's cross-examination of Mr. Ho began with questions directed to the register that the Commission maintains of phone calls received from the general public. Mr. Martinez inquired that if a caller did not identify himself, would there be any record of the call identifying the caller. Mr. Ho was unable give a definitive answer. Mr. Martinez posed one or two other questions, the answers to which did not assist me.

[42] Ms. Levy began her cross-examination of Mr. Ho by producing a sheaf of documents with unnumbered pages that she identified as the banking records of the account maintained in the name of J.B. These, it will be remembered, are the accounts used by Ms. Levy to receive and distribute interest payments from NFF to her 10 clients while retaining for herself the agreed upon interest to be paid for her referrals. Mr. Ho confirmed to Ms. Levy that he did not obtain or request any banking documents from the TD Bank for J.B.'s account. When presented with banking documents for three accounts at the TD Bank in the name of J.B., Mr. Ho confirmed to Ms. Levy that where the NFF accounts showed payments to J.B. or Ms. Levy, he characterized them as such; he did not focus on the bank account to which those payments were made. Ms. Levy then produced two sets of documents, the first a chronological order of drafts and transfers received and disbursed to clients referred by Pauline Levy to NFF. The Volume was entered as Exhibit 115. The second Volume was described as containing documents from three accounts held by J.B. with TD Canada Trust. Unfortunately the documents used by Ms. Levy and her cross-examination of Mr. Ho did not have numbered pages, which led to considerable confusion, particularly in the mind of Ms. Levy. As I understand her cross-examination, she was attempting to show that monies received by J.B. from NFF were further transmitted at the direction of Ms. Levy to some or all of the 10 clients introduced by Ms. Levy to NFF. Mr. Ho repeated pointed out to Ms. Levy that his analysis filed as Exhibit 114 did not attempt to show what J.B. did with the funds that came into her accounts, merely that NFF sent funds to J.B. Ms. Levy's point, as I understand it, is that the figure in Tab 1 of Exhibit 114 that shows application of funds to Pauline Levy and J.B. of $63,849 leaves a false impression that all those funds were retained by Ms. Levy. Mr. Ho conceded that it well may have been that funds from NFF received by J.B. were subsequently transferred to Ms. Levy's clients to reflect payment of interest owing to them. This was a matter upon which Mr. Ho could not pronounce.

[43] Ms. Levy directed questions to Mr. Ho about payments made to Mr. and Mrs. G and inquired why they were not included as investors. Mr. Ho explained that because Mrs. G was Mr. Singh's mother he chose not to consider her an investor but rather as a family member, an explanation that makes considerable sense to me.

[44] I find that the source and application of funds prepared by Mr. Ho (Ex. 114) to be accurate.

B. David Whidden

[45] Staff called David Whidden, a 63 year old retired engineer. Mr. Whidden confirmed that he had no background in securities. He testified by video conference from Windsor, Ontario. His evidence is found in Tr. Vol. 3, pp. 9-143.

[46] He heard about NFF from a friend of his; that friend, in turn, had learned about the program from Mr. Singh's sister.

[47] Mr. Whidden checked NFF's website, spoke with Mr. Singh and met with him in Willowdale in late September 2008. Mr. Singh gave him a brief lesson in currency trading and described its techniques, including only investing a small percentage of principal and holding back the balance. He learned that the Forex trader was an individual named Sylvan Blackett who had eight

years of experience. Mr. Whidden was shown a trading log purporting to be one of Mr. Blackett's trades and how he took $2,000 and turned it into $104,000 in one day and then in the next two days turned it into $250,000.

[48] Mr. Whidden took with him to the meeting with Mr. Singh documents previously forwarded to him. The documents showed an 8% return per month on whatever he invested with NFF, which included the normal return of 5% plus an additional 3% because he was being invited into the program by Mr. Singh's sister. His understanding was that the full amount of his investment would be transferred to the trader who would hold back 80% of the funds and trade only 20% of those funds.

[49] Staff counsel referred Mr. Whidden to documents contained in H.B. Vol. 8, Tabs 1-12 (Ex. 112). Tab 1 is an introduction to Forex trading on the letterhead of NFF offering a program requiring a minimum investment of $10,000, 5% interest per month return and guaranteeing 100% of the principal. In Tab 1, p. 3 is a page of frequently asked questions about Forex trading.

[50] Tab 2 shows Mr. Whidden's application to NFF providing for a participation amount of $10,000 with interest at 5%. There is also an addendum to his NFF contract providing for an additional 3%. Mr. Whidden understood that he was to receive $800.00 per month. At Tabs 3, 4 and 5 are copies of Mr. Whidden's welcome letter, his bank transfer to NFF's bank account for $10,000 and a confirmation of receipt of the money by NFF. Tabs 7 to 10 are similar documents recording Mr. Whidden's additional investment of $10,000 made December 21, 2008. All the correspondence including the "welcome letter" and the "confirmation" letter were signed by Mr. Singh's mother.

[51] Mr. Whidden received his first payment of $800.00 on December 17, 2008 and his first payment on his second investment was February 17, 2009. In late January or early February 2009, Mr. Whidden learned from Mr. Singh of concerns about Sylvan Blackett's management of his bank accounts. In June 2009 Mr. Whidden received a telephone call about banking problems of Mr. Blackett who, it was said, was unable to access his funds. There were late payments over the summer but the payments got up to date until September 2009 when no payment was received. The October payments were made and those were the last payments received by Mr. Whidden.

[52] Mr. Whidden became quite involved with Mr. Singh and Mr. Martinez in efforts to get the payments back on track. He was present at two meetings with Sylvan Blackett, who continued to insist that he had the funds and would meet the payments to be made but was prevented from doing so by "banking difficulties". At other times he said his accounts were "frozen".

[53] Staff counsel referred Mr. Whidden to Tab 10 of Exhibit 112, a document prepared by Mr. Whidden. The document is a spreadsheet showing Mr. Whidden and 12 persons introduced to the NFF program by Mr. Whidden. The document shows the amounts invested, the first payment date, the number of payments, amounts paid and the shortfall for each of the investors. The document also shows that Mr. Whidden received referral fees of $47,410 for his introductions to the program. Staff counsel obtained Mr. Whidden's confirmation that he had earlier entered into a settlement agreement with the Commission and that prior to the settlement he paid approximately $47,000 to investors.

[54] Staff drew Mr. Whidden's attention to Tab 12, Ex. 112. This is a document on NFF letterhead entitled True Freedom Marketing Program, Frequently Asked Questions. Mr. Whidden described this as a new program which was established in the spring of 2009. The program was designed by Mr. Singh. It invited persons to refer investors to NFF if they were interested in real estate, mortgages and/or tax services. The document sets out what commission would be paid and how much that would generate as revenue for NFF. It was an attempt to grow the NFF business in areas other than Forex trading. Mr. Whidden described it as a "restructuring" of what they had been doing and an attempt to get business in other areas. Mr. Whidden believed that most of the investors he referred to NFF filled out the agreements at Tab 12.

[55] Mr. Whidden established he was not an accredited investor.

[56] In cross-examination by Mr. Singh, Mr. Whidden confirmed he received the "frequently asked questions" application forms with the addendum and "Terms and Condition" before meeting with Mr. Singh in person. He further confirmed that a MasterCard program was discussed. Subsequent to June 2009 the program was described as something that would solve some of the banking problems that existed because the late payments and lack of payments were being blamed on banking problems. The MasterCard was reported to be something that was going to help alleviate that. Mr. Whidden had the impression that when the MasterCard came in, NFF would load the cards as it had done with the debit cards.

[57] Mr. Singh obtained confirmation that Mr. Whidden's funds would be referred to a Canadian trader and it was that program that was discussed in detail. Mr. Singh drew Mr. Whidden's attention to a line in the contract that said 100% of the principal was guaranteed but that the previous guarantee referred to in the documents was 80%. Mr. Whidden denied that he regarded this as a conflict. He assumed that the guarantee was coming from NFF because it was on its letterhead in the contract and it was NFF with whom he had his contract.

[58] There then followed a series of questions and answers relating to the True Freedom program introduced to take the place of the Forex trading program. Mr. Whidden said his understanding was that the new program did not erase the Forex

program, but rather was an addition to their existing contract in trading. Mr. Whidden acknowledged that he assisted in developing the program as it provided diversification.

[59] Mr. Martinez posed one or two questions to Mr. Whidden, the answers to which do not assist me.

[60] Ms. Levy began her cross-examination of Mr. Whidden by asking his understanding of how the referrals were rewarded. He said he did not realise at the outset that he could get a referral fee by bringing investors to the program. Once he learned that, he did make several referrals of family members and friends. He warned them not to invest more than they could afford to lose because he knew it was risky.

[61] When things started to go badly, some referrals never called NFF only Mr. Whidden. Others were calling NFF on a regular basis. Mr. Whidden helped Mr. Singh's mother to draft emails to investors who made inquiries to NFF. The usual message was to ask for patience, that NFF was "working on it". He described his activities as those of a speech writer. He may have helped prepare six or seven emails to clients, signed by Mr. Singh's mother. He said he was not responsible for the content of the emails but rather the form.

[62] As for the acceptance of the referral fees, Mr. Whidden confirmed that he had no concerns about receiving the fee nor did he feel there was anything illegal in receiving a referral fee.

[63] Ms. Levy pointed out to Mr. Whidden that it appeared that those who referred investors received investors interest payment plus the referral fee; it was the responsibility of the referrer to forward the interest payment to that investor. Mr. Whidden expressed surprise because, to his understanding, that was not the way it happened.

[64] Mr. Whidden told Ms. Levy that it took two months to develop the new True Freedom program which he helped to construct. The clients he referred were required to sign a new enrolment into the program but made no new payments. As Mr. Whidden explained it, the clients were enrolled retroactively to the date of their original Forex contracts. The new program was to replace their existing contract. The new contract was pre-dated to the date of their original Forex contract, but the intention was that the original contract would be treated as though it never happened. By signing the new contract, the client agreed to do new referrals. That ended Ms. Levy's cross-examination of Mr. Whidden.

[65] I accept Mr. Whidden's evidence. He was unshaken in cross-examination. The documents in Ex. 8 confirm his testimony as does the analysis of Mr. Ho in Ex. 114.

C. L.M.

[66] Staff called L.M. of Sherwood Park, Alberta who testified by video conference. His evidence may be found in Tr. Vol. 9, pp. 5-78.

[67] Mr. L.M. is 73 years old and describes himself as semi-retired. He was referred to NFF by a co-worker and friend. She had invested $10,000 with NFF and had known Mr. Martinez for 20 years. At the time they spoke she had received payments for the previous five months on her investment; she trusted Mr. Martinez.

[68] Mr. L.M. called Mr. Martinez towards the end of April 2009. He was told that NFF was dealing in the currency market and trading in Forex, that his funds would be placed with a trader and the funds were 100% guaranteed by the trader. Only up to 20% of the funds would be at risk at any time and the balance of 80% would be held by the trader. He was told that Paul Swaby was the manager overseeing the traders to make sure they complied with the rules and regulations of their company. L.M. was directed to H.B. Vol. 9, Tabs 1-17 (Ex. 113). M.M., L.M.'s wife, invested three amounts of $10,000 in NFF: at the beginning of March 2009, at the end of May 2009 and at the end of June 2009. Tabs 1-11 of Ex. 113 contain the application to NFF, the transfer of funds, the welcoming letter, the confirmation of funds received and the advice as to when the interest payments would start. The same or similar documents exist for each of the three investments of $10,000. As was the practice, the letters were signed Mr. Singh's mother.

[69] L.M. confirmed that in addition to his wife's investments, a company controlled by him named LDM Holdings (1994) Ltd. ("**LDM**") also invested in NFF for $75,000. Tabs 12-15 in Exhibit 113 contained the usual application and responses from NFF, including a contract agreement, a welcoming letter, evidence of the funds transferred and the confirmation letter.

[70] L.M. confirmed that his wife's investments received their interest up until August 2009, nothing for September and then the last payment in October 2009. There was some confusion arising from the dates and amounts of the interest payments. The matter is best resolved by reference to Exhibit 114, Tab 4, where Mr. Ho has entered the NFF payments to investors for the period January 24, 2009 to October 31, 2009.

[71] In July 2009 Mr. Martinez flew to Edmonton to meet with L.M. to report that NFF would be starting a new program. L.M. was considering participation in the program because he would receive a fee for providing investors. He was told he would

receive 8% on any additional money he put in the Forex program. At Tab 12 is the LDM contract calling for $75,000 payable to NFF as a "Participation Amount". Tabs 12-15 contain the usual documents associated with an investment in NFF. At Tab 15 is Mr. Singh's mother's letter to confirm that the first payment to LDM would be November 2, 2009. L.M. confirmed that no payments of any kind were ever received for this last investment of $75,000. At no time up to the end of August 2009 had the couple been told that there were difficulties with the NFF investing program.

[72] When the payments stopped in October 2009, L.M. called Mr. Martinez who told him that they were having some problems with a trader. Mr. Martinez assured him that his funds were secured and safe in a bank account and that they were trying to get this resolved. There followed many conversations and emails between L.M. and Mr. Martinez. Mr. Martinez indicated that a trader had taken off with a considerable amount of money; that they had tracked him down; that this money was going to be paid back; and that everyone would be paid out from the funds they recovered, alleged to be $1.2 million. At some later date, Mr. Martinez sent copies of four mortgages, the equity in which would allegedly be used to secure the couple's investment.

[73] L.M. tired of trying to find Mr. Martinez and wrote Mr. Swaby. At Tab 16 is an email chain starting with an email to Mr. Swaby dated July 1, 2010. It recites a litany of excuses advanced by Mr. Martinez and the difficulties L.M. had in trying to reach him. Mr. Swaby responded by asking for time to get matters sorted out, but L.M. has not heard back from him since the email from Mr. Swaby dated July 2, 2010.

[74] L.M.'s examination ended with responses to questions from Staff counsel to establish that he did not qualify as an accredited investor at the time he invested in NFF.

[75] In cross-examination by Ms. Levy, L.M. confirmed that his friend A.D.'s referral fee was directed to him. In response to a question from Ms. Levy, L.M. pointed out that he had received some documentation from Ms. Levy, a form letter that was similar to the letters he received from NFF. In Ms. Levy's letter she pointed out the differences between some of the NFF documents. He acknowledged that Ms. Levy was attempting to get the funds returned for all the investors and stated her intention was to seek legal advice. L.M. sent Ms. Levy $150 as his share for retaining a lawyer. The balance of Ms. Levy's cross-examination does not help me.

[76] In cross-examination by Mr. Martinez, L.M. confirmed that A.D. told him she was invested in the U.S. program and that she had received five payments on her investment.

[77] There then followed a long and confusing series of questions put to L.M. about when Mr. Martinez flew to Edmonton to meet with him and his friends. This evidently had to do with a transaction that never took place and the exchanges on this matter do not help me.

[78] The balance of Mr. Martinez's cross-examination doesn't help me.

[79] Mr. Singh cross-examined Mr. L.M. His cross-examination does not help me.

[80] In re-examination by Staff counsel, L.M. confirmed he was confident in investing $75,000 because he was receiving payments from his three previous investments, that he understood the traders were legitimate and licensed and there was nothing to indicate there were any problems. Before he invested the $75,000 Mr. Martinez told him that "everything was rosy." That concluded the re-examination.

[81] I accept L.M.'s evidence. His evidence was consistent with the documents in Ex. 113 and was not challenged in cross-examination. His figures are confirmed by Mr. Ho's analysis in Ex. 114.

D. L.S.

[82] L.S. is a 48 year-old police officer with no background in securities. Her evidence may be found in Tr. Vol. 5, pp. 136-167 and in Tr. Vol. 6, pp. 5-29.

[83] L.S. learned of NFF through her brother H.S., who also invested with NFF. H.S., in turn, learned about NFF through Mr. Martinez. L.S. conducted one or two background checks, spoke with Mr. Martinez a couple of times and after speaking with her brother, filled out the application form to NFF.

[84] At a meeting with Mr. Martinez, she was told that her money was safe and that it was 100% guaranteed. She was shown an Excel spreadsheet that showed different payments that she would receive if she invested a certain amount. Mr. Martinez further told her that NFF used an individual who did all the trading, that he was fully experienced and that he would invest in the correct areas or portfolios to get the best return. She believes that Mr. Martinez told her that the trader's name was Ron. On January 28, 2009, L.S. invested $40,000 and was told that she would receive a return of $3,200 a month.

[85] Staff counsel directed L.S. to Ex. 117. At Tab 7 is a document with NFF letterhead discussing managed Forex accounts. The document explains Forex trading, provides fast facts and program features and a series of frequently asked questions. She obtained the document from her brother, H.S. Her understanding was that although the document guaranteed 80% of the principal, that applied to a U.S. investment. L.S. said "I went Canadian, which 100% was guaranteed." Her attention was drawn to p. 22 of Tab 7 which calls for 5% interest per month. L.S. said she got 8% because her brother was a good friend of Mr. Martinez.

[86] L.S.'s attention was drawn to p. 23 of Tab 7, which cited there had been no loss of principal recorded to date. She said this greatly affected her decision to invest because if there was no loss recorded, she believed it was safe.

[87] L.S. referred to Tab 1 of Exhibit 117 which shows an email chain resulting in her brother H.S. forwarding to her a number of forms. In Tab 2, she identified the Canadian contract which she signed being pages 6-9 in Tab 2. She initially invested $40,000 which she obtained from her line of credit. Her attention was drawn to p. 6 and the term of the contract that said 100% of the principal was guaranteed. L.S. confirmed this was consistent with what Mr. Martinez had told her.

[88] L.S. made an additional investment of $10,000 on February 6, 2009. She identified the documents in Tab 2, pp. 10-13 to be the application she signed for the second investment. It was pointed out to her that on p. 11, all principal was 100% guaranteed "by our traders". L.S. said that her understanding remained that her principal was 100% guaranteed by NFF. She also maintained she was to receive interest of 8% per month, as confirmed by Mr. Singh's mother in an email found in Tab 5, p. 17 of Ex. 117.

[89] L.S. recalled receiving three or four payments of $3,200 on her first investment and one or two payments of $800 on her second investment. The monthly payments changed from a wire transfer to her bank account to a series of debit cards that entitled the holder of the card to obtain cash when the card was presented. The first came from TruCash and later by MasterCard. She recalled that the payments stopped somewhere around July. In Ex. 114, Tab 4, p. 10, Mr. Ho records interest payments to L.S. totalling $24,000.

[90] When the payments stopped L.S. called Mr. Martinez. When he returned her call he told her not to worry and that everything was alright. She met with him at a restaurant and Mr. Martinez continued to tell her that everything was alright, that she was going to get all of her money; it was all still 100% guaranteed. Mr. Martinez mentioned that he was having trouble finding Ron Singh. At some point, Mr. Martinez stopped returning her calls. None of her principal was returned to her.

[91] In response to questions by Staff counsel, L.S. established that she did not qualify as an accredited investor.

[92] In cross-examination by Mr. Singh, L.S. confirmed that he never told her that her principal was 100% guaranteed. Indeed, L.S. was unsure who Mr. Singh was.

[93] In cross-examination by Mr. Martinez, L.S., in response to a question from Mr. Martinez said as follows: "however, you told me specifically face-to-face that it's 100% guaranteed. Don't worry everything is okay". This conversation took place at the first meeting with Mr. Martinez.

[94] A second meeting took place between L.S. and Mr. Martinez; once again L.S. testified that Mr. Martinez told her that her principal was guaranteed 100% by NFF. An exchange took place about what Mr. Martinez said at that meeting that was not helpful to me.

[95] In cross-examination, Ms. Levy asked L.S. what prompted her to put $50,000 into NFF. L.S. replied that she did police checks on NFF and found nothing. Moreover, her brother knew Mr. Martinez for a number of years and also Mr. Martinez's father. They developed a very good friendship. Her brother's experiences with NFF were positive. What's more, she relied on the 100% guarantee. Ms. Levy asked L.S. if she was told that NFF had a referral program where, if you brought somebody else to the program, you could make a better return. L.S. said she never heard of that. L.S. was asked how the conversation about 8% interest came up and L.S. explained that because she was family of Mr. Martinez's good friend, she received 8%.

[96] L.S. was asked if Mr. Martinez or NFF ever said to her that they were having problems with any of their traders. L.S. said there was one occasion before Mr. Martinez stopped returning calls when he said that everything was okay but they were having trouble finding Ron. She never got an email that said they were having difficulties with traders or any correspondence as to why her interest payments were late.

[97] Ms. Levy asked L.S. if she knew what role she, Ms. Levy, played in NFF. L.S. responded she wasn't sure who Ms. Levy was. That ended any useful cross-examination of L.S. No questions were put to her in re-examination.

[98] I accept the evidence of L.S. She did not waiver when Mr. Martinez suggested he did not tell her that her investment was 100% guaranteed. The documents in Ex. 117 confirm her testimony, as does Mr. Ho's analysis in Ex. 114.

E. P.C.

[99] P.C. is 32 years old and is a catering supervisor. Her evidence may be found in Tr. Vol. 6, pp. 30-125.

[100] P.C. testified that she made an investment with NFF through Ms. Levy. Ms. Levy had worked with P.C. and her husband in obtaining a mortgage. Ms. Levy suggested an investment in NFF would be a way to have extra money coming in monthly to make the mortgage payments. It was Ms. Levy who first brought up NFF sometime in June 2009.

[101] P.C. stated that Ms. Levy told the couple that they would be getting a 5% interest on the money they invested, that 20% of the money would be traded in Forex and 80% would be insured. Ms. Levy said nothing about what her investment would be traded in nor who would be doing the trading. They did not speak to anyone from NFF before making the investment.

[102] In Ex. 118, P.C. identified the four pages in Tab 1 of Vol. 10 as her application to enter the True Freedom marketing program sponsored by NFF. The document was given to the couple by Ms. Levy at their residence and was signed the same day.

[103] She did not know why the document she was signing was called a marketing program membership agreement. She did not understand that she was purchasing anything, but rather thought she was investing with NFF. P.C. invested $15,000 on July 6, 2009 (Ex. 114, Tab 3, p. 1).

[104] P.C. was drawn to the terms of agreement on p. 1 of Tab 1 that recited that the applicant was applying for three units of membership. She said that Ms. Levy told her that those words did not apply to the couple. Ms. Levy told them that the reference to gold, silver and bronze memberships also did not apply. The form contains an undertaking that the applicant will market and promote the NFF products. Ms. Levy also told them it did not apply to them.

[105] At Tab 2 of Ex. 118, P.C. identified the draft she sent payable to NFF. The draft is dated July 2, 2009. At Tab 3, p. 9 is an invoice from P.C. to NFF for $750.00 described as “for marketing and professional services rendered as per membership agreement”. She confirmed that she never rendered any marketing or professional services to NFF.

[106] P.C. received her first payment on September 16 through a debit card issued by TrueCapital. She received a second payment in October through a MasterCard debit card. Following the October payment, no further payments were received from NFF.

[107] At Tab 7 of Ex. 118 is an email addressed to “Dear Valued Member” from NFF. It is an invitation to an important client meeting being held on Sheppard Avenue East on Wednesday, November 4, 2009. The email explains that NFF would be making important changes to their current programs and refers to ongoing problems with NFF banking. In the meantime, NFF advised that it was suspending all payments until the changes referred to were implemented.

[108] Following the suspension of interest payments, a series of emails found at Tabs 8-14 of Ex. 118 evidence a litany of cancelled meetings, explanations, reassurances and bafflegab designed to placate NFF investors who lost their money, including P.C. and her husband.

[109] In cross-examination by Mr. Singh, P.C. testified her introduction to NFF was done through Ms. Levy. Ms. Levy did not describe the role she had with NFF nor did she describe herself as a salesperson or an owner or anything of that nature. P.C. was unaware that Ms. Levy had other clients in the program. Ms. Levy never made reference to other programs not working out or that there were issues with the program or anything of that nature.

[110] P.C. signed one contract and stated there was never any discussion about being part of the investor Canadian program. She said her understanding was that she was investing to get a 5% return, that 20% of the money was going to be traded and 80% of it would be insured.

[111] In response to questions put by Mr. Martinez in cross-examination, P.C. confirmed she never met or talked to or had any communication with Mr. Martinez before she invested. She was unaware that Ms. Levy was paid a referral bonus of 5% on her money for investing. She was unaware that Ms. Levy went to the United States with Mr. Martinez and met with a trader before her investment. Before investing, she was unaware that the U.S. program was shut down.

[112] In cross-examination by Ms. Levy, P.C. testified that she first met Ms. Levy when she and her husband arranged a mortgage for a condo purchase. She felt she received good, fair and honest information regarding the mortgage and the interest rate. When they sold their condo they looked for a larger mortgage in order to buy a house. Ms. Levy pointed out that NFF could assist in making the increased mortgage payments that were being arranged.

[113] Ms. Levy showed P.C. a series of documents involving other clients Ms. Levy introduced to NFF. Ms. Levy's questions to P.C. about the documents (which P.C. had never seen) led nowhere other than to establish that P.C.'s application form was different from the one shown to her.

[114] In order to make the investment of $15,000 in NFF, P.C. increased the mortgage being arranged by Ms. Levy by $15,000. Ms. Levy suggested to P.C. that when she brought a draft for the $15,000 to P.C.'s house, Mr. Martinez was with her. P.C. denied that. She confirmed that Ms. Levy discussed the compensation to gold members, silver members and bronze members in the application which she signed; however she confirmed that Ms. Levy told her that it did not apply to her. Ms. Levy continued to suggest that Mr. Martinez met P.C. in June 2009 and P.C. continued to confirm that the first time she met him was in February of the following year.

[115] Ms. Levy asked a number of questions about recitals in the application she signed and in every instance P.C. replied that Ms. Levy told her that those recitals did not apply to her. P.C. stated she never went to the office of NFF because Ms. Levy told her that NFF had no office but that it was operated out of somebody's home. P.C. said the first time she ever met Mr. Singh and Mr. Martinez was in the hearing room "awhile back".

[116] Ms. Levy asked a long series of questions pertaining to email chains, which show that P.C. was attempting to find out why she was not receiving interest payments and expressing concerns about her principal. These emails confirm the disappearance of Mr. Singh and Mr. Martinez from time to time; they also confirm that a series of promises were made, mainly by Mr. Martinez, that things would sort themselves out and the investors would get their money back.

[117] Further questions were put to P.C. about the terms of the agreement that she signed. Ms. Levy pointed out many references in the document which P.C. said she paid no attention to, because Ms. Levy had told her that they did not apply to her. This was a common response to the questions put by Ms. Levy. That concluded the cross-examination.

[118] P.C. steadfastly denied propositions put to her on cross-examination in a calm and unemotional manner, devoid of animous towards Ms. Levy's questions. Her evidence is confirmed by the documents in Ex. 118 and by Mr. Ho's analysis in Ex. 114.

IV. RESPONDENT WITNESSES

A. Pauline Levy

[119] Pauline Levy testified. Her evidence may be found in Tr. Vol. 7, pp. 5-82.

[120] Ms. Levy said she came to know NFF through Mr. Martinez. She and her partner in the restaurant business were having difficulty. Mr. Martinez told her he was involved with a company that was doing currency trading. They had checked out their trader, the trader was licensed and the trading was legal. Ms. Levy said that since then she now knows that none of what Mr. Martinez told her was true.

[121] Ms. Levy referred 10 people to NFF. After two years, people she referred were not getting their interest, were not getting their principal back and were not getting any response from Messrs. Martinez and Singh.

[122] Ms. Levy then submitted that she could not understand why she was accused of trading in securities when all she did was refer clients to NFF and receive a referral fee for doing so. She pointed out that there were other people who had referred investors to NFF and received referral fees but that these persons had not been the subject of allegations by the OSC. When asked what that had to do with the allegations against herself, Ms. Levy replied that "there's a prejudicial case for having me solely and as with Mr. Whidden" (Tr. Vol. 7, p. 13, ll. 2-5). There follows several exchanges in between Ms. Levy and myself where I attempted to get her to concentrate on the allegations against her, rather than identifying other persons who had referred investors to NFF.

[123] Finally, Ms. Levy turned to a matter that was pertinent to the allegations made against her. She pointed out that in Mr. Ho's figures she received funds from NFF in the approximate amount of $63,000. Ms. Levy said that the first time she met Mr. Ho, she explained to him how those funds amounting to $63,000 were distributed. That number did not reflect what she forwarded to investors. The investors were to get 5% and the balance was retained for her referral fee. Ms. Levy went on to explain that this applied for the U.S. account number 7121753 maintained in the name of J.B. However, once the Canadian program was initiated it was no longer Ms. Levy's responsibility to receive a sum from NFF, deduct her referral fee and forward the balance to the investor. Rather, NFF sent the investors portion directly to that investor and paid Ms. Levy her referral fee.

[124] In the course of her testimony, Ms. Levy referred to Exs. 115 and 116, documents she had earlier produced in her cross-examination of Mr. Ho. The documents purport to show transactions in three TD Bank accounts in the name of J.B., two in Canadian dollars and one in U.S. dollars. These documents confirm that Ms. Levy did indeed receive payments from NFF in U.S. dollars via J.B.'s U.S. dollar account and confirm she made out drafts to clients she introduced to the NFF program. What is

not clear from Ms. Levy's submission is the exact amount that she transferred to investors and the exact amount she retained as a referral fee.

[125] Ms. Levy concluded her evidence by stating that the nature of what she does is what a broker does. She works with fees and referral fees are nothing out of the ordinary to brokers. She said there was no spirit of being devious or underhanded with anybody. She said the people joined NFF because there was a guarantee that the money would not be touched, other than a portion to be invested. Twenty per cent was the risk they were willing to take. That concluded Ms. Levy's evidence-in-chief.

[126] In cross-examination Staff counsel recalled to Ms. Levy that she affirmed to tell the truth during her interview with Mr. Ho, that she had told the truth to the best of her ability, that there was a court reporter present and a transcript produced, that she had a chance to read her transcript and to the best of her recollection everything in the transcript was true and accurate. Ms. Levy further confirmed that the first eight pages in Ex. 115 were prepared by her.

[127] Ms. Levy then identified the 10 clients that she referred to NFF – P.B., B.E., J.W., R.F., P.S., M.A., S.W., V.H., H.K., H.W. and P.C. These persons were mortgage clients of Ms. Levy. Some of them ultimately decided to take some equity out of their homes in order to invest in NFF. Believing what Mr. Martinez said, she told her clients as follows: NFF had checked out the trader and the trader was licensed; Forex trading was legal; gave an explanation of the NFF program to the people she referred; told the clients they would receive 5% interest per month; explained to them how they could provide their funds to NFF and that their principal was guaranteed by NFF; received the paperwork required from Mr. Martinez and gave investors blank NFF agreements to complete; for some clients, she filled out the entire form; and received confirmation letters from NFF for each of her clients.

[128] Ms. Levy confirmed the evidence of other witnesses called by Staff about the difficulty in learning from NFF what the situation was when the payments stopped. That concluded Staff's cross-examination.

[129] In cross-examination, Mr. Singh asked Ms. Levy if she recalled going to Ohio with Mr. Martinez to meet Kevin Harris, the owner of I3 and CDL and the U.S. trader for NFF. She confirmed this and said there were a lot of screens in Mr. Harris' building with screens for trading on every floor with obvious security in place. Mr. Singh asked how confident Ms. Levy was following the demonstration at Mr. Harris' office. She said "I had some questions", but Mr. Martinez continued to tell her, during the drive back from Ohio, that the program was safe and worthwhile.

[130] Ms. Levy confirmed that she never met Mr. Sylvan Blackett. She confirmed that when the money stopped coming from NFF she was determined to try and stay in touch with Mr. Martinez to find out what happened. Mr. Martinez continued to tell her that the money was safe and he was in touch with Sylvan's lawyer to unfreeze the money.

[131] In cross-examination by Mr. Martinez, Ms. Levy described how they first met and discussed NFF. Mr. Martinez posed questions about the trip to Ohio that mirrored those put by Mr. Singh. Ms. Levy was consistent in her answers.

[132] Ms. Levy was asked if she was a plaintiff in a civil suit against NFF; she confirmed she was. She explained the suit by saying that NFF had helped to destroy her good name. She acknowledged that she was upset when she stopped getting referral money. At a meeting with Messrs. Martinez, Singh and Swaby, Ms. Levy was told that she was no longer a part of NFF. She was fired by Mr. Singh. The clients that she referred were no longer her clients, they belonged to NFF. "I was dismissed and that was it." (Tr. Vol. 7, p. 78, ll. 9-11). In conclusion, Ms. Levy said that the civil suit was not about the money.

[133] Ms. Levy took the opportunity in re-examination to state that it was not a conscious effort on her part to have the investors incur losses. She didn't understand the process and had no idea of all the ramifications of NFF. It was not intentional on her part and she wished that she could have read or seen that participation in this activity was going to be an infraction. That concluded the evidence of Ms. Levy.

B. Wayne Gerard Martinez

[134] Mr. Martinez began his evidence by describing how he and Mr. Singh registered the partnership of NFF in March 2008. Mr. Martinez described his background as real estate investing and stated that Mr. Singh had a mortgage company.

[135] They heard about Kevin Harris and his reputation as an exceptional trader in Forex trading. The two men met with K.S., a business partner of Mr. Harris in Barrie, Ontario. She told Messrs. Singh and Martinez about the Forex program. Mr. Martinez said he made a call to the OSC and was told that "Forex currency, Forex is not within our jurisdiction." (Tr. Vol. 8, p. 9, ll. 3-4). Mr. Martinez said that was all they needed to move forward.

[136] Mr. Martinez described the trip to Ohio with Mr. Singh where they met Kevin Harris, saw all his trading screens and met with the IT team at the trading office. They were shown trading reports that confirmed Mr. Harris as a successful trader. Mr. Harris showed on a screen how 80% of the money he received was kept back and only 20% was leveraged in the Forex trading.

Messrs. Singh and Martinez were sufficiently impressed by Mr. Harris that they decided to look for investors whose money would be placed with Mr. Harris.

[137] The first deposits NFF received was from Mr. Singh's mother and his girlfriend. Mr. Martinez learned through Pastor K of Ms. Levy who was described as "very influential, she has some people and she's about business." (Tr. Vol. 8, p. 11, ll. 9-10). Mr. Martinez then described the trip to Ohio with Ms. Levy.

[138] NFF was launched and everything was going well until October of 2008. Mr. Harris wrote to say that he was ending the Forex trading program and moving over to real estate in Dubai. The returns to investors would diminish but the program would continue as a real estate investment. From that point on, NFF received many promises from Mr. Harris that the investors' principal was safe and they would get their money back.

[139] Mr. Martinez then explained how NFF started trading with Sylvan Blackett. NFF decided it would be better to have a trader in Canada. It investigated Mr. Blackett and confirmed that he was legitimate. Mr. Blackett showed Messrs. Martinez and Singh a trade that turned $2,000 into $100,000 in one day. Needless to say, they were impressed. NFF started placing investors' funds with Mr. Blackett. Meanwhile, Kevin Harris continued to promise the return of the investors' principal in the U.S. program.

[140] In January 2009 NFF received a call from Sylvan Blackett stating that he was having some "issues" with his bank. The explanation was that he had left BMO and was going to TD Bank and that TD Bank shut him down; he was looking for a bank that could help him. Mr. Blackett proposed a "roll-over" to NFF whereby Mr. Blackett would acknowledge that he owed the investors funds to NFF. NFF continued to supply investors to Mr. Blackett until September 2009. In the period from March 2009 until September 2009, Mr. Blackett continued to tell NFF that he couldn't "move any money."

[141] Sometime in April or May 2009 Mr. Blackett proposed that investors interest payments could be made by debit card. NFF adopted this method and worked through a company called TrueCash, which they subsequently changed to MasterCard. NFF continued collecting deposits and meeting with Sylvan to find out when he would solve his frozen funds. Mr. Blackett said the problem would be solved by September 2009, which is when they learned from Mr. Blackett that his bank funds were no longer frozen, but his trading account was frozen. NFF wrote their investors saying they weren't going to continue the Forex trading and promised a return of their money in about four weeks. Mr. Martinez acknowledged that that never happened.

[142] Mr. Martinez concluded his evidence by saying that if the OSC representative with whom he had spoken had told him that what was proposed couldn't be done, NFF would have moved forward somewhere else and then "we wouldn't be here."

[143] Staff commenced Mr. Martinez's cross-examination, by reminding him of the circumstances of his compelled examination with Mr. Ho and that he had been sworn to tell the truth and had done so.

[144] There followed a series of questions asked by Staff counsel and admissions made by Mr. Martinez to the following effect. NFF was a 50/50 partnership between Mr. Martinez and Mr. Singh. The business address was 85 Pilkey Crescent where Mr. Martinez lived with his mother. Mr. Martinez' role with NFF was as a salesperson whose task it was to tell people about the program and get money into the program. Mr. Singh was responsible for the administrative side of the program.

[145] Over the course of NFF's operations it had a total of four bank accounts, a BMO Canadian, BMO American, TD American and TD Canadian. Both partners had to sign for transactions in NFF's bank accounts. The email address of the enterprise was info@NFFFinancial.com and both Mr. Martinez and Mr. Singh had access to that email address.

[146] NFF began providing funds to Kevin Harris in April or May 2008. NFF was to receive monthly payments and, in fact, did so until October 2008. Mr. Harris told NFF that its principal was safe and would be returned within 60 to 90 days but stopped communicating with NFF in December 2008 or January 2009.

[147] NFF hired a private investigation firm to look into Mr. Harris' activities and received an investigation report in January or February 2010. At that point, NFF sued Mr. Harris.

[148] Staff counsel referred Mr. Martinez to H.B. Vol. 1, Tab C, sub-Tab 5, filed as Ex. 82. The document was an email dated June 17, 2009 and includes the statement that NFF had filed a lawsuit against Mr. Harris' company I3. Proceedings had started.

[149] There followed a series of questions and answered reported at Tr. Vol. 8, pp. 35-36:

> Q. Well, at least investors were informed that a lawsuit was commenced in June 2009.
>
> A. Right.

Q. Does that assist in your recollection of when you would have found out that I3 was a Ponzi scheme?

A. No. I – I still – I mean, I still –I'm going by what ... what we – what the person who assisted us in the lawsuit, what he – the information he has, which is he dealt with the lawyers and stuff like that,

Q. Your evidence this morning was that you commenced the lawsuit after learning that I3 was possibly a Ponzi scheme.

A. That's correct.

Q. You also learned that Mr. Harris had stopped trading any investor funds in November 2007?

A. Are you asking me whether I learned that in '07 or are you asking me whether I learned that he stopped doing it in '07?

Q. I'm asking whether you learned that at any point.

A. Yes.

Q. And you would have learned that at or around the same time that you learned that I3 was possibly a Ponzi scheme?

A. That's correct.

Q. But you didn't advise New Found Freedom investors that their funds had possibly been invested in a Ponzi scheme?

A. Did I advise them of that? I can't remember if we did that. I know I spoke to some of my clients, because the majority of the clients that – in Kevin Harris was a lot of my friends, so I didn't need to send an email, I spoke to them directly.

Q. You didn't advise any New Found Freedom investors that Mr. Harris had stopped trading in 2007?

A. Well, the conversation – are you asking me the conversation I had with my friends? Is that what you're asking me?

Q. I'm asking you whether you advised any New Found Freedom investors that Mr. Harris had stopped trading in 2007.

A. I advised them about the whole details of his Ponzi scheme when we found out.

Q. But you didn't provide any emails do that effect to investors.

[150] Mr. Martinez confirmed Mr. Ho's evidence that NFF stopped making deposits from any of the four bank accounts to any of the three traders on January 23, 2009. Instead of depositing money with Mr. Blackett the money was rolled-over, that is to say, that if NFF had $50,000 in investor funds to deposit with Mr. Blackett and Mr. Blackett owed NFF $20,000 in monthly payments, NFF would only deposit the difference, i.e. $30,000. The remaining $20,000 of investors' funds was used to pay out other investors. During the period from January to September 2009, NFF never told investors that it had stopped providing funds to the traders. New investor funds that NFF received from the end of January to September 2009 were deposited into one of the four NFF bank accounts and were not segregated from other funds in those accounts. Payments were made out of NFF accounts for a variety of purposes during that January to September 2009 period, including payments to other investors.

[151] Mr. Martinez was referred to H.B. Vol. 9, Tab 15 filed as Ex. 113. The document is a letter from NFF dated August 28, 2009 addressed to investor L.M. and the letter states that L.M.'s funds will be deposited "with our trader" on September 30, 2009. Mr. Martinez confirmed that L.M.'s funds were never deposited with a trader but were deposited into NFF's bank account. The funds would have been used to pay other investors. Letters with similar statements would have been sent to other investors after January 23, 2009.

[152] Mr. Martinez confirmed that NFF investor funds were transferred to a company called Greenland Developments ("**Greenland**"), a property development enterprise. It had nothing to do with Forex trading. A contract signed with Greenland

recorded a loan from NFF to Greenland. Mr. Martinez acknowledged that it would be fair to say that before January 29, 2009 investor funds were provided to parties other than Forex traders.

[153] Mr. Martinez was asked to refer to H.B. Vol. 3, Tab 9, sub-tab O. Mr. Martinez identified the documents as those received by investors. There are two documents that describe Forex trading, the first beginning at p. 137. Mr. Martinez confirmed that on p. 137 it states that 80% of the principal was guaranteed. At p. 138 it states that I3 is the party doing the trading. On the second document, beginning at p. 140, Mr. Martinez identified the document as one used after Mr. Blackett became the trader for NFF. At the top of p. 141 it states that 80% of the principal is guaranteed.

[154] In further questioning, Mr. Martinez conceded that after July 3, 2009 NFF did not receive any payments from any of the three traders. He confirmed that NFF told investors that the pre-paid debit cards would solve the problem that Sylvan Blackett was having with banking issues. He further confirmed that investors were not told about Mr. Blackett's accounts being frozen before October 2009, despite the fact Mr. Blackett first told NFF that the accounts were frozen in February or March 2009.

[155] Mr. Martinez confirmed that the True Freedom program stated in the summer of 2009. Existing investors of NFF were "grandfathered" into the new program, which required them to sign a marketing agreement. The marketing agreement required those investors to refer clients to NFF in order to fund their monthly payments. Mr. Martinez was unable to remember if the new referral program generated any money. That concluded the relevant responses given by Mr. Martinez in cross-examination by Staff.

[156] In cross-examination, Mr. Singh took Mr. Martinez through a series of documents prepared by NFF which varied in some particulars over the period of time that NFF was soliciting investor funds. The cross-examination was particularly unhelpful since all it did was to establish that NFF changed its marketing approach as it changed traders and subsequently changed to a debit card system.

[157] In cross-examination by Ms. Levy, Mr. Martinez confirmed that NFF did not have a lawyer or an accountant at the start of its business. Mr. Martinez repeated what he had said earlier – he called the OSC and a lady on the phone confirmed that Forex trading was not within the jurisdiction of the OSC. That, said Mr. Martinez, was all he needed to be satisfied that the OSC could not get involved with their activity.

[158] Ms. Levy asked who prepared the application forms that investors were required to sign. Mr. Martinez replied that NFF had "copycatted" the forms that I3 had produced. This was on the advice of Kevin Harris because the program was basically the same with the exception of different percentages. When asked what sold the clients on the program Mr. Martinez said it was the guarantee that Kevin Harris gave of 80% of the principal being returned to investors.

[159] Mr. Levy asked how NFF qualified Sylvan Blackett to trade for NFF. Mr. Martinez replied that he relied on the opinions of two people who told him how great Mr. Blackett was, how amazing he was and the returns that people were getting by investing with him. Ms. Levy repeatedly asked why NFF did not make more inquiries about the traders and Mr. Martinez continued to give the same response – because of what they were told by other persons who had invested with them.

[160] Ms. Levy asked Mr. Martinez why M.L. and Greenland got back all their funds. Mr. Martinez said that Greenland did not invest with NFF and he couldn't remember why M.L. got all his funds returned to him. A great deal of the cross-examination by Ms. Levy was spent on establishing that Mr. Martinez' memory of events and Ms. Levy's memory did not coincide. That concluded Ms. Levy's cross-examination of Mr. Martinez.

[161] At that point in the hearing Mr. Singh said he would not be calling any witnesses and would not be testifying.

[162] Following the lunch recess, Staff reported they were not calling any evidence in reply. Written submissions by Staff were to be filed with the Secretary's Office by November 16, 2012 and a date of November 23, 2012 was set for the hearing of oral submissions.

V. POSITIONS OF THE PARTIES

A. Commission Staff

[163] Staff submits the evidence is overwhelming that all the allegations against each of the Respondents have been made out. In Staff's written submissions, the individual actions of the Respondents relating to the alleged breaches of the *Act* are set out with detailed references to the undisputed evidence.

B. Ron Deonarine Singh

[164] Mr. Singh called no evidence, did not testify and did not appear to make final submissions.

C. Wayne Gerard Martinez

[165] Mr. Martinez virtually acknowledged the breaches of sections 25 and 53 of the *Act*. He denied he committed fraud. He submitted that the information given to investors was based on information he received from others, such as Harris and Blackett. He stated that he and Mr. Singh believed everything they were told. Further, they believed everything would be solved. They had no intention of defrauding anyone.

D. Pauline Levy

[166] Ms. Levy questioned the fairness of Staff proceeding against her, claiming others had referred investors to the program. This ignored the evidence given by Mr. Whidden who settled the allegations made against him with Staff. Ms. Levy blamed Messrs. Singh and Martinez for what happened to the investors she introduced to the program. Ms. Levy submitted they left her "high and dry". This does not excuse her obligation to investigate the legality of her position in assisting investors to participate.

VI. THE APPLICABLE LAW

A. Unregistered Trading of Securities

(i) Section 25 of the *Act*

[167] Prior to September 28, 2009, subsection 25(1)(a) of the *Act* provided that no person or company shall trade in a security unless that person is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer:

> **25.(1) Registration for trading** – No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> […]
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[168] The current subsection 25(1) of the *Act* came into force on September 28, 2009. Subsection 25(1) of the *Act* provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company is registered with the Commission:

> **25. Registration – (1) Dealers** – Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer;
>
> or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

(ii) Acts in Furtherance of Trade

[169] "Trade" or "trading" are defined in subsection 1(1)(e) of the *Act* and includes acts in furtherance of trade.

[170] The jurisprudence in this area reflects a contextual approach to determine whether non-registered individuals or companies have engaged in acts in furtherance of a trade. A contextual approach examines the totality of the conduct and the setting in which the acts have occurred, as well as the proximity of the acts to an actual or potential trade in securities. The primary consideration of the contextual approach is the effect the acts had on those to whom they were directed (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 77).

(iii) Definition of Security

[171] The definition of a "security" provided for in subsection 1(1)(n) of the *Act* includes any investment contract. "Investment contract" is not a term defined in the *Act*, but its interpretation has been the subject of a long line of established jurisprudence.

[172] In the leading case, *Pacific Coast Coin*, the Supreme Court of Canada considered and reviewed the test established by the United States Supreme Court in *Howey*: "Does the scheme involve 'an investment of money in a common enterprise, with profits to come solely from the efforts of others'?" (*Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 (Q.L.) ("***Pacific Coast Coin***") at pp. 10-11; *Securities and Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293 (1946) ("***Howey***") at pp. 298-299).

[173] In deciding *Pacific Coast Coin*, above the Supreme Court of Canada relied upon a decision of the Supreme Court of Hawaii to craft a risk capital approach to defining an investment contract. The Hawaiian Court stated that:

> [T]he salient feature of securities sales is the public solicitation of venture capital to be used in a business enterprise … This subjection of the investor's money to the risks of an enterprise over which he exercises no managerial control is the basic economic reality of a security transaction.
>
> (*State of Hawaii, Commissioner of Securities v. Hawaii Market Center, Inc.* 485 P. 2d 105 (1971) at p. 3)

[174] As formulated by the Supreme Court of Canada, the test for the existence of an "investment contract" thus requires:

(1) an investment of money;

(2) with an intention or expectation of profit;

(3) in a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties; and

(4) where the efforts made by those other than the investor are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

(*Pacific Coast Coin*, above at pp. 12-13 (Q.L.))

[175] The application of the investment contract test formulated by the Supreme Court of Canada in *Pacific Coast Coin* must be consonant with the important public policy goals and mandate of the Commission. To achieve the purposes of the *Act*, the definition of "investment contract" must embody a flexible rather than a static principle, one that adapts to the countless investment schemes devised by those who seek to use others' money on the promise of profits (*Pacific Coast Coin*, above at pp. 11-12 (Q.L.) citing *Howey*, above at p. 299).

(iv) Findings

[176] I agree with Staff's submission that the evidence establishes NFF, Mr. Singh, Mr. Martinez and Ms. Levy (the "**Respondents**"), traded in securities, committed acts in furtherance of trading and were engaged in the business of trading in securities. The evidence establishes:

- they each provided potential investors with investment agreements (the "**NFF Investment Contracts**") for signature;
- they each met with investors to discuss the NFF Investment Contracts; and
- they each prepared and/or distributed promotional materials describing the NFF Investment Contracts.

[177] The evidence establishes that Mr. Singh and Mr. Martinez:

- accepted funds from investors for the purpose of investing in NFF;
- had joint signing authority for the NFF accounts where the investor funds were placed;
- directed the use of investor funds from the NFF accounts;
- paid referral fees to Ms. Levy and others who brought investors into the NFF program; and

- entered into an agreement with Ms. Levy in the knowledge that she would solicit individuals to invest in NFF.

[178] I find that the NFF Investment Contracts constitute securities within the meaning of the *Act*.

[179] None of the Respondents has ever been registered with the Commission in any capacity. None of them was exempt from registration.

[180] I find the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to subsection 25(1)(a) of the *Act* as that section existed at the time of conduct at issue and contrary to subsection 25(1) of the *Act* as subsequently amended on September 28, 2009.

B. ILLEGAL DISTRIBUTION OF SECURITIES

(i) Importance of Prospectus

[181] Subsection 53(1) of the *Act* provides:

> **53.(1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus has been filed and receipts have been issued for them by the Director.

[182] The prospectus requirement plays an essential role in the protection of investors. It ensures that prospective investors have the information necessary to make informed investment decisions (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 136).

(ii) Distribution of Securities

[183] Subsection 1(1) of the *Act* defines a "distribution" as follows:

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued […]

[184] I find that the Respondents traded in securities that had not been previously issued.

[185] Trades of the NFF Investment Contracts were distributions since there is no evidence before the panel that any of the NFF Investment Contracts had previously been issued in accordance with the *Act*. No prospectus was filed in respect of the NFF Investment Contracts and no receipts were issued by the Director. No evidence was provided that any exemptions from the prospectus requirements were available to any of the Respondents.

[186] I find that the activities of the Respondents included a distribution in securities for which no preliminary prospectus or prospectus has been filed and for which no receipt has been issued by the Director, contrary to subsection 53(1) of the *Act*.

C. Securities Act Fraud

[187] Subsection 126.1(b) of the *Act* prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud. Subsection 126.1(b) of the *Act* states:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities […] that the person or company knows or reasonably ought to know […]
>
> (b) perpetrates a fraud on any person or company.

[188] In previous decisions, this Commission has adopted the interpretation of the fraud provision in provincial securities legislation as set out by the British Columbia Court of Appeal in the *Anderson* decision. In *Anderson*, the British Columbia Court of Appeal held that the fraud provision in the British Columbia *Securities Act*, which is similar to the Ontario provision, requires proof of the same elements of fraud as in a prosecution under the *Criminal Code*, R.S.C. 1985, c. C-46. The fraud provision in the *Act* merely broadens the ambit of liability to those who knew or reasonably ought to have known that a person or company engaged in conduct that perpetrated a fraud. The words "knows or reasonably ought to know" do not diminish the requirement of

Staff to prove subjective knowledge of the facts concerning the dishonest act by someone accused of fraud. As McKenzie J. stated at para. 26:

> … I find that it is clear that s. 57(b) [the fraud provision in the British Columbia *Securities Act*] does not dispense with proof of fraud, including proof a guilty mind. *Derry v. Peak* (1889), 14 A.C. 337 (H.L.) confirmed that a dishonest intent is required for fraud. Section 57(b) simply widens the prohibition against [… those] who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts concerning the dishonest act, by someone involved in the transaction.
>
> (*Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.C.A. 7 ("***Anderson***") at para. 26; leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.))

[189] In previous decisions, this Commission has also referred to the legal test for fraud set out in the leading case of *Théroux*. In this decision, McLachlin J. (as she then was) summarized the elements of fraud:

> …the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or putting of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist of knowledge that the victim's pecuniary interest are put at risk).
>
> (*R v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("***Théroux***") at para. 27)

[190] The Commission has also recognized that, for a corporation, it is sufficient to show that its directing minds knew that the acts of the corporation perpetrated a fraud to prove breach of subsection 126.1(b) of the *Act* (*Al-Tar Energy*, *supra* at para. 221).

(i) The *Actus Reus* of Fraud

[191] The act of fraud is established by two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or other fraudulent means. Deprivation is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims caused by the dishonest act.

[192] A dishonest act may be established by proof of "other fraudulent means." Other fraudulent means encompasses all other means other than deceit or falsehood which can properly be characterized as dishonest. The courts have included within the meaning of "other fraudulent means" the unauthorized diversion of funds and the unauthorized arrogation of funds or property. The use of investors' funds in an unauthorized manner has been determined to be "fraudulent" (*R. v. Currie*, [1984] O.J. No. 147 (Ont. CA) pp. 3-4).

[193] The conduct of Messrs. Singh and Martinez is nothing less than a litany of deceit, falsehoods or other fraudulent means as follows:

- the investor accounts were not segregated despite representations to the contrary in one of the NFF Investment Contracts;
- they represented to investors that their funds would be used for Forex trading or kept on deposit, but some investor funds were loaned to a property development company;
- they admitted that NFF used investor funds to make monthly payments to investors;
- they continued to seek new investments after January 23, 2009, without informing investors that NFF would stop providing funds to any of the Forex traders;

- after January 23, 2009, investors were provided with "Confirmation" letters which stated their funds would be deposited with a trader on a particular date when, in fact, no deposits were being made to any of the traders;

- they continued to seek new investments after July 3, 2009, without informing investors that NFF had stopped receiving payments from any of the Forex traders;

- they failed to disclose the true state of affairs to investors when NFF began having difficulties making monthly payments in July 2009, instead telling investors that the issue was banking problems;

- they used $173,890 of the funds in NFF's accounts for personal purposes including direct transfers to their individual accounts, cash withdrawals and Visa payments; and

- contrary to the representations made to investors by Mr. Singh and Mr. Martinez, their principal was not guaranteed – a total of over $1.1 million has never been returned to investors.

[194] The second essential element of the *actus reus* of fraud, "deprivation", is satisfied on proof of: (i) actual loss to the victim; (ii) prejudice to a victim's economic interest; or (iii) the risk of prejudice to the economic interests of a victim (*Théroux*, above at para. 16).

[195] "Prejudice" may be established by proof that a victim faced a risk of economic loss even if no loss took place. If, through an act of dishonesty, someone makes an investment or borrows money, even if that action did not cause an actual loss, it constitutes prejudice to the economic interests of the victim (*Re Lewis* (2011), 34 O.S.C.B. 11127 at para. 227).

[196] Suffice it to say there was actual loss to many, if not all, of the investors.

[197] I find the *actus reus* of fraud has been established by the evidence, as against NFF, Mr. Singh and Mr. Martinez.

(ii) The *Mens Rea* of Fraud

[198] The *mens rea* of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act could have as a consequence the deprivation of another. Deprivation may consist of knowledge that the victims' pecuniary interests are put at risk. In Ontario, the legislature has chosen to impose liability of fraud under the *Act* where a person "reasonably ought to know" that their conduct perpetrates a fraud on any person.

[199] Subjective knowledge of the prohibited act and the risk posed to another's interests can be inferred from the evidence, including the act itself. It may also be established by evidence showing that the perpetrator was "wilfully blind" or "reckless" as to the conduct and the truth or falsity of any statements made (*Théroux*, above at paras. 23, 26 and 29).

[200] A sincere belief or hope that no risk or deprivation would ultimately materialize does not vitiate fraud. As the Supreme Court stated in *Théroux*:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If the offence of fraud is to catch those who actually practice fraud, its *mens rea* cannot be cast so narrowly as this.
>
> (*Théroux*, above at para. 36)

[201] Messrs. Singh and Martinez had subjective knowledge they were undertaking dishonest acts which could, and did, put investors financial interests at risk as illustrated by the following findings:

- they were the directing minds of NFF and were responsible for creating the NFF investment program and for directing the use of investors' funds;

- they controlled the NFF accounts. Deposits were received from investors into those accounts and paid to investors, the Forex traders and others;

- they admitted that they loaned investor funds to Greenland Developments, and that they knew that these funds were not being used for Forex trading;

- despite knowing that NFF had not made any payments to any of the Forex traders since January 23, 2009, they continued to solicit new investments without informing investors of this fact;

- further, despite knowing that NFF had not made any payments from any of the Forex traders since July 3, 2009, they represented to investors that NFF was having difficulty making monthly payments in July, August and September 2009 due solely to "banking problems". They also continued to solicit new investments after July 3, 2009 without informing investors of the true state of affairs. Rather, Martinez told an investor that things were "rosy"; and

- they used to $173,890 of the funds in NFF's accounts for personal purposes including direct transfers to their individual accounts, cash withdrawals and VISA payments

[202] The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence (*Théroux*, above at para. 27).

[203] I find that Messrs. Singh and Martinez, as the directing minds of NFF, had subjective knowledge that they were undertaking dishonest acts which could, and did, put investors' interests at risk.

D. Directors and Officers Liability

[204] Section 129.2 of the *Act* provides:

> **129.2 Directors and officers** – For the purposes of this *Act*, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[205] A "person" is defined in subsection 1(1) of the *Act* as including a partnership or other unincorporated organization.

[206] Subsection 1(1) of the *Act* also defines "director" and "officer" as:

> "director" means a director of a company or an individual performing a similar function or occupying a similar position for any person;
>
> […]
>
> "officer", with respect to an issuer or registrant, means,
>
> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or a similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b);

[207] There is a low threshold for finding liability against a director or officer under section 129.2 of the *Act*:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit", and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Momentas*, above at para. 118)

[208] Messrs. Singh and Martinez were the directing minds of NFF. They made all significant business decisions including the use of investor funds and communications with investors.

[209] I find that Messrs. Singh and Martinez authorized, permitted or acquiesced in NFF's non-compliance with sections 25, 53(1) and 126.1(b) of the *Act*. They are liable under Ontario securities law pursuant to section 129.2 of the *Act*.

VII. CONCLUSION

[210] I conclude that:

(a) NFF, Mr. Singh, Mr. Martinez and Ms. Levy traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to subsection 25(1)(a) of the *Act* as that section existed at the time of the conduct at issue, and contrary to section 25(1) of the *Act* as subsequently amended on September 28, 2009;

(b) the activities of NFF, Mr. Singh, Mr. Martinez and Ms. Levy constituted a distribution of securities for which no preliminary prospectus or prospectus has been filed and for which no receipt has been issued by the Director, contrary to subsection 53(1) of the *Act*;

(c) FF, Mr. Singh and Mr. Martinez directly or indirectly engaged or participated in acts, practices or a course of conduct relating to securities that they knew or reasonably ought to have known perpetrate a fraud on persons contrary to subsection 126.1(b) of the *Act*;

(d) as *de facto* directors of NFF, Mr. Singh and Mr. Martinez authorized, permitted or acquiesced in NFF's non-compliance with Ontario securities law and accordingly are liable under Ontario securities law, pursuant to section 129.2 of the *Act*; and

(e) NFF, Mr. Singh, Mr. Martinez and Ms. Levy's conduct outlined above was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

[211] It is ordered that the hearing to determine sanctions and costs will be held at the office of ASAP Reporting Services Inc. at the Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, commencing on March 13, 2013 at 10:00 a.m. Written submissions to be filed with the Secretary of the Commission no later than (5) business days of the scheduled sanctions hearing.

[212] It is ordered upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

Dated at Toronto this 17th day of December, 2012.

"James D. Carnwath"

3.1.3 Merax Resource Management Ltd. 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
MERAX RESOURCE MANAGEMENT LTD.,
carrying on business as CROWN CAPITAL PARTNERS,
RICHARD MELLON and ALEX ELIN

REASONS AND DECISION ON SANCTIONS AND COSTS
(Section 127 and 127.1 of the Act)

Hearing:	May 22, 2012	
Decision:	December 17, 2012	
Panel:	Mary G. Condon	Chair of the Panel
	Sinan O. Akdeniz	Commissioner
Appearances:	Tamara Center Scott Boyle	For Staff of the Commission
	Richard Mellon	For himself
	Alex Elin	For himself

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REASONS AND DECISION

I. OVERVIEW

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c., S.5, as amended (the "**Act**") to consider whether it was in the public interest to make an order with respect to sanctions and costs against the respondents, Richard Mellon ("**Mellon**") and Alex Elin ("**Elin**") (together, the "**Respondents**").

[2] During the hearing on the merits (the "**Merits Hearin**g"), Staff issued a Notice of Withdrawal which noted that on May 15, 2006 Merax Resource Management Ltd. ("**Merax**"), carrying on business as Crown Capital Partners, was dissolved as a corporation and Staff withdrew its allegations against Merax. Accordingly, the Merits Hearing proceeded as against Mellon and Elin.

[3] The Respondents were the sole directors of Merax, which operated as Crown Capital Partners ("**CCP**"). At the Merits Hearing, Staff alleged that the Respondents were the sole directing minds of both CCP and Crown Capital Partners Limited ("**CCPL**"), the company name used to market and sell securities to investors. Staff alleged that CCPL was used by the Respondents interchangeably with CCP, the trade name for Merax.

[4] The Merits Hearing took place on January 17-21, 2011 and March 1, 2011. During the Merits Hearing, the Respondents each represented themselves. The decision on the merits was issued on December 12, 2011 and can be found at: (2011), 34 OSCB 12476 (the "**Merits Decision**").

[5] Following the release of the Merits Decision, a separate hearing was held on May 22, 2012 to consider the parties' submissions on sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff of the Commission ("**Staff**") filed written submissions, a compendium of documents including a bill of costs, and a book of authorities all dated March 29, 2012. The Respondents did not provide any written submissions in advance of the Sanctions and Costs Hearing.

[6] Both Staff and the Respondents gave oral submissions at the Sanctions and Costs Hearing. At the close of oral submissions, we invited the Respondents to provide the Panel with sworn evidence of their financial positions as well as further submissions on the following two issues: (a) the appropriateness of the Panel imposing a ban on the Respondents from acting as a director or officer of any issuer, and (b) the appropriateness of the Panel imposing such a ban for a period of time in excess of Staff's request of 15 years.

[7] On May 28, 2012, Elin filed a sworn affidavit with the Commission attaching a personal financial statement and supporting documentation as exhibits thereto. Elin did not make any submissions on the issues raised by the Panel. On May 29, 2012, Mellon sent an email to the Commission with further submissions on his financial position and the proposed bans with his supporting documents attached thereto. Mellon did not provide any sworn evidence. Staff filed its reply to the Respondents' supplemental submissions with the Commission on May 31, 2012.

[8] These are our reasons and decision as to the appropriate sanctions and costs in this matter. A copy of our sanctions order is attached as Schedule "A" to these reasons (the "**Sanctions Orde**r").

II. MERITS DECISION

[9] The Merits Decision addressed the following issues:

(a) Did the Respondents trade in securities without registration or act as underwriters in circumstances where no exemptions were available to them, contrary to section 25(1)(a) of the Act?

(b) Did the Respondents distribute securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued by the Director to qualify the sale of securities, contrary to section 53(1) of the Act?

(c) Did the Respondents give an undertaking relating to the future value or price of the shares in Karp Mineral Resources Inc. ("**Karp**") and Legacy Mining Corp. ("**Legacy**") with the intention of effecting a trade of the Karp and Legacy shares, contrary to section 38(2) of the Act?

(d) Did the Respondents make any representations to potential investors regarding the Karp and Legacy shares that such shares would be listed on an exchange, contrary to section 38(3) of the Act?

[10] Upon reviewing all of the evidence, the applicable law, and the submissions made, the Panel concluded in the Merits Decision as follows:

(a) The Respondents traded, sold and distributed securities without being registered to do so and where no exemptions were available to them, contrary to section 25(1)(a) of the Act.

(b) The trades in Legacy and Karp securities were distributions made without a prospectus and without a prospectus exemption, contrary to section 53(1) of the Act.

(c) The Panel was not satisfied that the representations as to the future value of Karp and Legacy securities by Crown Capital Partners Limited representatives constituted undertakings as to the future value of securities and as such no breach of section 38(2) was found.

(d) The Respondents made illegal representations that the Karp and Legacy securities would be listed on a recognized stock exchange, contrary to section 38(3) of the Act.

[11] This Panel must take these particular breaches into consideration when determining the appropriate sanctions to impose in this matter.

III. SANCTIONS AND COSTS REQUESTED

A. Staff's Submissions

[12] In the Notice of Hearing dated November 29, 2006, Staff requested that the following orders be made against the Respondents:

(a) Pursuant to paragraph 2 of section 127(1), the Respondents cease trading permanently or for such time as the Commission may direct;

(b) Pursuant to paragraph 7 of section 127(1), the Respondents resign any position they may hold as an officer or director of any issuer;

(c) Pursuant to paragraph 8 of section 127(1), the Respondents be prohibited for 15 years from becoming or acting as a director or officer of any issuer;

(d) Pursuant to paragraph 8.5 of section 127(1), the Respondents be prohibited for 15 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(e) Pursuant to clause 9 of section 127(1), the Respondents pay an administrative penalty for failure to comply with Ontario securities law;

(f) Pursuant to paragraph 10 of section 127(1), the Respondents disgorge to the Commission any amounts obtained for failure to comply with Ontario securities law;

(g) Pursuant to section 127.1, the Respondents pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission;

(h) Pursuant to section 37, the Respondents be prohibited from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or in any class of securities; and

(i) To make such order as the Commission may deem appropriate.

[13] By way of written submissions dated March 29, 2012, Staff further requested the following specific terms and conditions:

a) That the Respondents each pay an administrative penalty of $200,000;

b) That the Respondents be jointly and severally liable to disgorge to the Commission $513,000.29 or, in the alternative, $353,229.19;

c) That any amounts obtained pursuant to a disgorgement order be allocated to or for the benefit of third parties pursuant to section 3.4(2)(b) of the Act;

d) That the Respondents be jointly and severally liable to pay $264,767.04 representing a portion of the costs incurred by the Commission in this matter; and

e) That if any monetary sanctions are not paid in full within 15 years, that any prohibition bans continue in force until such payments are made in full.

[14] Staff submitted that although section 126.1 of the Act was not in force at the time the Respondents' activities in issue took place, fraud prevention has been a central principle of the securities regime in Ontario even prior to the proclamation of section 126.1. Accordingly, Staff has asked the Panel to take the Respondents' "fraudulent conduct" into account in determining what sanctions to impose. Staff submitted that the "Respondents' conduct undermined public confidence in the capital markets and shows blatant disregard for the rule of law and Ontario's securities regime" (Staff's Written Submissions on Sanctions at paragraph 19).

[15] Staff further submitted that the Respondents' conduct demonstrates their ability to plan and execute a complex securities fraud and is therefore cause for genuine concern in the future.

[16] In Staff's submission, the sanctions and costs requested are proportionate to the Respondents' misconduct and will send a message both specifically to the Respondents and generally to like-minded individuals that involvement in these types of schemes will result in severe sanctions.

[17] With respect to Mellon, Staff submitted that his prior involvement in a misleading advertising scheme which resulted in sanctions imposed upon him by the Competition Bureau demonstrates an increased need for specific deterrence. They relied on a press release dated May 25, 1998 describing the scheme and submitted that this Panel may consider Mellon's record of regulatory misconduct, relevant criminal misconduct, or both, in determining what sanctions are appropriate.

B. The Respondents' Submissions

Elin's Submissions

[18] Elin did not make any written submissions in advance but made oral submissions at the Sanctions and Costs Hearing. He expressed his disappointment at how Staff has handled this case and attributed the 6-year delay to the conduct of Staff. He noted that during the time that he was a registrant with the OSC from 1987-2000, he did not have any complaints on his record. Elin took issue with Staff's description of the Respondents' conduct as fraudulent particularly because he was not found in breach of any fraud provision in the Act.

[19] Elin recalled that in 2008 he signed an agreed statement of facts with Staff and was prepared to attend before the OSC solely with respect to the issue of appropriate sanctions. In Elin's submission, in July 2008, the parties attended before a panel for a sanctions hearing, which was adjourned immediately once Staff indicated their intention to supplement the agreed statement of facts with further evidence. Elin submited that after that attendance in 2008 he was not contacted by Staff again until 18 months later.

[20] Elin requested that the Panel take his loss of income over the last four years into consideration and submitted that Staff's request for monetary sanctions is not warranted. With respect to the trading ban, he said he "will not contest" being banned from dealing in public companies. However, he submitted that he would like the opportunity to be a director or officer of a private company in the future.

Mellon's Submissions

[21] Mellon did not make any written submissions in advance but made oral submissions at the Sanctions and Costs Hearing. Mellon began his submissions by questioning why he was not advised about the Commission's new pilot program called the Litigation Assistance Program (the "LAP"), which was launched on October 17, 2011 and which provides limited pro bono legal advice to unrepresented respondents that qualify for assistance. Mellon submitted that although he learned about the LAP from performing a "Google" search, no one at the Commission advised him about its availability.

[22] Mellon submitted an apology to those who were adversely affected by his actions. He acknowledged his prior regulatory misconduct as alleged by the Competition Bureau and tried to differentiate his conduct in that matter from the present matter. He asked that the Commission not consider his behaviour to be recidivist behaviour as a result of his past misconduct. He attributed the loss of his business to the OSC proceedings and submitted that he has suffered both personally and professionally as a result. Mellon, like Elin, made submissions on the irrelevance of section 126.1 to the sanctions determination and asked that it not be given any consideration. He also criticized Staff for not delivering a fair and timely hearing.

[23] More specifically, Mellon submitted that there should be a distinction between "direct perpetrators and those with a lesser level of involvement". He cited a statement that he claims was made by former legal counsel on staff at the Commission, as follows:

> Disgorgement is a power that's designed to deprive the rogue of his illegal profits. It doesn't imply that the money will be returned to investors. Restitution is the job of the courts, not administrative tribunals. (Transcript of Sanctions and Costs Hearing, page 75, lines 2-5)

[24] In this respect, Mellon submitted that getting money back to investors who were wronged is not a proper part of a sanctions hearing and, if it were, it would mean that an order for disgorgement is in effect a punitive and not a deterrent order.

[25] He further asked the Panel to consider that the amount in issue is relatively small compared to other matters before the Commission. He noted that he personally received $103,127.27 from the activities in issue and that his company, Cahara, received $94,000 which amounts were used to pay expenses and bills and not for luxuries.

[26] Mellon asked that the Panel not accede to Staff's request and draw an adverse inference from his decision not to testify at the Merits Hearing. He submitted that he chose not to testify as a matter of right and on the advice of his former counsel.

[27] In response to Staff's request for monetary sanctions, Mellon submitted that he is financially unable to pay any significant amounts:

> I'm 52 years of age today. However many more years of my working career I have in front of me, I don't know. If I'm saddled with debt of three, four, five, six, $800,000 jointly and/or severally, I can tell you I will never be able to pay it. Okay. And that's different – please understand, I'm trying to make you understand that's different from not wanting to pay it as opposed to not being able to pay it. Okay. I make X, I have obligations like we all do, okay, but putting that financial noose of multi-hundred thousand dollars worth of payment around me, it can't – I can't imagine a scenario where it will get paid. (Transcript of Sanctions and Costs Hearing, page 87, lines 9-20)

[28] In terms of a trading or director and officer ban, Mellon requested a carve-out that would allow him to be an officer and/or a director of a privately held company. He also asked for a carve-out that would allow him to hold an account in an RRSP and to hold an account in an RESP for his children with any restrictions on those accounts that the Panel deems appropriate.

[29] With respect to paying costs, Mellon submitted that he considered it inappropriate to pay costs of an investigation and a proceeding where he attempted to prove his innocence. He noted that if the Staff were unable to prove the allegations against him, he would not have been reimbursed for the time and costs incurred by him in that scenario. He expressed his concern that it is unfair for a respondent who exercises his right to have a fair hearing on the merits to be burdened with the regulator's financial expenses for doing so. In this respect, he asked the Panel to show "leniency and tolerance and understanding that there is nothing wrong or flawed with an individual standing up and trying to do the right thing and protect their name and innocence" (Transcript of Sanctions and Costs Hearing at page 85, lines 1-4).

[30] At the close of Mellon's submissions, we asked for his comments on the Panel's discretion to award penalty amounts that are larger than those requested by Staff. In response, Mellon indicated that he would not be in a position to pay any large sum in any event. Mellon did not provide any financial documentation to support his submissions.

C. Staff's Reply

[31] In reply to the Respondents' submissions on sanctions and costs, Staff drew the Panel's attention to the Commission's decision in *Re Maple Leaf Investment Fund Corp* at (2012) 35 OSCB 3075 ("***Maple Leaf***") at paragraph 18, which provides as follows:

> Although a respondent's ability to pay is one of the factors to be considered in determining the appropriate monetary sanctions, the Respondents made submissions only and provided no evidence to support their claims of impecuniosity. Accordingly, this factor will be given limited weight in our determination of the sanctions to be imposed, and in particular, the disgorgement orders and administrative penalties at paragraphs 29 to 46 below.

[32] Staff also referred the Panel to *Re Al-Tar Energy Corp.* (2011), 34 OSCB 447 ("***Al-Tar***") at paragraphs 47 and 48 where the Commission did not give any weight to the respondents' statements about their inability to pay any administrative costs, due to their previous deceitful conduct:

> We give no weight to these statements. Campbell and Da Silva have lied to Staff and the Commission in the past and are not to be believed. Even if those statements are true (which we have no way of knowing), they are only one factor to be weighed in imposing sanctions.

[33] Staff submitted that the Respondents' submissions on their inability to pay should not be determinative as they did not submit any supporting evidence. Staff also took issue with Mellon's form of apology and characterized it as a qualified apology which blamed others for his failings in this matter.

[34] As noted above, at the close of submissions, this Panel provided the parties with a further opportunity to file evidence of their financial positions and to provide further submissions on the following two issues: 1) the appropriateness of issuing a ban on being an officer or director of any issuer, including privately-held companies, and 2) whether or not it would be appropriate for the Panel to impose such a ban for a period of time in excess of the 15 years requested by Staff.

[35] The Respondents were given one week to provide these further submissions and Staff was permitted two days to reply.

D. Supplemental Submissions

[36] On May 28, 2012, Elin served and filed with the Commission his sworn affidavit attaching copies of a personal financial statement and other supporting documents. Elin did not provide any further submissions on the two issues outlined by the Panel.

[37] On May 29, 2012, Mellon emailed further submissions on his financial position to the Commission with attached documents. He did not provide any sworn evidence. With respect to the two issues outlined by the Panel, Mellon wrote as follows:

> As stated, I have no issue with trading bans, promoter bans, etc. However, I do not believe it fair that my business life should be so impaired that I could never act as an officer or director of a privately held company, particularly one that had no designs on raising investment capital or tapping the public markets in any way.
>
> While I currently do not have an RRSP account I do not believe that I should never be allowed to have one again. Though I don't imagine having the funds to contribute in the foreseeable future, there may come a time where I can resume retirement and tax planning. If you wish to confine my trading in an RRSP account to Mutual Funds, ETF's and/or stocks on large exchanges only that would be a reasonable compromise.

[38] In reply to the Respondents' supplemental submissions, Staff indicated that although unable to cross-examine the Respondents on their supplemental evidence and submissions, Staff provided follow-up questions to Mellon on his supplemental submissions by email. Staff submitted that Mellon's evidence should be given little or no weight because he failed to submit any sworn evidence. They also submitted that in Mellon's response to Staff's follow-up questions, Mellon referred to having a joint bank account with his wife but failed to provide the Commission with any evidence in respect thereof. Staff also questioned the truthfulness of Elin's submission that he is financially liable for an outstanding bill owing to the Hospital for Sick Children in Toronto (the "**HSC**") in the amount of $376,668 that references a patient who does not appear to be related to him.

[39] Ultimately, Staff submitted that "ability to pay" is only one of many factors to consider when imposing sanctions and that it should be given little or no weight in this matter.

IV. THE LAW ON SANCTIONS

[40] The Commission's public interest jurisdiction is guided by section 1.1 of the Act, which provides as follows:

> 1.1 The purposes of this Act are,
>
> (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.

[41] The purpose of a section 127 order is to restrain future conduct that is likely to be prejudicial to the public interest in investor protection and fair and efficient capital markets. The role of the OSC is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant "apprehension of future conduct detrimental to the integrity of the capital markets": *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*, [2001] 2 S.C.R. 132 at para. 43 citing *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. This Commission must not only focus on the fair treatment of investors but also on the effect that an order made in the public interest will have on capital market efficiencies and public confidence.

[42] The Commission has identified a number of factors to be considered, including:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit gained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent; and

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at p. 7746 ("***Belteco***"); *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holding***s") at p. 1136)

[43] Although these factors are relevant in determining appropriate sanctions, the applicability and importance of each factor will vary according to the facts and circumstances of the case. The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and the conduct of each respondent. Sanctions should also be proportionate to past decisions of the Commission and to the responsibilities of each of the Respondents in the circumstances: *Re Coventree Inc., Geoffrey Cornish and Dean Tai* (2012) 35 O.S.C.B. 119 at paras 46, 66 and 93.

[44] In addition to sanctioning respondents for the purpose of achieving specific deterrence, the Supreme Court of Canada has recognized that this Commission should, in appropriate circumstances, exercise its sanctioning powers for the purpose of general deterrence in order to protect the public interest:

> … it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125) …
>
> …
>
> It may well be that the regulation of market behaviour only works effectively when securities commissions impose ex post sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving confidence in our capital markets. (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 60 and 62)

[45] In determining appropriate sanctions in this matter, we have considered the submissions made by the parties at the Sanctions and Costs Hearing, the supplemental submissions of all parties, and the evidence before the Commission at the Sanctions and Costs Hearing.

V. APPROPRIATE SANCTIONS IN THIS CASE

A. Relevant Factors

[46] Considering the findings in the Merits Decision and the sanctioning factors set out above, we find the following factors and circumstances to be relevant in this proceeding.

(a) The Seriousness of the Allegations

[47] The Respondents were found to have breached sections 25(1)(a), 38(3), and 53(1) of the Act. Although the Merits Decision clearly states that the Panel found evidence that the Respondents engaged in fraudulent activity in committing these breaches of the Act, the Respondents did not act in contravention of section 126.1 of the Act, which was not in effect during the relevant time. As such, our decision on sanctions and costs does not take account of any fraud provisions but is made exclusively in reference to the Respondents' breaches of sections 25(1), 38(3), and 53(1) of the Act.

[48] The merits panel found that the Respondents took part in an investment scheme that resulted in the loss of at least $343,229.19 by more than 34 investors. The Merits Decision notes that investors were induced to make payments in return for securities in Karp and Legacy that were issued through CCPL at a time when the Respondents were not registered and in the absence of any registration exemptions available under Ontario securities law. The Panel in the Merits Hearing found that the Respondents were the directing minds of this scheme and that they directed their employees to induce investors to invest by making misrepresentations that Karp and Legacy were to become public companies in the coming months when there was no actual intention of doing so.

[49] These are very serious breaches of the Act with significant harm done at the hands of the Respondents, which we have taken into consideration in reaching our decision as to sanctions and costs.

(b) The Respondents' Experience in the Marketplace

[50] Although both Respondents appear to be sophisticated and experienced businessmen, neither of them was registered with the Commission during the time when they sold securities in Karp and Legacy. Elin, however, had previously been registered with the Commission from 1987 to 2000. Accordingly, he clearly has an awareness of securities law requirements, which we have taken into consideration in reaching this decision.

[51] We have also considered the complex nature of the scheme including the fact that it was conducted on an international scale and that none of the invested funds were returned to any of the investors. The Panel agrees with Staff's submission that the Respondents' conduct demonstrates their ability to plan and execute a complex securities scheme and is cause for concern, particularly with respect to protecting investors in the future.

(c) Recognition of the Seriousness of the Conduct and Remorse

[52] Staff submitted that the Respondents fail to recognize the seriousness of their improprieties or to have any true remorse for the consequences of their conduct. Staff has also asked the Panel to draw an adverse inference from the Respondents' decisions not to testify and to call no witnesses or provide evidence at the Merits Hearing.

[53] At paragraph 39 of the Merits Decision, the panel held that it did not draw any adverse inference, finding or conclusion from the Respondents' decisions not to testify or call witnesses. The same holds true for the Sanctions and Costs Hearing. We continue to draw no adverse inference about these matters in reaching our decision.

[54] The Respondents submitted that they have personally and financially suffered as a result of this proceeding before the Commission and have asked the Panel to take this into consideration in making its determination.

[55] We do not believe that the Respondents have acknowledged the impact of their actions on anyone other than themselves. We note that Elin did not issue any apology. Mellon did apologize to those affected by what he called the "Crown Capital affair" but did not acknowledge the role he himself played in that adversity. Neither of the Respondents specifically acknowledged the loss that resulted to investors from the actions of the Respondents or the financial and personal toll that such losses took on investors and their families. We have taken the Respondents' lack of remorse in this regard into consideration.

[56] In response to Mellon's submission that he was not notified about the Litigation Assistance Program (the "**LAP**") offered by the Commission, we note that this program was launched in October 2011, after the Merits Hearing had concluded in this matter. At the time of this Sanctions and Costs Hearing, the LAP was a one-year pilot initiative whereby legal assistance was offered to unrepresented respondents in specific proceedings, including sanctions hearings, by a roster of external volunteer counsel, not by the Commission itself. While the Commission facilitates applications for assistance under the LAP it cannot guarantee that legal services will be available in any particular instance. Information about the LAP initiative can be found on the Commission's website. We note that Mellon was entirely capable of informing himself about the LAP, which he did by performing a "Google" search. There is no guarantee that legal services would have been available to him in this particular proceeding; however, we find that he was capable of applying for such assistance had he wished to do so.

(d) Specific and General Deterrence

[57] As noted above, Staff asked the Panel to take into consideration an excerpt from a Competition Bureau of Canada Press Release dated May 25, 1998, describing a prior instance where Mellon pleaded guilty to one offence related to misleading advertising under the *Competition Act*, R.S.C., 1985, c. C-34 (the "***Competition Act***"). Staff submitted that Mellon's previous involvement in a telemarketing scheme is highly relevant to the appropriate sanction to impose upon him in this matter, particularly when considering specific deterrence. Staff cited the Commission's decision in *Re Goldbridge Financial Inc.* (2011), 34 OSCB 11113 at para. 25(b), where a panel took into consideration a respondent's prior criminal record in determining the need for specific deterrence.

[58] Mellon gave the Panel a description of the background to the settlement reached with the Competition Bureau whereby he and his former company pleaded guilty to breaching section 52.1 of the *Competition Act*. A relevant extract from his description is as follows:

> Now, the Competition Bureau launched their investigation into our affairs in 1994. You will note settlement was 1998…
>
> Now, we went on the offensive at that time, and I hired lawyers…We got aggressive. We launched complaints and filed suits under the Competition Act against our competitors. I proceeded to spend a lot of time and money, and this went on for quite some period of time. Despite being right, the fact is I could no longer afford the fight. When your adversary has endlessly deep pockets, at some point you have to recognize when to hold them and when to fold them.
>
> Now, the funny thing is Industry Canada knew that we were right as well … Now, you might deduce this fact by the negotiated settlement to their charges and a lengthy trial was avoided. You will note that the company and myself pled guilty to one offence contrary to section [52.1] of the *Competition Act*. It was understood and agreed that there were systemic industry problems that we confronted daily and it was a classic case of David versus Goliath. Nonetheless, it was agreed that some of the sales initiatives put in place by our sales manager and individual representatives crossed the line and were false and misleading. As president of the company, it was my responsibility to have known better and I took the responsibility for it and fell on my sword and the past is the past. (Transcript of Sanctions and Costs Hearing at pp. 64-66)

[59] Mellon asked that his record with respect to competition offences not cause the Panel to characterize his behaviour in these proceedings as recidivist.

[60] We recognize that Mellon has been in breach of the Competition Act in the past. We were not advised as to whether he satisfied the terms of the settlement reached in that matter. We find that there is a pattern of behaviour here. This pattern consists not only of previous charges and convictions for regulatory offences similar in nature to the allegations in these proceedings, but it also consists of a repeated characterization of negative regulatory outcomes being the result of others' actions and not Mellon's own actions. We have taken this pattern of behaviour into account. It is this kind of conduct we are mindful of in deciding on sanctions that will provide specific deterrence in this matter.

[61] As noted above, the Supreme Court of Canada has recognized that this Commission should also exercise its sanctioning powers for the purpose of general deterrence in order to protect the public interest: *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 60 and 62. Accordingly, we conclude that sanctions designed to achieve both specific and general deterrence are warranted in this instance.

(e) Proportionality

[62] In the Merits Decision, the panel found that the Respondents obtained at least $353,229.19 from investments in the Karp and Legacy schemes and that investors lost the entirety of their investments. At paragraph 121 in the Merits Decision, the panel also found evidence of personal profit by the Respondents at the expense of investors.

[63] During this Sanctions and Costs Hearing, Staff provided the Panel with a chart entitled "Summary of Cases and Approved Sanctions" listing four cases where sanctions were imposed by the Commission in like circumstances and in relation to similar breaches of the Act. Although it is important to reach a decision on sanctions that is proportionate to the Commission's previous decisions, each case has its own unique set of circumstances. Accordingly, we have reached a decision on sanctions in this matter which we consider to be in proportion to both the Commission's past decisions and to the circumstances and conduct of the Respondents and the public interest.

B. Trading Bans

[64] In the Notice of Hearing, Staff requested that a permanent trading ban be imposed on both of the Respondents. We note that participation in the capital markets is a privilege, not a right: *Al-Tar*, *supra* at para. 31. In this particular case, we find that the public interest requires that the Respondents be restrained permanently from any future capital market participation. The Respondents have demonstrated that they are capable of participating in a complex securities scheme and have failed to acknowledge the impact of their involvement on anyone other than themselves. They cannot be trusted to participate in the capital markets in the future.

[65] Accordingly pursuant to clause 2 of section 127(1), we find it is in the public interest to restrict the Respondents' participation in the capital markets permanently with the exception that each of the Respondents is permitted to trade securities in any registered education savings plan account (as defined in Part I of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)) ("**RESP's**") for the benefit of any of their children. This is subject to the conditions that (a) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer, (b) the RESPs do not include investments in more than one percent of the outstanding securities of a class or series of a class, (c) the Respondents carry out any permitted trading through a registered dealer, and (d) the Respondents must give a copy of the Merits Decision, these reasons and decision, and the Sanctions Order to any registered dealer through which they will trade, in advance of any trading.

C. Director and Officer Bans

[66] Staff have also requested an order that each Respondent be prohibited from becoming or acting as a director or officer of an issuer, or becoming a registrant, investment fund manager, or promoter for 15 years. In their written submissions dated March 22, 2012, Staff requested a further qualification that the 15 year ban remain in place beyond its expiration date should the Respondents fail to pay any outstanding monetary sanctions.

[67] We consider that a 15-year ban is not sufficient in the context of this proceeding. However, we are mindful of the need to afford procedural fairness to the Respondents. Staff referred us to the Commission's decision in *Re Rex Diamond Mining Corp.* (2009), 32 O.S.C.B. 6467 ("***Rex Diamond***"), where staff in that proceeding failed to request an administrative penalty in the Notice of Hearing but did request one five days prior to the sanctions hearing. The Commission's decision not to impose an administrative penalty at paragraphs 23 and 24 is germane to this case:

> We are of the view that it would be unfair to impose an administrative penalty because the Notice of Hearing did not include a request for this remedy. The Respondents did not receive notice that an administrative penalty would be sought until five days before the Sanctions and Costs Hearing. If a request for an administrative penalty had been included in the Notice of Hearing, the Respondents might have taken a different approach in their preparation for the hearing. It is unfair to inform the Respondents after the merits hearing has concluded and only a few days before the Sanctions and Costs Hearing commences that an administrative penalty is sought. As stated in Judicial Review of Administrative Action in Canada:
>
> > It has been held in many different contexts that it is a breach of the duty of fairness to fail to inform the individual of the gist, or key issues, of the case to be met.
> >
> > . . .
> >
> > > As well, since fairness requires that a person who has been found liable must normally be given an opportunity to address the decision-maker on the question of the appropriate penalty, *the parties should be given notice of the range of penalties to which they may be exposed.*
> >
> > [Emphasis added]
> >
> > (Brown and Evans, *Judicial Review of Administrative Action in Canada*, Looseleaf ed. (Toronto: Canvasback Publishing, 2008) at pp. 9-40 and 9-47)
>
> As a result, we have decided not to impose any administrative penalties in this case, as the Notice of Hearing did not contemplate that such a sanction might be imposed. In our view, Staff should have amended the Notice of Hearing to include a request for an administrative penalty in advance of the hearing on the merits.

[68] We have taken the *Rex Diamond* reasons into consideration in reaching our decision and, in particular, the reference in the Brown and Evans text to the need for parties to be given notice of the range of penalties to which they may be exposed. The

question before us is: were the Respondents given sufficient notice of the range of penalties? Will issuing an order beyond the 15-year ban requested in the Notice of Hearing result in a breach of the duty of fairness? We consider that a clear distinction exists between this situation and that in *Rex Diamond* where no mention was made in the notice of hearing that staff were seeking an administrative penalty. On the contrary, in this case, the Notice of Hearing does request a ban pursuant to clauses 8 and 8.5 of section 127(1) of the Act. It is the duration of that ban that is in issue.

[69] The Respondents knew at all times that Staff were seeking to impose bans upon them should the Commission find that breaches of the Act took place. At the Sanctions and Costs Hearing, the only submissions that the Respondents made with regard to the clause 8 ban was that such ban be limited to publicly-traded issuers, even though the clause contains no such limitation. This Panel invited the Respondents to make further submissions on the possibility of imposing a ban in excess of the 15 year period as originally requested by Staff. In their supplemental submissions, neither of the Respondents addressed the length of the bans notwithstanding their opportunity to do so.

[70] We believe that, unlike *Rex Diamond*, in this proceeding the Respondents were well aware of the potential sanction of having a lengthy ban imposed against them and that they were given sufficient opportunity to address the length of that ban. In this respect, we consider that the requirements of procedural fairness have been met.

[71] With respect to the Respondents' request for a carve-out that would allow them to act as director or officer of a private issuer, we note that Merax and CCP/CCPL were privately held companies. To permit the Respondents to act as directors or officers of privately held companies in the future would allow them to be in the same position as they were when they incorporated Merax and CCP/CCPL. It is incumbent upon this Panel to issue sanctions that are protective and preventive and we believe that the carve out requested by the Respondents would fail to meet that standard.

[72] In consideration of all of the submissions made by Staff and the Respondents on sanctions and the findings in the Merits Decision, we find that it is in the public interest to order the Respondents to resign any positions that they hold as directors or officers of any issuers, and to restrict permanently the Respondents' participation as directors or officers of issuers, in accordance with clauses 7 and 8 of section 127(1) of the Act. We find that it is appropriate to ensure that the Respondents will not be put in a position of control or trust with respect to any issuer in the future. To be clear, this restriction on acting as a director or officer is not limited to public issuers but applies to all issuers. In the circumstances of this case, it is appropriate that the Respondents also be subject to a permanent ban on becoming or acting as a registrant, an investment fund manager, or a promoter pursuant to clause 8.5.

[73] Altogether, the permanent bans imposed will prevent the Respondents from significant participation in the capital markets. The effect on the Respondents' livelihoods has been taken into consideration in reaching this decision and this Panel believes that these bans are necessary and will provide general and specific deterrence to discourage others from similar conduct. We note that notwithstanding the permanent nature of the bans, it is always open to the Respondents to bring a motion before the Commission in the future to vary the Sanctions Order should they be able to establish a basis upon which such a variation may be ordered.

D. Administrative Penalties

[74] As set out above, and unlike the situation in *Rex Diamond*, Staff did request an order in the Notice of Hearing that the Panel impose an administrative penalty on the Respondents. Staff submitted that administrative penalties against each of the Respondents in the amount of $200,000 are warranted in this proceeding. The Respondents submitted that they are financially unable to pay any administrative penalties.

[75] Elin submitted a sworn financial statement with supporting exhibits wherein he listed two teenage children as his financial dependents. He did not provide any explanation of his source of income or his other expenses. The supporting documentation contains some bank statements, a MasterCard statement with no name or address, and an outstanding bill from the HSC. We note that the HSC bill does not have Elin's name on it and is addressed to the "parent or guardian of" a child whose name is different from the two teenage dependents listed on Elin's financial statement and who lives at an address different from Elin. There may be a reasonable explanation for these discrepancies; however, Elin has not provided the Panel with sufficient details of his obligations and it is not for the Panel to make any presumptions on the evidence. There is nothing in Elin's submissions that persuades this Panel that he is unable to pay an administrative penalty over a period of time.

[76] Mellon sent an email to the Panel attaching various financial records, none of which were sworn or notarized. Staff pointed to inconsistencies in his submissions, such as, among other things, his failure to disclose the fact that he holds a joint bank account, to which he made reference in his correspondence with Staff when responding to Staff's questions about his financial records.

[77] We are not persuaded that Mellon was financially unable to provide a notarized financial statement. As a result, we give no weight to Mellon's submissions on his ability to pay. Even if his statements are true, which is unknown, those statements

are only one factor to consider in determining the appropriate administrative penalty in this case. There is nothing in Mellon's submissions that persuades this Panel that he is unable to pay an administrative penalty over a period of time.

[78] The Commission must make orders pursuant to section 127(1) that it determines to be in the public interest. Although Staff requested a penalty of $200,000 in respect of each Respondent, we do not consider that amount sufficient to deter similar future conduct by the Respondents or others.

[79] In reaching our decision, we are mindful of previous Commission decisions where the amount of administrative penalties ordered was in excess of that requested by staff. In cases where panels issued penalties in excess of staff's requested amounts, the respondents were in some cases invited to make submissions and not in others. In particular, we note the panel's description of the purpose of administrative penalties in *Re Gold-Quest International* (2010), 33 OSCB 11179 at paragraphs 115 and 116 ("***Gold-Quest***"):

> We have considered the submission made by both Staff and counsel for Buchanan as to the appropriate administrative penalty in this case. However, we find that the protection of investors and Ontario capital markets requires a higher administrative penalty than that requested by Staff. **Financial sanctions must act to deter future behaviour that is harmful to investors and Ontario capital markets. They are not a license fee to breach Ontario securities law.** [Emphasis added]

[80] We have also considered the Commission's decision in *Re Lehman Cohort Global Group Inc.* (2011), 34 OSCB 2999 at paragraphs 39-41 ("***Lehman***"), where the total amount raised from investors was $297,542. Administrative penalties were ordered against the corporate respondent and the directing mind of the corporation in the amount of $500,000 on a joint and several basis, which exceeded the $150,000 administrative penalty requested by staff. In reaching its decision, the Commission held at paragraph 41 as follows:

> We will order that an administrative penalty of $500,000 be paid to the Commission by Lehman and Schnedl, on a joint and several basis. Lehman and Schnedl committed multiple and repeated violations of the Act, including fraud, which caused serious harm to the Austrian Investors. As noted above, Schnedl was the directing and controlling mind of Lehman and orchestrated the investment scheme and misappropriated investors' funds. A very substantial administrative penalty is justified based on the fraud that occurred and the amounts that appear to have been lost by investors…

[81] Finally, we have also considered the Commission's decision in *Al-Tar*, *supra* at paragraphs 38-58, where approximately $660,000 was raised from investors and an administrative penalty was issued against the directing mind of the corporation in the amount of $750,000, which exceeded the amount sought by staff.

[82] In consideration of the Respondents' conduct and their multiple breaches of the Act, the level of administrative penalties imposed in similar cases, such as those noted above, and the amounts obtained from investors by the Respondents, we find it in the public interest to impose a $300,000 administrative penalty on Elin and a $400,000 administrative penalty on Mellon. The amounts paid in respect of the administrative penalties will be for allocation in accordance with section 3.4(2)(b) of the Act. We note that the higher penalty imposed on Mellon is related to his previous regulatory infractions, as described in these reasons, which we believe indicate a requirement for greater specific deterrence. The Panel considers these amounts to be proportionate to past decisions of the Commission and to the respective conduct and responsibilities of each of the Respondents in the circumstances.

E. Disgorgement

[83] In the Merits Decision it was determined that the Respondents obtained at least $353,229.19 from investments in the Karp and Legacy schemes through wire transfers into a bank account in Toronto held by CCP (the "**CCP Account**"). In making an order for disgorgement, we are mindful of the factors to be considered as set out by the Commission in *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at paragraph 52, and of the principles underlying a disgorgement order described at paragraph 49 as follows:

> We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity… In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity.

[84] In our view, it is not in the public interest or the objective of specific or general deterrence for the Respondents to profit from their contraventions of Ontario securities law. Rather, as the controlling minds of CCP, it is in the public interest that the Respondents disgorge the amounts deposited into the CCP Account. In the Merits Decision, the panel found at paragraph 96 that "at least $353,229.19 was invested in the Karp and Legacy schemes through wire transfers into the CCP Account." We therefore order that the Respondents jointly disgorge $353,229.19 to the Commission pursuant to paragraph 10 of section 127(1) of the Act and in accordance with section 3.4(2)(b) of the Act.

F. Costs

[85] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a respondent to pay the costs of the investigation and 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.

[86] Staff requested that the Respondents be ordered to pay $164,767.04, representing approximately 55% of the costs incurred in this matter. Staff did not point to anything that the Respondents have done to prolong this proceeding. Paragraph 74 of Staff's written submissions provides as follows:

> As the Commission is a self-funded body, it is appropriate that its costs should be borne by those who have caused them to be incurred rather than capital market participants who comply with securities law.

[87] We agree with Staff that there are circumstances where it is appropriate that the Commission's costs be borne by those who have caused them to be incurred. In this particular case, however, we attribute a substantial proportion of the costs to Staff's delay in bringing this matter to final resolution. In particular, Elin gave a detailed account of the procedural history of this matter. We were specifically directed to the events that occurred on July 14, 2008 after the Respondents agreed to the facts set out in the Amended Statement of Allegations and arranged with Staff to appear before a Panel for a hearing solely on the issue of appropriate sanctions. At that appearance, for reasons that are not attributable to the Respondents, the matter was adjourned to a date to be agreed upon; however the Respondents were not contacted by Staff until 18 months later.

[88] Staff did not provide any explanation for the significant time delay. In our opinion, this kind of delay is relevant to the Panel's decision on costs. We accept Elin's submission that the Respondents were prepared to proceed with a sanctions hearing in 2008 which, if completed, would have ended this proceeding four years ago. His submissions are consistent with the procedural history of this matter and there is no information submitted by Staff to the contrary. We do not believe that a reduction in Staff's costs to 55% is sufficient to mitigate the unexplained delay following the July 14, 2008 hearing.

[89] In light of our findings, we are not prepared to order that the Respondents pay any costs in this matter.

VI. DECISION ON SANCTIONS AND COSTS

[90] We believe that the following sanctions reflect the seriousness of the securities law violations that occurred in this matter and will not only deter the Respondents but also like-minded individuals from engaging in future conduct that violates Ontario's securities laws.

[91] We find that it is in the public interest to order that:

a) The Respondents cease trading in securities permanently pursuant to clause 2 of section 127(1) of the Act, except that each of them is permitted to trade securities for the account of a registered education savings plan (as defined in Part I of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)) in trust for any children, over which he has sole legal ownership, provided that:

   (i) The securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

   (ii) He does not own legally or beneficially more than one percent of the outstanding securities of a class or series of a class;

   (iii) He carries out any permitted trading through a registered dealer and through trading accounts in his name only (and he must close any trading accounts that are not in his name only); and

   (iv) He gives a copy of the Merits Decision, the Sanctions and Costs Decision, and the Sanctions and Costs Order to any registered dealer through which he will trade in advance of any trading.

b) The Respondents resign all positions that they hold as a director or officer of any issuer pursuant to clause 7 of section 127(1) of the Act;

c) The Respondents be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of section 127(1) of the Act;

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

e) Elin shall pay an administrative penalty of $300,000 and Mellon shall pay an administrative penalty of $400,000 for failure to comply with Ontario securities law pursuant to clause 9 of section 127(1) of the Act;

f) The Respondents shall disgorge to the Commission the sum of $353,229.19 on a joint and several basis pursuant to clause 10 of section 127(1) of the Act; and

g) All amounts received by the Commission in respect of the administrative penalty and the disgorgement ordered herein are to be allocated in accordance with section 3.4(2)(b) of the Act as the Commission in its absolute discretion shall decide.

Dated at Toronto this 17th day of December, 2012.

“Mary G. Condon”

“Sinan O. Akdeniz”

SCHEDULE "A"

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

AND

IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.,
carrying on business as CROWN CAPITAL PARTNERS,
RICHARD MELLON and ALEX ELIN

ORDER
(Sections 127(1) and 127.1 of the Securities Act)

WHEREAS on November 29, 2006, the Ontario Securities Commission (the "**Commission**") issued and filed a Notice of Hearing returnable December 5, 2006 to consider the allegations made by Staff of the Commission ("**Staff**") in the Statement of Allegations dated November 21, 2006;

AND WHEREAS on November 21, 2006, the Commission issued an Amended Statement of Allegations and on November 3, 2010, the Commission issued an Amended Amended Statement of Allegations;

AND WHEREAS on January 26, 2011, Staff filed a Notice of Withdrawal which provided that Staff withdrew the allegations against the Respondent, Merax Resource Management Ltd., carrying on business as Crown Capital Partners;

AND WHEREAS the hearing on the merits with respect to Staff's allegations against the remaining respondents to the proceeding, Richard Mellon ("**Mellon**") and Alex Elin ("**Elin**") (together, the "**Respondents**") commenced on January 17, 2011 and concluded on March 1, 2011(the "**Merits Hearing**");

AND WHEREAS the Respondents were self-represented throughout the Merits Hearing;

AND WHEREAS the Commission issued its Reasons for Decision on the merits on December 12, 2011, finding that the Respondents contravened sections 25(1)(a), 38(3), and 53(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**");

AND WHEREAS the Commission ultimately directed that a sanctions and costs hearing in respect of the Respondents be scheduled for May 22, 2012 (the "**Sanctions Hearing**");

AND WHEREAS the Respondents attended and were self-represented at the Sanctions Hearing;

AND WHEREAS having considered the written and oral submissions of Staff, the oral submissions of the Respondents, and the supplementary submissions of Staff and the Respondents, the Commission is of the opinion that it is in the public interest to make the following order;

IT IS ORDERED THAT:

1. The Respondents cease trading in securities permanently pursuant to clause 2 of section 127(1) of the Act, except that each of them is permitted to trade securities for the account of a registered education savings plan (as defined in Part I of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)) in trust for any children, over which he has sole legal ownership, provided that:

    a) The securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

    b) He does not own legally or beneficially more than one percent of the outstanding securities of a class or series of a class;

    c) He carries out any permitted trading through a registered dealer and through trading accounts in his name only (and he must close any trading accounts that are not in his name only); and

d) He gives a copy of the Merits Decision, the Sanctions and Costs Decision, and the Sanctions and Costs Order to any registered dealer through which he will trade in advance of any trading.

2. The Respondents resign all positions that they hold as a director or officer of any issuer pursuant to clause 7 of section 127(1) of the Act;

3. The Respondents be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of section 127(1) of the Act;

4. The Respondents be prohibited permanently from becoming or acting as a registrant, an investment fund manager, or a promoter pursuant to clause 8.5 of section 127(1) of the Act;

5. Elin shall pay an administrative penalty of $300,000 and Mellon shall pay an administrative penalty of $400,000 for failure to comply with Ontario securities law pursuant to clause 9 of section 127(1) of the Act;

6. The Respondents shall disgorge to the Commission the sum of $353,229.19 on a joint and several basis pursuant to clause 10 of section 127(1) of the Act; and

7. All amounts received by the Commission in respect of the administrative penalty and the disgorgement ordered herein are to be allocated in accordance with section 3.4(2)(b) of the Act as the Commission in its absolute discretion shall decide.

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

“Mary G. Condon”

“Sinan O. Akdeniz”

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
Revolution Technologies Inc.	06 Dec 12	18 Dec 12	18 Dec 12	
Preo Software Inc.	06 Dec 12	18 Dec 12	18 Dec 12	
Pure Energy Visions Corporation	06 Dec 12	18 Dec 12	18 Dec 12	
Cash Store Australia Holdings Inc., The	12 Dec 12	24 Dec 12		
ISEE3D Inc.	13 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

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
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 OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

NOTICE OF AMENDMENTS TO
OSC RULE 13-502 *FEES*
AND COMPANION POLICY 13-502CP *FEES*

December 20, 2012

Introduction

On December 18, 2012, the Ontario Securities Commission (OSC, Commission or we) made amendments to OSC Rule 13-502 *Fees* (the Final Amendments) and to Companion Policy 13-502CP *Fees* (the Final CP Changes). The Final Amendments and the Final CP Changes (collectively, the Final Materials) are largely consistent with materials published for a 90-day comment period on August 23, 2012 (the August 2012 Proposals), but as described below are responsive to a number of comments made. In this Notice, references to "existing rule" are to the Rule before taking into account the Final Amendments and references to the "Final Rule" are to the Rule as amended by the Final Amendments.

Under section 143.3 of the *Securities Act* (the Act), the Final Amendments were delivered to the Minister of Finance on December 18, 2012. If the Minister approves the Final Amendments by February 19, 2013 (or does not take an action under subsection 143.3(3) of the Act), they come into force on April 1, 2013.

Parallel changes to OSC Rule 13-503 *(Commodity Futures Act) Fees* and its Companion Policy have been made as necessary, and are likewise published in this Bulletin.

Need for Fee Increases

The current fee structure under the Act and the *Commodity Futures Act* was established in 2003. The OSC, as a self-funded agency, is dependent on fees from market participants, and strives to operate on a cost-recovery basis. Fee rates were last set in April 2010 to cover the fiscal years ending March 31, 2011, 2012 and 2013. At that time, the OSC advised market participants that, while the OSC's fee structure is intended to recover its costs of operation, it would be drawing down its surplus in order to reduce the magnitude of fee increases during a challenging market period and that the fee rates proposed would not be sufficient to fully recover the OSC's projected costs of regulating market participants over that period. As a result of setting the existing fees below cost recovery, the OSC is currently projecting in 2012/2013 to operate at a deficit of $10.7 million. In 2010, market participants were advised that future increases to fee rates would need to be sufficient to fully recover the Commission's costs of operations, and that they should anticipate future increases.

The OSC remains sensitive to current economic conditions, is committed to being efficient and is actively managing its costs. Where possible, the OSC will continue to re-allocate internal resources and staff to new areas to manage the increasing responsibilities and the associated costs. The resources needed to meet the increasing regulatory expectations facing the OSC cannot be handled by cost savings and resource re-allocation alone.

The fee increases proposed in the Final Amendments are necessary for two reasons. As noted above, additional revenues are required to address the current operating deficit and return the OSC to cost recovery. Those revenues constitute the majority of the fee increases. The fee proposal also takes into account new costs in order to meet evolving regulatory responsibilities, many of which are driven by work at the international level. To maintain competitive capital markets in Canada, the OSC must align its regulatory framework to be consistent with important global reforms and standards including G20 commitments (derivatives and systemic risk), increasingly complex international enforcement files, changing oversight responsibilities related to market infrastructure entities and new complex products.

The OSC also must continue to improve its capacity to keep up with market developments, innovation and investor concerns. The OSC needs to continue to strengthen its institutional capacity in key areas including building its derivatives capacity, integrating the new Office of the Investor, building capacity and expertise in important areas such as complex products and infrastructure oversight and expanding its research and data analysis capabilities to support a more data-based approach to issues and policy development. To meet these pressures, the fee proposal reflects budget increases of 5% annually which allow for some increase in general inflation as well as room to address these challenges and issues.

The fees set out in the Final Amendments are designed to allow the OSC to reach cost recovery by the end of fiscal 2016, in order to remain financially stable and achieve its mandate. There is a difference between the fee increases proposed for issuers and registrants in order to better align revenues generated from market participant groups with their level of participation in the Ontario capital markets.

Adjustments to the Proposed Fee Increases

The OSC has reflected on the comments to the proposed rule and has taken steps to respond to these concerns. We have now proposed in the Final Amendments to minimize the proposed fee increases and to respond to specific areas of concern highlighted in some comments. Participation fees associated with building a surplus have been reduced and certain market fees have been removed or capped.

The proposed percentage increases in participation fees have been reduced, relative to those set out in the in the August 2012 Proposals, from 15.55% to 11.65% for reporting issuers and from 7.9% to 4.7% for registrants. The reduction has been achieved by removing the component of the fee increases in the August 2012 Proposals that was designed to allow the OSC to build surplus to $30 million. The decision not to build a larger surplus at this time exposes the Commission to greater liquidity risks and will necessitate greater reliance on a suitable credit facility, particularly if yearly revenues continue to decline from original forecasts. In addition, increases in related interest costs may need to be passed on through higher future fees.

The table below provides a financial forecast based on forecast OSC costs and the proposed fee changes. For the three fiscal years ending March 2016, the OSC projects revenues to recover operating costs. The proposed fee increases will allow the OSC to maintain its operating reserve of $20 million as a contingency for revenue shortfalls or unexpected expenses.

	Forecast 2012/2013	2013/2014	2014/2015	2015/2016	Three-Year Total
		$ Thousands			
Revenues					
Total Revenues	87,900	102,200	108,600	115,600	326,400
less Expenses	98,600	103,500	108,700	114,100	326,300
Net Shortfall	(10,700)	(1,300)	(100)	1,500	100

Substance and Purpose of the Final Materials

The Final Amendments are largely consistent with the basic framework under the existing rule. Under the existing rule and the Final Rule, participation fees are based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities and are intended to serve as a proxy for a market participant's use of the Ontario capital markets. Participation fee levels are set using a tiered structure. Fees for issuers are based on average market capitalization in a fiscal year. Fees for registrants are based on their annual Ontario revenues. Participation fees are set based on estimates of OSC operating costs for upcoming periods.

Two additional categories of participation fees are provided in the Final Rule, increasing the categories from two to four. Participation fees for reporting issuers continue to be referred to as corporate finance participation fees and those for registrants and certain unregistered capital markets participants continue to be referred to as capital markets participation fees. The two additional categories of participation fees comprise fees for specified regulated entities, such as exchanges, alternative trading systems (ATSs), clearing agencies and trade repositories, and for designated rating organizations.

Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources used in undertaking the activities listed in Appendix C of the existing rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

The Final Amendments make changes to the existing rule so that the fees charged by the Commission are aligned more closely with actual Commission costs. New activity and participation fees are imposed in areas where workload has increased and more resources are being targeted.

To allow for the greater predictability of fee revenues, the Final Amendments in respect of corporate finance and capital markets participation fees provide that the fees be determined by referencing historical market capitalization or revenue data (rather than current data). This reference point is the basis for fees for the anticipated three-year period of the Final Rule.

The Final CP Changes largely reflect the Final Amendments.

The notice containing the August 2012 Proposals summarizes the amendments that are included in the Final Materials. Changes from the August 2012 Proposals, largely in response the comments received, are described below in this Notice.

The Commission is of the view that these changes do not require a second comment period.

Changes from the August 2012 Proposals

Corporate finance and capital markets participation fees

Under the Final Amendments, participation fees are increased, over the three-year fee cycle, by 4.7% per year for registrants and by 11.65% per year for issuers. This compares with the August 2012 Proposals, which proposed increases of 7.9% per year and 15.5% per year, respectively. See further the comments above under the heading "Need for Fee Increases", Appendices A, A.1 and B of the Final Rule and Items 2 and 10 of the table in Annex A responding to the comments.

Participation Fees for Specified Regulated Entities and Designated Rating Organizations

In response to comments, some changes have been made in the design of the new participation fee for specified regulated entities under Part 3.1 of the Final Rule:

- We have modified Part 3.1 to provide Part 3.1 fee relief and a refund for ATSs trading exchange-traded securities, to the extent aggregate fees otherwise charged under Part 3 and Part 3.1 exceed the Part 3.1 fee that would have been charged had the ATS been operating as an exchange. A similar measure is provided for other ATSs. See further subsections 3.1.1(7) to (10) of the Final Rule (as well as the consequential changes to section 1.3 of the Final Rule and new Form 13-502F7) and Items 25 and 26 of the table in Annex A responding to comments.

- The "Canadian trading share" for a specified market operator, which is used in determining participation fees under new Part 3.1 of the Final Rule, is now determined as the average of three metrics rather than the greatest of those metrics. The three metrics continue to be the share of trades in exchange-traded securities measured by total dollar value, total trading volume and total number of shares. See further paragraph 3.1.1(2)(a) of the Final Rule and Item 27 of the table in Annex A responding to comments.

- The Part 3.1 fee for ATSs trading unlisted debt has been reduced from $17,000 per year to $8,750 per year. See further row C2 of Appendix B.1 of the Final Rule and Item 26 of the table in Annex A responding to comments.

- The Part 3.1 participation fee for exempt exchanges and exempt clearing agencies has been reduced from $15,000 to $10,000. See further rows B1 and E1 of Appendix B.1 of the Final Rule and Item 26 of the table in Annex A responding to comments.

Activity fees

In response to comments, the proposed variable cost-based activity fee applying in special circumstances has been removed from the Final Rule. See further Item 24 of the table in Annex A responding to comments.

Final CP Changes

In response to comments, we have removed the proposed guidance in section 4.1 of the CP in the August 2012 Proposals, which indicated that participation fees should be paid and borne by registrants. See further Item 34 of the table in Annex A responding to comments.

In response to comments, we have also removed language from section 4.4 of the CP suggesting that unregistered investment fund managers are limited to paper-based filings. See further Item 36 of the table in Annex A responding to comments.

Given the changes described in the Final Amendments, it is no longer necessary to include guidance with regard to the previously-proposed variable cost-based activity fee. However, additional guidance is provided in new subsection 2.3(2.1) and section 5.2 of the CP with regard to subsections 3.1.1(7) to (10) of the Final Rule.

Additional minor technical changes

The Final Materials also reflect a number of minor technical changes/corrections.

Comments received

We have received comments from the 16 respondents listed below. We would like to thank everyone who took the time to provide comments. We have carefully considered the comments and have provided a summary of the comments and our responses in Annex A to this Notice. Copies of the comments letters are available on the Commission's website at www.osc.gov.on.ca.

- Perimeter Market Inc. (letter dated November 15, 2012)
- Omgeo Canada Matching Ltd. (letter dated November 19, 2012)
- IGM Financial Inc. (letter dated November 20, 2012)
- Prospectors & Developers Association of Canada (letter dated November 20, 2012)
- Borden Ladner Gervais LLP (letter dated November 21, 2012
- CHI-X Canada ATS Limited (letter dated November 21, 2012)
- CNSX Markets Inc. (letter dated November 21, 2012
- Cormark Securities Inc. (letter dated November 21, 2012)
- ICE Futures Canada Inc. (letter dated November 21, 2012)
- The Investment Funds Institute of Canada (letter dated November 21, 2012)
- Stikeman Elliott LLP (letter dated November 21, 2012)
- TMX Group Ltd (letter dated November 21, 2012)
- Blake Cassels & Graydon LLP (letter dated November 22, 2012)
- Liquidnet Canada Inc. (letter dated November 23, 2012)
- Raymond James Ltd. (letter dated November 23, 2012)
- Investment Industry Association of Canada (letter dated November 26, 2012)

Final Materials

The Final Amendments are set out in Annex B, accompanied by a blackline in Annex C showing how the Final Amendments change the consolidated text of the existing rule. The Final CP Changes are set out in Annex D.

Questions

Please refer your questions to:

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Annex A
Response to Comments

Item	Issue	Commission's Response
1	The mutual fund industry pays a disproportionate share of fees.	We agree with the assessment that the mutual fund industry is currently paying a disproportionate share of fees. The proposed fee increases will move us toward a more appropriate balance. Taking into account changes made to the August 2012 Proposals, the average increases proposed for issuers are more than double those for registrants. The increases to fees for issuers required to completely address this issue at this time would not be feasible. However, the OSC remains committed to resolving this issue as soon as practicable.
2	The OSC should maintain fees at current levels and use the surplus and our reserve if necessary to fund deficits.	The OSC has considered industry comments that the proposed fee increases should not include an element designed to build the OSC's accumulated surplus. As a result, the OSC has reduced the proposed fee increases from 15.55% to 11.65% for issuers and from 7.9% to 4.7% for registrants. The OSC continues to believe that building an adequate reserve is financially prudent given market uncertainty and the potential for negative revenue impacts going forward. Current year revenues are down materially from the forecasts used when the August 2012 Proposals were published and the OSC is projecting a larger operating shortfall in 2012/2013. A decision to not build a larger reserve will result in greater reliance on a credit facility, especially if financial performance continues its recent declines. Related interest costs incurred will need to be borne by industry participants through the fees they pay. Although we currently operate in a low interest rate environment, should interest rates increase in a material way, this approach would result in a meaningful increase in interest costs which would need to be passed on through higher future fees.
3	The OSC should adopt a two-year fee cycle beginning April 2013.	There is significant development time and internal approval processes involved to completing amendments to the fee rules. In addition, the public consultation required under our rule process generally requires a minimum of 90 days for comment and a minimum of a further 75 days before final rule amendments may come into force once they are delivered to the Minister of Finance for review. The OSC does not support moving to a two year process as the potential benefits of a more frequent renewal process do not appear to support the amount of additional time and effort involved, which would require us to reallocate resources from our strategic priorities.
4	Some commenters opposed fees being based for the next 3 years on historical data for a static fiscal year (generally, the last fiscal year ending before May 1, 2012).	The OSC understands that a fixed historical reference year may result in participants paying fees based on market revenues or capitalization levels that are different (higher or lower) than the most recent year. The OSC also agrees that changes could occur in the relative performance between market participants that would otherwise affect their individual fees and that some of the proposed approaches could result in a closer link between individual participant performance and fees paid. However, the OSC does not believe that any of the approaches proposed would significantly improve fairness among market participants. The OSC needs to recover its costs through fees. Under the proposed approach, each market participant will pay their share of OSC costs based on their relative size. While the OSC does not believe that changes to the position of individual market participants (in relative terms) would result in material changes to their share of the fees, allowing the reference year to change each year would expose the OSC to revenue losses if markets were to deteriorate.

Item	Issue	Commission's Response
		By setting the reference year based on historical data, the OSC will maintain its revenue base and the relative share of fees paid by each participant across the expected term of the Final Amendments. On balance, the OSC believes that the overall benefit achieved in the predictability of its revenues through using a fixed reference year significantly outweighs the sum of the impacts on individual entities.
5	Some commenters advocated the use of a rolling average, instead of a fixed reference year, in connection with the calculation of corporate finance and capital markets participation fees.	While the use of a rolling average approach would smooth performance and potentially provide a closer link to recent performance and the amount of fees paid, it would be inconsistent with the OSC's goal to have more predictable revenues. The OSC believes that the benefits to be achieved in improving OSC revenue predictability in total, more than offset any potential, negative impacts on individual market participants. Further, we believe that moving to a "rolling average" approach would substantially complicate the Rule and create difficulties in compliance.
6	One commenter suggested that there should be more graduated tiers of specified Ontario revenues, for the purposes of determining capital markets participation fees.	The goal of the fee model is to provide a clear and streamlined fee structure that reflects the OSC's cost of providing services. While a fee schedule with more graduated tiers would avoid more significant increases as participants move between tiers, the model is designed to minimize volatility in the OSC's revenue due to changes in market levels and therefore better match revenue to costs. This also means that market participants generally experience stability in their fees from one year to the next. The OSC will look at whether there are opportunities to improve the tier structure. In the interim, the proposed change to a fixed reference year will generally result in no changes between tiers for the next three years.
7	One commenter suggested the elimination of capital markets participation fees if specified Ontario revenues were under $1.	This is a comment on an existing rule, rather than a comment relating to fee rule changes. We do not agree with the comment. Registered firms and unregistered capital markets participants are governed by the OSC and subject to OSC oversight regardless of whether or not they have earned any specified Ontario revenues. Therefore, we believe it is appropriate for these firms to pay a capital markets participation fee.
8	One commenter opposed changes to the determination of late fees in connection with late fees for Form 45-501F1 and 45-106F1.	Late fees should be imposed to reflect the consequences of late filings of documents such as Forms 45-501F1 and 45-106F1. The OSC does not believe that a change from the August 2012 Proposals is advisable to late fees as they are only incurred by those participants who do not meet filing deadlines which are under their control.
9	A number of commenters have raised questions about the level of OSC accountability and have suggested that increased transparency and control over its operations is required.	The OSC is a public entity that operates within a comprehensive and robust accountability framework. It is accountable to the Minister of Finance and the Ontario Legislature. In addition, it is subject to review by the Ontario Legislature's *Standing Committee on Government Agencies*, which has a dual mandate to review intended government appointments, and review and report to the legislature its observations, opinions and recommendations on the operations of all agencies, boards and commissions established by the Government in Ontario. This accountability framework is based on transparency and public input. For example, the OSC annually publishes its Statement of Priorities for public comment. This document is finalized by June of each year and provides details on the initiatives and the budget for the upcoming fiscal year. A report card on the OSC's performance against its Statement of Priorities is also published each year. The OSC publishes an Annual Report that sets out its key achievements and which includes a Management Discussion and Analysis that provides detailed explanations of expenditures and variances against plan. The Annual Report also includes an independent audit report

Item	Issue	Commission's Response
		from the Office of the Auditor General of Ontario with regard to the OSC's financial statements. The OSC has entered into a Memorandum of Understanding with the Minister of Finance that sets out specific responsibilities to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission. In addition, the OSC holds monthly work-in-progress meetings with Ministry staff to communicate issues and discuss planned activities. The OSC gains insight into industry issues and concerns through a number of industry-based committees that are primarily comprised of market participants. These committees have proved very useful as a means to obtain input and improve transparency and two-way communications on issues. The OSC is of the view that the existing accountability framework addresses the issues raised by the commenters in this area.
10	A number of commenters were critical of the magnitude of the increases proposed.	The OSC is sensitive to the difficulties that industry participants are facing due to challenging market conditions. Our Board of Directors and management are committed to prudently managing our budget and expenditures. Each year in setting our budget we carefully review our priorities and our capacity and assess whether existing resources could be reduced or reallocated to better serve priority areas, while not impairing the OSC's ability to achieve our mandate. The OSC has considered industry concerns about the magnitude of the proposed increases as well as comments that the proposed fee increases should not include an element designed to build the OSC's accumulated surplus. In response to these comments and concerns, we are proposing to reduce the proposed percentage increases in participation fees, relative to those set out in the in the August 2012 Proposals, from 15.55% to 11.65% for reporting issuers and from 7.9% to 4.7% for registrants. The reduction has been achieved by removing the component of the fee increases in the August 2012 Proposals that was designed to allow the OSC to build surplus to $30 million. The decision not to build a larger reserve at this time exposes the Commission to greater liquidity risks and will necessitate a reliance on a suitable credit facility, particularly if yearly revenues continue to decline from original forecasts. In addition, increases in related interest costs may need to be passed on through higher future fees.
11	One commenter suggested that the OSC needs to review changes in market composition with a view to better align the fees charged to the sectors creating the work.	The OSC agrees that changes in market composition warrant ongoing review and potentially further revision to its fee model. As a first step, the Final Amendments reflect a new fee for exchanges, ATSs and other market participants not paying fees under the existing rule. The OSC will continue to review the markets as they evolve with an eye to identifying any other opportunities to better align its future fee proposals with the markets it regulates.
12	One commenter suggested the accelerated payment of participation fees, or a discount for early payment, as a means to minimize cash-flow difficulties for the OSC.	The OSC has considered options such as a discount for early payment as these would assist with the timing of payments and help to address the OSC's cash flow issues. However, because the OSC needs to recover all of its costs through fees, in order to implement such an approach, the OSC would need to increase the rate of fee increases overall to recover sufficient additional revenues to offset all revenues that would be lost to provide the discounts. The OSC will examine options to implement "accelerated" payment or other approaches to improve its cash flow in the context of future fee amendments.

Item	Issue	Commission's Response
13	One commenter expressed support for the provision in the definition of "unregistered investment fund manager" which exempts participation fees on the basis of no active solicitation in Ontario.	We appreciate the commenter's support.
14	One commenter took the position that the exemption from the payment of participation fees for unregistered investment fund managers could be refined further, in order to provide partial exemptions in appropriate cases.	Participation fees are generally determined on an entity-by-entity basis, with the Ontario nexus for the capital markets participation fee being achieved because of the application of the "Ontario percentage" to revenues. The exemption from the payment of participation fees for unregistered investment fund managers was likewise intended to be a simple mechanism applied on an entity-by-entity basis, rather than trying to stream the manager's income between "Ontario" and "non-Ontario income". We do not propose to refine the exemption for unregistered investment fund managers.
15	One commenter requested confirmation that registrants who have already paid a fee for registration in one category will not be charged fees for registration in a second category.	The terms of Items H.1, H.2 and H.3 of Appendix C of the existing rule set out circumstances in which one or multiple fees are payable.
16	Three commenters opposed the elimination of the exemption for payment of the $500 fee, in connection with the filing of Forms 45-501F1 and 45-106F1 by issuers subject to participation fees and by investment funds with managers subject to participation fees.	The activity fees in connection with the filing of Forms 45-501F1 and 45-106F1 by issuers subject to participation fees and by investments funds with managers subject to participation fees are estimates of the average cost to the OSC of reviewing these documents.
17	One commenter opposed the application of the $1,000 fee for an application to cease to be a reporting issuer, where the application falls under the "simplified procedure" under OSC Staff Notice 12-703 or CSA Staff notice 12-307.	The proposed $1,000 fee reflects the average costs to the OSC of reviewing these applications under the simplified and modified application procedures.
18	One commenter suggested the imposition of an activity fee to be paid for strategic applications to Staff by a party in the course of a takeover bid or proxy contest under subsection 104(1) or section 127 of the Act, for example to defeat a poison pill defence.	The OSC does not propose to charge fees for applications under subsection 104(1) or section 127 of the Act.
19	One commenter suggested that information requests should remain based on a fixed fee. If the OSC moves to a time based approach, it should set a minimum fee with a notice requirement in the event that fees to be incurred	The goal of the move towards a time based approach to fees for information requests is to apply a more reasonable fee structure to these requests based on the actual time required to fulfill the requests. The flat fee may not be affordable to non-corporate clients and may not be reflective of the time required to respond to simpler requests for copies of OSC records. The proposed fee structure is based on the *Freedom of Information and Protection of Privacy Act*, R.R.O. 1990, Regulation 460 which contains a fee

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	will surpass the minimum set fee.	model currently in place for access to Ontario government records. This time based approach to fees is considered fairer than the flat fee model for clients requesting copies of OSC records.
20	One commenter noted that cross-reference corrections should be made in E(1) of Appendix C of the Rule to reflect changes in organization of the Rule.	These corrections are reflected in the Final Rule.
21	One commenter suggested that less incremental time/cost should be required to review each additional fund in a single prospectus containing multiple funds, than it would to review individual separate prospectuses for each fund. Accordingly, the associated activity fee schedule for reviewing those additional funds in that same prospectus should decrease after a certain number of funds (e.g., 15 funds), to reflect that lower incremental review cost.	Generally, simplified prospectuses can cover a significant number of mutual funds. Note that the activity fees applicable to prospectuses filed in Form 81-101F1 and Form 81-101F2 (i.e. Simplified Prospectus and AIF) have not been changed. The scope of our review of mutual funds does not decrease incrementally based on the number of mutual funds in a prospectus.
22	One commenter suggested consideration should be given to reducing fees for corporate finance participants who are reporting issuers in another Canadian province where the securities regulator in that province acts as the principal regulator of the participant.	This is a comment on the existing rule, rather than a comment relating to fee rule changes. We do not agree with the comment. Participation fees are designed to cover the OSC's costs not easily attributable to specific regulatory activities. Reporting issuer participation fees are based on the issuer's capitalization which is used to approximate its proportionate participation in the Ontario capital markets. Participation fees are applied to the costs to the OSC of regulating the ongoing participation in Ontario's capital markets.
23	One commenter suggested that the OSC should try to collect more revenue through activity fees.	A fundamental principle of the OSC fee model is basing activity fees on average costs of specific underlying work. While we continue to review the level of activity fees and consider additional activity fees when practical, we do not foresee that it would be possible to impose substantially higher level of activity fees as a means of meeting our funding challenges.
24	Five commenters expressed concerns about the introduction by the OSC of a variable cost-based activity fee for work done by its staff on non-routine, novel or complex regulatory filings whose cost exceeds $300,000. They raised the following issues: - the OSC does not have adequate policies and procedures to track and control costs which could result in a filer having to pay a substantial fee well after it filed the application; - there are no provisions to allow an applicant to withdraw its application at any time due to the high cost of review; - the final variable cost is only subject to an informal review by	We acknowledge the commenters' concerns and have decided not to proceed with the variable activity fee at this time. As a result of the comments received, we have determined that further refinement is necessary. It is important to move forward with the fixed part of the fee in order to recover some of the costs of the work related to these types of activities - but at this time, we are removing the variable fee and the discretion of the Director and may reconsider the model in the future.

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	the Director or the Commission and does not provide the applicant the opportunity to be heard by either the Director or the Commission; - while there is a difference between the flat activity fee applicable to applications by exchanges and ATSs, there is no difference in the threshold for the imposition of the variable activity fee.	
25	Three commenters raised issues related to the treatment of ATSs under the Act. The commenters noted that ATS are required to register as investment dealers under NI 21-101. As a result, they are currently subject to Part 3 Capital Markets Participation Fees and, going forward, will also be subject to Part 3.1 Specified Regulated Entities Fee. One commenter recommended that ATSs should be exempt from the Part 3 Capital Markets Participation Fees, whereas the other noted that ATSs should only be subject to one of the two fees.	While we acknowledge the commenters' concerns related to multiple participation fees paid by ATSs, in our view, it is appropriate for the two sets of fees to remain. However, in response to the comments received we examined the fees proposed and further considered the aggregate participation fees charged to ATSs and those charged to exchanges. As a result, the Final Amendments align the participation fees charged to ATSs to those charged to exchanges. The Final Amendments generally provide Part 3.1 fee relief and a refund for ATSs for exchange-traded securities, to the extent that the aggregate fees otherwise charged under Parts 3 and 3.1 to the ATS are greater than the fee that would be charged under Part 3.1 if the ATS had operated as an exchange at the relevant market share level. The treatment of ATSs for unlisted debt or securities lending is dealt with in Item 26.
26	One commenter mentioned that the participation fee proposed for debt ATSs under Part 3.1 of the Rule is similar to the fee proposed for equity ATSs under the same Part. The commenter noted that debt ATSs operate only in the fixed income space which requires significantly less regulatory oversight than equity ATSs, therefore the participation fee should reflect this reality.	In the Final Amendments, we have adjusted the participation fee for ATSs for unlisted debt and securities lending. The Final Amendments generally provide Part 3.1 fee relief and a refund for these ATSs to the extent that the aggregate fees otherwise charged under Parts 3 and 3.1 to the ATS are greater than $30,000.
27	One commenter proposed that market share be determined as the average of the market share of volume, value and number of trades rather than the greatest of the three metrics.	The Final Amendments use the average of the three metrics, as suggested by the commenter.
28	One commenter took the position that the proposed participation fees for exempt exchanges and clearing houses were excessive compared to other regulators. In addition, the commenter noted that exempt exchanges and clearing houses have different sizes, product offerings, varied risk parameters etc. and therefore the participation fees charged	While the level of oversight of exempt entities is different than the oversight undertaken for recognized entities, there are oversight activities that do occur and therefore, a fee is appropriate. In setting the fees for exempt entities we considered both the amount of oversight work undertaken by OSC staff and fees charged by other jurisdictions for similar activities. In response to the concerns raised, in the Final Amendments the Part 3.1 fee has been has been reduced from $15,000 to $10,000.

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	should reflect these differences.	
29	Two commenters suggested that having two different times for payments of capital markets participation fees in s.3.1(1) and (2) is confusing, and potentially problematic (i.e., double charge of capital markets participation fees) if the same firm is an unregistered exempt international firm and an unregistered investment fund manager.	This is a comment on the existing rule, rather than a comment relating to fee rule changes. The administrative practice is that only one fee is charged in the case described. The OSC believes that the current payment system is effective. No changes will be made at this time. The OSC will consider in future aligning the timing for payment of these capital markets participation fees.
30	One commenter took the position that the participation fee, in so far as it is imposed on unregistered exempt international firms, is a tax rather than a user fee that the OSC has authority to impose.	This is a comment on the existing rule, rather than a comment relating to fee rule changes. We agree that the OSC does not have the authority to impose a tax, but we believe that the participation fee for unregistered exempt international firms can be appropriately characterized as a user fee. Unregistered exempt international firms are governed by the OSC in so far as they are required to comply with the conditions of the exemptions in Parts 8.18 and 8.26 of NI 31-103. These include certain requirements related to: • types of activities that may be conducted in Canada under the exemptions • types of securities that may be traded (International Dealers) • types of clients for whom the firms may act in Canada under the exemptions • restrictions on revenues that can be earned from portfolio management activities in Canada (International Advisers) • registrations or exemptions from registration required in the jurisdiction of a firm's principal place of business or head office • engaging in business as a dealer or adviser in the jurisdiction of a firm's principal place of business or head office • filings with the regulator (Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service)* • notifications to clients They benefit from OSC oversight in that clients of the firm have greater protection, and thus may have greater confidence in the firm because of OSC oversight, in addition to the oversight provided by other regulatory authorities.
31	One commenter opposed the adjustments to the calculation of the corporate finance participation fee in the case of an issuer that became a reporting issuer.	The adjustment was made because we think that capitalization determined after an initial public offering with reference to market value of an issuer's shares after that time properly reflects the issuer's capitalization.
32	Two commenters took the position that, in determining capital markets participation fees, the expression "capital markets activities" does not refer to world-wide activities.	This is a comment on the existing rule, rather than a comment relating to fee rule changes. We do not agree with the comment. The policy underlying the existing rule is that capital markets participation fees are determined with reference to specified Ontario revenues. The limitation to Ontario revenues is generally achieved by applying the "Ontario percentage" to world-wide revenues.

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		The position that the expression "capital markets activities" only refers to Ontario activities is not consistent with the scheme of the existing rule. The intention is that the same activity performed within and outside Ontario not be split up for the purposes of that expression.
33	One commenter took the position that a registrant with a December 31 fiscal year should (without reference to the new measures with regard to "reference fiscal years") pay the capital markets participation fee based on revenues from the preceding fiscal year.	This is a comment on the existing rule, rather than a comment relating to fee rule changes. We do not agree with the comment. If a fiscal year ends on December 31, under the existing rule there must be a good-faith estimate of revenues for that fiscal year (as per s.3.5(1)(a) of the existing rule), followed by payment of the estimate on December 31 (as per s.3.1(1) and s.3.5(1) of the existing rule)), with a subsequent adjustment if necessary to reflect the accounting statements for that fiscal year. The wording of the definition of "previous fiscal year" is consistent with this policy and the change suggested by the commenter would, for example, cause substantial differences in the treatment of December 30 and December 31 year ends.
34	The provision in section 4.1 of the CP providing that participation fees should be paid and borne by registrants is unfair and is inconsistent with past policy and practice of the OSC which has permitted fund managers to charge capital markets participation fees to the applicable fund. This is an administrative cost and should appropriately be treated as a fund expense. To do otherwise would impose higher costs on the industry.	We have removed this proposed guidance from the Final CP Changes. The charging of expenses and the allocation of expenses to funds can raise potential conflict of interest issues. Investment fund managers should ensure that they consider and adequately address conflicts associated with any allocation of capital markets participation fees, including review by a fund's independent review committee.
35	Two commenters noted that some of the text in the August 2012 Proposals was not accurate in so far as unregistered investment fund managers (as defined) are also charged participation fees under the existing rule.	We agree with this comment. In the Final CP Changes, the required technical correction has been made in section 4.1 of the CP.
36	One commenter questioned why unregistered investment fund managers are limited to paper-based filings.	We agree that there is no good reason for this restriction. The Final CP Changes amend section 4.4 of the CP to remove it.

ANNEX B

Amendments to
OSC Rule 13-502 *Fees*

1. National Instrument 13-502 Fees is amended by this Instrument.

2. Section 1.1 is amended by

(a) replacing the definition of "NI 31-103***" with the following:***

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

(b) adding the following definition:

"reference fiscal year" of a participant in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if

(i) the participant was a reporting issuer, registrant firm or unregistered capital markets participant at the end of the fiscal year, and

(ii) if the participant became a reporting issuer in that fiscal year under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act, all or substantially all of its securities were listed or quoted on a marketplace at the end of that fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;***; and***

(c) replacing the definition of "unregistered fund manager" with the following:

"unregistered investment fund manager" means a person or company that acts as an investment fund manager for one or more investment funds and is not registered as an investment fund manager in accordance with Ontario securities law, but does not include a person or company that does not have a place of business in Ontario if one or more of the following apply:

(a) none of those investment funds have security holders resident in Ontario;

(b) the person or company and those investment funds have not, at any time after September 27, 2012, actively solicited residents in Ontario to purchase securities of any of those investment funds.

3. Part 1 is further amended by adding the following:

1.3 **Liability for multiple participation fees –** For greater certainty, except as expressly provided in Part 3.1, the liability of a person or company for a payment under any of Parts 2 to 3.1 of this Rule does not affect the liability of that person or company under any other of those Parts.

4. Subsection 2.2(1) is replaced by the following:

(1) A reporting issuer must, after each of its fiscal years, pay the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for its reference fiscal year, as its capitalization is determined under section 2.7, 2.8 or 2.10.

5. Subsection 2.2(2) is amended by replacing "$960***" with "***$1,070***".***

6. Subsection 2.2(2), as amended by section 5, is amended by replacing "$1,070***" with "***$1,195***".***

7. Subsection 2.2(3) is replaced by the following:

(3) Despite subsection (1), a Class 3B reporting issuer must pay the participation fee shown in Appendix A.1 opposite the capitalization of the reporting issuer for its reference fiscal year, as its capitalization is determined under section 2.9.

(3.1) Despite subsections (1) and (3), the participation fee of a reporting issuer must, if its capitalization for its reference fiscal period is affected by the application of subsection 2.7(2) or 2.9(2) and its reference fiscal period coincides with its previous fiscal year in respect of the participation fee, be calculated by multiplying

(a) the amount of that participation fee determined without reference to this subsection, by

(b) the number of entire months in the previous fiscal year remaining after it became a reporting issuer divided by the lesser of

(i) 12, and

(ii) the number of entire months in the previous fiscal year.

8. (1) The portion of section 2.6 before paragraph 2.6(1)(a) is replaced by the following:

2.6 Participation Fee Exemptions for Subsidiary Entities

(1) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity in respect of a participation fee determined with reference to the subsidiary entity's capitalization for the subsidiary entity's reference fiscal year if

(2) Paragraphs 2.6(1)(a) to (e) and subsection 2.6(2) are amended by replacing "previous fiscal year***", wherever it occurs, with "***reference fiscal year***".***

9. Subsection 2.6.1(1) is amended by replacing "section 2.3,***" with "***section 2.3 and the issuer's reference fiscal year coincides with its previous fiscal year***".***

10. Section 2.7 is replaced by the following:

2.7 Class 1 reporting issuers

(1) The capitalization of a Class 1 reporting issuer for its reference fiscal year is the total of

(a) the average market value over the reference fiscal year of each class or series of the reporting issuer's securities listed or quoted on a marketplace, calculated by multiplying

(i) the total number of securities of the class or series outstanding at the end of the reference fiscal year, by

(ii) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the reference fiscal year in which the class or series were listed or quoted on the marketplace

(A) on which the highest volume in Canada of the class or series was traded in the reference fiscal year, or

(B) if the class or series was not traded in the reference fiscal year on a marketplace in Canada, on which the highest volume in the United States of America of the class or series was traded in the reference fiscal year, and

(b) the market value at the end of the reference fiscal year, as determined by the reporting issuer in good faith, of each class or series of securities of the reporting issuer not valued on the last trading day of any month under paragraph (a), if any securities of the class or series

(i) were initially issued to a person or company resident in Canada, and

(ii) trade over the counter or, after their initial issuance, are otherwise generally available for purchase or sale by way of transactions carried out through, or with, dealers.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in subparagraph (1)(a)(ii) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

11. Subsections 2.8(1) and (3) are amended by replacing "previous fiscal year***", wherever it occurs, with "***reference fiscal year***".***

12. Section 2.9 is replaced by the following:

2.9 Class 3B reporting issuers

(1) The capitalization of a Class 3B reporting issuer for its reference fiscal year is the total of each value of each class or series of securities of the reporting issuer listed or quoted on a marketplace, calculated by multiplying

(a) the number of securities of the class or series outstanding at the end of the reference fiscal year, by

(b) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the reference fiscal year in which the class or series were quoted on the marketplace on which the highest volume of the class or series was traded in the reference fiscal year.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in paragraph (1)(b) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

13. Subsections 3.1(1) and (2) are replaced by the following:

3.1 Participation Fee

(1) On December 31 of each calendar year, registrant firms and unregistered exempt international firms must pay the participation fee shown in Appendix B opposite the firm's specified Ontario revenues for its reference fiscal year, as those revenues are calculated under section 3.3, 3.4 or 3.5.

(2) Not later than 90 days after the end of each of its fiscal years, if at any time in the fiscal year a person or company was an unregistered investment fund manager, the fund manager must pay the participation fee shown in Appendix B opposite the fund manager's specified Ontario revenues for its reference fiscal year, as those revenues are calculated under section 3.4.

14. Sections 3.3 and 3.4 are amended by replacing "previous fiscal year***", wherever it occurs, with "***reference fiscal year***".***

15. The portion of subsection 3.5(1) before paragraph 3.5(1)(b) is replaced by the following:

3.5 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm or unregistered exempt international firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of the registrant firm or unregistered exempt international firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the firm must,

(a) on or before December 1 in that calendar year, file a completed Form 13-502F4 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and

16. The following Parts are added:

PART 3.1 – PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES

3.1.1 Payment of Participation Fee

(1) Each specified market operator must pay annually the participation fee specified in Column C of Appendix B.1 for each specified period except that, if there is a group of specified market operators each of which is related to each other, the obligation under this Part and Appendix B.1 must be determined as if the group were a single entity in which case each specified market operator in the group is jointly and severally liable in respect of the obligation.

(2) For the purposes of subsection (1) and Appendix B.1,

(a) "Canadian trading share" for a specified period is the average of:

(i) the share in the specified period of the total dollar values of trades of exchange-traded securities;

(ii) the share in the specified period of the total trading volume of exchange-traded securities; and

(iii) the share in the specified period of the total number of trades of exchange-traded securities;

(b) a "specified market operator" is a person or company that, on April 15 of the calendar year in which the payment under subsection (1) is required,

(i) is recognized under the Act as an exchange,

(ii) operates a market or facility recognized under the Act as an exchange or, pursuant to a recognition order under the Act, a market or facility similar to a market, or

(iii) has one or more subsidiaries that are recognized exchanges under the Act; and

(c) a "specified period" in respect of a payment required to be made under this section by April 30 of a calendar year, is the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year.

(3) Each person or company described in section B, C, E or F in Column B, of Appendix B.1 must pay annually the participation fee specified for the person or company in Column C of Appendix B.1.

(4) Each clearing agency recognized under section 21.2 of the Act must pay annually the total fee determined by aggregating the fees in Column C for the services in rows D3 to D8 that are provided by it.

(5) Each payment described in subsection (1), (3) or (4) must be made no later than April 30 of each calendar year and be accompanied by a completed Form 13-502F7.

(6) With regard to persons or companies described in any of rows B1, C1, C2, C3, D1, E1 or F1 of Appendix B.1, subsections (3) and (4) do not apply for a calendar year unless the person or company is so described on April 15 of that calendar year and carries on business in Ontario at that time.

(7) Subsection (8), (9) or (10) applies to a person or company for a calendar year only if all or substantially all of the gross revenues of the person or company in the calendar year attributable to capital markets activities derive from the operation of an alternative trading system.

(8) Despite subsection (3) and Appendix B.1, if a person or company is described in row C1 of Appendix B.1 and the sum of $17,000 and the amount paid by the person or company under Part 3 on December 31 of the preceding calendar year exceeds the amount that would be payable under subsection (1) on April 30 of the calendar year if the person or company were a specified market operator,

(a) the excess shall first be applied to reduce the $17,000 amount otherwise payable under this Part by the person or company for the calendar year, and

(b) any unapplied part of the excess shall be refunded to the person or company not later than June 1 of the calendar year.

(9) Despite subsection (3) and Appendix B.1, if a person or company is described in row C2 of Appendix B.1 and the sum of $8,750 and the amount paid by a person or company under Part 3 on December 31 of the preceding calendar year exceeds $30,000

(a) the excess shall first be applied to reduce the $8,750 amount otherwise payable under this Part by the person or company for the calendar year, and

(b) any unapplied part of the excess shall be refunded to the person or company not later than June 1 of the calendar year.

(10) Despite subsection (3) and Appendix B.1, if a person or company is described in row C3 of Appendix B.1

(a) if the person or company operates an alternative trading system for exchange-traded securities, subsection (8) applies; and

(b) in any other case, subsection (9) applies as if the reference in that subsection to "$8,750" were read as "$17,000".

3.1.2 Late fee

(1) A person or company that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a person or company is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

PART 3.2 – PARTICIPATION FEES FOR DESIGNATED RATING ORGANIZATIONS

3.2.1 Payment of Participation Fee

(1) Each designated rating organization must pay a participation fee of $15,000 after the completion of each financial year.

(2) The payment must be made no later than the earlier of:

(a) the time at which the designated rating organization files a completed Form 25-101FI *Designated Rating Organization Application and Annual Filing* in respect of the financial year, and

(b) the time at which the designated rating organization is required by National Instrument 25-101 Designated Rating Organizations to file a completed Form 25-101F1 *Designated Rating Organization Application and Annual Filing* in respect of the financial year.

(3) The payment must be accompanied by a completed Form 13-502F8.

3.2.2 Late fee

(1) A designated rating organization that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a designated rating organization is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

17. The portion of Part 4 before section 4.2 is replaced by the following:

PART 4 – ACTIVITY FEES

4.1 **Activity Fees – General** – A person or company that files a document or takes an action listed in Appendix C must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix C opposite the description of the document or action.

4.1.1 Information Request – Section 4.1 does not apply with regard to requests to the Commission under section K of Appendix C but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

18. Subsection 4.3(1) is amended by replacing "item A***" with "***item A or A.1***".***

19. Appendix A is replaced by the following:

APPENDIX A –
CORPORATE FINANCE PARTICIPATION FEES
(OTHER THAN CLASS 3A AND CLASS 3B ISSUERS)

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$800
$10 million to under $25 million	$960
$25 million to under $50 million	$2,320
$50 million to under $100 million	$5,725
$100 million to under $250 million	$11,950
$250 million to under $500 million	$26,300
$500 million to under $1 billion	$36,675
$1 billion to under $5 billion	$53,145
$5 billion to under $10 billion	$68,450
$10 billion to under $25 billion	$79,950
$25 billion and over	$89,990

20. Appendix A, as enacted by section 19, is replaced by the following:

APPENDIX A –
CORPORATE FINANCE PARTICIPATION FEES
(OTHER THAN CLASS 3A AND CLASS 3B ISSUERS)

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$890
$10 million to under $25 million	$1,070
$25 million to under $50 million	$2,590
$50 million to under $100 million	$6,390
$100 million to under $250 million	$13,340
$250 million to under $500 million	$29,365
$500 million to under $1 billion	$40,950
$1 billion to under $5 billion	$59,350
$5 billion to under $10 billion	$76,425
$10 billion to under $25 billion	$89,270
$25 billion and over	$100,500

21. Appendix A, as enacted by section 20, is replaced by the following:

APPENDIX A
CORPORATE FINANCE PARTICIPATION FEES
(OTHER THAN CLASS 3A AND CLASS 3B ISSUERS)

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$995
$10 million to under $25 million	$1,195
$25 million to under $50 million	$2,890
$50 million to under $100 million	$7,135
$100 million to under $250 million	$14,900
$250 million to under $500 million	$32,800
$500 million to under $1 billion	$45,725
$1 billion to under $5 billion	$66,275
$5 billion to under $10 billion	$85,325
$10 billion to under $25 billion	$99,675
$25 billion and over	$112,200

22. The following appendix is added:

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$800
$10 million to under $25 million	$960
$25 million to under $50 million	$1,070
$50 million to under $100 million	$1,910
$100 million to under $250 million	$3,980
$250 million to under $500 million	$8,760
$500 million to under $1 billion	$12,225
$1 billion to under $5 billion	$17,720
$5 billion to under $10 billion	$22,800
$10 billion to under $25 billion	$26,650
$25 billion and over	$30,000

23. Appendix A.1, as enacted by section 22, is replaced by the following:

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$890
$10 million to under $25 million	$1,070
$25 million to under $50 million	$1,195
$50 million to under $100 million	$2,135
$100 million to under $250 million	$4,450
$250 million to under $500 million	$9,780
$500 million to under $1 billion	$13,650
$1 billion to under $5 billion	$19,785
$5 billion to under $10 billion	$25,460
$10 billion to under $25 billion	$29,755
$25 billion and over	$33,495

24. Appendix A.1, as enacted by 23, is replaced by the following:

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Reference Fiscal Year	Participation Fee
under $10 million	$995
$10 million to under $25 million	$1,195
$25 million to under $50 million	$1,335
$50 million to under $100 million	$2,385
$100 million to under $250 million	$4,970
$250 million to under $500 million	$10,925
$500 million to under $1 billion	$15,240
$1 billion to under $5 billion	$22,090
$5 billion to under $10 billion	$28,440
$10 billion to under $25 billion	$33,225
$25 billion and over	$37,400

25. Appendix B is replaced by the following;

APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$800
$250,000 to under $500,000	$1,035
$500,000 to under $1 million	$3,390
$1 million to under $3 million	$ 7,590
$3 million to under $5 million	$ 17,100
$5 million to under $10 million	$ 34,550
$10 million to under $25 million	$ 70,570
$25 million to under $50 million	$105,750
$50 million to under $100 million	$ 211,500
$100 million to under $200 million	$ 351,200
$200 million to under $500 million	$ 711,850
$500 million to under $1 billion	$ 919,300
$1 billion to under $2 billion	$1,159,300
$2 billion and over	$1,945,500

26. Appendix B, as enacted by section 25, is replaced by the following:

APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$835
$250,000 to under $500,000	$1,085
$500,000 to under $1 million	$3,550
$1 million to under $3 million	$7,950
$3 million to under $5 million	$17,900
$5 million to under $10 million	$36,175
$10 million to under $25 million	$74,000
$25 million to under $50 million	$110,750
$50 million to under $100 million	$221,500
$100 million to under $200 million	$367,700
$200 million to under $500 million	$745,300
$500 million to under $1 billion	$962,500
$1 billion to under $2 billion	$1,213,800
$2 billion and over	$2,037,000

27. Appendix B, as enacted by section 26, is replaced by the following:

APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$875
$250,000 to under $500,000	$1,135
$500,000 to under $1 million	$3,715
$1 million to under $3 million	$8,325
$3 million to under $5 million	$18,745
$5 million to under $10 million	$37,875
$10 million to under $25 million	$77,475
$25 million to under $50 million	$115,955
$50 million to under $100 million	$232,000
$100 million to under $200 million	$385,000
$200 million to under $500 million	$780,000
$500 million to under $1 billion	$1,008,000
$1 billion to under $2 billion	$1,271,000
$2 billion and over	$2,133,000

28. The following appendix is added:

APPENDIX B.1
PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES
Part 3.1 of the Rule

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
	A. Specified Market Operators	
A1	Each specified market operator with a Canadian trading share for the specified period of up to 5%.	$30,000
A2	Each specified market operator with a Canadian trading share for the specified period of 5% to up to 15%.	$50,000
A3	Each specified market operator with a Canadian trading share for the specified period of 15% to up to 25%.	$135,000
A4	Each specified market operator with a Canadian trading share for the specified period of 25% to up to 50%.	$275,000
A5	Each specified market operator with a Canadian trading share for the specified	$400,000

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
	period of 50% to up to 75%.	
A6	Each specified market operator with a Canadian trading share for the specified period of 75% or more.	$500,000
	B. Exchanges Exempt from Recognition under the Act	
B1	Each exchange that is exempted by the Commission from the application of subsection 21(1) of the Act.	$10,000
	C. Alternative Trading Systems	
C1	Each alternative trading system only for exchange-traded securities.	$17,000
C2	Each alternative trading system only for unlisted debt or securities lending.	$8,750
C3	Each alternative trading system not described in Row C1 or C2.	$17,000
	D. Clearing Agencies Recognized under the Act	
D1	Each clearing agency recognized under section 21.2 of the Act --	
D2	Total determined by aggregating fees in respect of each of the following services, to the extent applicable, provided by a recognized clearing agency to Ontario participants in the market:	
D3	Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction.	$10,000
D4	Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money.	$20,000
D5	Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.*	$20,000
D6	Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight.	$150,000
D7	Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight.	$70,000
D8	Depositary services, being the provision of centralized facilities as a depository for securities.	$20,000
	E. Clearing Agencies Exempt from Recognition under the Act	
E1	Each clearing agency that is exempted by the Commission from the application of subsection 21.2(1) of the Act.	$10,000
	F. Trade Repositories	
F1	Each trade repository designated under subsection 21.2.2(1) of the Act.	$30,000

29. Appendix C is amended

(a) in items A(1), (3), (4) and (5) by replacing "$3,250***" with "***$3,750***", wherever it occurs;***

(b) in item A(2) by

(i) replacing "engineering***" with "***technical***", and***

(ii) replacing "$2,000***" with "***$2,500***";***

(c) by deleting the following text in item 5:

for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the issue***r***

(d) by adding the following item A(6):

6.	Filing of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations of securities of the issuer	$500

(e) by replacing item B(2) with the following:

2.	Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer	$500

(f) in item B(3) by replacing the first reference to "$2,000***" with "***$3,750***";***

(g) by replacing item E(1) with the following:

1.	Any application for relief, approval or recognition to which section H does not apply that is under an eligible securities section, being for the purpose of this item any provision of the Act, the Regulation or any Rule of the Commission not listed in item E(2), E(2.1), E(3), E(4) or E(4.1) below nor section E.1 or E.2 *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of a self-regulatory organization under section 21.1 of the Act or a quotation and trade reporting system under section 21.2.1 of the Act;* *(ii) approval of a compensation fund or contingency trust fund under section 110 of the Regulation;* *(iii) approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act;* *(iv) deeming an issuer to be a reporting issuer under subsection 1(11) of the Act;* *(v) except as listed in item E(4.1) (b), applications by a person or company under subsection 144(1) of the Act; and* *(vi) except as provide in section E.1, exemption applications under section 147 of the Act.*	$4,500 for an application made under one eligible securities section and $7,000 for an application made under two or more eligible securities sections (plus $2,000 if none of the following is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant), (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 144(1) of the Act in respect of an application described in section E.1 if the particular application (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile

	of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).

(h) by replacing item E(2) with the following:

2.	An application for relief from this Rule.	$1,750
2.1	An application for relief from any of the following: (a) NI 31-102 *National Registration Database*; (b) NI 33-109 *Registration Information*; (c) section 3.11 [*Portfolio manager – advising representative*] of NI 31-103; (d) section 3.12 [*Portfolio manager – associate advising representative*] of NI 31-103; (e) section 3.13 [*Portfolio manager – chief compliance officer*] of NI 31-103; (f) section 3.14 [*Investment fund manager – chief compliance officer*] of NI 31-103; (g) section 9.1 [*IIROC membership for investment dealers*] of NI 31-103; (h) section 9.2 [*MFDA membership for mutual fund dealers*] of NI 31-103.	$1,500

(i) by replacing item E(4) with the following:

4.	Application under subclause 1(10)(a)(ii) of the Act	$1,000
4.1	Application (a) under section 30 or subsection 38(3) of the Act or subsection 1(6) of the *Business Corporations Act*; (b) under section 144 of the Act for an order to partially revoke a cease-trade order to permit trades solely for the purpose of establishing a tax loss, as contemplated under section 3.2 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*; and (c) other than a pre-filing, where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under NI 41-101 or NI 81-101).	Nil

(j) by adding the following:

E.1 Market Regulation Recognitions and Exemptions	
(a) Application for recognition of an exchange under section 21 of the Act;	$100,000
(b) Application for exemption from the recognition of an exchange under section 21 of the Act;	$75,000
(c) Application by clearing agencies for recognition under section 21.2 of the Act;	$100,000
(d) Application for exemption from the recognition of a clearing agency under section 21.2 of the Act;	$75,000
	(plus an additional fee of $100,000 in connection with each such application that (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
E.2 Alternative Trading Systems	
Review of the initial Form 21-101F2 of a new alternative trading system	$50,000

(k) in item G(1), by replacing "$4,000***" with "***$4,500***";***

(l) in item H(1), by replacing "$600***" with "***$1,200***";***

(m) in item H(2), by replacing "$600***" with "***$700***";***

(n) in item H(5), by replacing "$2,000***" with "***$1,000***";***

(o) in section I, by replacing "$3,000***" with "***$3,500***";***

(p) by replacing section K with the following:

K.	**Requests to the Commission**	
1.	Request for a copy (in any format) of Commission public records	$0.50 per image
2.	Request for a search of Commission public records	$7.50 for each 15 minutes search time spent by any person
3.	Request for one's own individual registration form.	$30

30. Appendix D is amended by

(a) deleting "(c) Form 45-501F1 or Form 45-106F1 filed by a reporting issuer;***";***

(b) adding the following after paragraph (i) of section A:

(j) Form 13-502F7;

(k) Form 13-502F8.***; and***

(c) adding the following:

A.1	Fee for late filing Forms 45-501F1 and 45-106F1	$100 per business day (subject to a maximum aggregate fee of $5,000 per fiscal year, for an issuer, for all Forms 45-501F1 and 45-106F1, required to be filed within a fiscal year of the issuer).

31. Form 13-502F1 is replaced by the following:

FORM 13-502F1
CLASS 1 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's reference fiscal year	(i)	
Simple average of the closing price of that class or series as of the last trading day of each month in the reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule	(ii)	
Market value of class or series	(i) X (ii) =	(A)
(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the reference fiscal year)		(B)

Market value of other securities not valued at the end of any trading day in a month:(See paragraph 2.7(1)(b) of the Rule)

(Provide details of how value was determined)	(C)
(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies)	(D)

Capitalization for the reference fiscal year

(Add market value of all classes and series of securities)
(A) + (B) + (C) + (D) =

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above)	(iii)
Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (iii) amount above.	(iii)
If yes, prorate (iii) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee.	(iv)

Late Fee, if applicable

(As determined under section 2.5 of the Rule)

32. Form 13-502F2 is replaced by the following:

FORM 13-502F2
CLASS 2 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Financial Statement Values:

(Use stated values from the audited financial statements of the reporting issuer as of the end of its reference fiscal year)

Retained earnings or deficit	(A)
Contributed surplus	(B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	(C)
Non-current borrowings (including the current portion)	(D)
Finance leases (including the current portion)	(E)
Non-controlling interest	(F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	(G)
Any other item forming part of equity and not set out specifically above	(H)

Capitalization for the reference fiscal year

(Add items (A) through (H))

Participation Fee

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) ____

Late Fee, if applicable

(As determined under section 2.5 of the Rule) ____

33. Form 13-502F3A is amended by replacing "$960***" with "***$1,070***".***

34. Form 13-502F3A, as amended by section 26, is amended by replacing "$1,070***" with "***$1,195***".***

35. Form 13-502F3B is replaced by the following:

FORM 13-502F3B
CLASS 3B REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of securities:

Total number of securities of a class or series outstanding as at the end of the issuer's reference fiscal year		_____(i)	
Simple average of the closing price of that class or series as of the last trading day of each month of the reference fiscal year, computed with reference to paragraph 2.9(1)(b) and subsection 2.9(2) of the Rule)		_____(ii)	
Market value of class or series	(i) x (ii) =	_____	(A)
(Repeat the above calculation for each other listed or quoted class or series of securities of the reporting issuer)			_____(B)

Capitalization for the reference fiscal year

(A) + (B) = _____

(Add market value of all classes and series of securities)

Participation Fee Otherwise Determined

(C)

(From Appendix A.1 of the Rule, select the participation fee beside the capitalization calculated above) _____

Participation Fee Payable

Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt?

If **no**, participation fee equals (C) amount above. _____(C)

If yes, prorate (C) amount as calculated in subsection 2.2(3.1) of the Rule. _____(D)

Late Fee, if applicable
(As determined under section 2.5 of the Rule) ____

36. Form 13-502F3C is replaced by the following:

FORM 13-502F3C
CLASS 3C REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Section 2.10 of the Rule requires Class 3C reporting issuers to calculate their market capitalization in accordance with section 2.7 of the Rule.

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's reference fiscal year _____(i)

Simple average of the closing price of that class or series as of the last trading day of each month of the reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule _____(ii)

Market value of the class or series (i) x (ii) = _____ (A)

(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the reference fiscal year) _____(B)

Market value of other securities not valued at the end of any trading day in a month: _____(C)

(See paragraph 2.7(1)(b) of the Rule)

(Provide details of how value was determined)

(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies) _____(D)

Capitalization for the reference fiscal year

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) = _____(E)

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) _____

Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (E) amount above. _____(E)

If yes, prorate (E) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee. _____(F)

Late Fee, if applicable

(As determined under section 2.5 of the Rule)

37. Form 13-502F4 is amended

(a) by replacing General Instructions 1 and 2 with the following:

1. This form must be completed and returned to the Ontario Securities Commission by December 1 each year, as per section 3.2 of OSC Rule 13-502 Fees (the Rule), except in the case where firms register after December 1 in a calendar year or provide notification after December 1 in a calendar year of their status as exempt international firms. In these exceptional cases, this form must be filed as soon as practicable after December 1.

2. This form is to be completed by firms registered under the *Securities Act* or by firms that are registered under both the *Securities Act* and the *Commodity Futures Act*. This form is also completed by exempt international firms relying on section 8.18 [international dealer] and 8.26 [international adviser] of NI 31-103, as well as by firms that are unregistered investment fund managers (as defined in the Rule).

(b) in General Instruction 4, by replacing "Form***" with "***form***";***

(c) by replacing General Instruction 8 with the following:

8. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's reference fiscal year. A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

(d) by deleting General Instruction 12;

(e) by replacing "*3. Membership Status" with "*3. Membership Status (one selection)***";***

(f) in section 4 entitled "4. Financial Information" by

(i) adding "(one selection)***" at the end of the second line following that title,***

(ii) replacing "last completed***" with "***reference***", and***

(iii) deleting "*Note: The fiscal year identified above is referred to below as the relevant fiscal year.****";***

(g) in section 5, replacing "Relevant fiscal year***" with "***Reference fiscal year***",; and***

(h) after section 4, replacing "relevant fiscal year***" with "***reference fiscal year***", wherever it occurs.***

38. Form 13-506F5 is amended by replacing "that this Form***" with "***that this form***".***

39. Form 13-502F6 is replaced by the following:

FORM 13-502F6
SUBSIDIARY ENTITY EXEMPTION NOTICE

Name of Subsidiary Entity: _____

Name of Parent: _____

End Date of Subsidiary Entity's Reference Fiscal Year: _____

End Date of Subsidiary Entity's Reference Fiscal Year: _____

(A subsidiary entity's reference fiscal year is generally its last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year. In any other case, it is the subsidiary entity's last completed fiscal year.)

Indicate below which exemption the subsidiary entity intends to rely on by checking the appropriate box:

1. Subsection 2.6(1) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(1) of the Rule:

a) at the end of the subsidiary entity's reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's reference fiscal year;

d) the market capitalization of the subsidiary entity for the reference fiscal year was included in the market capitalization of the parent for the reference fiscal year; and

e) the net assets and total revenues of the subsidiary entity for its reference fiscal year represented more than 90 percent of the consolidated net assets and total revenues of the parent for the parent's reference fiscal year.

	Net Assets for reference fiscal year	**Total Revenues for reference fiscal year**	
Reporting Issuer (Subsidiary Entity)	_____	_____	(A)
Reporting Issuer (Parent)	_____	_____	(B)
Percentage (A/B)	_____%	_____%	

2. Subsection 2.6(2) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(2) of the Rule:

a) at the end of the subsidiary entity's reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's reference fiscal year;

d) the market capitalization of the subsidiary entity for the reference fiscal year was included in the market capitalization of the parent for the reference fiscal year; and

e) throughout the previous fiscal year of the subsidiary entity, the subsidiary entity was entitled to rely on an exemption, waiver or approval from the requirements in subsections 4.1(1), 4.3(1) and 5.1(1) and sections 5.2 and 6.1 of NI 51-102 *Continuous Disclosure Obligations*.

40. The following forms are added:

FORM 13-502F7
SPECIFIED REGULATED ENTITIES – PARTICIPATION FEE

Name of Specified Regulated Entity: _____

Applicable calendar year: _____(2013 or later)

Type of Specified Regulated Entity:
(check one)

☐ (1) Specified market operator, including recognized exchange

☐ (2) Alternative trading system

☐ (3) Recognized clearing agency

☐ (4) Exempt exchange, Exempt clearing agency or Trade Repository

(1) Participation Fee for applicable calendar year -- Specified market operator, including recognized exchange
Filer should enter their Canadian trading share for the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year below:

Canadian Trading Share Description	% (To be Entered by Filer)
Line 1: the share in the specified period of the total dollar values of trades of exchange-traded securities;	
Line 2: the share in the specified period of the total trading volume of exchange-traded securities;	
Line 3: the share in the specified period of the total number of trades of exchange-traded securities;	
Line 4: Average of Lines 1,2 & 3 above	

Line 5: Filer is required to Pay the Amount from the corresponding column in the table below based on the average calculated on Line 4 above:	**$**

Canadian trading share for the specified period of up to 5%	$30,000
Canadian trading share for the specified period of 5% to up to 15%	$50,000
Canadian trading share for the specified period of 15% to up to 25%	$135,000
Canadian trading share for the specified period of 25% to up to 50%	$275,000
Canadian trading share for the specified period of 50% to up to 75%.	$400,000
Canadian trading share for the specified period of 75% or more	$500,000

(2) Participation Fee for applicable calendar year -- Alternative trading system
Note: If all or substantially all of your gross revenues attributable to capital markets activities derive from the operation of an alternative trading system, enter the amounts described in Lines 6, 8, 9, 10 and 11, respectively. Otherwise, enter "$0" on each of the applicable lines.

Line 6: Amount Paid Based on Form 13-502F4 on December 31 of the preceding calendar year:	$
Line 7: If operating an alternative trading system only for unlisted debt or securities lending enter $8,750 on this line, otherwise enter $17,000.	$
Line 8:Sum Line 6 and Line 7	$

Line 9: If operating an alternative trading system for exchange-traded securities, calculate Participation Fee based on Section (1) Specified Market Operator of this form. Enter amount from Line 5 on this line.	$
Line 10: If operating an alternative trading system for other than for exchange-traded securities enter $30,000 on this line.	$
Line 11: Subtract Line 9 or Line 10 from Line 8.	$
Line 12: Subtract Line 11 from the Amount Entered on Line 7. If positive, this is your Part 3.1 fee payable for the year . If zero or negative, there is no Part 3.1 fee payable and there is a refund due to you of the amount determined.	$

(3) Participation Fee for applicable calendar year -- Recognized clearing agency
For services offered in Ontario Market the filer should enter the corresponding amount in the Fees Payable Column:

Services:	Fee Payable
Line 13: Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction. Enter $10,000	$
Line 14: Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money. Enter $20,000	$
Line 15: Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.* Enter $20,000.	$
Line 16: Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight. Enter $150,000	$
Line 17: Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight. Enter $70,000.	$
Line 18: Depositary services, being the provision of centralized facilities as a depository for securities. Enter $20,000.	$
Line 19: Total Fee Payable (Sum of Lines 13-18):	$

(4) Participation Fee for applicable calendar year for other types of specified regulated entities:

Line 20: Filer is required to Pay the Amount from the corresponding column in the table below.	**$**
Exempt Exchange	$10,000
Exempt clearing agency	$10,000
Trade Repository	$30,000

Late Fee

Line 21: Unpaid portion of Participation Fee from Sections (1),(2),(3),(4)	
Line 22: Number of Business Days Late	
Line 23: Fee Payable is as follows: Amount from Line 21*[Amount from Line 22*0.1%]	

FORM 13-502F8
DESIGNATED RATING ORGANIZATIONS – PARTICIPATION FEE

Name of Designated Rating Organization: _____

Fiscal year end date: _____

Participation Fee in respect of the fiscal year $15,000

(From subsection 3.2.1(1) of the Rule)

Late Fee, if applicable

(From section 3.2.2 of the Rule)

****

41. (1) Except as provided by subsections (2) and (3), this Instrument comes into force on April 1, 2013.

(2) Sections 5, 20, 23, 26 and 33 come into force on April 7, 2014.

(3) Sections 6, 21, 24, 27 and 34 come into force on April 6, 2015.

ANNEX C

BLACKLINE SHOWING FINAL CHANGES TO
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

TABLE OF CONTENTS

PART 1 – INTERPRETATION

1.1 Definitions – In this Rule

"capitalization" means the amount determined in accordance with section 2.7, 2.8, 2.9 or 2.10;

"capital markets activities" means

(a) activities for which registration under the Act or an exemption from registration is required,

(b) acting as an investment fund manager, or

(c) activities for which registration under the *Commodity Futures Act*, or an exemption from registration under the *Commodity Futures Act*, is required;

"Class 1 reporting issuer" means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year, has securities listed or quoted on a marketplace in Canada or the United States of America;

"Class 2 reporting issuer" means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada other than a Class 1 reporting issuer;

"Class 3A reporting issuer" means

(a) a reporting issuer that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year, has no securities listed or quoted on a marketplace located anywhere in the world, or

(b) a reporting issuer that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year,

(i) has securities listed or quoted on a marketplace anywhere in the world,

(ii) has securities registered in the names of persons or companies resident in Ontario representing less than 1% of the market value of all outstanding securities of the reporting issuer for which the reporting issuer or its transfer agent or registrar maintains a list of registered owners,

(iii) reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all its outstanding securities,

(iv) reasonably believes that none of its securities traded on a marketplace in Canada during its previous fiscal year, and

(v) has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of one or more of its subsidiary entities, or

(B) pursuant to the exercise of a right previously granted by it or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration;

"Class 3B reporting issuer" means a reporting issuer

(a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada,

(b) that is not a Class 3A reporting issuer, and

(c) whose trading volume in its previous fiscal year of securities listed or quoted on marketplaces in Canada was less than the trading volume in its previous fiscal year of its securities listed or quoted on marketplaces outside Canada;

"Class 3C reporting issuer" means a reporting issuer

(a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada, and

(b) whose trading volume in its previous fiscal year of securities listed or quoted on marketplaces in Canada was greater than the trading volume in its previous fiscal year of its securities listed or quoted on marketplaces outside Canada;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"marketplace" has the meaning ascribed to that term in National Instrument 21-101 *Marketplace Operation*;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"net assets" means total assets minus total liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law;

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

"Ontario allocation factor" has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words "ending after December 31, 2008";

"Ontario percentage" means, for a fiscal year of a participant

(a) if the participant is a company that has a permanent establishment in Ontario in the fiscal year, the participant's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the participant had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,

(b) if paragraph (a) does not apply and the participant would have a permanent establishment in Ontario in the fiscal year if the participant were a company, the participant's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the participant is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and

(c) in any other case, the percentage of the participant's total revenues for the fiscal year attributable to capital markets activities in Ontario;

"parent" means a person or company of which another person or company is a subsidiary entity;

"participant" means a person or company;

"permanent establishment" has the meaning provided in Part IV of the regulations under the ITA;

"previous fiscal year" of a participant in respect of a participation fee means,

(a) where the participation fee is payable by a reporting issuer under section 2.2 and the required date of payment is determined with reference to the required date or actual date of filing of financial statements for a fiscal year under Ontario securities law, that fiscal year,

(b) where the participation fee becomes payable by a firm under subsection 3.1(1) on December 31 of a calendar year, the last fiscal year of the participant ending in the calendar year, and

(c) where the participation fee is payable by an unregistered investment fund manager under subsection 3.1(2) no more than 90 days after the end of a fiscal year, that fiscal year;

"reference fiscal year" of a participant in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if

(i) the participant was a reporting issuer, registrant firm or unregistered capital markets participant at the end of the fiscal year, and

(ii) if the participant became a reporting issuer in that fiscal year under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act, all or substantially all of its securities were listed or quoted on a marketplace at the end of that fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;

"registrant firm" means a person or company registered under the Act as a dealer, adviser or investment fund manager;

"specified Ontario revenues" means, for a registrant firm or an unregistered capital markets participant, the revenues determined under section 3.3, 3.4 or 3.5;

"subsidiary entity" has the meaning ascribed to "subsidiary" under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law;

"unregistered capital markets participant" means,

(a) an unregistered investment fund manager; or

(b) an unregistered exempt international firm;

"unregistered exempt international firm" means a dealer or adviser that is not registered under the Act and is

(a) exempt from the dealer registration requirement and the underwriter registration requirement only because of section 8.18 [*International dealer*] of NI 31-103;

(b) exempt from the adviser registration requirement only because of section 8.26 [*International adviser*] of NI 31-103; or

(c) exempt from each of the dealer registration requirement, the underwriter registration requirement and the adviser registration requirement only because of sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of NI 31-103; and

"unregistered investment fund manager" means a person or company that acts as an investment fund ~~and is not registered under the Act.~~ manager for one or more investment funds and is not registered as an investment fund manager in accordance with Ontario securities law, but does not include a person or company that does not have a place of business in Ontario if one or more of the following apply:

(a) none of those investment funds have security holders resident in Ontario;

(b) the person or company and those investment funds have not, at any time after September 27, 2012, actively solicited residents in Ontario to purchase securities of any of those investment funds.

1.2 Interpretation of "listed or quoted" – In this Rule, a reporting issuer is deemed not to have securities listed or quoted on a marketplace that lists or quotes the reporting issuer's securities unless the reporting issuer or an affiliate of the reporting issuer applied for, or consented to, the listing or quotation.

1.3 Liability for multiple participation fees – For greater certainty, except as expressly provided in Part 3.1, the liability of a person or company for a payment under any of Parts 2 to 3.1 of this Rule does not affect the liability of that person or company under any other of those Parts.

PART 2 – CORPORATE FINANCE PARTICIPATION FEES

Division 1: General

2.1 Application – This Part does not apply to an investment fund if the investment fund has an investment fund manager.

2.2 Participation Fee

(1) A reporting issuer must, after each of its fiscal years, pay the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for its ~~previous~~reference fiscal year, as its capitalization is determined under section 2.7, 2.8 or 2.10.

(2) Despite subsection (1), a Class 3A reporting issuer must pay a participation fee of $960.*

**Note: The $960 amount in subsection 2.2(2) rises to $1,070 effective April 7, 2014, and to $1,195 effective April 6, 2015.*

(3) Despite subsection (1), a Class 3B reporting issuer must pay ~~a~~ the participation fee shown in Appendix A.1 opposite the capitalization of the reporting issuer for its reference fiscal year, as its capitalization is determined under section 2.9. ~~equal to the greater of~~

~~(a) $960, and~~

~~(b) 1/3 of the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for its previous fiscal year, as its capitalization is determined under section 2.9.~~

(3.1) Despite subsections (1) and (3), the participation fee of a reporting issuer must, if its capitalization for its reference fiscal period is affected by the application of subsection 2.7(2) or 2.9(2) and its reference fiscal period coincides with its previous fiscal year in respect of the participation fee, be calculated by multiplying

(a) the amount of that participation fee determined without reference to this subsection, by

(b) the number of entire months in the previous fiscal year remaining after it became a reporting issuer divided by the lesser of

(i) 12, and

(ii) the number of entire months in the previous fiscal year.

(4) Despite subsections (1) to (3), a participation fee is not payable by a participant under this section if the participant became a reporting issuer in period that begins immediately after the time that would otherwise be the end of the previous fiscal year in respect of the participation fee and ends at the time the participation fee would otherwise required to be paid under section 2.3.

2.3 Time of Payment – A reporting issuer must pay the participation fee required under section 2.2 by the earlier of

(a) the date on which its annual financial statements are required to be filed under Ontario securities law, and

(b) the date on which its annual financial statements are filed.

2.4 Disclosure of Fee Calculation – At the time that it pays the participation fee required by this Part,

(a) a Class 1 reporting issuer must file a completed Form 13-502F1,

(b) a Class 2 reporting issuer must file a completed Form 13-502F2,

(c) a Class 3A reporting issuer must file a completed Form 13-502F3A,

(d) a Class 3B reporting issuer must file a completed Form 13-502F3B, and

(e) a Class 3C reporting issuer must file a completed Form 13-502F3C.

2.5 Late Fee

(1) A reporting issuer that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a reporting issuer is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

2.6 Participation Fee ~~Exemption~~Exemptions for Subsidiary Entities

(1) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity in respect of a participation fee determined with reference to the subsidiary entity's capitalization for the subsidiary entity's ~~previous~~reference fiscal year if

(a) at the end of that ~~previous~~reference fiscal year, a parent of the subsidiary entity was a reporting issuer,

(b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity,

(c) the parent has paid a participation fee applicable to the parent under section 2.2 determined with reference to the parent's capitalization for the parent's ~~previous~~reference fiscal year,

(d) the capitalization of the subsidiary entity for its ~~previous~~reference fiscal year was included in the capitalization of the parent for the parent's ~~previous~~reference fiscal year, and

(e) the net assets and total revenues of the subsidiary entity for its ~~previous~~reference fiscal year represented more than 90 percent of the consolidated net assets and total revenues of the parent for the parent's ~~previous~~reference fiscal year.

(2) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity in respect of a participation fee determined with reference to the subsidiary entity's capitalization for the subsidiary entity's ~~previous~~reference fiscal year if

(a) at the end of that ~~previous~~reference fiscal year, a parent of the subsidiary entity was a reporting issuer,

(b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity,

(c) the parent has paid a participation fee applicable to the parent under section 2.2 determined with reference to the parent's capitalization for the parent's ~~previous~~reference fiscal year,

(d) the capitalization of the subsidiary entity for its ~~previous~~reference fiscal year was included in the capitalization of the parent for the parent's ~~previous~~reference fiscal year, and

(e) throughout the previous fiscal year of the subsidiary entity, the subsidiary entity was entitled to rely on an exemption, waiver or approval from the requirements in subsections 4.1(1), 4.3(1) and 5.1(1) and sections 5.2 and 6.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

(3) If, under subsection (1) or (2), a reporting issuer has not paid a participation fee, the reporting issuer must file a completed Form 13-502F6 at the time it is otherwise required to pay the participation fee under section 2.3.

2.6.1 Participation Fee Estimate for Class 2 Reporting Issuers

(1) If the annual financial statements of a Class 2 reporting issuer are not available by the date referred to in section ~~2.3,~~2.3 and the issuer's reference fiscal year coincides with its previous fiscal year, the Class 2 reporting issuer must, on that date,

(a) file a completed Form 13-502F2 showing a good faith estimate of the information required to calculate its capitalization as at the end of the previous fiscal year, and

(b) pay the participation fee shown in Appendix A opposite the capitalization estimated under paragraph (a).

(2) A Class 2 reporting issuer that estimated its capitalization under subsection (1) must, when it files its annual financial statements for the previous fiscal year,

(a) calculate its capitalization under section 2.8,

(b) pay the participation fee shown in Appendix A opposite the capitalization calculated under section 2.8, less the participation fee paid under subsection (1), and

(c) file a completed Form 13-502F2A.

(3) If a reporting issuer paid an amount under subsection (1) that exceeds the participation fee calculated under section (2), the issuer is entitled to a refund from the Commission of the amount overpaid.

Division 2: Calculating Capitalization

2.7 Class 1 reporting issuers

(1) The capitalization of a Class 1 reporting issuer for its ~~previous~~reference fiscal year is the total of

(a) the average market value over the ~~previous~~reference fiscal year of each class or series of the reporting issuer's securities listed or quoted on a marketplace, calculated by multiplying

(i) the total number of securities of the class or series outstanding at the end of the ~~previous~~reference fiscal year, by

(ii) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the ~~previous~~reference fiscal year in which the class or series were listed or quoted on the marketplace

(A) on which the highest volume in Canada of the class or series was traded in the ~~previous~~reference fiscal year, or

(B) if the class or series was not traded in the ~~previous~~reference fiscal year on a marketplace in Canada, on which the highest volume in the United States of America of the class or series was traded in the ~~previous~~reference fiscal year, and

(b) the market value at the end of the ~~previous~~reference fiscal year, as determined by the reporting issuer in good faith, of each class or series of securities of the reporting issuer not valued on the last trading day of any month under paragraph (a), if any securities of the class or series

(i) were initially issued to a person or company resident in Canada, and

(ii) trade over the counter or, after their initial issuance, are otherwise generally available for purchase or sale by way of transactions carried out through, or with, dealers.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in subparagraph (1)(a)(ii) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

2.8 Class 2 reporting issuers

(1) The capitalization of a Class 2 reporting issuer for its ~~previous~~reference fiscal year is the total of all of the following items, as shown in its audited statement of financial position as at the end of the ~~previous~~reference fiscal year:

(a) retained earnings or deficit;

(b) contributed surplus;

(c) share capital or owners' equity, options, warrants and preferred shares;

(d) non-current borrowings, including the current portion;

(e) finance leases, including the current portion;

(f) non-controlling interest;

(g) items classified on the statement of financial position as non-current liabilities, and not otherwise referred to in this subsection;

(h) any other item forming part of equity not otherwise referred to in this subsection.

(2) Despite subsection (1), a reporting issuer may calculate its capitalization using unaudited annual financial statements if it is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

(3) Despite subsection (1), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may calculate its capitalization using the monthly filed distribution report for the last month of its ~~previous~~reference fiscal year, if the reporting issuer is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

2.9 Class 3B reporting issuers

(1) The capitalization of a Class 3B reporting issuer for its ~~previous~~reference fiscal year is the total of each value of each class or series of securities of the reporting issuer listed or quoted on a marketplace, calculated by multiplying

(a) the number of securities of the class or series outstanding at the end of the ~~previous~~reference fiscal year, by

(b) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the ~~previous~~reference fiscal year in which the class or series were quoted on the marketplace on which the highest volume of the class or series was traded in the ~~previous~~reference fiscal year.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in paragraph (1)(b) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

2.10 Class 3C reporting issuers – The capitalization of a Class 3C reporting issuer is determined under section 2.7, as if it were a Class 1 reporting issuer.

2.11 Reliance on Published Information

(1) Subject to subsection (2), in determining its capitalization for purposes of this Part, a reporting issuer may rely on information made available by a marketplace on which securities of the reporting issuer trade.

(2) If a reporting issuer reasonably believes that the information made available by a marketplace is incorrect, subsection (1) does not apply and the issuer must make a good faith estimate of the information required.

PART 3 – CAPITAL MARKETS PARTICIPATION FEES

3.1 Participation Fee

(1) On December ~~31,~~31 of each calendar year, registrant firms and unregistered exempt international firms must pay the participation fee shown in Appendix B opposite the firm's specified Ontario revenues for its ~~previous~~reference fiscal year, as those revenues are calculated under section 3.3, 3.4 or 3.5.

(2) Not later than 90 days after the end of each of its fiscal ~~year~~years, if at any time in the fiscal year a person or company was an unregistered investment fund manager, the fund manager must pay the participation fee shown in Appendix B opposite the fund manager's specified Ontario revenues for ~~the~~its reference fiscal year, as those revenues are calculated under section 3.4.

(3) The participation fee otherwise required from a person or company under subsection (2) not later than 90 days after the end of its fiscal year is not required if the person or company

(a) ceased at any time in the fiscal year to be an unregistered investment fund manager, and

(b) the person or company did not become a registrant firm at that time.

(4) Despite subsection (2), where a person or company ceases at any time in a calendar year to be an unregistered investment fund manager and at that time becomes a registrant firm, the participation fee payable under subsection (2) not later than 90 days after the end of its last fiscal year ending in the calendar year is deemed to be the amount determined by the formula

A x B/365

in which,

"A" is equal to the amount, if any, that would be the participation fee payable under subsection (2) not later than 90 days after the end of that fiscal year if this section were read without reference to this subsection, and

"B" is equal to the number of days in that calendar year ending after the end of that fiscal year.

3.2 Disclosure of Fee Calculation

(1) By December 1, registrant firms and unregistered exempt international firms must file a completed Form 13-502F4 showing the information required to determine the participation fee due on December 31.

(1.1) Despite subsection (1), if at a particular time after December 1 and in a calendar year, a firm becomes registered or provides notification that it qualifies as an unregistered exempt international firm, the completed Form 13-502F4 must be filed as soon as practicable after the particular time.

(2) At the time that it pays any participation fee required under subsection 3.1(2), an unregistered investment fund manager must file a completed Form 13-502F4 showing the information required to determine the participation fee.

3.3 Specified Ontario Revenues for IIROC and MFDA Members

(1) The specified Ontario revenues for its ~~previous~~reference fiscal year of a registrant firm that was an IIROC or MFDA member at the end of the ~~previous~~reference fiscal year is calculated by multiplying

(a) the registrant firm's total revenue for its ~~previous~~reference fiscal year, less the portion of that total revenue not attributable to capital markets activities, by

(b) the registrant firm's Ontario percentage for its ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), "total revenue" for a ~~previous~~reference fiscal year means,

(a) for a registrant firm that was an IIROC member at the end of the ~~previous~~reference fiscal year, the amount shown as total revenue for the ~~previous~~reference fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm, and

(b) for a registrant firm that was an MFDA member at the end of the ~~previous~~reference fiscal year, the amount shown as total revenue for the ~~previous~~reference fiscal year on Statement D of the MFDA Financial Questionnaire and Report filed with the MFDA by the registrant firm.

3.4 Specified Ontario Revenues for Others

(1) The specified Ontario revenues of a registrant firm for its ~~previous~~reference fiscal year that was not a member of IIROC or the MFDA at the end of the ~~previous~~reference fiscal year or of an unregistered exempt international firm for its ~~previous~~reference fiscal year is calculated by multiplying

(a) the firm's gross revenues, as shown in the audited financial statements prepared for the ~~previous~~reference fiscal year, less deductions permitted under subsection (3), by

(b) the firm's Ontario percentage for the ~~previous~~reference fiscal year.

(2) The specified Ontario revenues of an unregistered investment fund manager for its ~~previous~~reference fiscal year is calculated by multiplying

(a) the fund manager's gross revenues, as shown in the audited financial statements for the ~~previous~~reference fiscal year, less deductions permitted under subsection (3), by

(b) the fund manager's Ontario percentage for the ~~previous~~reference fiscal year.

(3) For the purpose of paragraphs (1)(a) and (2)(a), a person or company may deduct the following items otherwise included in gross revenues for the ~~previous~~reference fiscal year:

(a) revenue not attributable to capital markets activities;

(b) redemption fees earned on the redemption of investment fund securities sold on a deferred sales charge basis;

(c) administration fees earned relating to the recovery of costs from investment funds managed by the person or company for operating expenses paid on behalf of the investment fund by the person or company;

(d) advisory or sub-advisory fees paid during the ~~previous~~reference fiscal year by the person or company to

(i) a registrant firm, as "registrant firm" is defined in this Rule or in Rule 13-503 *(Commodity Futures Act) Fees*, or

(ii) an unregistered exempt international firm;

(e) trailing commissions paid during the ~~previous~~reference fiscal year by the person or company to a registrant firm described in paragraph (d).

(4) Despite subsection (1), a registrant firm or an unregistered exempt international firm may calculate its gross revenues using unaudited financial statements, if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

(5) Despite subsection (2), an unregistered investment fund manager may calculate its gross revenues using unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

3.5 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm or unregistered exempt international firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of a~~t~~the registrant firm or unregistered exempt international firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the firm must,

(a) ~~by the time~~on or before December 1 in that calendar year ~~specified in section 3.2,~~ file a completed Form 13-502F4 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the ~~previous~~ fiscal year, and

(b) on December 31 in that calendar year, pay the participation fee shown in Appendix B opposite the specified Ontario revenues estimated under paragraph (a).

(2) A registrant firm or unregistered exempt international firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the previous fiscal year have been completed,

(a) calculate its specified Ontario revenues under section 3.3 or 3.4, as applicable,

(b) determine the participation fee shown in Appendix B opposite the specified Ontario revenues calculated under paragraph (a),

(c) complete a Form 13-502F4 reflecting the annual financial statements, and

(d) if the participation fee determined under paragraph (b) differs from the corresponding participation fee paid under subsection (1), the firm must, not later than 90 days after the end of the previous fiscal year,

(i) pay the amount, if any, by which

(A) the participation fee determined without reference to this section,

exceeds

(B) the corresponding participation fee paid under subsection (1),

(ii) file the Form 13-502F4 completed under paragraph (c), and

(iii) file a completed Form 13-502F5.

(3) If a registrant firm or unregistered exempt international firm paid an amount under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the firm is entitled to a refund from the Commission of the excess.

3.6 Late Fee

(1) A participant that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a participant is deemed to be nil if

(a) the participant pays an estimate of the participation fee in accordance with subsection 3.5(1), or

(b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

PART 3.1 – PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES

3.1.1 Payment of Participation Fee

(1) Each specified market operator must pay annually the participation fee specified in Column C of Appendix B.1 for each specified period except that, if there is a group of specified market operators each of which is related to each other, the obligation under this Part and Appendix B.1 must be determined as if the group were a single entity in which case each specified market operator in the group is jointly and severally liable in respect of the obligation.

(2) For the purposes of subsection (1) and Appendix B.1,

(a) "Canadian trading share" for a specified period is the average of:

(i) the share in the specified period of the total dollar values of trades of exchange-traded securities;

(ii) the share in the specified period of the total trading volume of exchange-traded securities; and

(iii) the share in the specified period of the total number of trades of exchange-traded securities;

(b) a "specified market operator" is a person or company that, on April 15 of the calendar year in which the payment under subsection (1) is required,

(i) is recognized under the Act as an exchange,

(ii) operates a market or facility recognized under the Act as an exchange or, pursuant to a recognition order under the Act, a market or facility similar to a market, or

(iii) has one or more subsidiaries that are recognized exchanges under the Act; and

(c) a "specified period" in respect of a payment required to be made under this section by April 30 of a calendar year, is the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year.

(3) Each person or company described in section B, C, E or F in Column B, of Appendix B.1 must pay annually the participation fee specified for the person or company in Column C of Appendix B.1.

(4) Each clearing agency recognized under section 21.2 of the Act must pay annually the total fee determined by aggregating the fees in Column C for the services in rows D3 to D8 that are provided by it.

(5) Each payment described in subsection (1), (3) or (4) must be made no later than April 30 of each calendar year and be accompanied by a completed Form 13-502F7.

(6) With regard to persons or companies described in any of rows B1, C1, C2, C3, D1, E1 or F1 of Appendix B.1, subsections (3) and (4) do not apply for a calendar year unless the person or company is so described on April 15 of that calendar year and carries on business in Ontario at that time.

(7) Subsection (8), (9) or (10) applies to a person or company for a calendar year only if all or substantially all of the gross revenues of the person or company in the calendar year attributable to capital markets activities derive from the operation of an alternative trading system.

(8) Despite subsection (3) and Appendix B.1, if a person or company is described in row C1 of Appendix B.1 and the sum of $17,000 and the amount paid by the person or company under Part 3 on December 31 of the preceding calendar year exceeds the amount that would be payable under subsection (1) on April 30 of the calendar year if the person or company were a specified market operator,

(a) the excess shall first be applied to reduce the $17,000 amount otherwise payable under this Part by the person or company for the calendar year, and

(b) any unapplied part of the excess shall be refunded to the person or company not later than June 1 of the calendar year.

(9) Despite subsection (3) and Appendix B.1, if a person or company is described in row C2 of Appendix B.1 and the sum of $8,750 and the amount paid by a person or company under Part 3 on December 31 of the preceding calendar year exceeds $30,000

(a) the excess shall first be applied to reduce the $8,750 amount otherwise payable under this Part by the person or company for the calendar year, and

(b) any unapplied part of the excess shall be refunded to the person or company not later than June 1 of the calendar year.

(10) Despite subsection (3) and Appendix B.1, if a person or company is described in row C3 of Appendix B.1

(a) if the person or company operates an alternative trading system for exchange-traded securities, subsection (8) applies; and

(b) in any other case, subsection (9) applies as if the reference in that subsection to "$8,750" were read as "$17,000".

3.1.2 Late fee

(1) A person or company that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a person or company is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

PART 3.2 – PARTICIPATION FEES FOR DESIGNATED RATING ORGANIZATIONS

3.2.1 Payment of Participation Fee

(1) Each designated rating organization must pay a participation fee of $15,000 after the completion of each financial year.

(2) The payment must be made no later than the earlier of:

(a) the time at which the designated rating organization files a completed Form 25-101FI *Designated Rating Organization Application and Annual Filing* in respect of the financial year, and

(b) the time at which the designated rating organization is required by National Instrument 25-101 *Designated Rating Organizations* to file a completed Form 25-101F1 *Designated Rating Organization Application and Annual Filing* in respect of the financial year.

(3) The payment must be accompanied by a completed Form 13-502F8.

3.2.2 Late fee

(1) A designated rating organization that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a designated rating organization is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

PART 4 – ACTIVITY FEES

4.1 Activity Fees – General – A person or company that files a document or takes an action listed in Appendix C must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix C opposite the description of the document or action.

4.1.1 Information Request – Section 4.1 does not apply with regard to requests to the Commission under section K of Appendix C but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

4.2 Investment Fund Families – Despite section 4.1, only one activity fee must be paid for an application made by or on behalf of two or more investment funds that have

(a) the same investment fund manager, or

(b) investment fund managers that are affiliates of each other.

4.3 Late Fee

(1) A person or company that files a document listed in item A or A.1 of Appendix D after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix D opposite the description of the document.

(2) Subsection (1) does not apply to the late filing of Form 13-502F4 by an unregistered investment fund manager.

(3) A person or company that files a Form 55-102F2 *Insider Report* after it was required to be filed must pay the late fee shown in item B of Appendix D upon receiving an invoice from the Commission.

PART 5 – CURRENCY CONVERSION

5.1 Canadian Dollars – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 6 – EXEMPTION

6.1 **Exemption** – The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7 – REVOCATION AND EFFECTIVE DATE

[not reproduced]

APPENDIX A
CORPORATE FINANCE PARTICIPATION FEES
(OTHER THAN CLASS 3A AND CLASS 3B ISSUERS)

Capitalization for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $10 million	$800	$890	$995
$10 million to under $25 million	$960	$1,070	$1,195
$25 million to under $50 million	~~$2,080~~2,320	$2,590	$2,890
$50 million to under $100 million	~~$5,125~~5,725	$6,390	$7,135
$100 million to under $250 million	~~$10,700~~11,950	$13,340	$14,900
$250 million to under $500 million	~~$23,540~~26,300	$29,365	$32,800
$500 million to under $1 billion	~~$32,850~~36,675	$40,950	$45,725
$1 billion to under $5 billion	~~$47,600~~53,145	$59,350	$66,275
$5 billion to under $10 billion	~~$61,300~~68,450	$76,425	$85,325
$10 billion to under $25 billion	~~$71,600~~79,950	$89,270	$99,675
$25 billion and over	~~$80,600~~89,990	$100,500	$112,200

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $10 million	$800	$890	$995
$10 million to under $25 million	$960	$1,070	$1,195
$25 million to under $50 million	$1,070	$1,195	$1,335
$50 million to under $100 million	$1,910	$2,135	$2,385
$100 million to under $250 million	$3.980	$4,450	$4,970
$250 million to under $500 million	$8,760	$9,780	$10,925
$500 million to under $1 billion	$12,225	$13,650	$15,240
$1 billion to under $5 billion	$17,720	$19,785	$22,090
$5 billion to under $10 billion	$22,800	$25,460	$28,440
$10 billion to under $25 billion	$26,650	$29,755	$33,225
$25 billion and over	$30,000	$33,495	$37,400

APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $250,000	$800	$835	$875
$250,000 to under $500,000	$1,035	$1,085	$1,135
$500,000 to under $1 million	~~$3,240~~3,390	$3,550	$3,715
$1 million to under $3 million	~~$7,250~~ 7,590	$7,950	$8,325
$3 million to under $5 million	~~$16,325~~ 17,100	$17,900	$18,745
$5 million to under $10 million	~~$33,000~~ 34,550	$36,175	$37,875
$10 million to under $25 million	~~$67,400~~ 70,570	$74,000	$77,475
$25 million to under $50 million	~~$101,000~~ 105,750	$110,750	$115,955
$50 million to under $100 million	~~$202,000~~ 211,500	$221,500	$232,000
$100 million to under $200 million	~~$335,400~~ 351,200	$367,700	$385,000
$200 million to under $500 million	~~$679,900~~ 711,850	$745,300	$780,000
$500 million to under $1 billion	~~$878,000~~ 919,300	$962,500	$1,008,000
$1 billion to under $2 billion	~~$1,107,300~~ 1,159,300	$1,213,800	$1,271,000
$2 billion and over	~~$1,858,200~~ 1,945,500	$2,037,000	$2,133,000

APPENDIX B.1
PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES
Part 3.1 of the Rule

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
	A. Specified Market Operators	
A1	Each specified market operator with a Canadian trading share for the specified period of up to 5%.	$30,000
A2	Each specified market operator with a Canadian trading share for the specified period of 5% to up to 15%.	$50,000
A3	Each specified market operator with a Canadian trading share for the specified period of 15% to up to 25%.	$135,000
A4	Each specified market operator with a Canadian trading share for the specified period of 25% to up to 50%.	$275,000
A5	Each specified market operator with a Canadian trading share for the specified period of 50% to up to 75%.	$400,000
A6	Each specified market operator with a Canadian trading share for the specified period of 75% or more.	$500,000
	B. Exchanges Exempt from Recognition under the Act	
B1	Each exchange that is exempted by the Commission from the application of subsection 21(1) of the Act.	$10,000
	C. Alternative Trading Systems	
C1	Each alternative trading system only for exchange-traded securities	$17,000
C2	Each alternative trading system only for unlisted debt or securities lending.	$8,750
C3	Each alternative trading system not described in Row C1 or C2	$17,000
	D. Clearing Agencies Recognized under the Act	
D1	Each clearing agency recognized under section 21.2 of the Act--	
D2	Total determined by aggregating fees in respect of each of the following services, to the extent applicable, provided by a recognized clearing agency to Ontario participants in the market:	
D3	Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction.	$10,000
D4	Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money.	$20,000
D5	Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.*	$20,000
D6	Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight.	$150,000
D7	Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight.	$70,000

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
D8	Depositary services, being the provision of centralized facilities as a depository for securities.	$20,000
	E. Clearing Agencies Exempt from Recognition under the Act	
E1	Each clearing agency that is exempted by the Commission from the application of subsection 21.2(1) of the Act.	$10,000
	F. Trade Repositories	
F1	Each trade repository designated under subsection 21.2.2(1) of the Act.	$30,000

APPENDIX C – ACTIVITY FEES

Document or Activity		Fee
A.	**Prospectus Filing**	
1.	Preliminary or Pro Forma Prospectus in Form 41-101F1 (including if PREP procedures are used) *Notes:* *(i) This applies to most issuers.* *(ii) Each named issuer should pay its proportionate share of the fee in the case of a prospectus for multiple issuers (other than in the case of investment funds).*	$~~3,250~~3,750
2.	Additional fee for Preliminary or Pro Forma Prospectus of a resource issuer that is accompanied by ~~engineering~~technical reports	$~~2,000~~2,500
3.	Preliminary Short Form Prospectus in Form 44-101F1 (including if shelf or PREP procedures are used) or a Registration Statement on Form F-9 or F-10 filed by an issuer that is incorporated or that is organized under the laws of Canada or a jurisdiction in Canada in connection with a distribution solely in the United States under MJDS as described in the companion policy to NI 71-101 *The Multijurisdictional Disclosure System*	$~~3,250~~3,750
4.	Prospectus Filing by or on behalf of certain investment funds	
	(a) Preliminary or Pro Forma Simplified Prospectus and Annual Information Form in Form 81-101F1 and Form 81-101F2 *Note: Where a single prospectus document is filed on behalf of more than one investment fund, the applicable fee is payable for each investment fund.*	$400
(b)	Preliminary or Pro Forma Prospectus in Form 41-101F2 *Note: Where a single prospectus document is filed on behalf of more than one investment fund and the investment funds do not have similar investment objectives and strategies, ~~$3,250~~3,750 is payable for each investment fund.*	The greater of (i) $~~3,250~~3,750 per prospectus, and (ii) $650 per investment fund in a prospectus.
5.	Review of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) ~~for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the issuer~~	$~~3,250~~3,750
6.	Filing of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations of securities of the issuer	$500
B.	**Fees relating to exempt distributions under OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and NI 45-106 *Prospectus and Registration Exemptions***	
1.	Application for recognition, or renewal of recognition, as an accredited investor	$500

Document or Activity		Fee
~~2. Forms 45-501F1 and 45-106F1~~ ~~(a)~~ 2. Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer ~~that is not an investment fund and is not subject to a participation fee~~ ~~(b) Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer that is an investment fund, unless the investment fund has an investment fund manager that is subject to a participation fee~~		$500
3.	Filing of a rights offering circular in Form 45-101F	~~$2,000~~3,750 (plus $2,000 if neither the applicant nor an issuer of which the applicant is a wholly owned subsidiary is subject to, or is reasonably expected to become subject to, a participation fee under this Rule)
C.	**Provision of Notice under paragraph 2.42(2)(a) of NI 45-106 *Prospectus and Registration Exemptions***	$2,000
D.	**Filing of Prospecting Syndicate Agreement**	$500
E.	**Applications for Relief, Approval or Recognition**	
1.	Any application for relief, approval or recognition to which section H does not apply that is under an eligible securities section, being for the purpose of this item any provision of the Act, the Regulation or any Rule of the Commission not listed in item E(2), E(2.1), E(3), E(4) or E(4.1) below~~.~~ nor section E.1 or E.2 *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of ~~an exchange under section 21 of the Act,~~ a self-regulatory organization under section 21.1 of the Act~~, a clearing agency under section 21.2 of the Act~~ or a quotation and trade reporting system under section 21.2.1 of the Act;* *(ii) approval of a compensation fund or contingency trust fund under section 110 of the Regulation;* *(iii) approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act;* *(iv) deeming an issuer to be a reporting issuer under subsection 1(11) of the Act;* *(v) except as listed in item E(4.1)(b), applications by a person or company under subsection 144(1) of the Act; and* *(vi) except as provide in section E.1, exemption applications under section 147 of the Act.*	~~$3,250~~4,500 for an application made under one eligible securities section and ~~$5,000~~7,000 for an application made under two or more eligible securities sections (plus $2,000 if none of the following is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant)~~.~~, (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 144(1) of the Act in respect of an application described in section E.1 if the particular application (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile

Document or Activity	Fee
	of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
2. An application for relief from ~~any of the following:~~ ~~(a)~~ this Rule.	$~~1,500~~1,750
2.1 An application for relief from any of the following: (~~b~~a) NI 31-102 *National Registration Database*; (~~c~~b) NI 33-109 *Registration Information*; (~~d~~c) section 3.11 [*Portfolio manager – advising representative*] of NI 31-103; (e~~d~~) section 3.12 [*Portfolio manager – associate advising representative*] of NI 31-103; (f~~e~~) section 3.13 [*Portfolio manager – chief compliance officer*] of NI 31-103; (f.~~1~~) section 3.14 [*Investment fund manager – chief compliance officer*] of NI 31-103; (g) section 9.1 [*IIROC membership for investment dealers*] of NI 31-103; (h) section 9.2 [*MFDA membership for mutual fund dealers*] of NI 31-103.	$1,500
3. An application for relief from any of the following: (a) section 3.3 [*Time limits on examination requirements*] of NI 31-103; (b) section 3.5 [*Mutual fund dealer – dealing representative*] of NI 31-103; (c) section 3.6 [*Mutual fund dealer – chief compliance officer*] of NI 31-103; (d) section 3.7 [*Scholarship plan dealer – dealing representative*] of NI 31-103 (e) section 3.8 [*Scholarship plan dealer – chief compliance officer*] of NI 31-103, (f) section 3.9 [*Exempt market dealer – dealing representative*] of NI 31-103, (g) section 3.10 [*Exempt market dealer – chief compliance officer*] of NI 31-103.	$800
4. Application ~~(a)~~ under ~~clause~~subclause 1(10)(~~b~~a)(ii) of the Act~~,~~	$1,000

Document or Activity	Fee
4.1 Application (a) under section 30 or subsection 38(3) of the Act or subsection 1(6) of the *Business Corporations Act*; (b) under section 144 of the Act for an order to partially revoke a cease-trade order to permit trades solely for the purpose of establishing a tax loss, as contemplated under section 3.2 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*; and (c) other than a pre-filing, where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under NI 41-101 or NI 81-101).	Nil
5. Application for approval under subsection 213(3) of the *Loan and Trust Corporations Act*	$1,500
6. (a) Application made under subsection 46(4) of the *Business Corporations Act* for relief from the requirements under Part V of that Act (b) Application for consent to continue in another jurisdiction under paragraph 4(b) of Ont. Reg. 289/00 made under the *Business Corporations Act* *Note*: *These fees are in addition to the fee payable to the Minister of Finance as set out in the Schedule attached to the Minister's Fee Orders relating to applications for exemption orders made under the Business Corporations Act to the Commission*.	$400
E.1 Market Regulation Recognitions and Exemptions (a) Application for recognition of an exchange under section 21 of the Act; (b) Application for exemption from the recognition of an exchange under section 21 of the Act; (c) Application by clearing agencies for recognition under section 21.2 of the Act; (d) Application for exemption from the recognition of a clearing agency under section 21.2 of the Act;	$100,000 $75,000 $100,000 $75,000 (plus an additional fee of $100,000 in connection with each such application that (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new

Document or Activity		Fee
		business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
E.2 Alternative Trading Systems Review of the initial Form 21-101F2 of a new alternative trading system		$50,000
F.	**Pre-Filings** *Note: The fee for a pre-filing under this section will be credited against the applicable fee payable if and when the corresponding formal filing (e.g., an application or a preliminary prospectus) is actually proceeded with; otherwise, the fee is nonrefundable.*	The fee for each pre-filing is equal to the applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.
G.	**Take-Over Bid and Issuer Bid Documents**	
1.	Filing of a take-over bid or issuer bid circular under subsection 94.2(2),(3) or (4) of the Act	$4,0004,500 (plus $2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, or reasonably expected to become subject to, a participation fee under this Rule)
2.	Filing of a notice of change or variation under section 94.5 of the Act	Nil
H.	**Registration-Related Activity**	
1.	New registration of a firm in one or more categories of registration	$6001,200
2.	Change in registration category *Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general categories of dealer or adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding item.*	$600700
3.	Registration of a new representative on behalf of a registrant firm *Notes:* *(i) Filing of a Form 33-109F4 for a permitted individual as defined in NI 33-109 does not trigger an activity fee.* *(ii) If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee.* *(iii) A registration fee will not be charged if an individual makes an application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.*	$200 per individual

Document or Activity		Fee
4.	Change in status from not being a representative on behalf of a registrant firm to being a representative on behalf of the registrant firm	$200 per individual
4.1	Registration as a chief compliance officer or ultimate designated person of a registrant firm, if the individual is not registered as a representative on behalf of the registrant firm	$200 per individual
5.	Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	~~$2,000~~1,000
6.	Application for amending terms and conditions of registration	$500
I.	**Notice required under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] or 11.10 [*Registered firm whose securities are acquired*] of NI 31-103**	~~$3,000~~3,500
J.	**Request for certified statement from the Commission or the Director under section 139 of the Act**	$100
K.	**Requests to the Commission**	
1.	Request for a ~~photocopy~~copy (in any format) of Commission public records	$0.50 per ~~page~~image
2.	Request for a search of Commission public records	~~$15~~07.50 for each 15 minutes search time spent by any person
3.	Request for one's own ~~Form 4~~ individual registration form.	$30

APPENDIX D – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
A. Fee for late filing of any of the following documents: (a) Annual financial statements and interim financial reports; (b) Annual information form filed under NI 51-102 *Continuous Disclosure Obligations* or NI 81-106 *Investment Fund Continuous Disclosure*; ~~(c) Form 45-501F1 or Form 45-106F1 filed by a reporting issuer;~~ (d) Notice under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] of NI 31-103, (e) Filings for the purpose of amending Form 3 or Form 4 under the Regulation or Form 33-109F4 or Form 33-109F6 under NI 33-109 *Registration Information*, including the filing of Form 33-109F1; (f) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the Act with respect to (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f.1) Form 13-502F1; (f.2) Form 13-502F2; (f.3) Form 13-502F3A; (f.4) Form 13-502F3B; (f.5) Form 13-502F3C; (g) Form 13-502F4; (h) Form 13-502F5; (i) Form 13-502F6;~~.~~ (j) Form 13-502F7; (k) Form 13-502F8.	$100 per business day (subject to a maximum aggregate fee of $5,000 (i) per fiscal year, for a reporting issuer, for all documents required to be filed within a fiscal year of the issuer, and (ii) for a registrant firm or an unregistered capital markets participant, for all documents required to be filed by the firm within a calendar year) *Note: Subsection 4.3(2) of this Rule exempts unregistered investment fund managers from the late filing fee for Form 13-502F4.*
A.1 Fee for late filing Forms 45-501F1 and 45-106F1	$100 per business day (subject to a maximum aggregate fee of $5,000 per fiscal year, for an issuer, for all Forms 45-501F1 and 45-106F1, required to be filed within a fiscal year of the issuer).
B. Fee for late filing of Form 55-102F2 – *Insider Report*	$50 per calendar day per insider per issuer (subject to a maximum of $1,000 per issuer within any one year beginning on April 1st and ending on March 31st.)

Document	Late Fee
	The late fee does not apply to an insider if (a) the head office of the issuer is located outside Ontario, and (b) the insider is required to pay a late fee for the filing in a jurisdiction in Canada other than Ontario.

FORM 13-502F1
CLASS 1 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year	_____(i)	
Simple average of the closing price of that class or series as of the last trading day of each month in the ~~last completed fiscal year (See~~ reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule~~)~~	_____(ii)	
Market value of class or series	(i) X (ii) =	(A)
(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the ~~last completed~~reference fiscal year)		(B)

Market value of other securities not valued at the end of ~~the last completed fiscal year~~any trading day in a month:(See paragraph 2.7(1)(b) of the Rule)

(Provide details of how value was determined)		(C)
(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies)		(D)

Capitalization for the ~~last completed~~reference fiscal year

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) =

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above)	(iii)
Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (iii) amount above.	(iii)
If yes, prorate (iii) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee.	(iv)

Late Fee, if applicable

(As determined under section 2.5 of the Rule)

FORM 13-502F2
CLASS 2 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Financial Statement Values:

(Use stated values from the audited financial statements of the reporting issuer as of the end of its ~~last completed~~reference fiscal year)

Retained earnings or deficit	(A)
Contributed surplus	(B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	(C)
Non-current borrowings (including the current portion)	(D)
Finance leases (including the current portion)	(E)
Non-controlling interest	(F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	(G)
Any other item forming part of equity and not set out specifically above	(H)

Capitalization for the ~~last completed~~reference fiscal year

(Add items (A) through (H))

Participation Fee

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) ____

Late Fee, if applicable

(As determined under section 2.5 of the Rule) ____

FORM 13-502F2A
ADJUSTMENT OF FEE PAYMENT
FOR CLASS 2 REPORTING ISSUERS

Reporting Issuer Name: _____

Fiscal year end date used to calculate capitalization: _____

State the amount paid under subsection 2.6.1(1) of Rule 13-502: _____(i)

Show calculation of actual capitalization based on audited financial statements:

Financial Statement Values:

Retained earnings or deficit	(A)
Contributed surplus	(B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	(C)
Non-current borrowings (including the current portion)	(D)
Finance leases (including the current portion)	(E)
Non-controlling interest	(F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	(G)
Any other item forming part of equity and not set out specifically above	(H)

Capitalization

(Add items (A) through (H)) _____

Participation Fee

(ii)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above)

Refund due (Balance owing)

(Indicate the difference between (i) and (ii)) (i) – (ii) = ____

FORM 13-502F3A
CLASS 3A REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____
(Class 3A reporting issuer cannot be incorporated or organized under the laws of Canada or a province or territory of Canada)

Fiscal year end date: _____

Indicate, by checking the appropriate box, which of the following criteria the issuer meets:

(a) At the fiscal year end date, the issuer has no securities listed or quoted on a marketplace located anywhere in the world; or ☐

(b) at the fiscal year end date, the issuer

(i) has securities listed or quoted on a marketplace anywhere in the world,

(ii) has securities registered in the names of persons or companies resident in Ontario representing less than 1% of the market value of all outstanding securities of the issuer for which the issuer or its transfer agent or registrar maintains a list of registered owners,

(iii) reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all its outstanding securities,

(iv) reasonably believes that none of its securities traded on a marketplace in Canada during its previous fiscal year, and

(v) has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of its subsidiary entities, or

(B) pursuant to the exercise of a right previously granted by it or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration. ☐

Participation Fee $960*

(From subsection 2.2(2) of the Rule)

** Note: The $960 amount rises to $1,070, effective April 7, 2014, and to $1,195, effective April 6, 2015.*

Late Fee, if applicable ____

(As determined under section 2.5 of the Rule)

FORM 13-502F3B
CLASS 3B REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of securities:

Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year		_____(i)	
Simple average of the closing price of that class or series as of the last trading day of each month of the ~~last completed fiscal year (See section~~reference fiscal year, computed with reference to paragraph 2.9(1)(b) and subsection 2.9(2) of the Rule)		_____(ii)	
Market value of class or series	(i) x (ii) =	_____	(A)
(Repeat the above calculation for each other listed or quoted class or series of securities of the reporting issuer)			_____(B)

Capitalization for the ~~last completed~~reference fiscal year

	(A) + (B) =	_____
(Add market value of all classes and series of securities)		

Participation Fee Otherwise Determined

	(C)
(From Appendix ~~A~~ A.1 of the Rule, select the participation fee beside the capitalization calculated above)	_____

Participation Fee Payable

Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt?

If **no**, participation fee equals (C) amount above. _____(C)

If yes, prorate (C) amount as calculated in subsection 2.2(3.1) of the Rule. _____(D)

~~**Participation Fee Payable**~~

~~1/3 of (C) or $960, whichever is greater~~
~~(See subsection 2.2(3) of the Rule)~~

Late Fee, if applicable
(As determined under section 2.5 of the Rule) ____

FORM 13-502F3C
CLASS 3C REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Section 2.10 of the Rule requires Class 3C reporting issuers to calculate their market capitalization in accordance with section 2.7 of the Rule.

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year _____(i)

Simple average of the closing price of that class or series as of the last trading day of each month of the ~~last completed fiscal year (See~~ reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule~~)~~ _____(ii)

Market value of the class or series (i) x (ii) = _____ (A)

(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the ~~last completed~~reference fiscal year) _____(B)

Market value of other securities not valued at the end of any trading day in a month:

(See paragraph 2.7(1)(b) of the Rule) _____(C)

(Provide details of how value was determined)

(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies) _____(D)

Capitalization for the ~~last completed~~reference fiscal year

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) = _____(E)

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) _____

Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (E) amount above. _____(E)

If yes, prorate (E) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee. _____(F)

Late Fee, if applicable

(As determined under section 2.5 of the Rule) _____

FORM 13-502F4
CAPITAL MARKETS PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed and returned to the Ontario Securities Commission by December 1 each year, as per section 3.2 of OSC Rule 13-502 *Fees* (the Rule), except in the case where firms register after December 1 in a calendar year or provide notification after December 1 in a calendar year of their status as exempt international firms. In these exceptional cases, this ~~Form~~form must be filed as soon as practicable after December 1.

2. This form is to be completed by firms registered under the *Securities Act* or by firms that are registered under both the *Securities Act* and the *Commodity Futures Act*. This form is also completed by exempt international firms relying on section 8.18 [international dealer] and 8.26 [international adviser] of NI 31-103, as well as by firms that are unregistered investment fund managers (as defined in the Rule).

3. For firms registered under the *Commodity Futures Act*, the completion of this form will serve as an application for the renewal of both the firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

4. IIROC members must complete Part I of this ~~Form~~form and MFDA members must complete Part II. Exempt international firms, unregistered investment fund managers and registrant firms that are not IIROC or MFDA members must complete Part III.

5. The components of revenue reported in each Part should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.

6. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

7. MFDA members may refer to Statement D of the MFDA Financial Questionnaire and Report for guidance.

8. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's ~~most recently completed~~reference fiscal year~~, which is generally referred to in the Rule as its "previous~~. A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

9. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from capital markets activities in Ontario.

10. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.

11. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.

~~12. There are a number of references in this form to "relevant fiscal year". The "relevant fiscal year" is generally a firm's last completed fiscal year. However, if good faith estimates for a fiscal year are provided in this Form pursuant to section 3.5 of the Rule, the relevant fiscal year is the fiscal year for which the good faith estimates are provided.~~

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status (one selection)

☐ The firm is a member of the Mutual Fund Dealers Association (MFDA).

☐ The firm is a member of the Investment Industry Regulators Organization of Canada (IIROC).

☐ The firm does not hold membership with the MFDA nor IIROC.

4. Financial Information

Is the firm providing a good faith estimate under section 3.5 of the Rule?

☐ Yes ☐ No (one selection)

If no, end date of ~~last completed~~reference fiscal year: _____/____/___
yyyy mm dd

If yes, end date of fiscal year for which the good faith estimate is provided:

_____/____/___
yyyy mm dd

~~*Note: The fiscal year identified above is referred to below as the relevant fiscal year.*~~

5. Participation Fee Calculation

		~~Relevant~~Reference fiscal year $
	Note: Dollar amounts stated in thousands, rounded to the neared thousand.	
Part I – IIROC Members		
1.	Total revenue for ~~relevant~~reference fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report	
2.	Less revenue not attributable to capital markets activities	
3.	Revenue subject to participation fee (line 1 less line 2)	
4.	Ontario percentage for ~~relevant~~reference fiscal year (See definition of "Ontario percentage" in the Rule)	%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	
Part II – MFDA Members		
1.	Total revenue for ~~relevant~~reference fiscal year from Statement D of the MFDA Financial Questionnaire and Report	
2.	Less revenue not attributable to capital markets activities	

3.	Revenue subject to participation fee (line 1 less line 2)	
4.	Ontario percentage for ~~relevant~~reference fiscal year	
	(See definition of "Ontario percentage" in the Rule)	%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	
6.	Participation fee	
	(From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	

Part III – Advisers, Other Dealers, and Unregistered Capital Markets Participants

Notes:

1. Gross revenue is defined as the sum of all revenues reported on the audited financial statements, except where unaudited financial statements are permitted in accordance with subsection 3.4(4) or (5) of the Rule. Audited financial statements should be prepared in accordance with Accepted Accounting Standards, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation.

2. Redemption fees earned upon the redemption of investment fund units sold on a deferred sales charge basis are permitted as a deduction from total revenue on this line.

3. Administration fees permitted as a deduction are limited solely to those that are otherwise included in gross revenue and represent the reasonable recovery of costs from the investment funds for operating expenses paid on their behalf by the registrant firm or unregistered capital markets participant.

4. Where the advisory services of a registrant firm, within the meaning of this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*, or of an exempt international firm, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

5. Trailer fees paid to registrant firms described in note 4 are permitted as a deduction on this line to the extent they are otherwise included in gross revenues.

1.	Gross revenue for ~~relevant~~reference fiscal year (note 1)	
Less the following items:		
2.	Revenue not attributable to capital markets activities	
3.	Redemption fee revenue (note 2)	
4.	Administration fee revenue (note 3)	
5.	Advisory or sub-advisory fees paid to registrant firms or exempt international firms (note 4)	
6.	Trailer fees paid to registrant firms (note 5)	
7.	Total deductions (sum of lines 2 to 6)	
8.	Revenue subject to participation fee (line 1 less line 7)	
9.	Ontario percentage for ~~relevant~~reference fiscal year	%
	(See definition of "Ontario percentage" in the Rule)	
10.	Specified Ontario revenues (line 8 multiplied by line 9)	

11.	Participation fee	_____
	(From Appendix B of the Rule, select the participation fee beside the specified Ontario revenues calculated above)	_____

Part IV – Management Certification

Where available, we have examined the financial statements on which the participation fee calculation is based and certify that, to the best of our knowledge, the financial statements present fairly the revenues of the firm for the period ended as noted under Financial Information above, and that the financial statements have been prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

	Name and Title	**Signature**	**Date**
1.	_____	_____	_____
2.	_____	_____	_____

FORM 13-502F5
ADJUSTMENT OF FEE FOR REGISTRANT FIRMS AND UNREGISTERED EXEMPT INTERNATIONAL FIRMS

Firm name: _____

End date of last completed fiscal year: _____

Note: Subsection 3.5(2) of the Rule requires that this ~~Form~~form must be filed concurrent with a completed Form 13-502F4 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under subsection 3.5(1) of the Rule: _____

2. Actual participation fee calculated under paragraph 3.5(2)(b) of the Rule: _____

3. Refund due (Balance owing): _____

   (Indicate the difference between lines 1 and 2)

FORM 13-502F6
SUBSIDIARY ENTITY EXEMPTION NOTICE

Name of Subsidiary Entity: _____

Name of Parent: _____

End Date of Subsidiary Entity's ~~Last Completed~~Reference Fiscal Year: _____

End Date of Subsidiary Entity's Reference Fiscal Year: _____

(A subsidiary entity's reference fiscal year is generally its last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year. In any other case, it is the subsidiary entity's last completed fiscal year.)

Indicate below which exemption the subsidiary entity intends to rely on by checking the appropriate box:

1. Subsection 2.6(1) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(1) of the Rule:

a) at the end of the subsidiary entity's ~~last completed~~reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's ~~last completed~~reference fiscal year;

d) the market capitalization of the subsidiary entity for the ~~last completed~~reference fiscal year was included in the market capitalization of the parent for the ~~last completed~~reference fiscal year; and

e) the net assets and total revenues of the subsidiary entity for its ~~last completed~~reference fiscal year represented more than 90 percent of the consolidated net assets and total revenues of the parent for the parent's ~~last completed~~reference fiscal year.

	Net Assets for ~~last completed~~reference fiscal year	**Total Revenues for ~~last completed~~reference fiscal year**	
Reporting Issuer (Subsidiary Entity)	_____	_____	(A)
Reporting Issuer (Parent)	_____	_____	(B)
Percentage (A/B)	_____%	_____%	

2. Subsection 2.6(2) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(2) of the Rule:

a) at the end of the subsidiary entity's ~~last completed~~reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's ~~last completed~~reference fiscal year;

d) the market capitalization of the subsidiary entity for the ~~last completed~~reference fiscal year was included in the market capitalization of the parent for the ~~last completed~~reference fiscal year; and

e) throughout the ~~last completed~~previous fiscal year of the subsidiary entity, the subsidiary entity was entitled to rely on an exemption, waiver or approval from the requirements in subsections 4.1(1), 4.3(1) and 5.1(1) and sections 5.2 and 6.1 of NI 51-102 *Continuous Disclosure Obligations*.

FORM 13-502F7
SPECIFIED REGULATED ENTITIES – PARTICIPATION FEE

Name of Specified Regulated Entity: _____

Applicable calendar year: _____ (2013 or later)

Type of Specified Regulated Entity:
(check one)

☐ (1) Specified market operator, including recognized exchange

☐ (2) Alternative trading system

☐ (3) Recognized clearing agency

☐ (4) Exempt exchange, Exempt clearing agency or Trade Repository

(1) Participation Fee for applicable calendar year -- Specified market operator, including recognized exchange
Filer should enter their Canadian trading share for the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year below:

Canadian Trading Share Description	% (To be Entered by Filer)
Line 1: the share in the specified period of the total dollar values of trades of exchange-traded securities;	
Line 2: the share in the specified period of the total trading volume of exchange-traded securities;	
Line 3: the share in the specified period of the total number of trades of exchange-traded securities;	
Line 4: Average of Lines 1,2 & 3 above	

Line 5: Filer is required to Pay the Amount from the corresponding column in the table below based on the average calculated on Line 4 above:	**$**

Canadian trading share for the specified period of up to 5%	$30,000
Canadian trading share for the specified period of 5% to up to 15%	$50,000
Canadian trading share for the specified period of 15% to up to 25%	$135,000
Canadian trading share for the specified period of 25% to up to 50%	$275,000
Canadian trading share for the specified period of 50% to up to 75%.	$400,000
Canadian trading share for the specified period of 75% or more	$500,000

(2) Participation Fee for applicable calendar year -- Alternative trading system

Note: If all or substantially all of your gross revenues attributable to capital markets activities derive from the operation of an alternative trading system, enter the amounts described in Lines 6, 8, 9, 10 and 11, respectively. Otherwise, enter "$0" on each of the applicable lines.

Line 6: Amount Paid Based on Form 13-502F4 on December 31 of the preceding calendar year:	$
Line 7: If operating an alternative trading system only for unlisted debt or securities lending enter $8,750 on this line, otherwise enter $17,000.	$
Line 8:Sum Line 6 and Line 7	$
Line 9: If operating an alternative trading system for exchange-traded securities, calculate Participation Fee based on Section (1) Specified Market Operator of this form. Enter amount from Line 5 on this line.	$
Line 10: If operating an alternative trading system other than for exchange-traded securities enter $30,000 on this line.	$
Line 11: Subtract Line 9 or Line 10 from Line 8.	$
Line 12: Subtract Line 11 from the Amount Entered on Line 7. If positive, this is your Part 3.1 fee payable for the year. If zero or negative, there is no Part 3.1 fee payable and there is a refund due to you of the amount determined.	$

(3) Participation Fee for applicable calendar year -- Recognized clearing agency
For services offered in Ontario Market the filer should enter the corresponding amount in the Fees Payable Column:

Services:	Fee Payable
Line 13: Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction. Enter $10,000	$
Line 14: Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money. Enter $20,000	$
Line 15: Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.* Enter $20,000.	$

Line 16: Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight. Enter $150,000	$
Line 17: Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight. Enter $70,000.	$
Line 18: Depositary services, being the provision of centralized facilities as a depository for securities. Enter $20,000.	$
Line 19: Total Fee Payable (Sum of Lines 13-18):	$

(4) Participation Fee for applicable calendar year for other types of specified regulated entities:

Line 20: Filer is required to Pay the Amount from the corresponding column in the table below.	**$**
Exempt Exchange	$10,000
Exempt clearing agency	$10,000
Trade Repository	$30,000

Late Fee

Line 21: Unpaid portion of Participation Fee from Sections (1),(2),(3),(4)	
Line 22: Number of Business Days Late	
Line 23: Fee Payable is as follows: Amount from Line 21*[Amount from Line 22*0.1%]	

FORM 13-502F8
DESIGNATED RATING ORGANIZATIONS – PARTICIPATION FEE

Name of Designated Rating Organization: _____

Fiscal year end date: _____

Participation Fee in respect of the fiscal year $15,000

(From subsection 3.2.1(1) of the Rule)

Late Fee, if applicable

(From section 3.2.2 of the Rule)

ANNEX D
BLACKLINE SHOWING FINAL CHANGES TO
ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-502CP FEES

This blackline shows the changes adopted on December 18, 2012 by the Commission to Companion Policy 13-502CP Fees. The changes become effective on April 1, 2013.

TABLE OF CONTENTS

ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-502CP FEES

PART 1 – PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-502 *Fees* (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 – PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and General Approach of the Rule

(1) The purpose of the Rule is to establish a fee regime that creates a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation Fees

(1) Reporting issuers, registrant firms and unregistered capital markets participants, as well as specified regulated entities and designated rating organizations, are required to pay participation fees annually. For the purposes of the Rule, "unregistered capital markets participants" are defined to mean "unregistered investment fund managers" and "unregistered exempt international firms". ~~The~~Subject to exceptions applying to an investment fund manager that has no place of business in Ontario, the Rule defines an "unregistered investment fund manager" to mean an "investment fund manager" that is not registered under the Act. (The term "investment fund manager" is defined in subsection 1(1) of the Act to mean "a person or company that directs the business, operations or affairs of an investment fund".)

The Rule defines "unregistered exempt international firms" to mean a dealer or adviser that is not registered under the Act and is:

(a) exempt from the dealer registration requirement and the underwriter registration requirement only because of section 8.18 [International dealer] of NI 31-103;

(b) exempt from the adviser registration requirement only because of section 8.26 [*International adviser*] of NI 31-103; or

(c) exempt from ~~the~~ each of the dealer registration requirement, the underwriter registration requirement and the adviser registration requirement only because of sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of NI 31-103.

The term "dealer" is, in turn, defined in subsection 1(1) of the Act to mean "a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities". Similarly, an adviser is defined in that subsection to mean "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities".

(1.1) Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a market participant under Parts 2 of 3 of the Rule is based on a measure of the market participant's size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a reporting issuer, the participation fee is based on the issuer's capitalization, which is used to approximate its proportionate participation in the Ontario capital markets. In the case of a registrant firm or unregistered capital markets participant, the participation fee is based on the firm's revenues attributable to its capital markets activity in Ontario.

(~~2~~1.2) Participation fees under Part 3.1 of the Rule are generally fixed annual amounts payable each calendar year, In the case of specified regulated entities to which Part 3.1 of the Rule applies, participation fees are generally specified for a particular organization or type of organization in Appendix B.1. The level of participation fees for recognized clearing agencies is determined by reference to the services they provide.

(1.3) Participation fees for designated rating organizations under Part 3.2 of the Rule are $15,000 per fiscal year.

(2) Participation fees under Parts 2 and 3 are determined with reference to capitalization or revenue from a market participant's "~~previous~~reference fiscal year"~~, which is essentially~~. As defined in section 1.1 of the Rule ~~as the~~, a market participant's "reference fiscal year" is generally the market participant's last fiscal year ending before May 1, 2012. There are two exceptions:

(a) where the market participant was **not** a reporting issuer, registrant firm or unregistered investment fund manager at the end of that fiscal year; and

(b) where the participant became a reporting issuer in that fiscal year by reason of being issued a receipt under the Act and all or substantially of its securities were not listed or quoted on a marketplace at the end of that fiscal year.

In these two cases, the participant's reference fiscal year is its last completed fiscal year at or before the time the participation fee is required to be paid~~.~~ (which is defined in section 1.1 of the Rule as the market participant's "previous fiscal year"). In cases where the participant falls within an exception described in paragraph (a) or (b) above, the participation fee is determined with reference to the "previous fiscal year" (which advances from year to year), rather than with reference to a static "reference fiscal year". For example, for the purposes of subsection 3.1(1) of the Rule, if a new firm is registered in Ontario in 2013 and has annual fiscal years ending on March 31, its reference fiscal years for the 2013, 2014 and 2015 calendar years would be March 31, 2013, 2014 and 2015, respectively.

2.3 Application of Participation Fees – Although participation fees are determined ~~by using~~ with reference to information from a fiscal year of the payor ending before the time of their payment, ~~both corporate finance and capital markets participation fees~~they are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the payor and other market participants.

2.4 Registered Individuals – The participation fee is paid at the firm level under the Rule. ~~That is~~ For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a representative of the firm.

2.5 Activity Fees – Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix C of the Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications, and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.6 Registrants under the *Securities Act* and the *Commodity Futures Act*

(1) The Rule imposes an obligation to pay a participation fee on registrant firms, defined in the Rule as a person or company registered under the Act as a dealer, adviser or investment fund manager. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*. Given the definition of "capital markets activities" under the Rule, the revenue of such an entity from its *Commodity Futures Act* activities must be included in its calculation of revenues when determining its fee under the Rule. Section 2.8 of OSC Rule 13-503 *(Commodity Futures Act) Fees* exempts such an entity from paying a participation fee under that rule if it has paid its participation fees under the *Securities Act* Rule.

(2) Note that dealers and advisers registered under the *Commodity Futures Act* are subject to activity fees under OSC Rule 13-503 *(Commodity Futures Act) Fees* even if they are not required to pay participation fees under that rule.

2.7 No Refunds

(1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a reporting issuer, registrant firm or unregistered capital markets participant that loses that status later in the fiscal year in respect of which the fee was paid.

(2) An exception to this principle is provided in subsections 2.6.1(3) and 3.5(3) of the Rule. These subsections allow for a refund where a registrant firm overpaid an estimated participation fee.

(2.1) A further exception to this principle is provided under subsections 3.1.1(8) to (10). These subsections deal with a refund mechanism used to effect a cap of Part 3 and Part 3.1 participation fees for alternative trading systems, in an attempt to align the participation fees to those charged to other specified regulated entities.

(3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

2.8 Indirect Avoidance of Rule – The Commission may examine arrangements or structures implemented by market participants and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the firm's specified Ontario revenues and, consequently, its participation fee.

PART 3 – CORPORATE FINANCE PARTICIPATION FEES

3.1 Application to Investment Funds – Part 2 of the Rule does not apply to an investment fund if the investment fund has an investment fund manager. The reason for this is that under Part 3 of the Rule an investment fund's manager must pay a capital markets participation fee in respect of revenues generated from managing the investment fund.

3.2 Late Fees – Section 2.5 of the Rule requires a reporting issuer to pay an additional fee when it is late in paying its participation fee. Reporting issuers should be aware that the late payment of participation fees may lead to the reporting issuer being noted in default and included on the list of defaulting reporting issuers available on the Commission's website.

3.3 Exemption for Subsidiary Entities – Under section 2.6 of the Rule, an exemption from participation fees is available to a reporting issuer that is a subsidiary entity if, among other requirements, the parent of the subsidiary entity has paid a participation fee applicable to the parent under section 2.2 of the Rule determined with reference to the parent's capitalization for the parent's fiscal year. For greater certainty, this condition to the exemption is not satisfied in circumstances where the parent of a subsidiary entity has paid a fixed participation fee in reliance on subsection 2.2(2) or (3) of the Rule in lieu of a participation fee determined with reference to the parent's capitalization for its fiscal year.

3.4 Determination of Market Value

(1) Section 2.7 of the Rule requires the calculation of the capitalization of a Class 1 reporting issuer to include the total market value of classes of securities that may not be listed or quoted on a marketplace, but trade over the counter or, after their initial issuance, are otherwise generally available for sale. Note that the requirement that securities be valued in accordance with market value excludes from the calculation securities that are not normally traded after their initial issuance. In addition, also note that, if the issuer became a reporting issuer pursuant to clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference year because of being issued a prospectus receipt, month-end valuations do not include those before the issuer's securities were listed or quoted on a marketplace.

(2) When determining the value of securities that are not listed or quoted in any relevant month, a reporting issuer should use the best available source for pricing the securities. That source may be one or more of the following:

(a) pricing services,

(b) quotations from one or more dealers, ~~or~~

(c) prices on recent transactions.

(3) Note that market value calculation of a class of securities included in a calculation under section 2.7 of the Rule includes all of the securities of the class, even if some of those securities are still subject to a hold period or are otherwise not freely tradable.

(4) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.

3.5 Owners' Equity and Non-Current Borrowings – A Class 2 reporting issuer calculates its capitalization on the basis of certain items reflected in its audited statement of financial position. Two such items are "share capital or owners' equity" and "non-current borrowings, including the current portion". The Commission notes that "owners' equity" is designed to describe the equivalent of share capital for non-corporate issuers, such as partnerships or trusts. "Non-current borrowings" is designed to describe the equivalent of long term debt or any other borrowing of funds beyond a period of twelve months.

3.6 **Identification of Non-Current Liabilities** – If a Class 2 reporting issuer does not present current and non-current liabilities as separate classifications on its statement of financial position, the reporting issuer will still need to classify these liabilities for purposes of its capitalization calculation. In these circumstances non-current liabilities means total liabilities minus current liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law.

PART 4 – CAPITAL MARKETS PARTICIPATION FEES

4.1 **Liability for Capital Markets Participation Fees** – Capital markets participation fees are payable annually by registrant firms and "unregistered capital markets participants", as defined in section 1.1 of the Rule.

4.2 **Filing Forms under Section 3.5 of the Rule** – If the estimated participation fee paid under subsection 3.5(1) of the Rule by a registrant firm or unregistered exempt international firm does not differ from its true participation fee determined under paragraph 3.5(2)(b) of the Rule, the registrant firm is not required to file either a Form 13-502F4 or a Form 13-502F5 under paragraph 3.5(2)(d) of the Rule.

4.24.3 **Late Fees** – Section 3.6 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm. The Commission may also consider measures in the case of late payment of fees by an unregistered capital markets participant, such as: in the case of an unregistered investment fund manager, prohibiting the manager from continuing to manage any investment fund or cease trading the investment funds managed by the manager; or, in the case of an unregistered exempt international firm, making an order pursuant to section 127 of the Act, that the corresponding exemptions from registration requirements under which the firm acts do not apply to the firm (either permanently or for such other period as specified in the order).

4.34.4 **Form of Payment of Fees** – Registrant firms pay through the National Registration Database. ~~Unregistered capital markets participants make filings and pay fees under Part 3 of the Rule by paper copy. The filings and payment for unregistered investment fund managers should be addressed to the Commission (Attention: Manager, Investment Funds).~~ The filings and payments for unregistered exempt international firms should be sent to the Ontario Securities Commission (Attention: Manager, Registrant Regulation).

4.44.5 **"Capital markets activities"**

(1) A person or company must consider its capital markets activities when calculating its participation fee. The term "capital markets activities" is defined in the Rule to include "activities for which registration under the Act or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, carrying on the business of trading in securities, carrying on the business of an investment fund manager, providing securities-related advice or portfolio management services. The Commission notes that corporate advisory services may not require registration or an exemption from registration and would therefore, in those contexts, not be capital markets activities.

(2) The definition of "capital markets activities" also includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

4.54.6 **Permitted Deductions** – Subsection 3.4(3) of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for unregistered capital markets participants and registrant firms. The purpose of these deductions is to prevent the "double counting" of revenues that would otherwise occur.

~~**4.6** **Application to Non-resident Unregistered Investment Fund Managers** – For greater certainty, the Commission is of the view that Part 3 of the Rule applies to non-resident unregistered investment fund managers managing investment funds distributed in Ontario on a prospectus exempt basis.~~

4.7 **Active solicitation –** For the purposes of the definition of "unregistered investment fund manager" in section 1.1 of the Rule, "active solicitation" refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund's securities, such as pro-active, targeted actions or communications that are initiated by an investment fund manager for the purpose of soliciting an investment. Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

4.74.8 Change of Status of Unregistered Investment Fund Managers – Subsection 3.1(4) of the Rule reduces the participation fee otherwise payable after the end of a fiscal year under subsection 3.1(2) of the Rule by an unregistered investment fund manager that becomes a registrant firm. The reduction takes into account the imposition of a participation fee payable by registrant firms under subsection 3.1(1) of the Rule on December 31 of a calendar year and generally prevents the imposition of total participation fees in excess of total participation fees that would have been charged had there been no change of registration status.

4.84.9 Confidentiality of Forms – The material filed under Part 3 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection.

PART 5 –OTHER PARTICIPATION FEES

5.1 General – Participation fees are also payable annually by specified regulated entities and designated rating organizations under Parts 3.1 and 3.2 of the Rule.

5.2 Specified Regulated Entities – The calculation of participation fees under Part 3.1 of the Rule is generally determined with reference to described classes of entities. The classes, and their level of participation fees, are set out in Appendix B.1 of the Rule. To provide more equitable treatment among exchanges and alternative trading systems for exchange-traded securities and to take into account Part 3 participation fees payable by an alternative trading system entity for exchange-traded securities, its participation fee is adjusted under subsection 3.1.1(8) provided all of substantially of the entity's gross revenues from capital markets activities derive from the operation of an alternative trading system. For example, assume that participation fees under Part 3 for an eligible alternative trading system entity payable on December 31, 2012 was $67,400 and the eligible entity's Canadian trading share is under 5%. In this case, the alternative trading system entity would pay the $67,400 on December 31 when filing its Form 13-502F4. On April 30 when calculating its Part 3.1 fees payable the excess of $37,400 (= $67,400 (above) minus $30,000 (Appendix B.1)) first reduces the Part III.1 fee payable from $17,000 to nil. The unapplied part of the excess ($20,400 = $37,400 - $17,000) is then refunded prior to June 1. A mechanism that is similar in principle applies to other alternative trading systems under subsections 3.1.1(9) and (10).

5.3 Designated Rating Organizations- The participation fees for designated rating organizations are a flat $15,000 per fiscal year.

5.1.2 OSC Rule 13-503 (Commodity Futures Act) Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees

NOTICE OF AMENDMENTS TO
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES
AND COMPANION POLICY 13-503CP (COMMODITY FUTURES ACT) FEES

December 20, 2012

Introduction

On December 18, 2012, the Ontario Securities Commission (OSC, Commission or we) made amendments to OSC Rule 13-503 *(Commodity Futures Act) Fees* (the Final Amendments) and to Companion Policy 13-503CP *(Commodity Futures Act) Fees* (the Final CP Changes). These amendments relate to fees under the *Commodity Futures Act* (the CFA). The Final Amendments and the Final CP Changes (collectively, the Final CFA Materials) are largely consistent with materials published for a 90-day comment period on August 23, 2012 (the August 2012 Proposals), but as described below are responsive to a number of comments made. In this Notice, references to "existing rule" are to the Rule before taking into account the Final Amendments and references to the "Final Rule" are to the Rule as amended by the Final Amendments.

Under section 68 of the CFA, the Final Amendments were delivered to the Minister of Finance on December 18, 2012. If the Minister approves the Final Amendments by February 19, 2013 (or does not take an action under subsection 68(3) of the CFA), they come into force on April 1, 2013.

The Final CFA Materials are consistent with a number of the related amendments made to OSC Rule 13-502 *Fees* and its Companion Policy. The latter notice, which is likewise published in this Bulletin, is referred to in this Notice as the "Final 13-502 Notice". The Final 13-502 Notice explains the need for fee increases to this Rule and to OSC Rule 13-502 *Fees*.

Substance and Purpose of the Final CFA Materials

The Final Amendments are largely consistent with the basic framework under the existing rule. Under the existing rule and the Final Rule, participation fees are based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities and are intended to serve as a proxy for the market participant's use of the Ontario capital markets. Participation fee levels are set using a tiered structure, based on their annual Ontario revenues. Participation fees are set based on estimates of OSC operating costs for upcoming periods.

Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources used in undertaking the activities listed in Appendix B of the current rule are considered in determining these fees. Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

The Final Amendments make changes so that the fees charged by the Commission are aligned more closely with actual Commission's costs. New activity and participation fees are made in areas where workload has increased and more resources are being targeted.

To allow for the greater predictability of fee revenues, the Final Amendments in respect of participation fees provide that the fees be determined by referencing historical revenue data (rather than current data). This reference point is the basis for fees for the anticipated three-year period of the Final Rule.

The Final CP Changes largely reflect the Final Amendments.

The notice containing the August 2012 Proposals summarizes the amendments that are included in the Final CFA Materials. Changes from the August 2012 Proposals, which are largely in response the comments received in connection with OSC Rule 13-502 *Fees*, are described below in this Notice.

The Commission is of the view that these changes do not require a second comment period.

Changes from the August 2012 Materials

Participation fees

Under the Final Amendments, participation fees are increased, over the three-year fee cycle, by 4.7% per year. This compares with the August 2012 Proposals, which proposed increases of 7.9% per year. See further Appendix A of the Final Rule, the Final 13-502 Notice and Items 2 and 10 of the table in Annex A of that notice.

Activity fees

In response to comments, the proposed variable cost-based activity fee applying in special circumstances has been removed from the Final Rule. See further Item 24 of the table in Annex A of the Final 13-502 Notice responding to comments.

Final CP Changes

In response to comments, we have removed the proposed guidance in section 3.1 of the CP in the August 2012 Proposals, which indicated that participation fees should be paid and borne by registrants. See further Item 34 of the table in Annex A of the Final 13-502 Notice.

Given the changes described in the Final Amendments, it is no longer necessary to include guidance with regard to the previously-proposed variable cost-based activity.

Additional minor technical changes

The Final Materials also reflect a number of minor technical changes/corrections.

Comments received

Some of the issues raised in the comments received on the amendments proposed to OSC Rule 13-502 in the August 2012 Proposals are relevant to the Final CFA Materials. A summary of these comments and OSC responses is contained in Annex A of the Final 13-502 Notice. No comments were otherwise received.

Text of the Final CFA Materials

The Final Amendments are set out in Annex A, accompanied by a blackline in Annex B showing how the Final Amendments change the consolidated text of the existing rule. The Final CP Changes are set out in Annex C.

Questions

Please refer your questions to any of the following:

Simon Thompson Senior Legal Counsel, General Counsel's Office (416) 593-8261 sthompson@osc.gov.on.ca	Nikhil Verghese Accountant, Market Regulation (416) 593-8927 nverghese@osc.gov.on.ca

ANNEX A

Amendments to
OSC Rule 13-503 *(Commodity Futures Act) Fees*

1. National Instrument 13-503 Fees is amended by this Instrument.

2. Section 1.1 is amended by

(a) replacing the definition of "IIROC***" with the following:***

"IIROC" means the Investment Industry Regulatory Organization of Canada; ***and***

(b) adding the following definition:

"reference fiscal year" of a registrant firm in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if the firm was a registrant firm at the end of the fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;**.**

3. Section 2.2 is replaced by the following:

2.2 **Participation Fee** – On December 31 of each calendar year, a registrant firm must pay the participation fee shown in Appendix A opposite the registrant firm's specified Ontario revenues for its reference fiscal year, as that revenue is calculated under section 2.4 or 2.5.

4. Section 2.4 and subsection 2.5(1) are amended by replacing each of "previous fiscal year***" and "***previous year***" with "***reference fiscal year***", wherever they occur.***

5. Subsection 2.5(2) is replaced by the following:

(2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items otherwise included in gross revenues for the reference fiscal year:

(a) revenue not attributable to CFA activities,

(b) advisory or sub-advisory fees paid during the reference fiscal year by the registrant firm to

(i) a person or company registered as a dealer or an adviser under the CFA or under the *Securities Act*, or

(ii) an unregistered exempt international firm, as defined in Rule 13-502 Fees under the *Securities Act*.**.**

6. Subsection 2.6(1) is replaced by the following:

2.6 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of a registrant firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the registrant firm must,

(a) on or before December 1 in that calendar year, file a completed Form 13 503F1 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and

(b) on December 31 in that calendar year, pay the participation fee shown in Appendix A opposite the specified Ontario revenues estimated under paragraph (a).

7. Part 3 is amended by adding the following:

3.1.1 Information Request -- Section 3.1 does not apply with regard to requests to the Commission under section E of Appendix B but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

8. Appendix A is replaced by the following:

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$800
$250,000 to under $500,000	$1,035
$500,000 to under $1 million	$3,390
$1 million to under $3 million	$7,590
$3 million to under $5 million	$17,100
$5 million to under $10 million	$34,550
$10 million to under $25 million	$70,570
$25 million to under $50 million	$105,750
$50 million to under $100 million	$211,500
$100 million to under $200 million	$351,200
$200 million to under $500 million	$711,650
$500 million to under $1 billion	$947,360
$1 billion to under $2 billion	$1,195,000
$2 billion and over	$2,000,000

9. Appendix A, as amended by section 8, is replaced by the following:

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$835
$250,000 to under $500,000	$1,085
$500,000 to under $1 million	$3,550
$1 million to under $3 million	$7,950
$3 million to under $5 million	$17,900
$5 million to under $10 million	$36,175
$10 million to under $25 million	$74,000
$25 million to under $50 million	$110,750
$50 million to under $100 million	$221,500
$100 million to under $200 million	$367,700
$200 million to under $500 million	$745,300
$500 million to under $1 billion	$962,500
$1 billion to under $2 billion	$1,213,800
$2 billion and over	$2,037,000

10. Appendix A, as amended by section 9, is replaced by the following:

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the Reference Fiscal Year	Participation Fee
under $250,000	$875
$250,000 to under $500,000	$1,135
$500,000 to under $1 million	$3,715
$1 million to under $3 million	$8,325
$3 million to under $5 million	$18,745
$5 million to under $10 million	$37,875
$10 million to under $25 million	$77,475
$25 million to under $50 million	$115,955
$50 million to under $100 million	$232,000
$100 million to under $200 million	$385,000
$200 million to under $500 million	$780,000
$500 million to under $1 billion	$1,008,000
$1 billion to under $2 billion	$1,271.000
$2 billion and over	$2,133,000

11. Appendix B is amended

(a) by replacing Item A(1) with the following:

1. Any application for relief, regulatory approval or recognition under an eligible CFA section, being for the purpose of this item any provision of the CFA or any Regulation or OSC Rule made under the CFA not listed in item A.2, A.3 or A.4 nor section A.1. *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of a self-regulatory organization under section 16 of the CFA;* *(ii) approval of the establishment of a council, committee or ancillary body under section 18 of the CFA;* *(iii) applications by a person or company under subsection 78(1) of the CFA; and* *(iv) except as provided in section A.1, exemption applications under section 80 of the CFA.*	$4,500 for an application made under one eligible CFA section and $7,000 for an application made under two or more eligible CFA sections (plus $2,000 if none of the following is not subject to, or is not reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 under the *Securities Act*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant) (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 78(1) of the CFA in respect of an application described in section A.1 that is not in conjunction with a corresponding application under subsection 144(1) of the *Securities Act* if the particular application (a) reflects a merger of an exchange or clearing house, (b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house.) Despite the above, the fee under this Item for a recognition described in Note (i) of the first column, an approval described in Note (ii) of the first column or an application described in Note (iii) of the first column does not apply where the recognition, approval or application is in conjunction with a recognition, approval or application under the *Securities Act.*

(b) by replacing Item A(3) with the following:

3.	An application for relief from this Rule.	$1,750
4.	An application for relief from any of the following: (a) OSC Rule 31-509 *(Commodity Futures Act) National Registration Database*; (b) OSC Rule 33-505 *(Commodity Futures Act) Registration Information*; (c) Subsection 37(7) of the Regulation to the CFA.	$1,500

(c) by adding the following section:

A.1	**Market Regulation Recognitions and Exemptions**	
(a)	Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is not made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$100,000
(b)	Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$20,000
(c)	Application for exemption from registration of an exchange under section 80 of the CFA if the application is not made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$75,000
(d)	Application for exemption from registration of an exchange under section 80 of the CFA if the application is made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$20,000
(e)	Application for recognition of a clearing house under section 17 of the CFA if the application is not made in conjunction with the application for recognition of a clearing agency under the *Securities Act*;	$100,000
(f)	Application for recognition of a clearing house under section 17 of the CFA if the application is made in conjunction with the application for recognition of a clearing agency under the *Securities Act*.	$20,000
		(plus, in connection with each such application described in paragraph (a), (c) or (e) of this Item, an additional fee of $100,000 if the application (a) reflects a merger of an exchange or clearing house,

	(b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house).

(d) in Item B(1) by replacing "$600***" with "***$1,200***";***

(e) in Item B(2) by replacing "$600***" with "***$700***";***

(f) in Item B(5) by replacing "$2,000***" with "***$1,000***";***

(g) by replacing section C as follows:

C. Application for Approval of the Director under Section 9 of the Regulation *to the CFA* *Note: No fee for an approval under subsection 9(3) of the Regulation to the CFA is payable if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Requirements.*	$3,500

(h) by replacing section E as follows:

E.	**Requests of the Commission**	
1.	Request for a copy (in any format) of Commission public records	$0.50 per image
2.	Request for a search of Commission public records	$7.50 for each 15 minutes search time spent by any person
3.	Request for one's own individual registration form.	$30

12. Appendix C is amended by deleting "or Form 7***" in paragraph (d) in the first column.***

13. Form 13-503F1 is amended

(a) by replacing items 1 to 10 of General Instructions with the following:

1. This form must be completed by firms registered under the *Commodity Futures Act* but not under the *Securities Act*. It must be returned to the Ontario Securities Commission by December 1 each year pursuant to section 2.3 of Rule 13-503, except in the case where firms register late in a calendar year (after December 1). In this exceptional case, this form must be filed as soon as practicable after December 1.

2. The completion of this form will serve as an application for the renewal of your firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

3. IIROC members must complete Part I of this form. All other registrant firms must complete Part II. Everyone completes Part III.

4. The components of revenue reported in this form should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.

5. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's reference fiscal year, which is generally referred to the Rule as its "previous fiscal year". A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

7. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.

8. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.

9. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.

(b) in section 4 by

(i) replacing "last completed***" with "***reference***", and***

(ii) deleting "*Note: The fiscal year identified above is referred to below as the relevant fiscal year****";***

(c) after section 4, by replacing "**Relevant Fiscal Year****" with "*****Reference Fiscal Year****"; and***

(d) after section 4, by replacing "relevant fiscal year***" with "***reference fiscal year***", wherever it occurs.***

14. Form 13-503F2 is amended by

(a) replacing "**Fiscal Year End****" with "*****End Date of Last Completed Fiscal Year****"; and***

(b) replacing "that this Form***" with "***that this form***".***

****

15. (1) Except as provided by subsections (2) and (3), this Instrument comes into force on April 1, 2013.

(2) Section 9 comes into force on April 7, 2014.

(3) Section 10 comes into force on April 6, 2015.

ANNEX B

BLACKLINE SHOWING FINAL CHANGES TO
RULE 13-503 (COMMODITY FUTURES ACT) FEES

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ONTARIO SECURITIES COMMISSION
RULE 13-503 (COMMODITY FUTURES ACT) FEES

PART 1 – DEFINITIONS

1.1 Definitions – In this Rule

"CFA" means the *Commodity Futures Act*;

"CFA activities" means activities for which registration under the CFA or an exemption from registration is required;

"IIROC" means the Investment Industry Regulatory Organization ~~of Canada and, where context requires, includes the Investment Dealers Association~~ of Canada;

"Ontario allocation factor" has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words "ending after December 31, 2008";

"Ontario percentage" means, for a fiscal year of a registrant firm

(a) if the registrant firm is a company that has a permanent establishment in Ontario in the fiscal year, the registrant firm's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,

(b) if paragraph (a) does not apply and the registrant firm would have a permanent establishment in Ontario in the fiscal year if the registrant firm were a company, the registrant firm's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and

(c) in any other case, the percentage of the registrant firm's total revenues for the fiscal year attributable to CFA activities in Ontario;

"permanent establishment" has the meaning provided in Part IV of the regulations under the ITA;

"previous fiscal year" of a registrant firm in respect of a participation fee that becomes payable under section 2.2 on December 31 of a calendar year, the last fiscal year of the registrant firm ending in the calendar year;

"reference fiscal year" of a registrant firm in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if the firm was a registrant firm at the end of the fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;

"registrant firm" means a person or company registered as a dealer or an adviser under the CFA; and

"specified Ontario revenues" means the revenues determined in accordance with section 2.4, 2.5 or 2.6.

PART 2 – PARTICIPATION FEES

2.1 Application – This Part does not apply to a registrant firm that is registered under the *Securities Act* and that has paid its participation fee under Rule 13-502 *Fees* under the *Securities Act*.

2.2 Participation Fee – On December ~~31,~~ 31 of each calendar year, a registrant firm must pay the participation fee shown in Appendix A opposite the registrant firm's specified Ontario revenues for its ~~previous~~reference fiscal year, as that revenue is calculated under section 2.4 or 2.5.

2.3 Disclosure of Fee Calculation

(1) By December 1, a registrant firm must file a completed Form 13-503F1 showing the information required to determine the participation fee due on December 31.

(2) Despite subsection (1), if at a particular time after December 1 and in a calendar year, a firm becomes registered, the completed Form 13-503F1 must be filed as soon as practicable after the particular time.

2.4 Specified Ontario Revenues for IIROC Members

(1) The specified Ontario revenues for its ~~previous~~reference fiscal year of a registrant firm that was an IIROC member at the end of the ~~previous~~reference fiscal year is calculated by multiplying

(a) the registrant firm's total revenue for its ~~previous~~reference fiscal year, less the portion of that total revenue not attributable to CFA activities, by

(b) the registrant firm's Ontario percentage for its ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), "total revenue" for a ~~previous~~reference fiscal year means the amount shown as total revenue for the previous fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm.

2.5 Specified Ontario Revenues for Others

(1) The specified Ontario revenues of a registrant firm that was not an IIROC member at the end of its ~~previous~~ reference fiscal year is calculated by multiplying

(a) the registrant firm's gross revenues, as shown in the audited financial statements prepared for the ~~previous~~reference fiscal year, less deductions permitted under subsection (2), by

(b) the registrant firm's Ontario percentage for the ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items otherwise included in gross revenues for the reference fiscal year:

(a) revenue not attributable to CFA activities,

(b) advisory or sub-advisory fees paid during the ~~previous~~reference fiscal year by the registrant firm to

(i) a person or company registered as a dealer or an adviser under the CFA or under the *Securities Act*, or

(ii) an unregistered exempt international firm, as defined in Rule 13-502 *Fees* under the *Securities Act*.

2.6 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of a registrant firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the registrant firm must,

(a) ~~by the time~~on or before December 1 in that calendar year ~~specified in section 2.3,~~ file a completed Form 13-503F1 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and

(b) on December 31 in that calendar year, pay the participation fee shown in Appendix A opposite the specified Ontario revenues estimated under paragraph (a).

(2) A registrant firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the previous fiscal year have been completed,

(a) calculate its specified Ontario revenues under section 2.4 or 2.5, as applicable,

(b) determine the participation fee shown in Appendix A opposite the specified Ontario revenues calculated under paragraph (a),

(c) complete a Form 13-503F1 reflecting the annual financial statements, and

(d) if the participation fee determined under paragraph (b) differs from the participation fee paid under subsection (1), the registrant firm must, not later than 90 days after the end of the previous fiscal year,

(i) pay the amount, if any, by which

(A) the participation fee determined without reference to this section,

exceeds

(B) the corresponding participation fee paid under subsection (1),

(ii) file the Form 13-503F1 completed under paragraph (c), and

(iii) file a completed Form 13-503F2.

(3) If a registrant firm paid an amount paid under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the registrant firm is entitled to a refund from the Commission of the excess.

2.7 Late Fee

(1) A registrant firm that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a registrant firm is deemed to be nil if

(a) the registrant firm pays an estimate of the participation fee in accordance with subsection 2.6(1), or

(b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

PART 3 – ACTIVITY FEES

3.1 Activity Fees

A person or company that files a document or takes an action listed in Appendix B must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix B opposite the description of the document or action.

3.1.1 Information Request – Section 3.1 does not apply with regard to requests to the Commission under section E of Appendix B but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

3.2 Late Fee – A person or company that files a document listed in Appendix C after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix C opposite the description of the document.

PART 4 – CURRENCY CONVERSION

4.1 Canadian Dollars – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 5 – EXEMPTION

5.1 Exemption – The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 – REVOCATION AND EFFECTIVE DATE

[not reproduced]

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $250,000	$800	$835	$875
$250,000 to under $500,000	$1,035	$1,085	$1,135
$500,000 to under $1 million	~~$3,240~~3,390	$3,550	$3,715
$1 million to under $3 million	~~$7,250~~ 7,590	$7,950	$8,325
$3 million to under $5 million	~~$16,325~~ 17,100	$17,900	$18,745
$5 million to under $10 million	~~$33,000~~ 34,550	$36,175	$37,875
$10 million to under $25 million	~~$67,400~~ 70,570	$74,000	$77,475
$25 million to under $50 million	~~$101,000~~ 105,750	$110,750	$115,955
$50 million to under $100 million	~~$202,000~~ 211,500	$221,500	$232,000
$100 million to under $200 million	~~$335,400~~ 351,200	$367,700	$385,000
$200 million to under $500 million	~~$679,900~~ 711,850	$745,300	$780,000
$500 million to under $1 billion	~~$878,000~~ 919,300	$962,500	$1,008,000
$1 billion to under $2 billion	~~$1,107,300~~ 1,159,300	$1,213,800	$1.271,000
$2 billion and over	~~$1,858,200~~ 1,945,500	$2,037,000	$2,133,000

APPENDIX B - ACTIVITY FEES

Document or Activity	Fee
A. Applications for relief, approval and recognition	
1. Any application for relief, regulatory approval or recognition under an eligible CFA section, being for the purpose of this item any provision of the CFA or any Regulation or OSC Rule made under the CFA not listed in item A.2, ~~or~~ A.~~3.~~3 or A.4 nor section A.1. *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of ~~an exchange under section 34 of the CFA,~~ a self-regulatory organization under section 16 of the CFA ~~or a clearing house under section 17 of the CFA;~~* *~~(ii) registration of an exchange under section 15 of the CFA;~~* *(iii) approval of the establishment of a council, committee or ancillary body under section 18 of the CFA;* *(~~iv~~iii) applications by a person or company under subsection 78(1) of the CFA; and* *(iv) except as provided in section A.1, exemption applications under section 80 of the CFA.*	$~~3,250~~4,500 for an application made under one eligible CFA section and $~~5,000~~7,000 for an application made under two or more eligible CFA sections (plus $2,000 if none of the following is not subject to, or is not reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 under the *Securities Act*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant)~~.~~ (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 78(1) of the CFA in respect of an application described in section A.1 that is not in conjunction with a corresponding application under subsection 144(1) of the *Securities Act* if the particular application (a) reflects a merger of an exchange or clearing house, (b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house.) Despite the above, ~~if an application is made under at least one eligible securities section described in Appendix C(E) 1 of OSC Rule 13-502 and at least one eligible CFA section, the fee in respect of the application is equal to the amount, if any, by which~~ the fee under this Item for a recognition described in Note (i) of the first column, an approval described in Note (ii) of the first column or an application described in Note (iii) of the first column does not apply where the

Document or Activity	Fee
	recognition, approval or application is in conjunction with a recognition, approval or application under the *Securities Act*. ~~(a) the fee that would have been charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application if each eligible CFA section were an eligible securities section~~ ~~exceeds~~ ~~(b) the fee charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application.~~
2. Application under (a) Section 24 or 40 or subsection 36(1) or 46(6) of the CFA, and (b) Subsection 27(1) of the Regulation to the CFA.	Nil
3. An application for relief from ~~any of the following~~ ~~(a) this Rule~~;.	~~$1,500~~$1,750
4. An application for relief from any of the following: (~~b~~a) OSC Rule 31-509 *(Commodity Futures Act) National Registration Database*; (~~c~~b) OSC Rule 33-505 *(Commodity Futures Act) Registration Information*; (~~d~~c) Subsection 37(7) of the Regulation to the CFA.	$1,500
A.1 Market Regulation Recognitions and Exemptions	
(a) Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is not made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$100,000
(b) Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$20,000
(c) Application for exemption from registration of an exchange under section 80 of the CFA if the application is not made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$75,000

Document or Activity	Fee
(d) Application for exemption from registration of an exchange under section 80 of the CFA if the application is made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$20,000
(e) Application for recognition of a clearing house under section 17 of the CFA if the application is not made in conjunction with the application for recognition of a clearing agency under the *Securities Act*;	$100,000
(f) Application for recognition of a clearing house under section 17 of the CFA if the application is made in conjunction with the application for recognition of a clearing agency under the *Securities Act*.	$20,000 (plus, in connection with each such application described in paragraph (a), (c) or (e) of this Item, an additional fee of $100,000 if the application (a) reflects a merger of an exchange or clearing house, (b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house).
B. Registration-Related Activity	
1. New registration of a firm in one or more categories of registration	$~~600~~1,200
2. Change in registration category *Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general category of adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding section.*	$~~600~~700
3. Registration of a new director, officer or partner (trading or advising), salesperson or representative *Notes:* *(i) Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee*.	$200 per individual

Document or Activity	Fee
(ii) If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee. *(iii) A registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.*	
4. Change in status from a non-trading or non-advising capacity to a trading or advising capacity	$200 per individual
5. Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	~~$2,000~~1,000
6. Application for amending terms and conditions of registration	$500
C. Application for Approval of the Director under Section 9 of the Regulation to the CFA *Note: No fee for an approval under subsection 9(3) of the Regulation to the CFA is payable if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Requirements.*	~~$1,500~~3,500
D. Request for Certified Statement from the Commission or the Director under Section 62 of the CFA	$100
E. Requests of the Commission	
1. Request for a ~~photocopy~~copy (in any format) of Commission public records	$0.50 per ~~page~~image
2. Request for a search of Commission public records	~~$150~~7.50 for each 15 minutes search time spent by any person
3. Request for one's own ~~Form 7~~individual registration form.	$30
F. Pre Filings of Applications *Note: The fee for a pre-filing of an application will be credited against the applicable fee payable if and when the corresponding formal filing is actually proceeded with; otherwise, the fee is nonrefundable.*	The fee for each pre-filing of an application is equal to the applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.

APPENDIX C – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
Fee for late filing of any of the following documents: (a) Annual financial statements and interim financial reports; (b) Report under section 15 of the Regulation to the CFA; (c) Report under section 17 of the Regulation to the CFA; (d) Filings for the purpose of amending Form 5 ~~or Form 7~~ under the Regulation to the CFA or Form 33-506F4 or Form 33-506F6 under OSC Rule 33-506, including the filing of Form 33-506F1; (e) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-503F1; (g) Form 13-503F2.	$100 per business day (subject to a maximum of $5,000 for a registrant firm for all documents required to be filed within a calendar year)

FORM 13-503F1
(COMMODITY FUTURES ACT)

PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed by firms ~~only~~ registered under the *Commodity Futures Act* ~~and~~but not under the *Securities Act*. It must be returned to the Ontario Securities Commission by December 1 each year pursuant to section 2.3 of Rule 13-503, except in the case where firms register late in a calendar year (after December 1). In this exceptional case, this ~~Form~~form must be filed as soon as practicable after December 1.

2. The completion of this form will serve as an application for the renewal of your firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

3. IIROC members must complete Part I of this ~~Form~~form. All other registrant firms must complete Part II. Everyone completes Part III.

4. The components of revenue reported in this ~~Form~~form should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.

5. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's ~~most recently completed~~ reference fiscal year, which is generally referred to the Rule as its "previous fiscal year". A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

7. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.

8. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.

9. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.

~~10. There are a number of references in this form to "relevant fiscal year". The "relevant fiscal year" is generally a firm's last completed fiscal year. However, if good faith estimates for a fiscal year are provided in this Form pursuant to section 2.6 of the Rule, the relevant fiscal year is the fiscal year for which the good faith estimates are provided.~~

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status

☐ The firm is a member of the Investment Industry Regulators Organization of Canada (IIROC).

☐ The firm does not hold membership with IIROC.

4. Financial Information

Is the firm providing a good faith estimate under section 2.6 of the Rule?

☐ Yes ☐ No

If no, end date of ~~last completed~~reference fiscal year: _____/____/___
yyyy mm dd

If yes, end date of fiscal year for which the good faith estimate is provided: ____/____/___
yyyy mm dd

~~*Note: The fiscal year identified above is referred to below as the relevant fiscal year.*~~

5. Participation Fee Calculation

Note: Dollar amounts stated in thousands, rounded to the neared thousand.

	~~Relevant Fiscal~~Reference Fiscal Year $
Part I – IIROC Members	
1. Total revenue for ~~relevant~~reference fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report	
2. Less revenue not attributable to CFA activities	
3. Revenue subject to participation fee (line 1 less line 2)	
Part II – Other Registrants	

Notes:

1. Gross Revenue is defined as the sum of all revenues reported on the audited financial statements prepared in accordance with Accepted Accounting Standards, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation. Gross revenues are reduced by amounts not attributable to CFA activities.

2. Where the advisory or sub-advisory services of another registrant firm, or of an exempt international firm under Rule 13-502 *Fees* of the *Securities Act*, are used by the registrant firm to advise on a portion of its assets under management, such advisory or sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

1. Gross revenue for ~~relevant~~reference fiscal year (note 1)	
Less the following items:	
2. Amounts not attributable to CFA activities	
3. Advisory or sub-advisory fees paid to other registrant firms or to exempt international firms under Rule 13-502 (Fees) of the *Securities Act* (note 2)	
4. Revenue subject to participation fee (line 1 less lines 2 and 3)	

Part III – Calculating Specified Ontario Revenues

1. Gross revenue for ~~relevant~~reference fiscal year subject to participation fee
   (line 3 from Part I or line 4 from Part II)

2. Ontario percentage for ~~relevant~~reference fiscal year
   (See definition of "Ontario percentage" in the Rule) %

3. Specified Ontario revenues
   (line 1 multiplied by line 2)

4. Participation fee
   (From Appendix A of the Rule, select the participation fee
   opposite the specified Ontario revenues calculated above)

Part IV – Management Certification

Where available, we have examined the financial statements on which the participation fee calculation is based and certify that, to the best of our knowledge, the financial statements present fairly the revenues of the firm for the period ended as noted under **Financial Information** above, and that the financial statements have been prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

	Name and Title	**Signature**	**Date**
1.	_____	_____	_____
2.	_____	_____	_____

FORM 13-503F2
(COMMODITY FUTURES ACT)

ADJUSTMENT OF FEE PAYMENT

Firm Name: _____

~~**Fiscal Year End:** _____~~
End date of last completed fiscal year: _____

Note: Subsection 2.6(2) of the Rule requires that this ~~Form~~form must be filed concurrent with a completed Form 13-503F1 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under subsection 2.6(1) of the Rule: _____

2. Actual participation fee calculated under paragraph 2.6(2)(b) of the Rule: _____

3. Refund due (Balance owing): _____
(Indicate the difference between lines 1 and 2)

ANNEX C

BLACKLINE SHOWING FINAL CHANGES TO
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES

This blackline shows changes adopted on December 18, 2012 by the Commission to Companion Policy 13-502CP Fees. The changes become effective on April 1, 2013.

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ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES

PART 1 – PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-503 *(Commodity Futures Act) Fees* (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 – PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and General Approach of the Rule

(1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of OSC Rule 13-502 (the "OSA Fees Rule"), which governs fees paid under the *Securities Act*. Both rules are designed to create a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation Fees

(1) Registrant firms are required to pay participation fees annually. Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities . The participation fee required of each market participant is based on a measure of the market participant's size, which is used as a proxy for its proportionate participation in the Ontario capital markets.

(2) Participation fees are determined with reference to gross revenue from a firm's "~~previous~~reference fiscal year"~~, which is essentially~~. As defined in section 1.1 of the Rule~~ as the~~, a firm's "reference fiscal year" is generally the firm's last fiscal year ending before May 1, 2012. However, if the firm was not a registrant at the end of that fiscal year, the "reference fiscal year" is its last completed fiscal year before the participation fee is required to be paid~~.~~ (which is defined in section 1.1 of the Rule as the firm's "previous fiscal year").

2.3 Application of Participation Fees – Although participation fees are determined ~~by using~~with reference to information from a fiscal year of a registrant firm ending before the time of the payment, participation fees are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the firm and other firms.

2.4 Registered Individuals – The participation fee is paid at the firm level under the Rule. ~~That is~~For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a salesperson, representative, partner, or officer of the firm.

2.5 Activity Fees – Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix B of the Rule are considered in determining these fees (e.g., reviewing registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.6 Registrants under the CFA and the *Securities Act*

(1) A registrant firm that is registered both under the CFA and the *Securities Act* is exempted by section 2.1 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. The registrant firm will include revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under the OSA Fees Rule.

(2) A registrant firm that is registered both under the CFA and the *Securities Act* must pay activity fees under the CFA Rule even though it pays a participation fee under the OSA Fees Rule.

2.7 No Refunds

(1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the year for which the fee was paid.

(2) An exception to this principle is provided in subsection 2.6(3) of the Rule. This provision allows for a refund where a registrant firm overpaid an estimated participation fee.

(3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

2.8 Indirect Avoidance of Rule – The Commission may examine arrangements or structures implemented by registrant firms and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the firm's specified Ontario revenues and, consequently, its participation fee.

2.9 Confidentiality of Forms The material filed under the Part 2 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection

PART 3 – PARTICIPATION FEES

3.1 Liability for Participation Fees – Participation fees are payable annually by registrant firms.

3.2 Filing Forms under Section 2.6 – If the estimated participation fee paid under subsection 2.6(1) by a registrant firm does not differ from its true participation fee determined under subsection 2.6(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.6(3).

~~3.2~~3.3 Late Fees – Section 2.7 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm.

~~3.3~~3.4 "CFA Activities" – Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term "CFA activities" is defined in section 1.1 of the Rule to include "activities for which registration under the CFA or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

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Chapter 6

Request for Comments

6.1.1 OSC Exempt Market Review – OSC Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions

OSC Exempt Market Review – OSC Staff Consultation Paper 45-710 – *Considerations for New Capital Raising Prospectus Exemptions* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Consultation Paper.

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OSC EXEMPT MARKET REVIEW

OSC STAFF CONSULTATION PAPER 45-710
CONSIDERATIONS FOR NEW CAPITAL RAISING PROSPECTUS EXEMPTIONS

December 14, 2012

TABLE OF CONTENTS

1. INTRODUCTION

1.1 Background on review

This paper sets out concept ideas for new capital raising prospectus exemptions in Ontario, which have been developed as part of the Ontario Securities Commission's (**OSC**) broadened exempt market review, more fully described below. A detailed summary of these concept ideas is set out in Parts 5 and 6 and Appendices A and B.

While this paper discusses these concept ideas, no decision has been made:

- whether additional capital raising prospectus exemptions are warranted, and
- if so, whether these concept ideas should be adopted (and on what terms) or whether alternative prospectus exemptions would be more appropriate.

No such decisions will be made without broad public consultation and discussion. This paper is the initial step in soliciting comments from all interested stakeholders on these important issues.

Exempt market regime

Major changes to the exempt market regime in Canada were last made in 2005 with the introduction of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**), an instrument that substantially harmonized many of the prospectus exemptions available across the country.

NI 45-106 contains two key capital raising prospectus exemptions, the minimum amount and accredited investor exemptions. These exemptions were available in some jurisdictions prior to 2005, but were harmonized nationally in NI 45-106. At that time, the OSC chose not to adopt an offering memorandum (**OM**) exemption, unlike all other Canadian jurisdictions, due to investor protection concerns. Further, the OSC adopted a more limited version of the family, friends and business associates exemption available elsewhere.

Original scope of review

On November 10, 2011, the Canadian Securities Administrators (**CSA**) published CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the **Consultation Note**). The Consultation Note focused on the minimum amount and accredited investor exemptions and asked questions designed to elicit feedback on whether these exemptions continue to be appropriate for our markets. The CSA conducted this consultation to identify issues that stakeholders may have about the use of the exemptions and to obtain information that would assist in deciding whether changes are necessary or appropriate.

Since 2005, the capital markets have experienced significant upheaval. As stated in the Consultation Note, the global financial crisis and recent international regulatory developments have raised questions about the use of the minimum amount and the accredited investor exemptions. These events have also raised broader questions about the distribution of exempt securities to supposedly sophisticated investors (such as accredited investors).

In Ontario, we consulted widely on the issues raised in the Consultation Note by holding four public sessions and by speaking directly with a wide range of stakeholder groups, including investor representatives, industry members, registrants, other regulators and legal and other advisors. In addition, the CSA received 109 comment letters in response to the Consultation Note.

A wide range of views was expressed in both the written comment letters and in our consultation sessions. One theme that emerged was the desirability of providing greater access to the exempt market for both issuers and investors. Another frequently expressed view was the desirability of harmonizing prospectus exemptions across Canadian jurisdictions. Other themes expressed included the diversity of the participants and products in the exempt market, issues related to the criteria for accredited investors, the appropriateness of the current minimum amount exemption and other possible options for prospectus exemptions.

Expanded exempt market review

Given the feedback received during the first consultation, the OSC decided to expand the focus of our review to consider whether there was potential to foster greater access by start-ups and small and medium sized enterprises (**SMEs**) to capital markets while maintaining appropriate investor protection. In this respect, the OSC noted that Ontario does not have all of the prospectus exemptions (such as the OM exemption) available in the rest of the country.

We announced our expanded review on June 7, 2012, with the publication of OSC Staff Notice 45-707 *OSC Broadening Scope of Review of Prospectus Exemptions* (the **Scope Notice**). The Scope Notice stated that, in light of feedback from stakeholders, we were broadening the scope of our review to consider whether the OSC should introduce any new prospectus exemptions that would facilitate capital raising for business enterprises while protecting the interests of investors.

The Scope Notice set out the specific steps we would take in the coming year to advance our expanded review. We indicated that, during the 2013 fiscal year, we would:

- publish a second consultation note in which we will seek further feedback on the exempt market regulatory regime and, in particular, explore whether the OSC should adopt any new prospectus exemptions and, if so, under what circumstances or terms,
- hold further public consultation sessions, and actively reach out to investors and meet with other stakeholders to obtain their feedback,
- consider the experience of the other CSA jurisdictions with prospectus exemptions not currently available in Ontario (the OM and family, friends and business associates exemptions),
- consider developments in other jurisdictions relevant to capital raising in the exempt market, including the *Jumpstart Our Business Startups Act* (the **JOBS Act**), and
- establish an ad hoc advisory committee.

Our Exempt Market Advisory Committee was established in September 2012 and we have consulted with them on our concept ideas for new prospectus exemptions. We now intend to actively consult on the issues we discuss in this paper.

1.2 OSC mandate and guiding principles

This policy review must take into account the OSC's dual mandate of:

- providing protection to investors from unfair, improper or fraudulent practices, and
- fostering fair and efficient capital markets and confidence in capital markets.

The objectives of this policy review are to consider how to best regulate the exempt market in a manner that:

- enhances its role in raising capital for businesses, particularly SMEs,
- provides retail investors with greater access to investment opportunities without compromising investor protection, and
- better aligns the interests of issuers and investors.

We are also guided by the statutory principle that business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

In carrying out this policy review, it is important that we consider the exempt market as a whole and the range of prospectus exemptions available in that market. In that respect, we must consider the current policy reviews of the minimum amount and accredited investor exemptions as well as the proposed approach to securitized products distributed under the short term debt exemption. While there are currently multiple policy initiatives looking at different prospectus exemptions, we must consider in this policy review the full range of prospectus exemptions available in the exempt market, the rationale for those exemptions and the interplay of those exemptions with our concept ideas.

2. BACKGROUND ON EXEMPT MARKET

2.1 Prospectus and registration requirements

Prospectus requirement

One of the key principles of Ontario securities law is that securities may not be distributed unless a prospectus is filed with and receipted by the OSC.

A prospectus is a comprehensive disclosure document that sets out detailed information about the issuer and describes the securities being issued and the risks associated with purchasing those securities. However, a prospectus is not simply a disclosure document, but also gives rise to key purchaser rights. The *Securities Act* (Ontario) (the **Securities Act**) provides specific remedies to purchasers of securities under a prospectus including the right to sue for damages in the event of a misrepresentation in the prospectus. The persons that are required to sign the prospectus assume liability for the disclosure included in the prospectus.

In limited circumstances, securities may be distributed without a prospectus. This is typically referred to as an "exempt distribution" that occurs in the "exempt market". As long as the terms of an available exemption are met, no disclosure is mandated to be provided to purchasers. As a result, the key statutory protections associated with a prospectus, such as the right to sue for damages in the event of a misrepresentation, do not apply. Private placements may, however, be made on the basis of some form of offering document which will attract liability under section 130.1 of the Securities Act in the event of a misrepresentation.

Exemptions from the prospectus requirement are primarily set out in NI 45-106. Generally speaking, each exemption is premised on a specific policy rationale that supports not requiring a prospectus in the circumstances. For example, an exemption may be premised on the nature of the security being offered, the characteristics of the purchaser or the fact that alternative disclosure is being provided (such as an information circular under a statutory procedure).

If a security is issued under a prospectus exemption, then in many cases that security can only be resold if certain conditions are met. These resale conditions are designed to ensure that there is sufficient disclosure available in the marketplace to allow a subsequent purchaser to make an informed investment decision.

An exempt distribution avoids the costs associated with a prospectus offering and may be a more effective means for a smaller issuer to raise capital.

Registration requirement

Registration requirements are imposed on persons and companies in the business of trading in securities or advising others in connection with securities. Although there is no requirement for issuers to distribute securities through a registrant, in many cases, as a practical matter, this will be necessary to sell the offering. The registration requirements are intended to ensure the suitability of individuals or firms for registration. The cornerstones of these registration requirements are:

- proficiency (only qualified persons can deal in securities, advise or manage investment funds),
- integrity (registrants are subject to business conduct rules and are held accountable for their securities related activities), and
- solvency (registered firms must be financially viable).

Registration requirements also require registrants to disclose conflicts of interest and to comply with Know-Your-Client (**KYC**), Know-Your-Product (**KYP**) and suitability obligations. In many cases, registrants base their KYP and

suitability determinations on prospectus or other disclosure provided by issuers. Accordingly, disclosure requirements that are imposed on issuers help support and inform registrants' compliance with their KYP and suitability requirements and these requirements may be viewed as complementary to the distribution process.

Registrants may, however, not be prepared to participate in smaller offerings or offerings by smaller issuers. We note that an issuer is not required to be registered where it is not carrying on the business of trading in securities.

2.2 Current regulatory approaches

Prospectus exemptions can be based on a number of factors, including the following:

- investor attributes, which are premised on the investor having a certain level of sophistication, the ability to withstand financial loss, the financial resources to obtain expert advice, and/or the incentive to carefully evaluate an investment,
- the investor's relationship with the issuer or its management,
- the investment size,
- disclosure provided to the investor, and
- the offering size.

In this section, we refer to prospectus exemptions available under the Canadian regime as well as similar exemptions available in the US, Australia and the UK. We refer to the approaches to prospectus exemptions in other jurisdictions where those approaches are relevant to the policy issues raised. Information included in this paper about the regulatory regimes in other jurisdictions is general in nature and is not intended to present a comprehensive review of the law in those jurisdictions.

A. Prospectus exemptions based on investor attributes

There are currently prospectus exemptions based on investor attributes in both the Canadian and foreign regimes discussed below.

Canadian regime

In Canada, the accredited investor exemption permits issuers to sell any amount or type of security to individuals who qualify as accredited investors. The exemption is premised on an investor being an institution or sophisticated organization, having the ability to withstand financial loss or the resources to obtain expert financial advice. The exemption is found in section 2.3 of NI 45-106. It is similar to the accredited investor exemption available in the US.

The definition of accredited investor includes specified governments, financial institutions and other entities. It also includes individuals who meet one of the following criteria:

- **Income.** An individual whose net income before taxes exceeded $200,000 in each of the two most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the two most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year.

- **Financial assets.** An individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1 million.

- **Net assets.** An individual who, either alone or with a spouse, has net assets of at least $5 million.

We are not seeking feedback on the accredited investor exemption as part of this paper. Feedback on this exemption was sought in the Consultation Note and the CSA is currently considering the feedback received. We will take that feedback into account in proposing any new prospectus exemptions as a result of this policy review.

Australian regime

The available exemptions from disclosure requirements are primarily set out in section 708 of Australia's *Corporations Act 2001* (**AU Corporations Act**). There are a number of types of securities offerings which are exempt from the requirement for a disclosure document. The relevant Australian prospectus exemptions that are based on investor attributes are as follows:

Sophisticated investor exemption

This exemption is governed by section 708(8), (9) and (10) of the AU Corporations Act and applies where offers are made to sophisticated investors:

- who invest more than a minimum amount of A$500,000,
- are sufficiently wealthy (with net assets of at least A$2.5 million or gross income for each of the last two financial years of at least A$250,000), or
- have previous experience investing in securities that allows them to assess the details of the offer and their information needs (in which case the offer must be made through a dealer who is satisfied that the investor can make such assessments and provides reasons for this conclusion in writing).

Professional investor exemption

This exemption is governed by section 708(11) of the AU Corporations Act and applies where an offer is made to a licensed dealer or investment adviser who is acting as a principal in the transaction or to certain specific bodies such as banks, insurance companies or regulated superannuation funds or to a person who has or controls gross assets of at least A$10 million.

UK regime

Section 85 of the *Financial Services and Markets Act* (**FSMA**) sets out the requirement for a prospectus in the UK. Exemptions to this requirement are set out in section 86 of the FSMA.

Offers to qualified investors

This exemption is governed by sections 86(1)(a) and 86(7) of the FSMA and applies where the offer is made to a qualified investor. A qualified investor is defined in the FSMA as:

- a person who is described as, or who has made a request to be treated as, a professional client in accordance with Annex II of the *Markets in Financial Instruments Directive* (**MiFID**),
- a person who is an eligible counterparty in accordance with Article 24 of MiFID, or
- a person whom any investment firm is authorized to continue to treat as a professional client in accordance with Article 71(6) of MiFID.

Clients that are considered to be professional clients are described in Annex II of MiFID and include:

- regulated financial institutions,
- large enterprises that meet minimum financial thresholds,
- national and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank and other similar international organizations, and
- other institutional investors whose main activity is to invest in financial instruments.

In addition, an individual investor may request to be treated as a professional client by an investment firm. The investment firm must conduct an assessment of the expertise, experience and knowledge of the investor. In the

course of that assessment, two of the following criteria must be satisfied:

- The investor has carried out transactions, in significant size, on a securities market at an average frequency of ten per quarter over the previous four quarters.
- The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €0.5 million.
- The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

An individual investor may revoke in writing any prior request to be treated as a professional client.

B. Prospectus exemptions based on relationships with the issuer

Canadian regime

There are four notable capital raising prospectus exemptions that are based on an investor's relationship with the issuer:

- the private issuer exemption,
- the rights offering exemption,
- the family, friends and business associates exemption in Canadian jurisdictions other than Ontario, and
- the founder, control person and family exemption available in Ontario.

Private issuer exemption

The private issuer exemption in section 2.4 of NI 45-106 allows a non-reporting issuer to distribute securities to 50 people (excluding current and former employees of the issuer or affiliates) who fall within certain categories. For example, private issuer security holders include:

- directors, officers, employees, founders or control persons of the issuer,
- directors, officers or employees of an affiliate of the issuer,
- certain relatives of a director, executive officer, founder or control person and certain relatives of the spouse of a director, executive officer, founder or control person,
- a close personal friend or a close business associate of a director, executive officer, founder or control person,
- an existing security holder of the issuer,
- an accredited investor, and
- a person that is not the public.

These types of investors are generally thought to have a relationship to the issuer that allows them to, at least partially, mitigate the risks of the investment because of the closeness of the relationship or the fact that they have access to information from the issuer.

To be a private issuer, the articles of the issuer must include restrictions on transfer of securities other than non-convertible debt securities.

Some stakeholders have indicated that the private issuer exemption is a useful capital raising tool for SMEs. However, there are concerns that the limit of 50 security holders (other than employees and former employees) is too restrictive. Stakeholders have suggested that the limit could be increased without the issuer selling securities to the public.

Closely held issuer exemption

The closely held issuer exemption replaced the private issuer exemption in 2001 as a result of concerns highlighted in the Final Report of the Task Force on Small Business Financing.[1] The closely held issuer exemption was repealed in 2005 on the introduction of NI 45-106 and replaced with the private issuer exemption in the interest of harmony with other Canadian jurisdictions.

At the time, the closely held issuer exemption permitted issuers to raise a total of $3 million, through any number of financings, from up to 35 investors (excluding employees who acquired securities under a compensation or incentive plan) without concern for the "qualifications" of the investors. It differed from the private issuer exemption in that the investors in a closely held issuer did not need to be in a specified relationship, be an accredited investor or not be a member of the public. In addition, closely held issuers were not restricted as to the number of prospective investors who could be approached under the exemption. The exemption was designed to facilitate financings of issuers at early stages by allowing issuers to access a finite amount of capital from investors who did not meet the accredited investor requirements.

The exemption was only available to issuers, other than investment funds, whose shares were subject to restrictions on transfer.

There were mixed views on the repeal of the closely held issuer exemption and the re-introduction of the private issuer exemption. Some stakeholders preferred the private issuer exemption, which was harmonized across Canada, while others thought the closely held issuer exemption was a useful way for SMEs to raise capital.

Rights offering exemption

The rights offering exemption in section 2.1 of NI 45-106 permits any issuer to offer, to its existing security holders, rights to acquire additional securities without a prospectus. Existing investors are assumed to have the information they need to make an investment decision based on their previous experience and knowledge as an investor with the issuer.

There are many conditions to the use of the rights offering exemption set out in both section 2.1 of NI 45-106 and National Instrument 45-101 *Rights Offerings* (**NI 45-101**). The issuer must give the securities regulators prior written notice of the proposed distribution and the regulators have 10 days to object to the proposed distribution or confirm acceptable information has been delivered to them.

Under NI 45-101, the issuer must prepare a rights offering circular in the prescribed form that contains a brief description of the issuer, including its business, the planned use of proceeds, the resale restrictions of the securities to be distributed, the intentions of insiders regarding rights, underwriting conflicts, any escrow arrangements or stand-by commitments and details regarding the rights and how they may be exercised.

Family, friends and business associates exemption

The family, friends and business associates exemption in section 2.5 of NI 45-106 is available in Canadian jurisdictions other than Ontario. Under the exemption, a person can sell securities to investors who have a direct relationship or connection with the issuer. The permitted investors include:

- a director, executive officer or control person of the issuer or its affiliate,
- a family member (spouse, parent, grandparent, brother, sister, child or grandchild) of a director, executive officer or control person of the issuer or its affiliate,
- a family member (parent, grandparent, brother, sister, child or grandchild) of the spouse of a director, executive officer or control person of the issuer or its affiliate,
- a close personal friend or close business associate of a director, executive officer or control person of the issuer or its affiliate,

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[1] Task Force on Small Business Financing, *Final Report* (published by the OSC: October 1996).

- a founder of the issuer or a family member (spouse, parent, grandparent, brother, sister, child or grandchild), close personal friend or close business associate of a founder of the issuer, and
- a family member (parent, grandparent, brother, sister, child or grandchild) of the spouse of a founder of the issuer.

The terms “close personal friend” and “close business associate” are not defined. However, there is guidance provided on both terms. A close personal friend is someone who has known the founder, director, executive officer or control person of the issuer for a sufficient period of time to be able to assess that person's capabilities and trustworthiness. Someone is not a close personal friend simply because they belong to the same organization, association or religious group. Nor is someone a close personal friend simply because they are a current or former customer or client. A close business associate is someone who has had sufficient prior business dealings with the founder, director, executive officer or control person of the issuer to be able to assess that person's capabilities and trustworthiness.

There is no limit on the number of investors or the amount of capital that can be raised using this exemption. There is no requirement to provide investors with any disclosure regarding the issuer or the offering. In Saskatchewan, the investor must sign a risk acknowledgement form.

The OSC did not adopt this exemption when NI 45-106 came into force. In a notice dated December 17, 2004, the OSC stated:

> Ontario is not adopting the family, friends and business associates exemption as we do not believe that an exemption that allows securities to be issued to an unlimited group of non-accredited investors is appropriate for the Ontario market.

Founder, control person and family exemption available in Ontario

In Ontario, in lieu of the family, friends and business associates exemption, we have the founder, control person and family exemption in section 2.7 of NI 45-106. It applies to a distribution by an issuer of any security to a specified list of purchasers, which includes:

- a founder of the issuer,
- an affiliate of a founder of the issuer,
- certain family members of an executive officer, director or founder of the issuer, and
- a person that is a control person of the issuer.

The investors must have a pre-existing relationship with the issuer which would provide them with access to information about the issuer.

Australian regime

Sections 708(1) and (2) of the AU Corporations Act set out an exemption which permits an issuer to make a personal offer to a maximum of 20 unqualified investors over 12 months with no more than A$2 million being raised in the 12 months.

A personal offer is:

- one that may only be accepted by the person to whom it is made, and
- made to a person who is likely to be interested in the offer, having regard to (1) a previous personal, professional or other relationship or (2) a statement made that the person receiving the offer would be interested in an offer of that kind.

Consultation questions

- Is the 50 security holder limit under the private issuer exemption too restrictive? If so, what limit would be appropriate? Please explain.
- Should the OSC consider re-introducing the closely held issuer exemption in addition, or as an alternative, to the private issuer exemption? If yes, should the conditions be changed?
- Should the OSC consider adopting a family exemption, that allows for securities to be issued to an unlimited number of family members of the directors, executive officers or control persons of the issuer or its affiliates? Please explain.
- Are there other changes that should be made to the current Ontario exemptions referred to above?

C. Prospectus exemptions based on investment size

Canadian regime

The minimum amount exemption in section 2.10 of NI 45-106 is premised on the investment being a minimum size such that an investor has the incentive to carefully evaluate it. This exemption permits any issuer to distribute securities to an investor that invests at least $150,000 in a single investment, payable in cash at the time of the distribution.

We are not seeking feedback on the minimum amount exemption as part of this paper. Feedback on this exemption was sought in the Consultation Note and the CSA is currently considering the feedback received. We will take that feedback into account in proposing any new prospectus exemptions as a result of this policy review.

Australian regime

Australia has had a minimum amount exemption of A$500,000 since 1989, set out in sections 708(8)(a) and (b) of the AU Corporations Act.

UK regime

The UK has had the following minimum amount exemption limits: €40,000 (1995), €50,000 (2005), and €100,000 (2012). Currently, there are exemption thresholds for both offers of securities with a denomination of at least €100,000 and where each investor must invest at least €100,000, as set out in section 86(1)(c) and (d) of the FSMA.

US regime

The US Securities and Exchange Commission (**SEC**) adopted a minimum amount exemption of US$100,000 in 1979. In 1982, this limit was raised to US$150,000, so long as the amount was at most 20% of the investor's net worth. With the introduction of the accredited investor exemption in 1988, the minimum amount exemption was rescinded. According to the SEC, it had concerns:

> …that size of purchase alone, particularly at the $150,000 level, does not assure sophistication or access to information. While some persons previously accredited would no longer be accredited (i.e., individuals

with net worths of $750,000 but less than $1 million […]), many of the persons who used the $150,000 purchaser item will now become accredited investors by virtue of [the accredited investor exemption].

D. Prospectus exemptions based on disclosure

Canadian regime

The OM exemption is found in section 2.9 of NI 45-106 and is available in Canadian jurisdictions other than Ontario. It can be relied on for a distribution by an issuer of a security of its own issue to a purchaser, provided that:

- the purchaser purchases the security as principal,
- the issuer delivers an OM to the purchaser in the prescribed form, and
- the purchaser signs a prescribed risk acknowledgement form.

There are two primary models of the OM exemption:

BC model

In the BC model, there is no restriction on the identity of the purchaser nor on the investment size. This model is found in section 2.9(1) of NI 45-106.

Alberta model

In the Alberta model, a purchaser may not invest more than $10,000 unless the purchaser is an "eligible investor". "Eligible investors" include persons whose:

- net assets, alone or with a spouse, in the case of an individual, exceed $400,000,
- net income before taxes exceeded $75,000 in each of the two most recent calendar years and who reasonably expect to exceed that income level in the current calendar year, or
- net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125,000 in each of the two most recent calendar years and who reasonably expect to exceed that income level in the current calendar year.

The Alberta model also limits use of the exemption by investment funds. Only mutual funds that are reporting issuers and non-redeemable investment funds may rely on this exemption.

This model is found in section 2.9(2) of NI 45-106.

The OSC did not adopt this exemption when NI 45-106 came into force. In a notice dated December 17, 2004, the OSC stated:

> Ontario is not adopting the offering memorandum exemption. NI 45-106 contains two versions of the offering memorandum exemption, one for British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador (the BC model) and one for Alberta, Manitoba, the Northwest Territories, Nunavut, Prince Edward Island, Quebec and Saskatchewan (the Alberta model).
>
> The BC model permits sales in securities with an acquisition cost of any amount with no registrant involvement. Under this model, a non-accredited investor who does not have that ability to withstand financial loss may be able to invest, to an unlimited extent, in a private placement simply because he or she has received an offering memorandum and signed a risk acknowledgement form.
>
> The Alberta model requires that purchasers either be "eligible investors" as defined in NI 45-106 or purchase securities at an acquisition cost of less than $10,000. We are concerned that the threshold for eligible investors has been set too low. It includes a person whose net assets, alone or with a spouse, in the case of an individual,

exceed $400,000… In addition, the definition of eligible investors includes a person that has obtained advice regarding the suitability of the investment. We are concerned that obtaining investment advice and receiving a lesser form of disclosure document is not an acceptable alternative to the prospectus regime, particularly if the issuer is not a reporting issuer and no continuous disclosure is available.

We are concerned that both models of this exemption may place investors in Ontario at risk as the offering memorandum is a non-vetted prospectus-like document provided to non-accredited investors who may not have the ability to withstand financial loss. This maintains the status quo in Ontario.

We note that these exemptions do not exclude a principal residence from the calculation of net assets.

Australian regime

In Australia, section 709(4) of the AU Corporations Act provides that a body offering to issue securities may use an offer information statement (**OIS**) for the offer instead of a prospectus if the amount of capital to be raised by the body issuing the securities, when added to all amounts previously raised by:

- the body,
- a related body corporate, or
- an entity controlled by a person who controls the body or an associate of that person,

by issuing securities under an OIS is A$10 million or less.

An OIS has lower disclosure requirements than a prospectus and the prescribed content of an OIS is set out in section 715 of the AU Corporations Act. It includes, among other things, the following information:

- the issuer and the nature of the securities being offered,
- the issuer's business,
- the use of proceeds from the offering,
- the nature of the risks involved in investing in the securities,
- the details of all amounts payable in respect of the securities,
- a statement that the OIS is not a prospectus and has a lower level of disclosure requirements than a prospectus,
- a statement that a copy of the OIS has been lodged with Australian Securities Investment Commission (**ASIC**) and that ASIC takes no responsibility for the content of the OIS,
- a statement that investors should obtain professional investment advice before accepting the offer, and
- a financial report for the issuer, which includes certain audited financial statements.

Please see section 5.3 below for consultation questions on an OM exemption.

E. Crowdfunding

Meaning of crowdfunding

Crowdfunding is a method of funding a project or venture through small amounts of money raised from a large number of people over the internet via an internet portal intermediary. There are at least five models of crowdfunding:

- **Donation model.** The practice of the crowd donating to a project or venture in exchange for nothing of tangible value.

- **Reward model.** The practice of the crowd donating to a project or venture in exchange for some tangible reward or a "perk".

- **Pre-purchase model.** The practice of the crowd donating to a project or venture in exchange for a future tangible reward (such as a consumer product).

- **Peer-to-peer lending model.** The practice of an online intermediary facilitating money lending between individuals to fund a business, usually in the form of unsecured personal loans.

- **Equity securities model.** The practice of the crowd investing in an issuer in exchange for securities.

The crowdfunding discussed in this paper involves the distribution of a security.

Crowdfunding under the JOBS Act

On April 5, 2012, the JOBS Act was approved and signed by President Barack Obama after receiving rapid congressional approval in both the United States House of Representatives and United States Senate. The JOBS Act is intended to help increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

The JOBS Act contemplates broadened access to investment opportunities in the exempt market through a new crowdfunding exemption. While the JOBS Act creates a new exemption for "crowdfunding", that exemption is subject to SEC rulemaking and crowdfunding for securities will only be legal in the US once the SEC rules are adopted. Many details of the crowdfunding exemption, including those around the funding portal, are still not clear as they will be dealt with by the SEC in rulemaking. The SEC is required to issue rules not later than 270 days following enactment of the JOBS Act (December 31, 2012). However, we note that there is speculation that there may be delays in meeting this deadline.

The following is a summary of the key provisions of crowdfunding as set out in the JOBS Act.

Availability of the exemption

The exemption is only available to domestic US issuers. It is not available to non-US issuers, issuers subject to public company reporting requirements and investment companies. The exemption could potentially be available to a Canadian issuer through its US subsidiaries. However, this is unclear absent SEC guidance.

Size of the offering and investments

Crowdfunding is a strategy designed to allow a company to raise up to $1 million in a 12-month period by selling securities to the public.

The aggregate amount of securities sold to any investor within the previous 12-month period in reliance on the exemption cannot exceed:

- the greater of US$2,000 or 5% of the investor's annual income or net worth if either the annual income or the net worth of the investor is less than US$100,000, and
- 10% of the investor's annual income or net worth, not to exceed a maximum aggregate amount sold of US$100,000, if either the annual income or net worth of the investor is equal to or more than US$100,000.

Resale restrictions

The securities purchased under this exemption are subject to certain resale restrictions for one year. However, securities may be resold to the issuer, to an accredited investor, as part of a registered offering or to a family member of the purchaser under limited circumstances.

Intermediaries

Crowdfunding offerings must be conducted through an intermediary that is registered with the SEC as a broker or funding portal (defined as any person acting as an intermediary in a transaction involving the offer or sale of

securities for the account of others pursuant to the exemption that meets certain conditions) and with any applicable self-regulatory organization (**SRO**).

The intermediary must take certain actions, including:

- providing disclosures related to risks and other investor education materials, as the SEC by rule deems appropriate and ensuring that investors review such disclosures, affirm the risk of loss and answer various questions,
- taking such measures to reduce the risk of fraud, as will be established by the SEC, including background and regulatory checks on directors, officers and significant shareholders of issuers, and
- making such efforts as the SEC determines appropriate by rule to ensure that no investor in a 12-month period exceeds the crowdfunding investment limits.

Issuers relying on the exemption will not be permitted to advertise the terms of the offering, except for notices that direct investors to the intermediary.

Disclosure to be provided to investors

Issuers will be required to file with the SEC and provide to investors information such as:

- a description of the business and its anticipated business plan,
- a description of its financial condition (including audited financial statements where the specified target offering amount exceeds US$500,000 or such other amount that the SEC determines appropriate),
- the names of officers and directors and greater than 20% shareholders,
- the stated purpose and intended use of proceeds,
- the specified target offering amount and deadline to reach that target,
- the price of the securities,
- a description of the ownership and capital structure, and
- such other information as the SEC prescribes by rule.

Securities issued under this exemption will not be subject to state blue sky securities laws (which are intended to protect investors from fraud).

Crowdfunding in other jurisdictions

Australian regime

No specific crowdfunding exemption or legislation appears to have been passed in Australia. However, an order of ASIC to permit business introduction or matching services may be facilitating equity crowdfunding activity.

ASIC Class Order 02/273 “Business Introduction and Matching Services”, which was made effective on March 11, 2002, provides an exemption from certain provisions of the AU Corporations Act for persons involved in making or calling attention to offers of securities through a business introduction service (the **AU Class Order**). The AU Class Order permits a person to bring together issuers seeking capital and investors without being subject to the full requirements of the AU Corporations Act, provided the terms of the AU Class Order are complied with.

For issuers that wish to offer their securities through a business introduction service, the AU Class Order limits such offers to the following:

- a personal offer to a maximum of 20 unqualified investors over 12 months, and
- with no more than A$5 million being raised in that 12 months.

There are restrictions on advertising and recommendations of offerings under the exemption provided in section 734 of the AU Corporations Act. However, issuers and those making introductions are exempt from some advertising restrictions as a result of the AU Class Order.

On August 14, 2012, ASIC issued "12-196MR ASIC guidance on crowdfunding" (the **AU Notice**). The AU Notice appears to primarily focus on non-equity crowdfunding. It describes crowdfunding and states that project "sponsors or pledgers typically receive some reward in return for their funds".

ASIC also highlighted some of the risks for operators of crowdfunding websites and for individuals investing in crowdfunded ventures, including:

- a risk of fraud being carried out through crowdfunding websites. ASIC suggests that website operators can help manage this risk by performing background checks on project creators.
- a risk that funded projects are not completed and the sponsors do not receive the rewards promised. The guidance suggests that website operators can manage this risk by assessing the viability of the project before it is posted to the website, requiring the project creator to provide more information and mandate reporting requirements on project progress.
- a risk that the money collected is lost due to fraud or bankruptcy of the website operator before the money is passed on to the project creator. The guidance states that a website operator can manage this risk by holding funds in a separate account.

ASIC has been monitoring the increased use of equity crowdfunding to identify arrangements that may be regulated by ASIC. In its guidance, ASIC highlighted that crowdfunding arrangements offering or advertising a financial product, providing a financial service or fundraising through securities may require a complying disclosure document depending on the approach taken.

UK regime

In the UK, the prospectus requirement is triggered for offerings of securities where:

- the total offering amount is €5 million or greater, or
- there are more than 150 investors.

Below these thresholds, a prospectus is generally not required. Despite the fact that a prospectus may not be required for small offerings of securities, a UK entity involved in securities distributions may still need to be registered with the Financial Services Authority (**FSA**) depending on the activities being conducted.

Equity crowdfunding in the UK is already active. For example, Crowdcube is a crowdfunding website founded in 2010 that allows businesses to raise money directly from investors. Crowdcube restricts participation to investors who can self-certify as high net worth or sophisticated investors.

In addition, on July 6, 2012, Seedrs Limited was launched as an equity crowdfunding platform in the UK. Seedrs is an online platform for investing in start-up businesses. It is structured such that Seedrs acts as the nominee for individual investors that want to invest through the platform, holding the shares on their behalf. Seedrs is registered with the FSA and is subject to restrictions on the type of business activities it can conduct as set out in its permission from the FSA.

On August 10, 2012, the FSA published a consumer information bulletin called "Crowdfunding: is your investment protected?". The guidance warned investors that many crowdfunding opportunities are high risk and complex and are suited to sophisticated investors only. The notice also pointed out that these types of investments are generally illiquid and that investors should be careful about investing over the internet because of the risk of fraud. The FSA also expressed concern that some firms involved in crowdfunding may be acting without FSA permission or authorisation.

F. Prospectus exemptions based on offering size

Small issue exemption under the JOBS Act

Title IV of the the JOBS Act directs the SEC to amend existing regulations or adopt a new exemption to permit a new class of securities that are exempt from the registration requirements where the aggregate amount of all securities offered and sold in reliance on the exemption within the prior 12-month period does not exceed US$50 million. The JOBS Act did not set a deadline for adopting these new rules and the SEC has not yet made changes to implement this exemption. Previously, the limitation was US$5 million. Section 401 of the JOBS Act requires the SEC to review and increase the "small issue" offering amount biennially and to report to certain congressional committees on its reasons for not increasing the amount if it decides not to do so.

Section 401 of the JOBS Act outlines the details of how the exemption will operate. The exemption permits securities to be offered and sold publicly and exempts them from resale restrictions. The exemption applies to equity securities, debt securities and debt securities convertible into or exchangeable for equity interests, as well as any guarantees of such securities. The civil liability for false or misleading statements or omissions set forth in an offering document or oral communications will apply to such securities.

Unlike the other registration exemptions under the US *Securities Act of 1933*, this "small issue" exemption requires the issuer to file audited financial statements annually with the SEC. In addition, the exemption provides that the SEC may create rules or regulations that require an issuer relying on the exemption to make available to investors and file with the SEC an offering statement and periodic disclosure containing prescribed information about the issuer, its business operations, financial condition, corporate governance principles, use of investor funds and other matters.

Issuers relying on the exemption will be permitted to solicit investor interest prior to the filing with the SEC of any required offering statement on such terms as the SEC prescribes.

Securities issued under this exemption will also be subject to state blue sky securities laws (intended to protect investors from fraud).

2.3 Snapshot of exempt market activity in Ontario

The exempt market in Ontario has become increasingly important for issuers and investors.

Overall activity in the exempt market

The total amount of capital raised in Ontario through exempt distributions in 2011 was approximately $86.5 billion. [2] This capital was raised by a diverse range of issuers using a variety of instruments, including debt, equity, asset backed securities, investment fund securities and derivatives. Approximately 32% of the capital raised in Ontario through the exempt market was raised by non-investment funds.[3] Of the capital raised by non-investment funds in Ontario, approximately 23% was raised by the financial services industry. The mining and technology sectors represented only approximately 14% and 5%, respectively.

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[2] We note that this exempt market data is limited because it is based on reports of exempt distribution filed with the OSC. Only specified prospectus exemptions trigger a requirement to file a report. As a result, this data does not capture all exempt market activity. We also note that this data reflects distributions to both individual and institutional investors under the exemption.

[3] We note that the data for distributions of investment fund securities reflects distributions to both individual and institutional investors of both public and private investment fund securities. We also note that this data reflects purchases and not redemptions of investment fund securities.

Accredited investor exemption

In 2011, approximately $72.8 billion was raised under the accredited investor exemption in Ontario. This is by far the most heavily relied upon prospectus exemption for which a report of exempt distribution is required to be filed with the OSC. In Ontario, it has historically accounted for over 70% of distributions and over 80% of capital raised in the exempt market in reported transactions. In addition, the largest distributions have been overwhelmingly conducted in reliance on the accredited investor exemption.

The following are highlights of the use of the accredited investor exemption in Ontario in 2011:

- Approximately 66% of the total amount invested under this exemption was invested in investment funds.[4]
- Approximately 85% of the total amount raised under this exemption was raised by non-reporting issuers.
- There were 4,575 distributions made under this exemption, with approximately 77% of those distributions being made by non-reporting issuers.
- Investment funds made approximately 41% of the distributions.[5]

Minimum amount exemption

The minimum amount exemption is less used. In 2011, approximately $3.9 billion was raised under this exemption in Ontario.

The following are highlights of the use of the minimum amount exemption in Ontario in 2011:

- Approximately 49% of the total amount invested under this exemption was invested in investment funds.[6]
- Approximately 62% of the total amount raised under this exemption was raised by non-reporting issuers.

Appendix C contains a summary of the exempt market data reported to the OSC.

As part of this policy review, we are proposing to amend our exempt distribution reporting requirements to provide more accurate and useful information with respect to the use of these exemptions. Please see section 7.3.

2.4 Estimates of investors eligible to participate in the Ontario exempt market

As discussed above, under the existing capital raising prospectus exemptions, only certain individuals can invest in the exempt market. Specifically, the definition of "accredited investor" as set out in section 1.1 of NI 45-106 includes, among others, individuals who meet the specified income or asset criteria.

Based on available data,[7] we have produced an estimate of the number of individuals who qualified as accredited investors in 2010 under the current thresholds. The minimum figure for the number of potential accredited investors was produced using only individuals qualifying under the individual and family income thresholds. This assumes high net worth individuals also earn income qualifying them as accredited investors and as such are captured. The larger figure assumes the opposite, namely that no high net worth individuals would also qualify under the income thresholds. Overall, we find the total number of individuals qualifying as accredited investors under the current income and assets thresholds is less than 4% of the Ontario and Canadian populations.

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4 *Supra* note 3.
5 *Ibid*.
6 *Ibid*.
7 We have used 2010 Statistics Canada data on income, 2011 Ipsos Reid data on financial assets and 2005 Statistics Canada data on household assets. We have made a number of assumptions to deal with the limitations of the data.

Jurisdiction	Estimated number of potential accredited investors under current thresholds
Ontario	Between: • 175,210 individuals (1.8% of Ontario taxfilers) and • 351,970 individuals (3.6% of Ontario taxfilers)
Canada	Between: • 391,030 individuals (1.5% of Canadian taxfilers) and • 857,222 individuals (3.4% of Canadian taxfilers) Ontario residents represent 41.0% to 44.8% of all potential Canadian accredited investors.

Due to data constraints, identifying overlap between potential accredited investors qualifying under the income and asset thresholds is difficult. The lower bound estimate assumes complete overlap between the income and asset thresholds, providing the number of individuals in families with income over $300,000 and individuals not in families, with incomes over $200,000. The upper bound estimate assumes no overlap between individuals qualifying under the income and asset thresholds and also adjusts for individuals in families with incomes above $200,000 but family incomes below $300,000.

Appendix D contains more detailed information regarding income data for Ontario and Canadian taxfilers.

3. CURRENT INITIATIVES RELATED TO CAPITAL RAISING

3.1 Prior consultations on the exempt market

A. Consultation on the accredited investor and $150,000 minimum amount exemptions

Key themes from feedback received

The Consultation Note published in November 2011 asked for feedback on a number of specific questions about the minimum amount and accredited investor exemptions. A wide range of views was expressed in both the written comment letters and in our consultation sessions. Some of the themes raised with OSC staff were:

- **Diversity of the exempt market.** There are different segments of the exempt market and a "one size fits all" regulatory approach may not be appropriate or sufficient.

- **Access to the exempt market by issuers.** Some stakeholders suggested that access to a broader range of investors through the exempt market may provide better support for SMEs.

- **Access to the exempt market by investors.** Stakeholders expressed divergent views on whether greater access to the exempt market should be provided to non-accredited investors. Some stakeholders supported "democratization" of the exempt market so that more individuals, rather than simply high net worth or high income individuals, would be able to make investments on a prospectus-exempt basis. Others focused on the investor protection concerns associated with broader investor participation in the exempt market.

- **Existing criteria for accredited investor status.** Stakeholders expressed divergent views on the appropriateness of the existing financial thresholds in the accredited investor exemption. While some found the current financial thresholds to be an appropriate basis for determining accredited investor status, many others suggested that these criteria are not an adequate proxy for sophistication, particularly given the fact that the financial thresholds have not been adjusted for inflation since the introduction of the exemption. However, we also heard that this exemption is critical to capital raising for businesses and any restrictive changes could have a significant impact.

- **Existing minimum purchase amount.** Many stakeholders questioned the rationale for the existing minimum amount exemption. Some suggested that it was time to repeal this exemption and that the accredited investor exemption is an appropriate alternative.

- **Other suggestions.** Some stakeholders submitted that the OSC should adopt an OM exemption, which would allow a broader range of investors to participate in the exempt market on the condition that some disclosure is provided. Others encouraged CSA members to renew their efforts to harmonize the current prospectus exemptions that exist in NI 45-106.

Status of CSA staff review of minimum amount and accredited investor exemptions

On June 7, 2012, the CSA published CSA Staff Notice 45-310 *Update on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions* (the **CSA Notice**). The CSA Notice indicated that given the number of comments and the diversity of the feedback provided, CSA staff will need further time to complete the review of the minimum amount and accredited investor exemptions. CSA staff will finalize the review and publicly report on their conclusions in 2013.

B. Consultation on distributions of securitized products

A separate CSA initiative to consider a new regulatory regime for the distribution of certain securitized products has been underway for some time. On April 1, 2011, the CSA published for comment a set of proposed rules that would establish a new framework for the regulation of securitized products in Canada. These proposed rules would introduce enhanced disclosure requirements for securitized products issued by reporting issuers. In addition, the proposals consider whether new restrictions should be implemented that would narrow the class of investors who can buy securitized products on a prospectus-exempt basis.

The CSA received 30 comment letters in response to these proposals. Commenters expressed differing views on how best to regulate securitized products sold on a prospectus-exempt basis. Some suggested that there does not seem to be a valid reason to identify securitized products as a class of securities that raise greater investor protection concerns, while others suggested that securitized products pose unique investor protection risks.

These consultations are ongoing and the CSA plans to publish amended proposals in 2013. We will take the feedback received on these proposals into account in proposing any new exemptions arising out of this policy review.

3.2 Proportionate regulation

Facilitating effective capital raising is a matter that must be addressed, not only in the context of the exempt market, but also of the public market.

In recognition of this reality and to address other concerns, on September 13, 2012, the CSA published for a second comment period proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers*. It was originally published for comment on July 29, 2011. The comment period closed on December 12, 2012.

The proposed instrument is designed to:

- improve access to key information and facilitate informed decision-making by venture issuer investors by:
  - tailoring disclosure requirements to the circumstances of venture issuers,
  - eliminating certain disclosure obligations that may be of less value to venture issuer investors, and
  - providing supplemental disclosure that we think is relevant to venture issuer investors,

- allow venture issuer management more time to focus on the growth of their issuer's business by reducing the time venture issuer management must spend reading and trying to understand disclosure requirements through:
  - reducing the overall length and complexity of the instruments,
  - tailoring the requirements to focus on those applicable to venture issuers, and
  - streamlining and reducing disclosure redundancies, and

- enhance investor confidence in the venture market by introducing substantive governance standards relating to conflicts of interest, related party transactions and insider trading.

Under the proposed instrument, all venture issuers will be required to file an annual report and will therefore be able to access the public market through the short form prospectus system.

4. KEY ISSUES

4.1 Greater access to the exempt market for issuers and investors

It is important that we take into account the needs of both issuers and investors when considering new prospectus exemptions. Greater access to the exempt market is a theme we heard during our initial consultation. As part of this process, we will consider ways to align the interests of investors and issuers as much as possible.

Increased access to capital for issuers

A key purpose of this policy review is to examine how business enterprises, particularly SMEs, can have greater access to capital raising opportunities.

SMEs play an important role in the economy. In 2010, SMEs accounted for over 99% of the number of businesses in Canada.[8] In 2005, the latest year for which Statistics Canada has reported data, SMEs accounted for over 54% of Canada's Gross Domestic Product (**GDP**).[9] Further, SMEs accounted for 54% of Canadian job creation between 2001 and 2010.[10] The statistics for Ontario for 2009 largely parallel these national statistics, except that SMEs only accounted for approximately 40% of the province's GDP.[11]

One of our goals is to consider whether any new prospectus exemptions could improve capital raising options available to SMEs without unduly compromising investor protection. We recognize that facilitating capital raising has not been an express objective of securities regulation (except to the extent that it is subsumed in the purpose of fostering "efficient capital markets"). However, given the importance of SMEs to the economy, we should consider whether there are ways to streamline and improve on the prospectus exemptions currently available to SMEs.

Access to investment opportunities by investors

In addition to considering the impact of possible new prospectus exemptions on business enterprises, particularly SMEs, we are considering whether there is investor interest in greater access to investment opportunities in the exempt market. There are a variety of potential reasons for this:

- **Changing investor profile.** Given the demographic makeup of the Canadian population, the investment needs of Canadians are expected to change to some degree in the coming years. As the baby boomer generation moves into retirement, there will be a shift in investment focus by a segment of the population. As a result, some investors may seek a broader range of investment opportunities.

- **Availability of information on the internet.** Financial and business information is now widely available to the public over the internet. This allows for individual investors to do more of their own research on possible investment opportunities, rather than rely solely on investment professionals. At the same time, an increasing number of financial and investment transactions are taking place over the internet. One survey suggests that

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8 Small Business Branch, *Key Small Business Statistics* (Ottawa: Industry Canada, July 2011) at 8, online: <http://www.ic.gc.ca/eic/site/061.nsf/vwapj/KSBS-PSRPE_July-Juillet2011_eng.pdf/$FILE/KSBS-PSRPE_July-Juillet2011_eng.pdf>.

9 Danny Leung, Luke Rispoli & Bob Gibson, *Small, Medium-sized and Large Businesses in the Canadian Economy: Measuring Their Contribution to Gross Domestic Product in 2005* (Ottawa: Economic Analysis Division, Statistics Canada, May 2011) at 6, online: <http://www.statcan.gc.ca/pub/11f0027m/11f0027m2011069-eng.pdf>.

10 *Supra* note 8 at 22.

11 Ontario Ministry of Economic Development and Trade, *Snapshot of Ontario's Small and Medium Enterprises* (May 2010), online: <http://www.sbe.gov.on.ca/ontcan/1medt/downloads/SME_snapshot_may2010_en.pdf>.

up to 30% of Canadians are seeking financial advice from online news articles and blogs and from social media.[12]

- **Greater self-reliance in retirement.** The availability of traditional retirement investments, such as defined benefit pension plans, is much reduced today in Canada. As a result, investors must increasingly rely on their own investments and savings to meet their retirement goals. This arguably results in a greater need for the availability of diverse investment opportunities and strategies.

As a result of these factors, it is worthwhile to consider whether investors should have greater access to a wider range of investments, including investments available in the exempt market.

4.2 Investor protection concerns and concerns regarding registrant conduct

When considering possible new prospectus exemptions, we need to be aware of the problems that currently exist with the way that securities are distributed in the exempt market, so that we can create rules that will mitigate these harms.

Sales of securities on an exempt basis, especially to individual investors (commonly referred to as "retail" investors), raise a number of investor protection concerns. For example, with no mandatory disclosure required, it is left to investors to determine what information, if any, they require to make an investment decision and to request that information from the issuer. Retail investors may be at a disadvantage when it comes to negotiating with issuers. They may also not have the ability to determine whether the information provided to them is sufficient and to analyze the information received.

It can be difficult to quantify the exact nature and extent of the problems that may exist in the exempt market from a retail investor protection perspective. Problematic activity lies along a spectrum from unlawful activity such as fraud to activity that is within the letter of the law but nevertheless may cause harm. We have information on concerns about activities in the exempt market from a variety of sources.

Contact Centre complaints

We know from complaints received by the OSC's Contact Centre that some investors who acquired securities under a prospectus exemption believe there was a problem or unfairness with the transaction.

Staff in the Contact Centre have received complaints from retail investors who acquired securities in the exempt market. These complaints suggest that retail investors may have difficulty making informed investment decisions in some cases. Specific complaints often focus on the fact that an investor was not aware of the risks associated with the securities that were acquired or did not understand what it means to be an "accredited investor".

Concerns with the minimum amount and accredited investor exemptions

We also heard views expressed in our initial consultation on the minimum amount and accredited investor exemptions. Many stakeholders indicated that the exempt market raises investor protection concerns that need to be addressed.

In particular, the current minimum amount exemption has been criticized for being fundamentally flawed. Some stakeholders stated that having a certain amount of money to invest is not a proxy for sophistication, nor does it provide any assurance that an investor has the ability to withstand the loss of the investment. The minimum

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[12] Rob Carrick, "Are we placing too much faith in banks' advice" *The Globe and Mail* (November 7, 2012), online: <http://www.theglobeandmail.com/globe-investor/personal-finance/household-finances/are-we-placing-too-much-faith-in-banks-advice/article5077728/>.

amount exemption has also been criticized for requiring investors to invest a large amount in one security, which discourages diversification and may not be an appropriate investment choice for the investor.

Others have taken the position that the current thresholds for both the minimum amount and accredited investor exemptions are too low and should be adjusted for inflation. They argue that the original rationale for setting these thresholds has been watered down by the impact of inflation, potentially allowing a broader group of investors to participate in the exempt market than was originally intended.

Information from OSC "sweeps" – compliance reviews of EMDs

In recent years, we have identified significant compliance issues with some firms registered as dealers in the category of exempt market dealer (**EMDs**). The issues identified include:

- **Suitability.** A number of EMDs continue to sell exempt securities that are not suitable for their clients. Examples include selling high risk securities to low and medium risk investors, selling long term investments to clients with short term investment needs and not collecting sufficient KYC information to assess suitability.

- **Accredited investor qualification.** Certain EMDs have been selling exempt securities to clients who were not accredited investors. In May 2011, the OSC issued OSC Staff Notice 33-735 *Sale of Exempt Securities to Non-Accredited Investors*, that sets out our expectations of issuers and dealers who sell exempt securities to accredited investors.

- **KYP.** A number of EMDs fail to discharge their KYP obligations and are distributing unsuitable investments to clients. EMDs are expected to understand the structure and features of each security they recommend. Securities that are sold under a prospectus exemption may require a more extensive review because of the limited disclosure available.

- **Related parties.** We have identified numerous compliance deficiencies among EMDs that distribute securities of related parties where the same individuals manage both the EMD and the issuer. We found a number of cases of commingling and inappropriate use of investor proceeds by the EMD and/or the related party issuer.

- **Marketing and client disclosure.** The marketing practices of EMDs continue to be an area of concern. Many EMDs are providing materials to investors with information that is outdated or misleading or that contain unsubstantiated claims. In addition, we identified a continued lack of disclosure to investors on conflicts of interest, particularly with EMDs who trade in securities of "related issuers" and "connected issuers".

5. CONSIDERATIONS FOR CROWDFUNDING AND OM PROSPECTUS EXEMPTIONS

5.1 Introduction

Stakeholders have suggested that we consider adopting a prospectus exemption to permit crowdfunding similar to the one found in the JOBS Act as well as a form of OM exemption. They submit that these exemptions would increase capital raising opportunities for issuers, particularly SMEs. They also have indicated that they would provide investors with more access to investment opportunities through the exempt market and thereby "democratize the exempt market".

We view a crowdfunding exemption and an OM exemption along the same continuum. While these exemptions may be subject to different conditions, they both would allow retail investors greater access to the exempt market. We have historically limited investor access to the exempt market due to investor protection concerns.

Both of these exemptions are premised on some form of disclosure being provided to investors on which they could base an investment decision. One of the key differences between the two exemptions is that the crowdfunding exemption contemplates investing through an online funding portal, whereas distributions under the OM exemption historically have been made through more traditional investment channels.

We explore each of these options below.

We note that neither of these options is currently proposed to apply to investment funds. This approach is consistent with the JOBS Act, which excludes investment fund companies from the crowdfunding exemption. We also note that an investment fund that is advised by a registered adviser or a person exempt from registration already qualifies (as a form of institutional investor) as an accredited investor to invest in all types of businesses, including SMEs, on an exempt basis.

5.2 Exploration of crowdfunding

Permitting capital raising by allowing retail investors access to the exempt market would represent a significant change to the current exempt market regulatory regime. In addition, allowing investments to be made through the internet may raise heightened concerns regarding the potential risk of fraud and abuse. As a result, it is important to consider not only the potential benefits of crowdfunding, but also its potential challenges. The benefits and the challenges of crowdfunding for both issuers and investors have been the subject of much debate.

Issuer perspective

Crowdfunding arguably may provide a new source of capital for start-ups and SMEs that either have limited access to capital or have exhausted other available sources of capital. More traditional funding models may not be available to invest in these issuers and having a more diverse investor pool may lead to increased investment in underfunded businesses. Crowdfunding would also be less expensive than raising capital through a public offering.

Crowdfunding, however, may not be appropriate for all issuers. It would likely work best for projects that require relatively small amounts of capital as limits on investment and offering size will restrict how much can be raised through crowdfunding in a 12-month period. It may also not be an effective capital raising mechanism for issuers with less "marketable" projects that are less attractive to the crowd. For example, the crowd may be more interested in funding a film or an art project or supporting a community initiative, than providing an issuer's

working capital needs. As a result, crowdfunding may not be a useful capital raising tool for issuers at all stages of development or in all industry sectors.

There may also be disadvantages associated with raising capital under this model. Crowdfunding may result in an issuer having a large number of potentially unsophisticated shareholders with relatively small interests in the issuer and thereby limit the issuer's future financing options. That may make it more difficult to attract angel investors and venture capital financing at later stages of development. In addition, a large number of shareholders may result in increased compliance costs under corporate law. On the other hand, having a large pool of investors with small interests may be attractive to angel investors or venture capitalist financing as this shareholder profile may facilitate acquiring a control position at a relatively low cost.

An issuer that distributes securities through crowdfunding will also have to provide ongoing disclosure to investors, which will result in costs to the issuer.

Finally, given the potential illiquid nature of the securities and the high business risk, investors may not receive a return in the short term or at all on their investment. That may in turn lead to lawsuits and a decline in investor interest in crowdfunding in the future.

Investor perspective

Crowdfunding may provide investors that do not qualify as accredited investors opportunities to invest in the exempt market. This would democratize the exempt market so that investment opportunities can be accessed by all investors, not just those with a high income or net worth. In particular, it would allow retail investors to participate, to a limited extent, in start-ups and SMEs.

However, there are a number of investor protection concerns associated with the crowdfunding model. The North American Securities Administrators Association (**NASAA**) has described it as one of the top investor threats in its 2012 Enforcement Report.[13] NASAA has also highlighted potential fraud concerns in an investor alert and in its comment letter to the SEC.[14]

The concerns include the risk that crowdfunding will be subject to fraud and abuse. The existing non-equity crowdfunding models have reported a two percent rate of fraud.[15] However, such a low rate of fraud may not apply to the equity crowdfunding models under consideration by securities regulators.

In addition, issuers may not be appropriately accountable to their investors regarding the use of the proceeds raised.

There are also concerns that investors may not fully understand the risks associated with their investment. For example:

- Investors need to understand that they could lose all of their money and it is important that they are able to withstand that loss.
- There will be limited disclosure made to investors at the time of distribution and on an ongoing basis.
- Investors need to understand that crowdfunding offerings will not have undergone the same level of due diligence as that undertaken in connection with a prospectus offering.

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[13] NASAA Enforcement Section, *North American Securities Administrators Association – Enforcement Report* (Washington: NASAA, October 2012), online: <http://www.nasaa.org/wp-content/uploads/2012/10/2012-Enforcement-Report-on-2011-Data.pdf>.

[14] NASAA, News Release, "Laws Provide Con Artists with Personal Economic Growth Plan" (August 21, 2012), online: <http://www.nasaa.org/14679/laws-provide-con-artists-with-personal-economic-growth-plan/>; Comment letter from the North American Securities Administrators Association on SEC Regulatory Initiatives Under the JOBS Act: Title III - Crowdfunding (July 3, 2012), online: <http://www.sec.gov/comments/jobs-title-ii/jobstitleii-40.pdf>.

[15] Quentin Casey, "Equity crowdfunding source of innovation, capital for startups" *Financial Post* (October 22, 2012), online: <http://business.financialpost.com/2012/10/22/equity-crowdfunding-source-of-innovation-capital-for-startups/>.

- It will be difficult for investors to value their investments unless the issuer becomes a reporting issuer in the future.
- Investors need to understand that they may not be able to resell their investment.
- There may be limited rights of recourse with respect to the issuer. Investors also need to understand that they will have little recourse to the funding portal.

Consultation questions

- Would a crowdfunding exemption be useful for issuers, particularly SMEs, in raising capital?
- Have we recognized the potential benefits of this exemption for investors?
- What would motivate an investor to make an investment through crowdfunding?
- Can investor protection concerns associated with crowdfunding be addressed and, if so, how?
- What measures, if any, would be the most effective at reducing the risk of potential abuse and fraud?
- Are there concerns with retail investors making investments that are illiquid with very limited options for monetizing their investments?
- Are there concerns with SMEs that are not reporting issuers having a large number of security holders?
- If we determine that crowdfunding may be appropriate for our market, should we consider introducing it on a trial or limited basis? For example, should we consider introducing it for a particular industry sector, for a limited time period or through a specified portal?

Crowdfunding concept

In order to explore the possibility of a crowdfunding exemption, we have developed a concept idea for this type of exemption solely for discussion purposes. Based on the feedback received from stakeholders and further consideration of investor protection and other regulatory concerns, we may decide not to introduce a crowdfunding exemption in this or any other form.

In developing this concept idea, we considered some elements of the BC and Alberta models of the OM exemption. We understand that BC, Alberta and certain other CSA jurisdictions are currently reviewing their OM exemptions based on market experience. We will consider the results of that review as part of our consultation process.

Our concept idea encompasses many of the investor protection elements of the crowdfunding exemption in the JOBS Act. As noted above, many details of the crowdfunding exemption, including those related to the funding portal, have not yet been resolved by the SEC in rulemaking. The SEC is required to issue rules not later than 270 days following enactment (December 31, 2012). However, we note that there is speculation that there may be delays in meeting this deadline.

There are three parties that would be involved in a distribution under the crowdfunding model: the issuer, the investor and the funding portal. We have discussed the elements of this concept idea relevant to each party below.

Issuer restrictions

There are four primary restrictions imposed on the issuer:

- **Qualification criteria.** In order to rely on this exemption, the issuer, its parent (if applicable) and its principal operating subsidiary (if applicable) must be incorporated or organized under Canadian federal laws or the laws of a Canadian jurisdiction and the issuer must have its head office located in Canada.

- **Limit on offerings.** The issuer cannot raise more than $1.5 million under this exemption in any 12-month period.

- **Limit on security.** Only the following securities can be distributed under this exemption:
  - common shares,
  - non-convertible preferred shares,
  - non-convertible debt securities that are linked only to a fixed or floating interest rate, and
  - securities convertible into common shares or non-convertible preferred shares.

- **Limit on advertising.** The issuer is not permitted to advertise an investment except through the funding portal or on the issuer's website. However, the issuer would be able to use social media to direct investors to the funding portal or the issuer's website.

Investor protection measures

This exemption could be used to sell securities to any investor, regardless of his/her income, net worth or investment sophistication. As a result, there are several conditions that are designed to provide greater investor protection:

- **Investment limits.** The primary investor protection measure is a limit on the amount of money an investor can invest. The investor cannot invest more than $2,500 in a single investment under this exemption. In addition, the investor cannot invest more than $10,000 in total under this exemption in any calendar year. Bright-line tests enhance the clarity and contribute to the simplicity of this important investor protection measure. The investment limits are intended to reduce the investor's exposure by capping the amount of money that the investor is placing at risk.

- **Provision of disclosure at point of sale.** At the time of distribution, the investor must be provided with a streamlined information statement that includes basic information about the offering, the issuer, the funding portal and any other registrant involved. In particular, the information statement must include a description of the principal risks facing the issuer as well as one year of financial statements, if any. If the proceeds of the distribution are proposed to be greater than $500,000 or if the issuer is a reporting issuer, the financial statements must be audited. Otherwise, they can be certified by management.

  The information statement must be certified by the issuer. In addition, the investor must be given statutory rights in the event of a misrepresentation in the information statement.

- **Risk acknowledgement.** Investors must sign a risk acknowledgement in which they confirm that:
  - they fall within the investment limitations,
  - they understand that they may lose their entire investment and they can bear that loss, and
  - they understand the illiquid nature of the investment (in the case of securities of a non-reporting issuer).

- **Two-business day "cooling off" period.** Investors must be provided with a two-business day right of withdrawal from the date of their investment decision in order to provide investors with an opportunity to consider the disclosure provided and reflect on their investment decisions.

- **Provision of ongoing disclosure.** The issuer must provide investors with annual financial statements. The issuer must also keep books and records which contain, at a minimum:
  - information on the securities issued by the issuer as well as the distribution price and date,
  - the names of all security holders and the size of their holdings, and
  - the use of funds raised.

Registration of funding portal

All investments under this exemption must be made through a registered funding portal.

As indicated above, under the JOBS Act, a crowdfunding portal will be required to obtain registration with the SEC as a broker or funding portal and with any SRO.

We expect that funding portals that carry on business in Ontario will also be required to register in an appropriate dealer or adviser category in Ontario, since the activities of the portals (i.e., showcasing investment opportunities to investors and matching issuers with investors) will generally constitute registerable trading or advising activity under the Securities Act. In this regard, we note that clause (e) of the definition of “trade” in section 1(1) of the Securities Act includes “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a sale of a security and that a number of OSC and Court decisions have held that establishing a website that offers securities or information about securities offerings to investors through the internet constitutes an act in furtherance of a trade. Where this type of trading activity is conducted with regularity and for a business purpose, we will generally consider the funding portal to be "in the business" of trading or advising (depending on the particular business model) and therefore subject to the dealer or adviser registration requirement.

The registration requirement is an important investor protection measure necessary to address, among other things, integrity, proficiency and solvency requirements applicable to funding portals and the persons operating them. We also believe that the registration requirement will help address concerns relating to possible conflicts of interest and self-dealing and provide some assurance that funding portals will not be established or used to facilitate fraudulent offerings of securities to investors through the internet.

We recognize that, in light of the limited nature of a funding portal's activities, existing dealer or adviser categories, such as investment dealer, EMD or portfolio manager, may not be well tailored to a particular portal's business model. Accordingly, OSC staff would consider registration either in an existing dealer or adviser category or in a restricted dealer or adviser category. Similarly, we recognize that certain traditional dealer or adviser obligations, such as the obligation to provide client-specific suitability advice about investments that are made through a funding portal, may not be well suited to the portal's business model. We would consider exempting funding portals from specific dealer or adviser registration requirements, after considering the particular features of the portal's proposed business model and our continuing review of crowdfunding developments in other jurisdictions.

A more detailed summary of this concept idea, along with explanatory commentary, is set out in Appendix A.

Implications for registration regime

We note that no registrant, other than the funding portal, will be required to be involved in a crowdfunding distribution.

Consultation questions

Issuer restrictions

- Should there be a limit on the amount of capital that can be raised under this exemption? If so, what should the limit be?

- Should issuers be required to spend the proceeds raised in Canada?

Investor protection measures

- Should there be limits on the amount that an investor can invest under this exemption? If so, what should the limits be?

- What information should be provided to investors at the time of sale as a condition of this exemption? Should that information be certified and by whom?

- Should issuers that rely on this exemption be required to provide ongoing disclosure to investors? If so, what form should this disclosure take?

- Should the issuer be required to provide audited financial statements to investors at the time of the sale or on an ongoing basis? Is the proposed threshold of $500,000 for requiring audited financial statements (in the case of a non-reporting issuer) appropriate?

- Should rights and protections, such as anti-dilution protection, tag-along rights and pre-emptive rights, be provided to shareholders?

Funding portals and other registrants

- Should we allow investments through a funding portal (similar to the funding portals contemplated by the crowdfunding exemption in the JOBS Act)? If so:

    - What obligations should a funding portal have?

    - Should funding portals be exempt from certain registration requirements? If so, what requirements should they be exempted from?

- Should a registrant other than the funding portal be involved in this type of distribution? If so, what category of registrant? Should additional obligations be imposed on the registrant?

5.3 Exploration of an OM prospectus exemption

An OM exemption would permit a distribution of securities based on a limited disclosure document.

In order to explore the possibility of an OM exemption, we have developed a concept idea for this type of exemption solely for discussion purposes. Based on the feedback received from stakeholders and further consideration of investor protection and other regulatory concerns, we may decide not to introduce an OM exemption in this or any other form.

We believe that certain of the terms and conditions applied to the crowdfunding exemption should be applied to the OM exemption. For example:

- The issuer, its parent (if applicable) and its principal operating subsidiary (if applicable) must be incorporated or organized under Canadian federal laws or the laws of a Canadian jurisdiction and the issuer must have their head office located in Canada.
- There would be a $1.5 million limit on the amount of capital that can be raised under this exemption in a 12-month period.
- The exemption could not be used to distribute securities other than common shares, non-convertible preferred shares, non-convertible debt securities that are linked only to a fixed or floating interest rate and securities convertible into common shares or non-convertible preferred shares.
- There would be a limit on a purchaser's investment in a particular distribution of $2,500 under this exemption and a limit of $10,000 in total under this exemption in any calendar year.
- A limited disclosure document that includes basic information about the offering, the issuer and the registrant (if the securities are distributed through a registrant) must be provided to the purchaser.
- The purchaser must sign a risk acknowledgement form and must be provided with a two-business day right of withdrawal. In addition, the purchaser must have statutory rights in the case of a misrepresentation in the disclosure document.

There are two notable differences between the two exemptions. An OM investment would not need to be conducted through a funding portal and there would be no requirement for involvement of a registrant as a condition to reliance on the exemption (unless the issuer or any intermediary is in the business of trading in securities).

This concept idea is a prospectus exemption and is not an exemption from ordinary dealer registration or adviser registration requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). To the extent an issuer or intermediary may be considered to be "in the business" of trading securities or advising with respect to securities, ordinary registration requirements will continue to apply.

This concept idea, if implemented, will have implications for the registration regime since it will expand the class of investors with whom EMDs may deal. Through our compliance reviews, we have recently identified significant compliance issues and concerning trends with certain types of EMDs, particularly EMDs that distribute securities of "related issuers" and "connected issuers". Although these concerns may also apply to other classes of registrants, we have highlighted these concerns in relation to EMDs since the proposed exemption will expand the class of investors with whom an EMD may deal. Broadening the prospectus exemption regime may heighten these current issues with these types of EMDs.

A more detailed summary of this concept idea, along with explanatory commentary, is set out in Appendix A.

Consultation questions

- Should an OM exemption be adopted in Ontario? If so, why?
- Should there be any monetary limits on this exemption? If so, should those limits be in addition to any limits imposed under any crowdfunding exemption?
- Should a purchaser be required to receive investment advice from an adviser in order to rely on this exemption?
- Should there be mandatory disclosure required in an OM? If so, what level of disclosure should be required?
- Should we require registrant involvement as a condition of this exemption? If so, what category of registration should be required?

6. CONSIDERATIONS FOR PROSPECTUS EXEMPTIONS BASED ON SOPHISTICATION AND ADVICE

6.1 Introduction

Stakeholders have suggested that we consider adopting prospectus exemptions that would allow a distribution to an investor where:

- the investor is sophisticated and has knowledge of investments, or
- the investor receives advice about the investment from a registrant.

Both of these options can be viewed as extensions of the current accredited investor exemption. That exemption is based on an investor having one or more of the following:

- a certain level of sophistication,
- the ability to withstand financial loss, and
- the financial resources to obtain expert advice.

These options are similarly based on investor sophistication or expert advice.

We explore each option below to obtain feedback from stakeholders on whether these options would be useful to issuers trying to raise capital and appropriate for investors wishing to invest in the exempt market. This feedback will inform our analysis before we decide whether the OSC should adopt new capital raising prospectus exemptions based on these concepts. We may decide not to introduce exemptions based on these concepts or that other alternatives are preferable.

6.2 Exploration of a prospectus exemption based on investment knowledge

Some stakeholders have submitted that having income or net worth of a certain minimum amount does not assure investment sophistication. Conversely, an investor may have investment sophistication but not meet the prescribed minimum income or net worth bright-line tests. A more appropriate test for investment sophistication is the investor's knowledge of an investment as a result of his/her education or work experience.

Concept idea

The following concept idea is for an exemption which would allow for distributions of securities to "sophisticated" investors who do not qualify as accredited investors.

Premise of the exemption

Given an investor's investment knowledge, the investor does not require the protections afforded by a prospectus offering, including the delivery of a prospectus that is subject to statutory liability for a misrepresentation and the involvement of a registrant.

As noted in Part 2, this concept is found in the UK's regulatory regime.

Investor qualification criteria

To qualify as a "sophisticated" investor, the investor would have to satisfy two conditions:

- **Relevant work experience.** The investor must have worked in the investment industry for at least one year in a position that requires knowledge of securities investments.

- **Relevant educational qualification.** The investor must have earned or received one of the following:
  - a Chartered Financial Analyst designation (**CFA Charter**),
  - a Chartered Investment Manager designation (**CIM designation**), or
  - a Master in Business Administration degree (**MBA**) from an accredited university.

We considered whether other educational qualifications or work experience would satisfy these conditions. For example, we considered whether a person who is a "qualified person" under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* should be able to invest in an issuer in the mining industry. Such a person has familiarity with the industry and would arguably be in a position to assess an issuer's prospects based on the issuer's scientific and technical disclosure. However, there are many challenges associated with creating qualification criteria on an industry-by-industry basis because not all industries have clearly defined qualification standards. As a result, we focused more broadly on general investment knowledge and expertise.

We also considered whether the size of an investor's portfolio and/or the frequency and size of the investor's investment transactions are relevant for measuring sophistication. As noted above, several stakeholders do not agree that net worth is an adequate proxy for investment sophistication. An investor may have a sizeable investment portfolio as a result of an inheritance or as a result of investment decisions previously made on his/her behalf by a registrant. We also do not believe that transaction size and frequency are indicators of investment sophistication and, in fact, such criteria could provide an incentive for an investor to make larger and more frequent investments than would make sense for his/her personal circumstances.

Other conditions

Similar to the accredited investor exemption, there would be no restrictions on:

- the type of security that may be distributed,
- the size of the investor's investment, or
- the size of the offering.

However, additional conditions would apply to provide greater investor protection. They include:

- the investor must be provided with basic information about the offering, such as the information typically found in a term sheet, and
- the investor must sign a risk acknowledgement form.

A more detailed summary of this concept idea, along with explanatory commentary, is set out in Appendix B.

Benefits and challenges of this concept idea

This concept idea may provide greater investment opportunities for "sophisticated investors" and may increase the investor pool for issuers. While we recognize that "sophisticated investors" may not need the protections afforded by a prospectus offering, there are a number of challenges associated with this concept idea.

Potentially small impact

We do not expect that the number of investors who will qualify under this exemption will be significant and we note that there is already a prospectus exemption for distributions to registrants. As a result, the introduction of this type of exemption may not have a significant impact on capital raising by issuers and, in particular, SMEs.

Implementation and compliance issues

This concept idea is principles-based and refers to terms such as "investment industry" and "knowledge of securities investments" which are not readily defined. As a result, assessing whether an investor satisfies the qualification criteria will involve subjective determinations, which may be more challenging than applying

quantitative bright-line tests.

Appropriate framing of qualification criteria

It is challenging to define relevant work experience and educational qualifications in a manner that is neither over-inclusive nor under-inclusive.

Implications for registration regime

This concept idea is a prospectus exemption and is not an exemption from ordinary dealer registration or adviser registration requirements under NI 31-103. To the extent an issuer or intermediary may be considered to be "in the business" of trading securities or advising with respect to securities, ordinary registration requirements will continue to apply.

This concept idea, if implemented, will have implications for the registration regime since it will expand the class of investors with whom EMDs may deal. Through our compliance reviews, we have recently identified significant compliance issues and concerning trends with certain types of EMDs, particularly EMDs that distribute securities of "related issuers" and "connected issuers". Although these concerns may also apply to other classes of registrants, we have highlighted these concerns in relation to EMDs since the concept idea will expand the class of investors with whom an EMD may deal. Broadening the prospectus exemption regime may heighten these current issues with these types of EMDs.

Consultation questions

General questions

- Would this exemption be useful for issuers, particularly SMEs, in raising capital?
- Are there sufficient investor protections built into this exemption?

Questions on the specific terms of the concept idea

- Should we require an investor to satisfy both a relevant work experience condition and an educational qualification condition or would one suffice?
- How should we define the relevant work experience criteria?
- What educational qualifications should be met? Should we broaden the relevant educational qualifications?
- Are there other proxies for sophistication that we should consider?

6.3 Exploration of a prospectus exemption based on registrant advice

We heard from stakeholders that we should consider adopting a prospectus exemption for distributions to an investor where the investor has received appropriate advice from a registrant. The investor would not need to satisfy any sophistication criteria or have an income or net worth of a minimum amount.

Managed account exemption

A prospectus exemption based on registrant involvement already exists under Ontario securities law. A portfolio manager acting on behalf of a "fully managed account" managed by the portfolio manager is an "accredited investor" under clause (q) of the definition of "accredited investor" in section 1.1 of NI 45-106. As a result, the

portfolio manager is able to acquire securities (other than, in Ontario, investment fund securities) of non-reporting issuers on a prospectus-exempt basis on behalf of accounts for retail clients.

The existing exemption is premised on the portfolio manager:

- having satisfied the requisite proficiency requirements required for registration in that category,
- having an ongoing relationship with its client, and
- being in a fiduciary relationship with its client.

Concept idea for broader exemption based on the provision of advice

In order to explore the possibility of an exemption based on registrant advice, we have developed a concept idea for this type of exemption. It contemplates a prospectus exemption for a distribution to an investor where:

- an investment dealer is providing advice to the investor in connection with the distribution,
- the investment dealer has an ongoing relationship with the investor,
- the investment dealer has contractually agreed that it has a fiduciary duty to act in the best interests of the investor, and
- the investment dealer is not providing advice in connection with a distribution of securities of a "related issuer" or a "connected issuer" of the investment dealer. Accordingly, the investment dealer must not be otherwise acting for the issuer or in connection with the distribution.

Only dealing representatives within the investment dealer who are qualified to provide advice can do so. Investment dealers do not include other types of registrants, such as EMDs.

Concerns with extending exemption to EMDs

EMDs would not be permitted to provide advice under this exemption. We have excluded EMDs because there are important differences in terms of the duties owed to a client and the proficiency, solvency and other requirements applicable to an EMD as compared with a portfolio manager managing a fully managed account or an investment dealer who is qualified to provide advice. Based on our experience with recent compliance reviews, we have concerns about the ability and willingness of *some* EMDs to comply with their KYC, KYP and suitability obligations, and other registrant obligations when dealing with accredited investors. These concerns are particularly apparent when the EMD is dealing in products of a “related issuer” or “connected issuer”. We believe these concerns may be exacerbated if EMDs were able to deal with retail clients under this concept idea.

Consultation questions

- Should we consider a new prospectus exemption that is based on advice provided by a registrant? If so:
    - Do you agree with limiting this exemption to a situation where the registrant has a fiduciary duty to act in the best interests of the client?
    - Do you agree that this type of exemption should be limited to certain types of registrants (e.g., investment dealers) or should this exemption be available for another type of registrant (e.g., an EMD)?
    - Should this type of exemption be available for registrants that sell securities of "related issuers" or "connected issuers" (which would raise conflict of interest concerns, as explained in National Instrument 33-105 *Underwriting Conflicts* and Part 13 of NI 31-103)? If so, would this be consistent with the registrant being subject to a fiduciary duty to the client?
    - Would exempting the issuer from a disclosure obligation have implications for a registrant's ability to conduct a meaningful KYP and suitability review?
    - Do you agree that a registrant should be required to have an ongoing relationship with the client?
    - Should there be any restrictions on the type of security that could be purchased? For example, should this exemption be available for purchases of securities of investment funds and/or complex products (including securitized products and derivatives)?
- Should the existing managed account exemption described above be expanded in Ontario to permit purchases of securities of investment funds?

7. NEED FOR ADDITIONAL EXEMPT MARKET DATA

7.1 Need for more data

Data on exempt market activity is necessary to inform decisions about regulatory changes to the exempt market.

Issuers or underwriters that sell securities under certain prospectus exemptions are required to file a report of exempt distribution on Form 45-106F1 *Report of Exempt Distribution* (the **report**) with securities regulators. The report includes some information about the issuer, the offering and the purchasers. The report is our primary source for information regarding activity in the exempt market.

While this information is useful, there are three challenges with the current reporting requirement:

- **Manner of collection.** The reports currently can be filed with the OSC in paper format. In Ontario, we receive thousands of reports each year. In order to properly analyze the data in the reports, we need to manually review and extract the key pieces of information from each form, which is extremely labour-intensive and time-consuming.

- **Information collected.** The information required to be included in the report is limited and is more focused on the details of the distribution, rather than the parties involved in the distribution (being the issuer, the investors and potentially a registrant).

- **Reporting trigger.** Not all prospectus exemptions trigger a reporting requirement. For example, a report is not required for a distribution under the private issuer exemption.

As a result, we do not have a complete picture of activity in the exempt market.

We are considering two means of addressing these issues:
- mandating electronic filing of the reports, and
- amending the reports to require additional information.

7.2 Electronic filing

In June 2012, the OSC launched an electronic version of the report (the **E-form**) which can be filed through the OSC's website. Our goal in providing an E-form is to both make it easier for filers to prepare and file the report and also to facilitate the OSC's ability to review the data contained in the report.

The information required to be included in the report did not change and no new reporting requirements were added at that time.

Issuers and underwriters that are required to prepare and file a report may now choose to prepare and file the report using the E-form, instead of in paper format. While filing the report electronically is voluntary, we anticipate moving towards mandatory electronic filings in the future.

Please see OSC Staff Notice 45-708 *Introduction of Electronic Report of Exempt Distribution on Form 45-106F1* (June 21, 2012) for further information.

Consultation question

- Are there any concerns with mandating use of the E-form?

7.3 Additional information required

Information currently collected

Currently, the report requires the reporting of the following types of information:

- basic information about the issuer, including its name, head office address, reporting issuer status and industry,
- if an underwriter is completing the form, the name and address of the underwriter,
- details of the distribution, including the date, the type of security distributed, the total number of securities distributed, the price of the securities and the prospectus exemptions relied on,
- information regarding commissions and finder's fees, and
- basic information regarding the investors, including their names and addresses and the number and type of securities purchased by them.

The report must be certified by the issuer or underwriter.

Additional information required

As part of this policy review, we have identified additional information that would provide us with a better understanding of issuers, registrants and investors in the exempt market. This information includes: [16]

Party	Additional information sought
Issuer	For non-investment fund issuers: • the issuer's full legal name • the full legal name of the issuer's parent • the industry of the issuer based on a more granular industry categorization than is currently set out in the report • the number of years that the issuer has been in operation • information regarding the issuer's directors and executive officers For investment fund issuers: • key service providers to the fund, including the fund's manager, trustee, portfolio manager, sub-advisor, custodian, registrar and auditor • manager's assets under management • type of fund by strategy • redemptions during the period • key financial information such as size of fund and management expense ratio (**MER**) • performance information

[16] Any proposed changes to the report would be published for comment.

Party	Additional information sought

Registrant	• whether the distribution involves a registrant
	• if a registrant is involved:
	  • the name of registrant
	  • registrant's contact information
	  • information on the category of registrant
	  • the registrant's National Registration Database (**NRD**) number
	  • information about whether the registrant is somehow related or connected to the issuer

Investor	• whether the investor is an individual
	• if the distribution was made to the investor under the accredited investor prospectus exemption, the category of accredited investor in which the investor qualifies
	• where the investor is an individual:
	  • the investor's age range
	  • the investor's work status (i.e. full-time, part-time, retired)

We also would like to obtain more specificity on the type of security distributed and whether an OM was provided to investors as part of the distribution.

In our view, collecting this additional information will enable the OSC to better understand its stakeholders (both issuers and investors) that access the exempt market and better enable the OSC to monitor exempt market activity and identify compliance issues.

Consultation questions

- Are there any concerns with requiring this additional information in the report? Please explain.
- Are there other types of information that we should require in the report?
- Should we require more frequent reporting for investment funds? If not, why not?

8. CONCLUSION

8.1 Implications for broadening access to the exempt market

Introducing new capital raising prospectus exemptions may provide issuers, particularly SMEs, with greater access to capital and may provide investors with greater investment opportunities. However, greater access does have significant implications for the regulation of the exempt market.

If we allow more issuers and registrants to actively participate in the exempt market, we will need to adjust our regulatory oversight of this market. In particular, if we introduce either a crowdfunding or OM exemption, we would need to consider developing new programs for the review of the disclosure provided to investors and for the oversight of funding portals and other registrants involved in these distributions.

Based on current research, there are concerns regarding the level of financial literacy of retail investors. These concerns will be heightened if retail investors are able to make investments in the exempt market without the benefit of expert advice.

The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets. Any consideration of increasing access to capital raising in the exempt market should be consistent with the aim of aligning the interests of issuers and investors. As noted above, this paper is the initial step in soliciting comments from all interested stakeholders on these important issues. The OSC does not intend to make any decisions regarding new capital raising prospectus exemptions without:

- broad consultation with all interested stakeholders,
- obtaining the results of our further investor research, and
- consulting with the other members of the CSA on their review of their OM exemption.

Consultation question

- Are there prospectus exemptions, in addition to the concept ideas discussed in this paper, that we should consider? Please elaborate.

8.2 Need for investor research to support review

Information about the investment knowledge, objectives and behaviour of individual investors is difficult to obtain and the feedback that we have received during our consultations to date has principally been from the investment industry. In order to ensure that any new prospectus exemptions introduced by the OSC include appropriate investor protections, we need to gain insight into individual investors' approaches when investing in start-ups and SMEs.

Concurrent with this consultation, we are conducting investor research to help us better understand:

- investors' desire to invest in start-ups and SMEs, including risk appetite and size of investment,
- investors' perceptions of the risks associated with investing in the exempt market,
- the specific information needs of investors investing in start-ups and SMEs,

- the experiences of those investors that do or have considered investing in securities in the exempt market, and
- the role of professional advisors in investors' investment decision-making process.

We are seeking investor feedback on the following general topics:

- **Access to investment opportunities.** We would like to better understand the level of individual investor interest in investing in the exempt market, including in start-ups and SMEs as an investment class. We are interested to learn if individual investors want access to investment opportunities in the exempt market, and if so, what investor protections they believe that they need. In particular, if new prospectus exemptions provide individual investors with more opportunities to invest in start-ups and SMEs, we want to understand the level of disclosure that individual investors need, the level of investment they are willing to make and who they would consult in making these decisions.

- **Information about investment decision making by individual investors.** We would like to better understand the current information relied on by individual investors. In particular, what information do investors want before making an investment decision in start-ups or SMEs? We also want to understand the reliance by individual investors on advisors in the decision making process.

- **Knowledge of investment products – investor sophistication.** We are interested in gaining a better understanding of individual investors' level of sophistication and knowledge.

- **Past experience with investments in the exempt market.** We are interested in learning more about the direct investing experience of individual investors who have invested in the exempt market. For example, we would like to know more about investors' experiences and whether they feel they understood the investments they made. We would also like to determine if investors understood the risks associated with the investment.

9. HOW TO PROVIDE FEEDBACK

9.1 Written comments

You must submit your comments in writing by **February 12, 2013**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address and send you comments to the address below.

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: jstevenson@osc.gov.on.ca

Please note that all comments received during the comment period will be made publicly available. We will post all comments to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

9.2 Questions

If you have any questions, please contact:

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OSC EXEMPT MARKET REVIEW

APPENDICES TO OSC STAFF CONSULTATION PAPER 45-710
CONSIDERATIONS FOR NEW CAPITAL RAISING PROSPECTUS EXEMPTIONS

APPENDIX A – CONCEPT IDEAS FOR A CROWDFUNDING AND OM PROSPECTUS EXEMPTION

1. Crowdfunding prospectus exemption

The key elements of this concept idea, along with explanatory commentary, are set out in the table below. This concept idea is being put forward solely for discussion purposes. We are requesting comments on each of the elements of this concept idea.

Key elements of the crowdfunding concept idea	Explanatory notes
Type of issuer • The issuer of the security, its parent (if applicable) and its principal operating subsidiary (if applicable) must be incorporated or organized under Canadian federal laws or the legislation of a Canadian jurisdiction, and the issuer must have its head office located in Canada. • This exemption is not available for distributions of securities of investment funds.	• We have proposed that the issuer of the security, its parent (if applicable) and its principal operating subsidiary (if applicable) must be incorporated or organized under Canadian federal laws or the legislation of a Canadian jurisdiction and have its head office located in Canada because one of our objectives is to facilitate capital raising for SMEs in Canada. We note that the JOBS Act has similarly limited the availability of the crowdfunding exemption to domestic US issuers. It remains unclear whether the crowdfunding exemption will be available to US subsidiaries of Canadian issuers or issuers domiciled in other foreign jurisdictions. However, we note that the accredited investor exemption, the minimum amount exemption and the OM exemption in NI 45-106 are not currently limited to distributions of securities of issuers based in Canada. • We have suggested making this exemption available for distributions of both reporting and non-reporting issuers. That is consistent with the accredited investor exemption and the OM exemption available in other Canadian jurisdictions. We recognize that some SMEs are reporting issuers. • The focus of this paper is to consider possible new prospectus exemptions that could facilitate capital raising for business enterprises. As a result, we have suggested limiting the use of this exemption to distributions of securities of issuers other than investment funds. This approach is consistent with the JOBS Act, which excludes investment fund companies from using the crowdfunding exemption. We note that an investment fund that is advised by a registered adviser or a person exempt from registration already qualifies (as a form of institutional investor) as an accredited investor to invest in all types of businesses, including SMEs, on an exempt basis.

Key elements of the crowdfunding concept idea	Explanatory notes
Type of security • The only securities that can be distributed under this exemption are: o common shares o non-convertible preferred shares o non-convertible debt securities that are linked only to a fixed or floating interest rate o securities convertible into common shares or non-convertible preferred shares	• There are currently no restrictions on the type of security that can be sold under the accredited investor exemption or the OM exemption available in other Canadian jurisdictions. There similarly do not appear to be any restrictions on the type of security that can be sold under the crowdfunding exemption in the JOBS Act. • Only four classes of security can be issued under this exemption. Given that this exemption is intended to facilitate capital raising by SMEs, we do not think it is necessary or appropriate to allow certain complex products, such as derivatives and securitized products, to be distributed under this exemption. • For the reasons discussed above, we have carved out securities of investment funds.
Type of purchaser • There are no limitations on the purchaser of the security. However, the purchaser is subject to investment limitations, as discussed below.	• We considered the approach taken in the JOBS Act and the OM exemption available in other Canadian jurisdictions regarding the type of purchaser. <u>US approach</u> • There are no restrictions on the purchaser under the crowdfunding exemption in the JOBS Act. <u>BC approach</u> • There are no restrictions on the purchaser under the BC model of the OM exemption. <u>Alberta approach</u> • Under the Alberta model of the OM exemption, the purchaser must be an "eligible investor" or the acquisition cost to the purchaser cannot exceed $10,000. We agree with the concept of an investment limit. However, we question whether the "eligible investor" criteria provides meaningful investor protection. • Consistent with these approaches, we are suggesting that any investor can buy securities under this exemption. The purchaser, however, would be subject to investment limits (discussed below).

Key elements of the crowdfunding concept idea	Explanatory notes
Type of seller • This exemption is limited to distributions by an issuer in securities of its own issue.	• This approach is substantially consistent with the OM exemption available in other Canadian jurisdictions, which is limited to distributions by issuers of securities of their own issue. • Consistent with the OM exemption, we have suggested not allowing selling security holders to use this exemption. This exemption is intended to facilitate capital raising and not necessarily the resale of securities. We do not believe selling security holders are necessarily as well positioned to provide the disclosure and other investor protection measures discussed below.
Size of investment • A purchaser's investment in securities of a particular issuer cannot exceed $2,500. • In addition, a purchaser's investment under this exemption during a calendar year cannot exceed $10,000.	• We believe investment limits are an important element of investor protection to limit an investor's exposure. • An investment limit presents difficulties with compliance. A centralized system where funding portals are required to confirm the size of an investor's investment in its own and other registered portals has been suggested. • Another alternative proposal would be to require the investor to self-certify that he/she is within the investment limits and has not exceeded the annual threshold. <u>US approach</u> • Under the crowdfunding exemption in the JOBS Act, the aggregate amount of securities sold to any investor within the previous 12-month period in reliance on the exemption cannot exceed: o the greater of US$2,000 or 5% of the investor's annual income or net worth if either the annual income or the net worth of the investor is less than US$100,000, and o 10% of the investor's annual income or net worth, not to exceed a maximum aggregate amount sold of US$100,000, if either the annual income or net worth of the investor is equal to or more than US$100,000. • We are concerned that investors may not wish to share their tax returns with issuers or registrants to establish that they are investing within the prescribed limits. As a result, a monetary cap may be easier to administer than an approach that requires calculations of an investor's net income or net worth.

Key elements of the crowdfunding concept idea	Explanatory notes
	BC approach • There are no limits on the size of the investment under the BC model of the OM exemption. We have concerns that this approach could result in too much of an investor's assets being at risk. Alberta approach • As noted above, under the Alberta model of the OM exemption, a purchaser can purchase securities under the exemption if he/she is either an eligible investor or the acquisition cost to the purchaser does not exceed $10,000. • A monetary cap of $10,000 may be easier to apply than a limit based on a percentage of net income or net worth.
Size of offerings • An issuer cannot raise more than $1.5 million in a 12-month period under this exemption.	BC and Alberta approach • The OM exemption in other Canadian jurisdictions does not impose a limit on the amount of capital that can be raised under the exemption by an issuer. US approach • Under the crowdfunding exemption in the JOBS Act, an issuer can raise up to $1 million in a 12-month period. Some commenters have expressed concern that the threshold is too low for the exemption to be a useful capital raising tool. Some commenters have suggested that a limit of $5 to $10 million may be more appropriate. • We acknowledge that not all SMEs' capital requirements are the same. Issuers in different industry sectors may require different capital needs at different stages of growth. In looking at alternatives, we considered the following: o The prospectuses of 298 SMEs that raised capital between 2002 and 2006 were examined. The median offering size was $6 million and nearly two-thirds of the offerings were for less than $10 million. o The OSC's former closely-held issuer exemption provided that an issuer could only raise $3 million under that exemption in total (not just in a 12-month period). • We have suggested a limit of $1.5 million in a 12-month period.

Key elements of the crowdfunding concept idea	Explanatory notes
Disclosure provided to purchaser at the time of distribution • A purchaser must be provided with an information statement at the time of the distribution. • The information statement must include "financing facts", "issuer facts" and "registrant facts". <u>"Financing facts"</u> • "Financing facts" (i.e. basic information about the offering) include: o the type/nature of the securities being offered o the price of the securities o the rights attached to the securities (including the impact on those rights if the issuer's operations and/or assets are located outside of Canada) o whether there is a minimum and maximum subscription, and if so, the deadline to reach the minimum subscription o the use of the proceeds from the offering (including whether any directors, officers, promoters or related parties of the issuer will receive any of the proceeds) o resale restrictions o statutory rights in the event of a misrepresentation and a right of withdrawal (please see discussion below) <u>"Issuer facts"</u> • "Issuer facts" (i.e. basic information about the issuer) include: o a description of the issuer's business or proposed business, and its anticipated business plan o one year of annual financial statements, if any o a description of the directors, officers and control persons of the issuer o limited executive compensation disclosure o principal risks of the issuer's business	<u>General comments on disclosure</u> • We believe that purchasers and any registrants advising them require a minimum level of disclosure on which to base an investment decision or recommendation. • Both the BC and Alberta models of the OM exemption require disclosure that is similar to the type of disclosure found in a long-form prospectus. We have heard two concerns with this approach: o Stakeholders have advised us that an offering memorandum prepared in accordance with the form requirements in NI 45-106 contains an overwhelming amount of information that is neither useful nor read by investors. o We have been advised that the OM exemption is not particularly useful to SMEs. The speculated reason is the cost associated with preparing an offering memorandum (and the cost of obtaining an audit of the financial statements). • In light of these concerns, we have suggested more streamlined disclosure in the information statement. The key items of disclosure are substantially derived from: o the requirements for the summary of a long-form prospectus, and o the disclosure requirements set out in the crowdfunding exemption in the JOBS Act (which remain subject to SEC rulemaking). <u>Financial statement disclosure</u> • This concept idea requires one year of audited annual financial statements of the issuer if the issuer has been in business. • The crowdfunding exemption in the JOBS Act has adopted a scaled approach to financial disclosure. Under that exemption, if the aggregate offering proceeds within a 12-month period are: o $100,000 or less: the issuer must file income tax statements for the most recently completed year and have its financial statements certified by the principal executive officer to be true and complete in all material respects o more than $100,000 but not more than $500,000: the issuer must file financial statements reviewed by an independent public accountant, using professional standards and procedures for such review or standards and procedures established by the SEC o more than $500,000: the issuer must file audited

Key elements of the crowdfunding concept idea	Explanatory notes
"Registrant facts" • "Registrant facts" (i.e. basic information about the registrant) include (where applicable): o the name of the funding portal o the name of any other registrant involved and the relationship between that registrant and the issuer, if any Certification • We believe that the issuer should take responsibility for the disclosure provided. Management of the issuer should certify the disclosure. Marketing • No other marketing materials may be provided. • In addition, no advertising by an issuer would be permitted except through the funding portal or the issuer's website. The issuer would be able to use social media to direct investors to the funding portal or issuer's website.	financial statements • We are suggesting a similarly scaled approach: o If the proceeds of the offering are proposed to be at least $500,000 or if the issuer is a reporting issuer, then audited annual financial statements must be included in the information statement. o If the proceeds of the offering are proposed to be less than $500,000 and if the issuer is not a reporting issuer, then only management-certified financial statements need to be included. • We recognize that the cost of an audit could be an impediment for start-ups and SMEs using this exemption. Risk factor disclosure • The summary of a long-form prospectus requires disclosure of risk factors. Similarly, the crowdfunding exemption in the JOBS Act contemplates some level of risk factor disclosure. We are similarly suggesting that the information statement include a discussion of the *principal* risks facing the issuer's business. • We have heard from stakeholders that risk factor disclosure is often not helpful as the issuer and its advisors include a lengthy list of risk factors, many of which are boilerplate. Some stakeholders have argued that having those risk factors protects the issuer from liability. • We have suggested that all purchasers sign a risk acknowledgement form. Please see the discussion below. Marketing • General solicitation and advertising would be prohibited other through the issuer's or the funding portal's website.
Ongoing information available to investors Ongoing continuous disclosure • The issuer must provide its security holders with annual financial statements within 120 days from its fiscal year end. Books and records • The issuer must maintain books and records that are available for inspection by purchasers and OSC staff.	Ongoing continuous disclosure • As noted above, this exemption contemplates issuers providing one year of annual financial statements to potential investors, if any. • We believe that issuers who raise money under this exemption should provide *ongoing* financial statement disclosure to investors. For start-up issuers, in particular, the financial statements provided at the time of an offering may be of little value to investors if the issuer is in an early stage of development with little in the way of

Key elements of the crowdfunding concept idea	Explanatory notes
• The books and records must contain, at a minimum: o the securities issued by the issuer as well as the distribution price and date o the names of all security holders and the size of their holdings o the use of funds raised under this exemption	assets or earnings. In addition, requiring annual financial statements may reduce the risk of fraud. • Under the terms of the crowdfunding exemption in the JOBS Act, issuers will be required to file with the SEC and provide to investors on an annual basis reports of the issuer's results of operations and financial statements, with the details to be determined by SEC rulemaking. • We note that it would be a novel approach in Ontario to require an issuer to provide ongoing continuous disclosure in the exempt market. <u>Books and records</u> • We also believe requiring the issuer to maintain books and records provides another measure of investor protection. This would enable security holders to assess whether the issuer has used the proceeds from the offering in the manner indicated in the information statement.
Risk acknowledgement from purchaser • A purchaser must sign a stand-alone risk acknowledgement form in which the purchaser confirms that he/she: o falls within the investment limitations o understands the risk of loss of the entire investment o can bear the loss of the entire investment o understands the illiquid nature of the investment	• We believe that requiring the purchaser to sign a risk acknowledgement form provides another element of investor protection. It puts the investor on notice that he/she may lose all of his/her investment. • The OM exemption in other Canadian jurisdictions and the family, friends and business associates exemption in Saskatchewan require a risk acknowledgement form. Similarly, the crowdfunding exemption in the JOBS Act contemplates a form of risk acknowledgement.

Key elements of the crowdfunding concept idea	Explanatory notes
Registrant involvement • Distributions must be made through a registered funding portal. • The funding portal may be registered in an existing dealer or adviser category or in a restricted dealer or adviser category. • The funding portal must play a "gatekeeper" role and take reasonable measures to reduce the risk of fraud. That would include obtaining background and securities enforcement regulatory history checks on the issuer and each officer, director and significant shareholder of the issuer.	• Use of an online funding portal is an important element of this exemption and is found in the crowdfunding exemption in the JOBS Act. • Under the JOBS Act, intermediaries involved in a crowdfunding transaction must be registered as a broker or funding portal under the US *Securities Exchange Act of 1934* and registered with a SRO. • A "funding portal" is defined in the JOBS Act to mean any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to the exemption that meets certain conditions. • The funding portal cannot: o offer investment advice or recommendations o solicit purchases, sales or offers to buy securities offered or displayed on its website or portal o compensate employees and others for such solicitation or based on the sale of securities • The JOBS Act requires a person acting as a broker or funding portal intermediary to take certain actions, including to: o register with the SEC as a broker or funding portal and register with any applicable SRO o provide such disclosures, including those related to risks and other investor education materials, as the SEC by rule will determine appropriate, and ensure that investors review such disclosures, affirm risk of loss and answer various questions o take such measures to reduce risk of fraud, as will be established by the SEC, including background and regulatory checks on directors, officers and significant shareholders of issuers o make available to the SEC and to potential investors any information provided by the issuer to investors and intermediaries, not later than 21 days prior to the first day on which securities are sold to any investor o ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount and allow all investors to cancel their commitments to invest as determined by SEC rulemaking o make such efforts as the SEC determines appropriate by rule to ensure that no investor in a 12-month period has purchased securities offered pursuant to this exemption that, in the aggregate,

Key elements of the crowdfunding concept idea	Explanatory notes
	from all issuers, exceed the investment limits set forth above o take steps to protect privacy of information o not compensate promoters, finders, or lead generators for providing personal identifying information of personal investors o prohibit insiders from having any financial interest in an issuer using that intermediary's services o meet any other requirements that the SEC may prescribe • Many details are not yet clear as they will be dealt with by the SEC in rulemaking. • We believe that requiring the funding portal to undertake a similar role would provide an important element of investor protection. We note that this may have the effect of enabling the funding portal to control what investment opportunities are available to investors and what capital raising opportunities are available to issuers. Under the JOBS Act, the funding portal is essentially acting as an "exchange" and its "listing process" involves background checks.
Other conditions <u>Rights if misrepresentation</u> • This exemption would specify that the information statement contemplated falls within the definition of offering memorandum set out in the Securities Act. • As a result, the statutory rights in the event of misrepresentation in the offering memorandum set out in section 130.1 of the Securities Act would apply. <u>Withdrawal right</u> • The purchaser must be provided with a right of withdrawal that is to be exercised within two-business days of the distribution.	<u>Rights if misrepresentation</u> • We believe the purchaser's rights contemplated by section 130.1 of the Securities Act provide an important element of investor protection. <u>Withdrawal right</u> • We believe a right of withdrawal provides another element of investor protection. It allows the purchaser a "cooling off" period to consider the disclosure provided and reflect on the investment decision. • This type of consumer protection is available in other legislation. For example, an individual who purchases a condo in pre-construction is provided with a 10-day rescission period where the individual can withdraw the offer to purchase. • We have suggested a two-business day period in which to exercise the right in order to be consistent with the right of withdrawal period applicable in prospectus offerings.

Key elements of the crowdfunding concept idea	Explanatory notes
Reporting requirement • A distribution by an issuer or underwriter under this exemption triggers a requirement to file a report of exempt distribution.	• Requiring a report of exempt distribution would be consistent with the approach taken for other capital raising exemptions.
Resale restrictions • Securities distributed under this exemption are subject to a restricted resale period.	• This resale treatment is consistent with the resale treatment of securities distributed under other capital raising exemptions. • The resale restriction is indefinite where the issuer is not a reporting issuer.

2. OM prospectus exemption

The key elements of this concept idea, along with explanatory commentary, are set out in the table below. This concept idea is being put forward solely for discussion purposes. We are requesting comments on each of the elements of this concept idea.

Key elements of the OM concept idea	Explanatory notes
Type of issuer • The issuer of the security, its parent (if applicable) and its principal operating subsidiary (if applicable) must be incorporated or organized under Canadian federal laws or the legislation of a Canadian jurisdiction, and the issuer must have its head office located in Canada. • This exemption is not available for distributions of securities of investment funds.	• We have proposed that the issuer of the security, its parent and principal operating subsidiary must be incorporated or organized under Canadian federal laws or the legislation of a Canadian jurisdiction and have its head office located in Canada because one of our objectives is to facilitate capital raising for SMEs in Canada. However, we note that the accredited investor exemption, the minimum amount exemption and the OM exemption in NI 45-106 are not currently limited to distributions of securities of issuers based in Canada. • We have suggested making this exemption available for distributions of both reporting and non-reporting issuers. That is consistent with the accredited investor exemption available in other Canadian jurisdictions. We recognize that some SMEs are reporting issuers. • The focus of this paper is to consider possible new prospectus exemptions that could facilitate capital raising for business enterprises. As a result, we have currently suggested limiting the use of this exemption to distributions of securities of issuers other than investment funds. We note that an investment fund that is advised by a registered adviser or a person exempt from registration already qualifies (as a form of institutional investor) as an accredited investor to invest in all types of businesses, including SMEs, on an exempt basis.

Type of security
• The only securities that can be distributed under this exemption are:
  ○ common shares
  ○ non-convertible preferred shares
  ○ non-convertible debt securities that are linked only to a fixed or floating interest rate
  ○ securities convertible into common shares or non-convertible preferred shares
	• There are currently no restrictions on the type of security that can be sold under the accredited investor exemption or the OM exemption available in other Canadian jurisdictions.
	
	• Only four classes of security can be issued under this exemption. Given that this exemption is intended to facilitate capital raising by SMEs, we do not think it is necessary or appropriate to allow certain complex products, such as derivatives and securitized products, to be distributed under this exemption.
	
	• For the reasons discussed above, we have carved out securities of investment funds.

Key elements of the OM concept idea	Explanatory notes
Type of purchaser • There are no limitations on the purchaser of the security. However, the purchaser is subject to investment limitations, as discussed below.	• We considered the approach taken in the JOBS Act and the OM exemption available in other Canadian jurisdictions regarding the type of purchaser. <u>US approach</u> • There are no restrictions on the purchaser under the crowdfunding exemption in the JOBS Act. <u>BC approach</u> • There are no restrictions on the purchaser under the BC model of the OM exemption. <u>Alberta approach</u> • Under the Alberta model of the OM exemption, the purchaser must be an "eligible investor" or the acquisition cost to the purchaser cannot exceed $10,000. We agree with the concept of an investment limit. However, we question whether the "eligible investor" criteria provides meaningful investor protection. • Consistent with these approaches, we are suggesting that any investor can buy securities under this exemption. The purchaser, however, would be subject to investment limits (discussed below).
Type of seller • This exemption is limited to distributions by an issuer in securities of its own issue.	• This approach is substantially consistent with the OM exemption available in other Canadian jurisdictions, which is limited to distributions by issuers of securities of their own issue. • Consistent with the OM exemption, we have suggested not allowing selling security holders to use this exemption. This exemption is intended to facilitate capital raising and not necessarily the resale of securities. In addition, we do not believe selling security holders are necessarily as well positioned to provide the disclosure and other investor protection measures discussed below.

Key elements of the OM concept idea	Explanatory notes
Size of investment • A purchaser's investment in securities of a particular issuer cannot exceed $2,500. • In addition, a purchaser's investment under this exemption during a calendar year cannot exceed $10,000.	• We believe investment limits are an important element of investor protection to limit an investor's exposure. • We recognize that an investment limit presents difficulties with compliance. • Another alternative proposal would be to require the investor to self-certify that he/she is within the investment limits and has not exceeded the annual threshold. <u>US approach</u> • Under the crowdfunding exemption in the JOBS Act, the aggregate amount of securities sold to any investor within the previous 12-month period in reliance on the exemption cannot exceed: o the greater of US$2,000 or 5% of the investor's annual income or net worth if either the annual income or the net worth of the investor is less than US$100,000, and o 10% of the investor's annual income or net worth, not to exceed a maximum aggregate amount sold of US$100,000, if either the annual income or net worth of the investor is equal to or more than US$100,000. • We are concerned that investors may not wish to share their tax returns with issuers or registrants to establish that they are investing within the prescribed limits. As a result, a monetary cap may be easier to administer than an approach that requires calculations of an investor's net income or net worth. <u>BC approach</u> • There are no limits on the size of the investment under the BC model of the OM exemption. We have concerns that this approach could result in too much of an investor's assets being at risk. <u>Alberta approach</u> • As noted above, under the Alberta model of the OM exemption, a purchaser can purchase securities under the exemption if he/she is either an eligible investor or the acquisition cost to the purchaser does not exceed $10,000. • A monetary cap of $10,000 may be easier to implement than a limit based on a percentage of net income or net worth.

Key elements of the OM concept idea	Explanatory notes
Size of offerings • An issuer cannot raise more than $1.5 million in a 12-month period under this exemption.	<u>BC and Alberta approach</u> • The OM exemption in other Canadian jurisdictions does not impose a limit on the amount of capital that can be raised under the exemption by an issuer. <u>US approach</u> • Under the crowdfunding exemption in the JOBS Act, an issuer can raise up to $1 million in a 12-month period. Some commenters have expressed concern that the threshold is too low for the exemption to be a useful capital raising tool. Some commenters have suggested that a limit of $5 to $10 million may be more appropriate. • We acknowledge that not all SMEs' capital requirements are the same. Issuers in different industry sectors may require different capital needs at different stages of growth. In looking at alternatives, we considered the following: o The prospectuses of 298 SMEs that raised capital between 2002 and 2006 were examined. The median offering size was $6 million and nearly two-thirds of the offerings were for less than $10 million. o The OSC's former closely-held issuer exemption provided that an issuer could only raise $3 million under that exemption in total (not just in a 12-month period). • We have suggested a limit of $1.5 million in a 12-month period.
Disclosure provided to purchaser at the time of distribution • A purchaser must be provided with an information statement at the time of the distribution. • The information statement must include "financing facts", "issuer facts" and "registrant facts". <u>"Financing facts"</u> • "Financing facts" (i.e. basic information about the offering) include: o the type/nature of the securities being offered o the price of the securities o the rights attached to the securities (including the impact on those rights if the issuer's operations and/or assets	<u>General comments on disclosure</u> • We believe that purchasers and the registrants advising them require a minimum level of disclosure on which to base an investment decision or recommendation. • Both the BC and Alberta models of the OM exemption require disclosure that is similar to the type of disclosure found in a long-form prospectus. We have heard two concerns with this approach: o Stakeholders have advised us that an offering memorandum prepared in accordance with the form requirements in NI 45-106 contains an overwhelming amount of information that is neither useful nor read by investors. o We have been advised that the OM exemption is not particularly useful to SMEs. The speculated reason is the cost associated with preparing an offering memorandum (and the cost of obtaining an audit of the financial statements).

Key elements of the OM concept idea	Explanatory notes
are located outside of Canada) o whether there is a minimum and maximum subscription, and if so, the deadline to reach the minimum subscription o the use of the proceeds from the offering (including whether any directors, officers, promoters or related parties of the issuer will receive any of the proceeds) o resale restrictions o statutory rights in the event of a misrepresentation and a right of withdrawal (please see discussion below) <u>"Issuer facts"</u> • "Issuer facts" (i.e. basic information about the issuer) include: o a description of the issuer's business or proposed business, and its anticipated business plan o one year of annual financial statements, if any o a description of the directors, officers and control persons of the issuer o limited executive compensation disclosure o principal risks of the issuer's business <u>"Registrant facts"</u> • "Registrant facts" (i.e. basic information about any registrant including the name of that registrant and the relationship between that registrant and the issuer, if any). <u>Certification</u> • We believe that the issuer should take responsibility for the disclosure provided. Management of the issuer should certify the disclosure. <u>Marketing</u> • No other marketing materials may be provided. • In addition, no advertising by an issuer would be permitted except through the issuer's website.	• In light of these concerns, we have suggested more streamlined disclosure in the information statement. The key items of disclosure are substantially derived from: o the requirements for the summary of a long-form prospectus, and o the disclosure requirements set out in the crowdfunding exemption in the JOBS Act (which remain subject to SEC rulemaking). <u>Financial statement disclosure</u> • This concept idea requires one year of audited annual financial statements of the issuer if the issuer has been in business. • The crowdfunding exemption in the JOBS Act has adopted a scaled approach to financial disclosure. Under the crowdfunding exemption, if the aggregate offering proceeds within a 12-month period are: o $100,000 or less: the issuer must file income tax statements for the most recently completed year and have its financial statements certified by the principal executive officer to be true and complete in all material respects o more than $100,000 but not more than $500,000: the issuer must file financial statements reviewed by an independent public accountant, using professional standards and procedures for such review or standards and procedures established by the SEC o more than $500,000: the issuer must file audited financial statements • We are suggesting a similarly scaled approach: o If the proceeds of the offering are proposed to be at least $500,000 or if the issuer is a reporting issuer, then audited annual financial statements must be included in the information statement. o If the proceeds of the offering are proposed to be less than $500,000 and if the issuer is not a reporting issuer, then only management-certified financial statements need to be included. • We recognize that the cost of an audit could be an impediment for start-ups and SMEs using this exemption. <u>Risk factor disclosure</u> • The summary of a long-form prospectus requires disclosure of risk factors. Similarly, the crowdfunding

Key elements of the OM concept idea	Explanatory notes
	exemption in the JOBS Act contemplates some level of risk factor disclosure. We are similarly suggesting that the information statement include a discussion of the *principal* risks facing the issuer's business. • We have heard from stakeholders that risk factor disclosure is often not helpful as the issuer and its advisors include a lengthy list of risk factors, some of which are boilerplate. Some stakeholders have argued that having those risk factors protects the issuer from liability. • We have suggested that all purchasers sign a risk acknowledgement form. Please see the discussion below. <u>Marketing</u> • General solicitation and advertising would be prohibited other than through the issuer's website.
Ongoing information available to investors <u>Ongoing continuous disclosure</u> • The issuer must provide its security holders with annual financial statements within 120 days from its fiscal year end. <u>Books and records</u> • The issuer must maintain books and records that are available for inspection by purchasers and OSC staff. • The books and records must contain, at a minimum: o the securities issued by the issuer as well as the distribution price and date o the names of all security holders and the size of their holdings o the use of funds raised under this exemption	<u>Ongoing continuous disclosure</u> • As noted above, this exemption contemplates issuers providing one year of annual financial statements to potential investors. • We believe that issuers who raise money under this exemption should provide *ongoing* financial statement disclosure to investors. For start-up issuers, in particular, the financial statements provided at the time of an offering may be of little value to investors if the issuer is in an early stage of development with little in the way of assets or earnings. In addition, requiring annual financial statements may reduce the risk of fraud. • Under the terms of the crowdfunding exemption in the JOBS Act, issuers will be required to file with the SEC and provide to investors on an annual basis reports of the issuer's results of operations and financial statements, with the details to be determined by SEC rulemaking. • We note that it would be a novel approach in Ontario to require an issuer to provide ongoing continuous disclosure in the exempt market. <u>Books and records</u> • We also believe requiring the issuer to maintain books and records provides another measure of investor protection. This would enable security holders to assess whether the issuer has used the proceeds from the

Key elements of the OM concept idea	Explanatory notes
	offering in the manner indicated in the information statement.
Risk acknowledgement from purchaser • A purchaser must sign a stand-alone risk acknowledgement form in which the purchaser confirms that he/she: o falls within the investment limitations o understands the risk of loss of the entire investment o can bear the loss of the entire investment o understands the illiquid nature of the investment	• We believe that requiring the purchaser to sign a risk acknowledgement form provides another element of investor protection. It puts the investor on notice that he/she may lose all of his/her investment. • The OM exemption in other Canadian jurisdictions and the family, friends and business associates exemption in Saskatchewan require a risk acknowledgement form. Similarly, the crowdfunding exemption in the JOBS Act contemplates a form of risk acknowledgement.
Registrant involvement • Registrant involvement in the distribution would not be required as a condition to the prospectus exemption. • To the extent an issuer or intermediary may be considered to be "in the business" of trading securities or advising with respect to securities, ordinary registration requirements will continue to apply.	• The OM exemption in the other Canadian jurisdictions does not require registrant involvement. • We believe registrant involvement can provide an important element of investor protection as the registrant is subject to KYC, KYP and suitability assessment obligations. This may be particularly important given that the purchasers may not be sophisticated investors. • However, we note that involvement of a registrant could prevent many issuers from accessing the exempt market through this exemption because registrants may not be prepared to participate in smaller distributions. Registrant involvement would also increase the costs of the distribution for issuers.
Other conditions <u>Rights if misrepresentation</u> • This exemption would specify that the information statement contemplated falls within the definition of offering memorandum set out in the Securities Act. • As a result, the statutory rights in the event of misrepresentation in the offering memorandum set out in section 130.1 of the Securities Act would apply. <u>Withdrawal right</u> • The purchaser must be provided with a right of withdrawal that is to be exercised within two-business days of the distribution.	<u>Rights if misrepresentation</u> • We believe the purchaser's rights contemplated by section 130.1 of the Securities Act provide an important element of investor protection. <u>Withdrawal right</u> • We believe a right of withdrawal provides another element of investor protection. It allows the purchaser a "cooling off" period to consider the disclosure provided and reflect on the investment decision. • This type of consumer protection is available in other legislation. For example, an individual who purchases a condo in pre-construction is provided with a 10-day rescission period where the individual can withdraw the offer to purchase. • We have suggested a two-business day period in which to exercise the right in order to be consistent with the

Key elements of the OM concept idea	Explanatory notes
	right of withdrawal period applicable in prospectus offerings.
Reporting requirement • A distribution by an issuer or underwriter under this exemption triggers a requirement to file a report of exempt distribution.	• Requiring a report of exempt distribution would be consistent with the approach taken for other capital raising exemptions.
Resale restrictions • Securities distributed under this exemption are subject to a restricted resale period.	• This resale treatment is consistent with the resale treatment of securities distributed under other capital raising exemptions. • The resale restriction is indefinite where the issuer is not a reporting issuer.

APPENDIX B – CONCEPT IDEA FOR A PROSPECTUS EXEMPTION BASED ON AN INVESTOR'S INVESTMENT KNOWLEDGE

The key elements of this concept idea, along with explanatory commentary, are set out in the table below. This concept idea is being put forward solely for discussion purposes. We are requesting comments on each of the elements of this concept idea.

Key elements of the investment knowledge concept idea	Explanatory notes
Type of issuer • This exemption is available for distributions of securities of any issuer.	• We have suggested making this exemption available for distributions of securities of both reporting and non-reporting issuers. That is consistent with the accredited investor exemption.
Type of security • There are no restrictions on the type of security that can be distributed under this exemption.	• There are no restrictions on the type of security that can be distributed under the accredited investor exemption. We suggest being consistent with that approach.
Type of purchaser • The purchaser must meet a work experience condition *and* an educational qualification condition. <u>Work experience condition</u> • The purchaser must have worked in the investment industry for at least one year in a position that requires knowledge of securities investments. <u>Educational qualification condition</u> • One of the following must apply to the purchaser: o the individual has earned a CFA Charter o the individual has received the CIM designation o the individual has received a MBA from an accredited university	• As the premise behind this exemption is that the purchaser is a sophisticated investor, we have identified relevant work experience and relevant educational qualifications that we believe could operate as proxies for investment sophistication. • We note that registrants and former registrants (other than limited market dealers) qualify as accredited investors. This exemption is intended to extend the class of sophisticated investors beyond registrants. <u>Work experience condition</u> • We suggest that the purchaser must have at least one year of relevant work experience. • In the UK, there is an exemption for distributions to "qualified investors". The investor must meet two of three criteria, one of which is that the investor is working, or has worked for at least one year, in the financial sector in a professional position which requires knowledge of securities transactions. We were concerned that this threshold for relevant work experience was too low as anyone currently working in the financial sector, regardless of how long, would meet this criteria. We also questioned whether one year of work experience is sufficient. • We reviewed work experience requirements for other relevant Canadian designations. For example, to become a regular CFA member, an individual must have completed four years of qualifying work experience (in

Key elements of the investment knowledge concept idea	Explanatory notes
	addition to completing the requisite examinations). The concept of "relevant work experience" also appears in NI 31-103. For example, portfolio managers must have gained 12, 24 or 48 months of relevant investment management experience (depending on their educational qualifications and type of registration). • There are challenges with this condition as it is principles-based and refers to terms such as "investment industry", "professional position" and "knowledge of securities investments" which are not readily defined. An issuer and/or a registrant would be responsible for determining whether a purchaser satisfies this work experience requirement, which may raise compliance concerns. <u>Educational qualification condition</u> • In assessing which educational qualifications would be appropriate, we considered the educational qualifications which would be needed to become registered as a dealing representative of an exempt market dealer (set out in section 3.9 of NI 31-103). In that circumstance, an individual must have obtained or completed one of the following: o Canadian Securities Course Exam o Exempt Market Products Exam o CFA Charter o CIM designation • While we are comfortable with a CFA Charter and the CIM designation as proxies for investment sophistication, we do not believe passing the Canadian Securities Course Exam or the Exempt Market Products Exam is sufficient. • In our view, an MBA is also an adequate proxy for investment sophistication given that that degree would provide an individual with the basic tools for assessing investments. • We also considered whether lawyers and/or Chartered Accountants should meet the educational qualification condition, but did not consider these educational backgrounds to necessarily be sufficiently relevant for investing.

Key elements of the investment knowledge concept idea	Explanatory notes
Type of seller • Any seller may distribute securities under this exemption. This includes the issuer of the security, an underwriter or a selling security holder.	• This approach is consistent with the accredited investor exemption, which is available to any seller.
Size of investment • There is no limit on the size of a purchaser's investment under this exemption.	• This approach is consistent with the accredited investor exemption, which similarly does not impose any limits on the size of the investment.
Size of offerings • There is no limit on the size of an offering under this exemption.	• This approach is consistent with the accredited investor exemption, which similarly does not impose any limitations on the size of the offering.
Registrant involvement • There is no requirement for a registrant to be involved in the distribution. • Although registrant involvement is not required, to the extent an issuer or intermediary may be considered to be "in the business" of trading securities or advising with respect to securities, ordinary registration requirements will continue to apply.	• We acknowledge that registrant involvement provides an element of investor protection as the registrant is subject to KYC, KYP and suitability assessment obligations. • However, the rationale for this exemption is that the purchaser is a sophisticated investor who is familiar with investments. As a result, involvement of a registrant is not necessary.
Disclosure provided to purchaser <u>Term sheet</u> • A purchaser must be provided with a term sheet setting out basic information about the offering. This includes: For a non-investment fund: o the type/nature of the securities being offered o the price of the securities o the rights attached to the securities (including the impact on those rights if the issuer's operations and/or assets are located outside of Canada) o whether there is a minimum and maximum subscription, and if so, the deadline to reach the minimum subscription o the use of the proceeds from the offering (including whether any directors, officers, promoters or related parties of the issuer will receive any of the proceeds)	<u>Term sheet</u> • We believe that purchasers require basic information about what they are buying in the exempt market in order to make an informed investment decision. The term sheet is intended to provide basic information about the security being sold, the offering price and the purchasers' rights. <u>Marketing materials</u> • In our compliance reviews, we have seen misleading marketing materials that misstate the risks and safety of investments. To address this concern, we suggest requiring that all marketing materials be consistent with the term sheet and explicitly refer a purchaser to the term sheet and the risk acknowledgement form (discussed below).

Key elements of the investment knowledge concept idea	Explanatory notes
○ resale restrictions For an investment fund, information similar to that appearing in the Fund Facts for public mutual funds, including: ○ the investment objective of the fund, ○ the manager, portfolio advisor, trustee, custodian and other key service providers to the fund, and ○ the fees and expenses associated with operating the fund and with distributing securities of the fund. <u>Marketing materials</u> • Any marketing materials provided to a purchaser in addition to the term sheet must: ○ be consistent with the term sheet ○ explicitly refer a purchaser to the term sheet and the risk acknowledgement form (discussed below)	
Risk acknowledgement from purchaser • A purchaser must sign a stand-alone risk acknowledgement form in which the purchaser confirms that he/she: ○ meets the eligibility criteria (and explains how this criteria is met) ○ understands the risk of loss of the entire investment ○ can bear the loss of the entire investment ○ understands the potentially illiquid nature of the investment (in the case of a security of a non-reporting issuer)	• We believe that requiring the purchaser to sign a risk acknowledgement form provides another element of investor protection. It puts the purchaser on notice that he/she may lose all of his/her investment. • The OM exemption in other Canadian jurisdictions and the family, friends and business associates exemption in Saskatchewan require a risk acknowledgement form. Similarly, the crowdfunding exemption under the JOBS Act contemplates a form of risk acknowledgement. We note, however, that the accredited investor exemption currently does not require such a form.

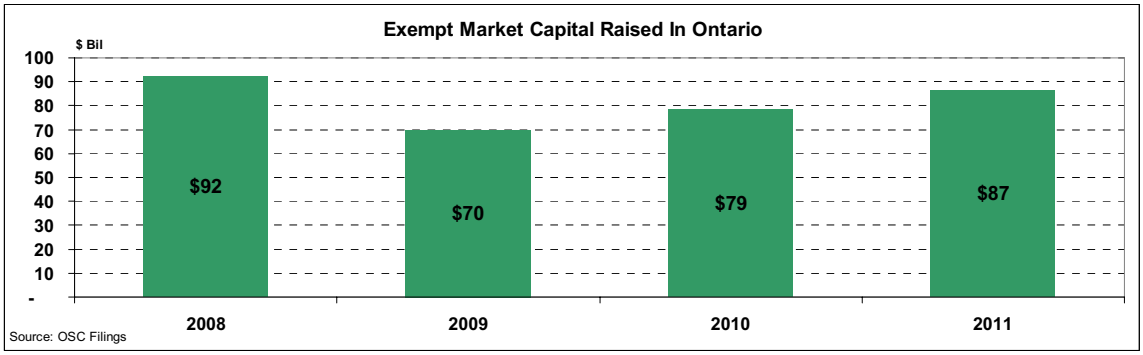
Key elements of the investment knowledge concept idea	Explanatory notes
Rights if misrepresentation • The term sheet would not likely constitute an offering memorandum under the Securities Act because it does not describe the business and affairs of the issuer. As a result, the purchasers' rights set out in section 130.1 of the Securities Act would not be available.	• We could consider whether contractual rights of action should apply in the case of a misrepresentation in the term sheet. That would represent a departure from our current approach to term sheets provided to purchasers. • We note that the term sheet would be subject to the prohibition on misleading or untrue statements in section 126.2 of the Securities Act. • In addition, if an issuer or other seller voluntarily provides an offering memorandum to a purchaser, the rights set out in section 130.1 of the Securities Act would apply.
Reporting requirement • A distribution by an issuer or underwriter under this exemption triggers a requirement to file a report of exempt distribution.	• Requiring a report of exempt distribution would be consistent with the approach taken for the accredited investor exemption.
Resale restrictions • Securities distributed under this exemption are subject to a restricted resale period.	• This resale treatment is consistent with the resale treatment of securities distributed under the accredited investor exemption. • The resale restriction is indefinite where the issuer is not a reporting issuer.

APPENDIX C – EXEMPT MARKET ACTIVITY IN ONTARIO

The following exempt market statistics are based on reports of exempt distribution filed with the OSC. Only specified prospectus exemptions trigger a requirement to file a report. As a result, these statistics do not capture all exempt market activity.

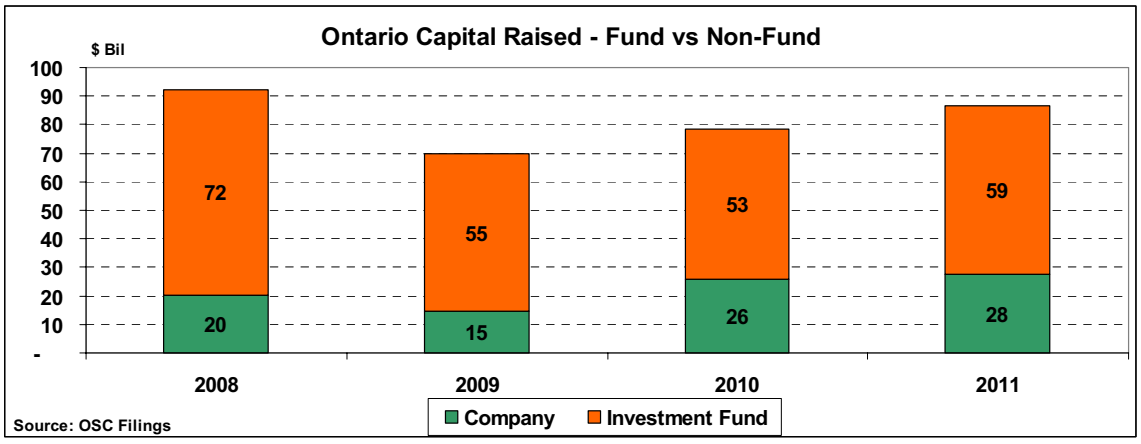
(1) Size of exempt market

Approximately $86.5 billion was raised through the exempt market in Ontario in 2011.



(2) Exempt market activity by investment funds vs. non-investment funds

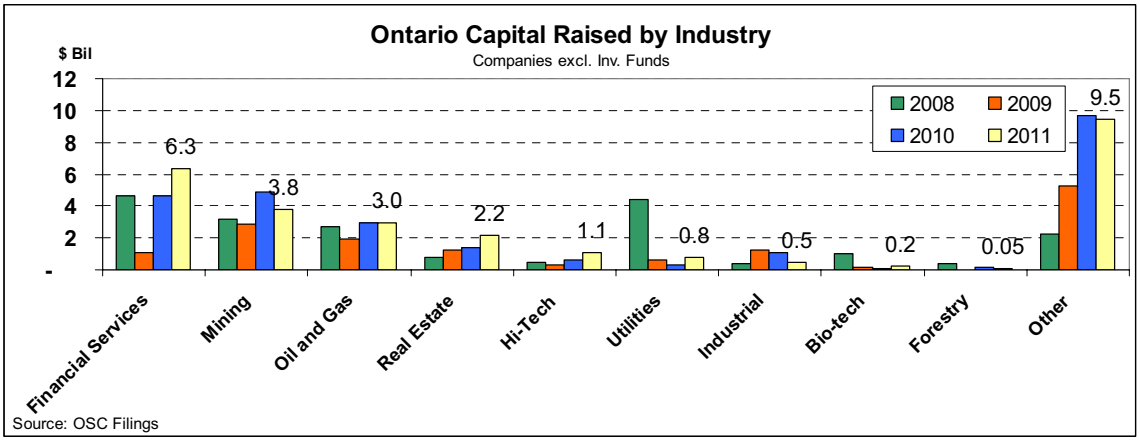
Investment funds[17] accounted for approximately 68% of the capital raised in Ontario in 2011.



[17] We note that the data for distributions of investment fund securities reflects distributions to both individual and institutional investors of both public and private investment fund securities. We also note that this data reflects purchases and not redemptions of investment fund securities.

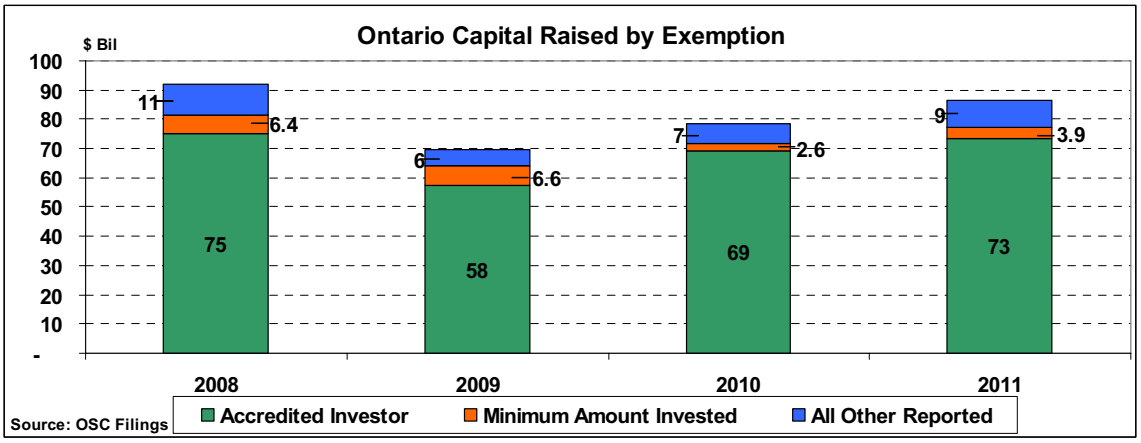
(3) Industries represented in the exempt market

Approximately 23% of the capital raised by non-investment funds was raised by issuers in the financial services industry. The mining and technology sectors represented approximately 14% and 5%, respectively, of this segment of the exempt market.



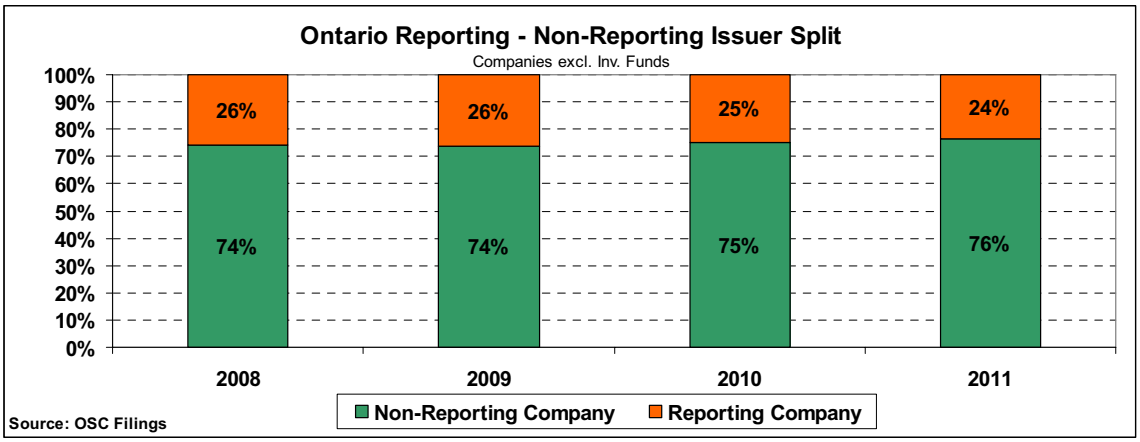
(4) Use of accredited investor and minimum amount exemptions

In 2011, approximately $72.8 billion was raised under the accredited investor prospectus exemption in Ontario. In 2011, approximately $3.9 billion was raised under the minimum amount prospectus exemption in Ontario.



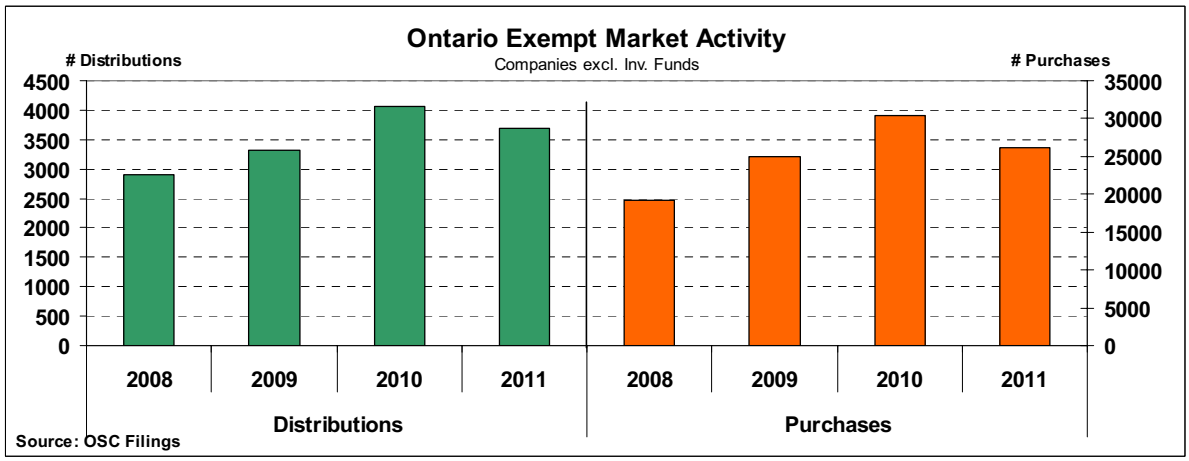
(5) Exempt market activity by reporting vs. non-reporting issuers

Approximately 76% of the capital raised in Ontario in 2011 by non-investment funds was raised by non-reporting issuers (such as private companies).



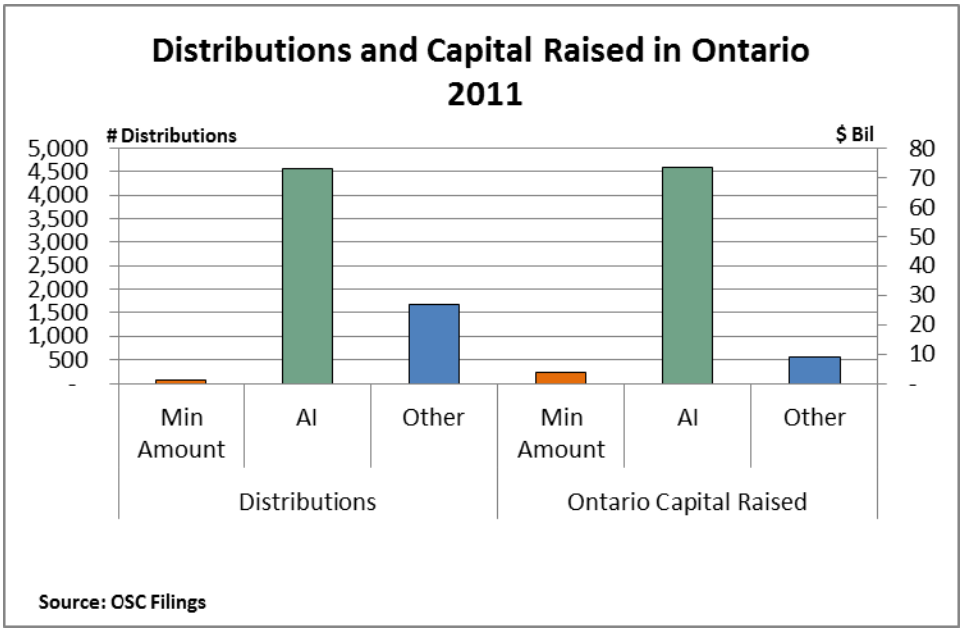
(6) Number of distributions and purchases

3,701 non-investment fund distributions were reported to the Commission in 2011 involving 26,156 purchases from Ontario investors.



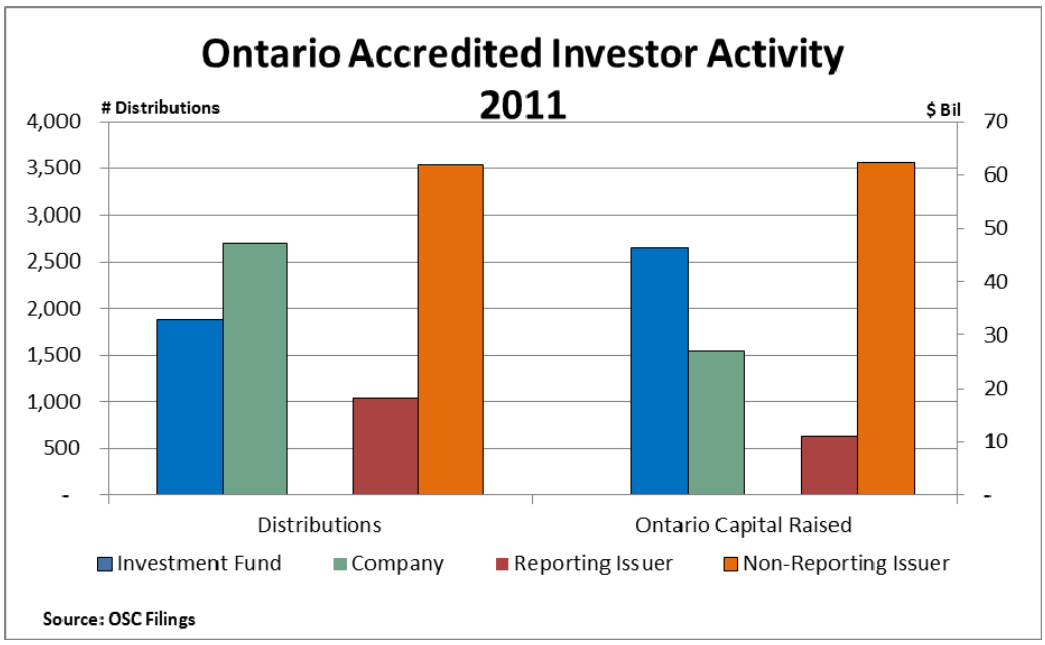
(7) Use of different prospectus exemptions

The accredited investor exemption is the most used capital raising exemption. The accredited investor exemption accounts for over 50% of purchases, over 70% of distributions, and over 80% of funds raised.



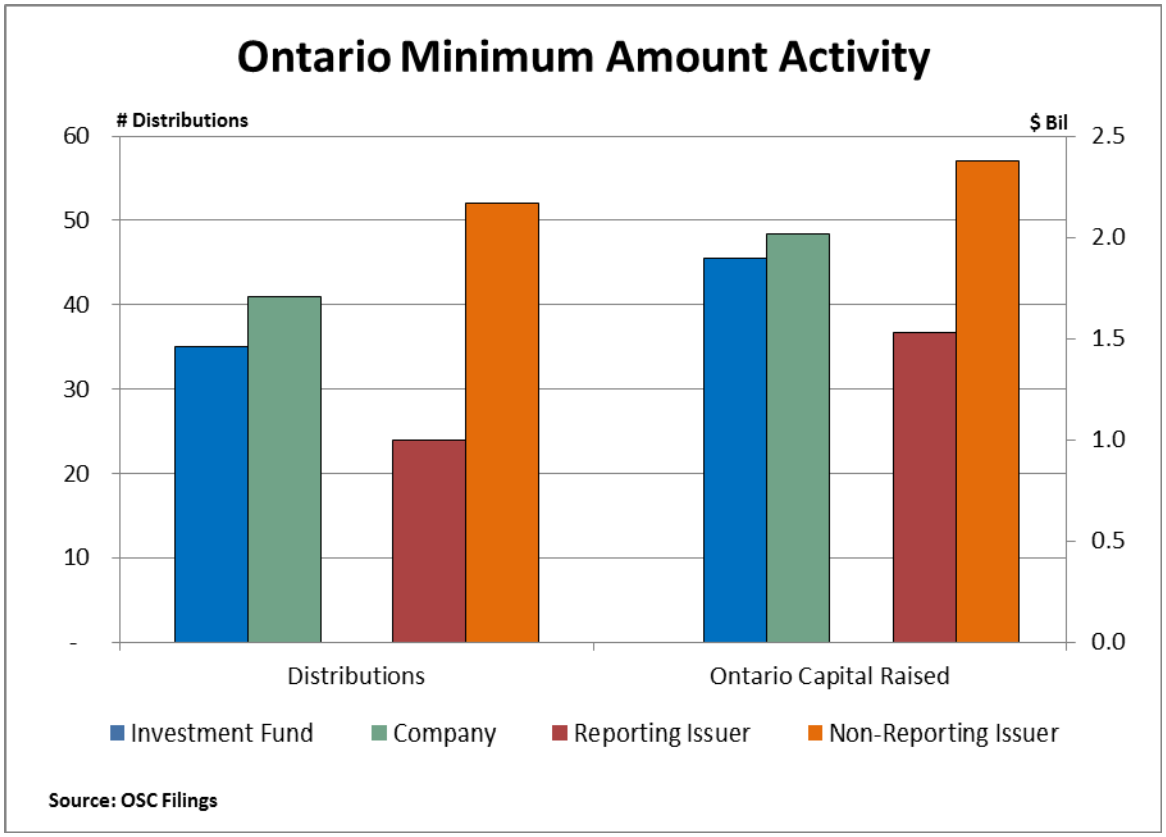
(8) Use of accredited investor exemption in 2011

Approximately 85% of the total amount raised under this exemption was raised by non-reporting issuers.

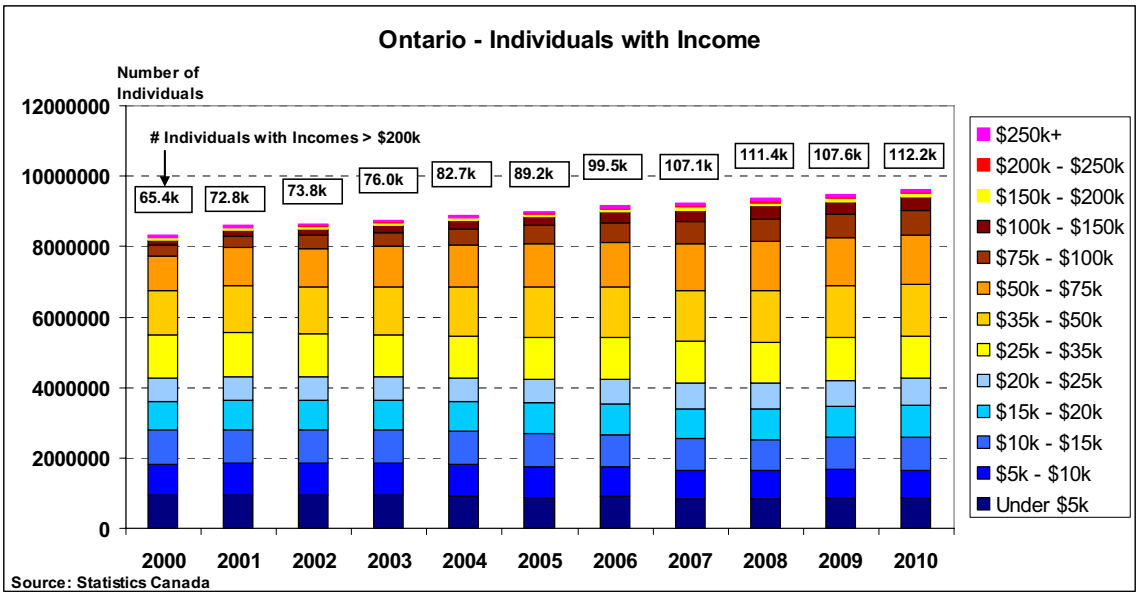


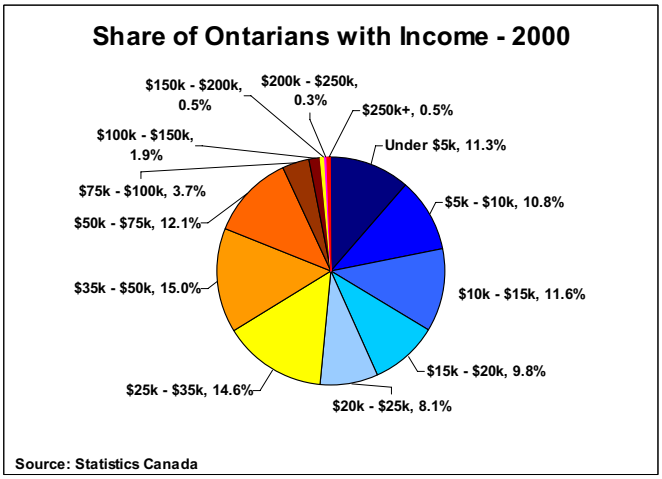
(9) Use of minimum amount exemption in 2011

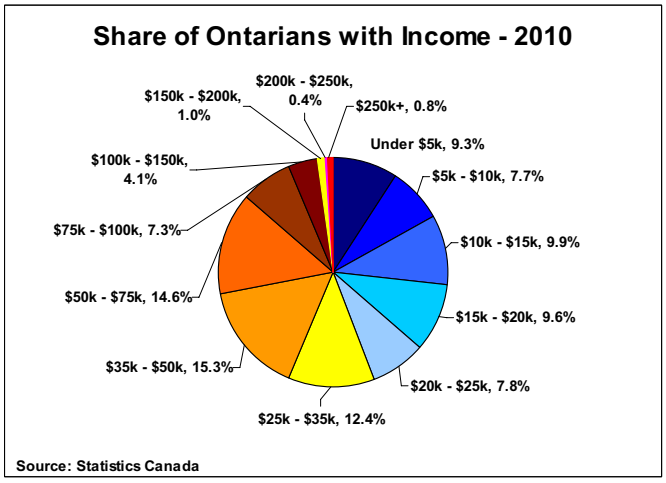
Approximately 62% of the total amount raised under this exemption was raised by non-reporting issuers.

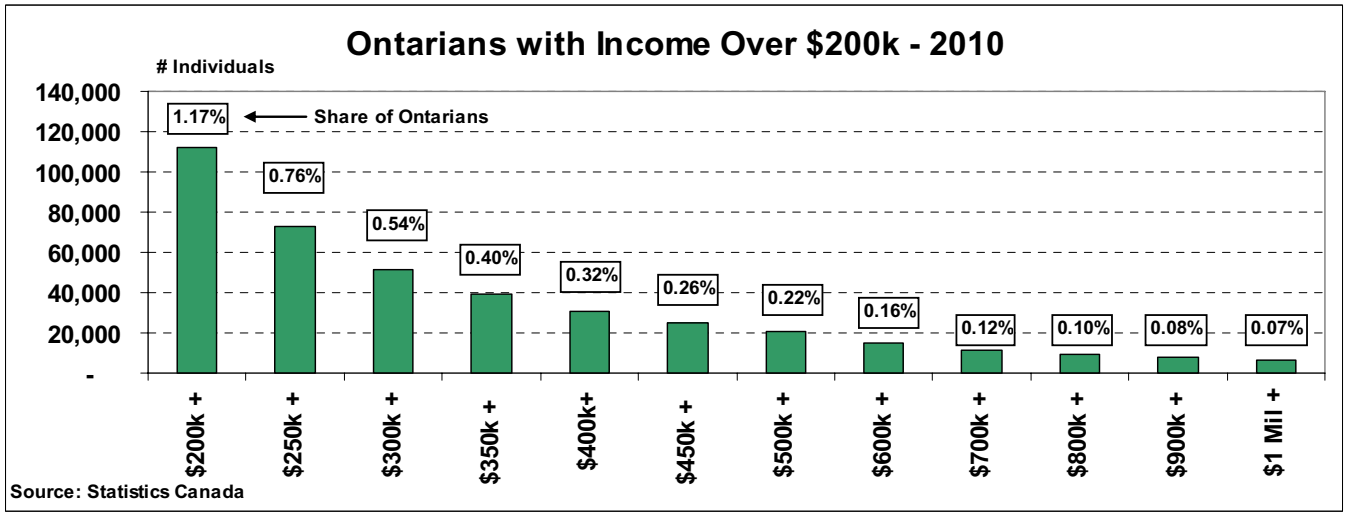


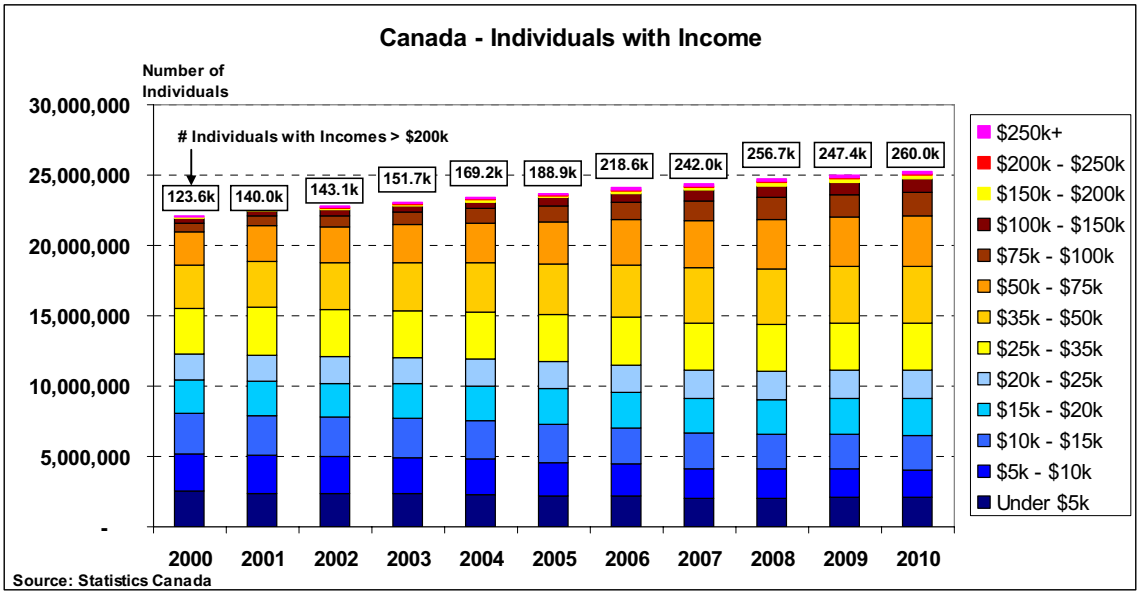
APPENDIX D – INCOME DATA










Canada - Individuals with Income
Number of Individuals
30,000,000
25,000,000
20,000,000
15,000,000
10,000,000
5,000,000
-
Individuals with Incomes > $200k
123.6k
140.0k
143.1k
151.7k
169.2k
188.9k
218.6k
242.0k
256.7k
247.4k
260.0k
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
$250k+
$200k - $250k
$150k - $200k
$100k - $150k
$75k - $100k
$50k - $75k
$35k - $50k
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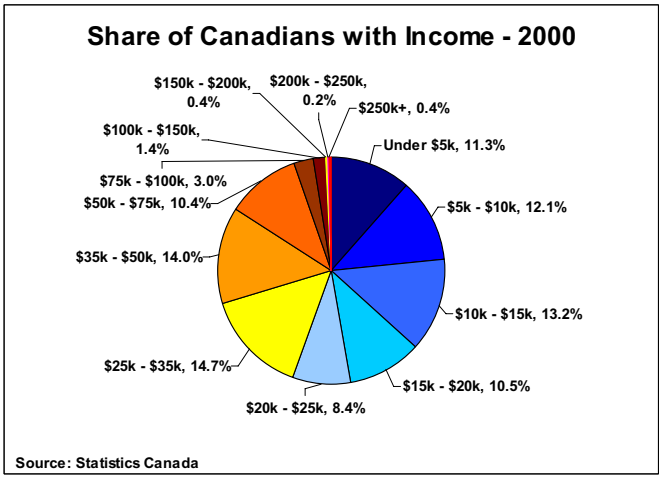
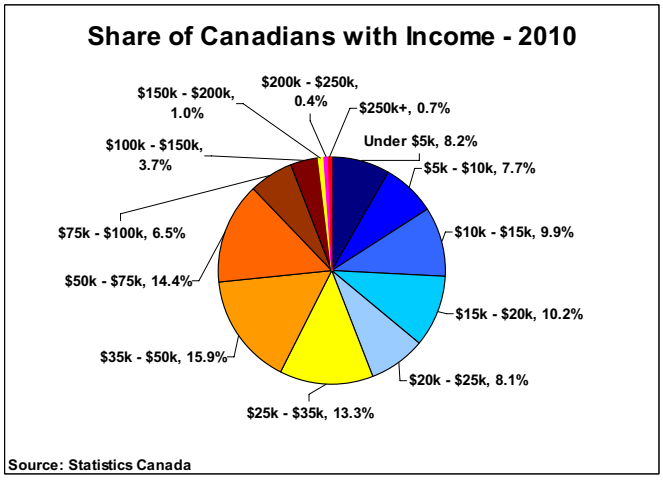
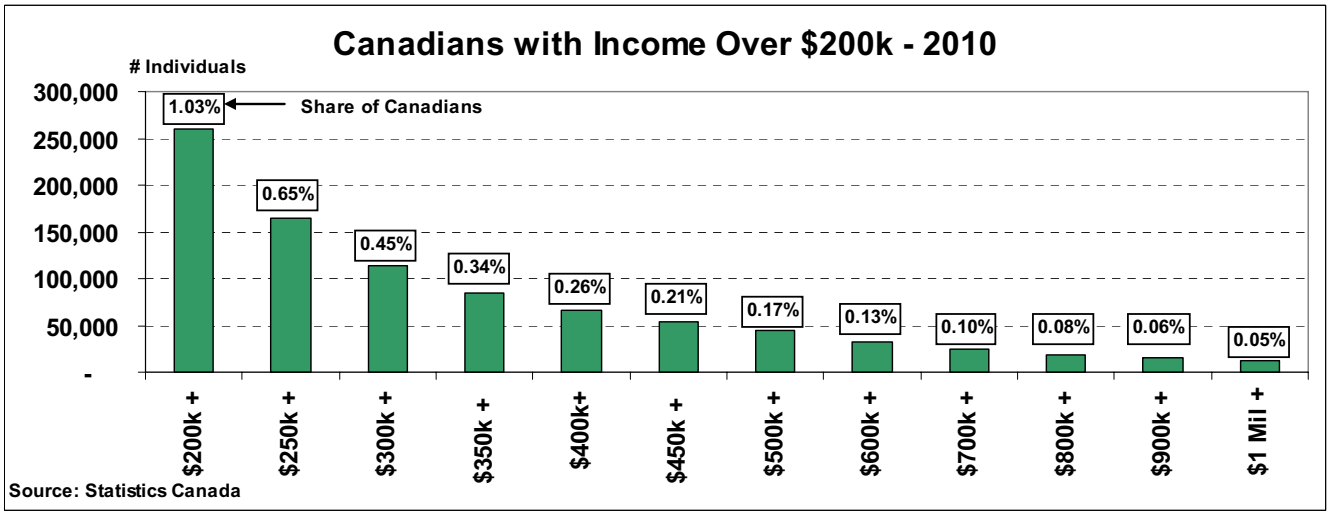
$10k - $15k
$5k - $10k
Under $5k
Source: Statistics Canada


Share of Canadians with Income - 2000
$150k - $200k, 0.4%
$200k - $250k, 0.2%
$250k+, 0.4%
$100k - $150k, 1.4%
Under $5k, 11.3%
$75k - $100k, 3.0%
$50k - $75k, 10.4%
$5k - $10k, 12.1%
$35k - $50k, 14.0%
$10k - $15k, 13.2%
$25k - $35k, 14.7%
$15k - $20k, 10.5%
$20k - $25k, 8.4%
Source: Statistics Canada


Share of Canadians with Income - 2010
$150k - $200k, 1.0%
$200k - $250k, 0.4%
$250k+, 0.7%
$100k - $150k, 3.7%
Under $5k, 8.2%
$5k - $10k, 7.7%
$75k - $100k, 6.5%
$10k - $15k, 9.9%
$50k - $75k, 14.4%
$15k - $20k, 10.2%
$35k - $50k, 15.9%
$20k - $25k, 8.1%
$25k - $35k, 13.3%
Source: Statistics Canada


Canadians with Income Over $200k - 2010
Individuals
300,000
250,000
200,000
150,000
100,000
50,000
-
1.03%
Share of Canadians
0.65%
0.45%
0.34%
0.26%
0.21%
0.17%
0.13%
0.10%
0.08%
0.06%
0.05%
$200k +
$250k +
$300k +
$350k +
$400k+
$450k +
$500k +
$600k +
$700k +
$800k +
$900k +
$1 Mil +
Source: Statistics Canada

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/06/2012	43	2333914 Ontario Inc. - Receipts	20,000,000.00	200,000,000.00
10/31/2012	85	ACM Commercial Mortgage Fund - Units	6,959,432.51	N/A
10/23/2012	1	Adroit Resources Inc. - Common Shares	10,000.00	200,000.00
10/31/2012	2	Advent International GPE VII-E Limited Partnership c/o Advent International Corporation - Limited Partnership Interest	49,230,769.00	2.00
11/20/2012	2	AK Steel Corporation - Notes	2,500,000.00	2.00
11/02/2012	1	AK Steel Holding Corporation - Common Shares	1,000,000.00	225,000.00
11/21/2012	2	American Homes 4 Rent - Common Shares	5,989,500.00	34,000,000.00
11/29/2012 to 12/03/2012	2	AndeanGold Ltd. - Units	274,000.00	2,740,000.00
11/05/2012	8	Armistice Resources Corp. - Common Shares	2,158,700.00	16,344,000.00
11/05/2012	12	Armistice Resources Corp. - Flow-Through Shares	2,712,360.00	19,374,000.00
10/22/2012 to 10/31/2012	6	Bison Income Trust II - Trust Units	1,860,000.00	186,000.00
10/10/2012 to 10/17/2012	5	Bison Income Trust II - Trust Units	370,150.00	37,015.00
11/01/2011 to 12/01/2011	2	BlackRock Fixed Income Portable Alpha Fund - Common Shares	101,860,000.00	N/A
11/19/2012	1	BNP Paribas Arbitrage Issuance B.V. - Certificates	10,101.99	10.00
10/31/2012	3	Bristol Gate US Dividend Growth Fund LP - Limited Partnership Units	999,500.00	7,510.28
10/31/2012	1	Brookfield Americas Infrastructure Fund (Canadian PIV) LP - Limited Partnership Units	24,210,650.84	24,220,338.98
12/04/2012	9	Canadian Orebodies Inc. - Flow-Through Units	2,000,000.00	10,000,000.00
11/15/2012	3	Canopy Labs Software Inc. - Preferred Shares	1,097,256.85	2,089,267.00
11/01/2012	4	Capital Direct I Income Trust - Trust Units	98,815.25	9,881.53
12/11/2012	1	Caribou King Resources Ltd - Common Shares	8,000.00	200,000.00
09/10/2012	127	Carrizo Oil & Gas, Inc. - Notes	307,320,000.00	300,000,000.00
10/23/2012	3	Centre Hospitalier Universitaire Sainte-Justine - Debentures	50,001,500.00	50,001,500.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
10/25/2012	2	Cequel Communications Holdings I, LLC/Cequel Capital Corporation - Note	1,485,000.00	1.00
11/19/2012	2	Clear Channel Worldwide Holdings, Inc. - Notes	2,585,259.44	2.00
10/15/2012	13	Condor Gold plc - Common Shares	6,719,151.00	2,655,791.00
11/20/2012	17	Cougar Minerals Corp. - Units	389,450.00	2,596,331.00
10/30/2012	3	C. R. Bard, Inc. - Notes	12,975,699.91	3.00
09/17/2012	22	Eagle Hill Exploration Corporation - Common Shares	3,338,080.00	18,900,153.00
10/31/2012	12	Earthworks Industries Inc. - Common Shares	300,000.00	1,500,000.00
10/17/2012	1	Emerald City of OZ, LLC - Units	60,000.00	20,000.00
10/25/2012	2	EPL Oil & Gas, Inc. - Notes	7,468,859.37	2.00
10/15/2012	1	ERAC USA Finance LLC - Notes	3,158,187.15	3,000,000.00
10/15/2012	1	ERAC USA Finance LLC - Notes	488,417.28	5,000,000.00
10/15/2012	1	ERAC USA Finance LLC - Notes	5,364,410.66	5,500,000.00
11/29/2012	13	Firm Capital Property Trust - Options	0.00	415,000.00
11/29/2012	38	Firm Capital Property Trust - Units	10,000,000.00	2,000,000.00
10/31/2012	1	Foresight Energy LLC and Foresight Energy Finance Corporation - Note	918,952.87	1.00
10/18/2012	2	Griffey Intermediate, Inc./Abe Investment Holdings, Inc./Grifey Finance Sub, LLC/Getty Images, Inc. - Notes	4,168,400.00	2.00
11/30/2012	3	GuestLogix Inc. - Notes	7,000,000.00	3.00
10/17/2012	2	Gulfport Energy Corporation - Notes	1,470,000.00	2.00
08/21/2012	19	Harbour Silverthorn Limited Partnership - Units	2,700,000.00	54.00
11/27/2012	11	Hard Creek Nickel Corporation - Common Shares	585,000.00	10,000,000.00
11/16/2012	2	HayFin Special Opportunities Credit Fund LP - Limited Partnership Interest	133,875,000.00	N/A
03/15/2012	1	Hillsdale Canadian Long/Short Equity Fund - Units	70,000.00	2,269.51
12/15/2011 to 11/05/2012	29	HIllsdale Canadian Performance Equity Fund - Units	21,491,418.72	N/A
12/12/2011 to 11/19/2012	56	Hillsdale Enchanced Income Fund - Units	6,086,849.80	N/A
03/15/2012	1	Hillsdale Global Long/Short Equity Fund - Units	70,000.00	7,187.52
12/16/2011 to 11/02/2012	20	Hillsdale US Performance Equity Fund - Units	7,566,188.31	N/A
10/03/2012	2	Intelsat Jackson Holdings S.A. - Notes	2,467,500.00	2,500,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/29/2012	106	ISG Capital Corporation - Common Shares	10,000,000.00	59,523,810.00
11/30/2012	1	Kingwest Canadian Equity Portfolio - Units	10,244.30	864.14
11/30/2012	2	Kingwest High Income Fund - Units	90,000.00	15,388.82
11/30/2012	1	Kingwest US Equity Portfolio - Units	4,592.49	306.02
10/30/2012	2	Lamar Media Corp. - Notes	11,992,800.00	2.00
11/06/2012 to 11/09/2012	8	League IGW Real Estate Investment Trust - Units	439,473.40	289,473.40
09/24/2012 to 09/28/2012	24	League IGW Real Estate Investment Trust - Units	1,141,273.36	0.00
12/06/2012	4	Lions Bay Capital Inc. - Common Shares	64,000.00	400,000.00
10/23/2012	25	Lower Mattagami Energy Limited Partnership - Bonds	200,000,000.00	200,000,000.00
11/16/2012	3	MBK Partners Fund III L.P. - Limited Partnership Interest	1,103,080,000.00	N/A
11/29/2012	10	Meadow Bay Gold Corporation - Common Shares	583,560.00	1,945,200.00
12/06/2012	12	Mediagrif Interactive Technologies Inc. - Common Shares	35,000,000.00	2,000,000.00
12/04/2012	24	Medivest Professional Centre Inc. - Common Shares	659,670.00	43,978.00
10/30/2012	26	Memory Care Investments (Oakville) Ltd. - Notes	2,590,000.00	26.00
10/31/2012	2	Minexco Minerals Corp. - Common Shares	1,329,999.90	4,433,333.00
10/10/2012	3	Minexco Petroleum Inc. - Debentures	18,000,000.00	18,000.00
11/07/2012	3	MM Realty Partners LP - Units	600,000.00	60,000.00
10/17/2012	1	MSBAM Commercial Mortgage - Certificate	31,394,800.00	1.00
11/19/2012 to 11/28/2012	4	Newport Balanced Fund - Trust Units	14,430.00	N/A
11/29/2012 to 12/08/2012	6	Newport Balanced Fund - Trust Units	111,005.33	N/A
11/19/2012 to 11/28/2012	4	Newport Canadian Equity Fund - Trust Units	77,800.00	N/A
11/29/2012 to 12/07/2012	2	Newport Canadian Equity Fund - Trust Units	495,000.00	N/A
11/19/2012 to 11/28/2012	4	Newport Fixed Income Fund - Trust Units	149,950.00	N/A
11/29/2012 to 12/07/2012	2	Newport Fixed Income Fund - Trust Units	200,000.00	N/A
11/19/2012 to 11/28/2012	5	Newport Global Equity Fund - Trust Units	119,025.00	N/A

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/29/2012 to 12/07/2012	22	Newport Strategic Yield Fund - Trust Units	1,410,649.26	N/A
11/18/2012 to 11/28/2012	14	Newport Yield Fund - Trust Units	645,438.23	N/A
11/29/2012 to 12/07/2012	12	Newport Yield Fund - Trust Units	226,146.16	N/A
09/30/2012	6	NewStart Capital Inc. - Bonds	105,200.00	1,052.00
11/23/2012	1	Northern Gold Mining Inc. - Common Shares	2,100,000.00	6,000,000.00
10/01/2012	1	Oakville Hydro Electricity Distribution Inc. - Debentures	22,000,000.00	22,000,000.00
10/30/2012	19	Pancontinental Uranium Corporation - Units	668,399.85	11,111,111.00
10/29/2012	1	Parkside Resources Corporation - Flow-Through Units	290,040.00	2,417,000.00
10/31/2012	2	Phenomenome Discoveries Inc. - Special Shares	60,000.00	750.00
10/26/2012	4	Plains Exploration & Production Company - Notes	52,947,000.00	4.00
11/08/2012	1	PQ Corporation - Note	2,995,800.00	1.00
12/11/2012	1	Probe Mines Limited - Common Shares	95,000.00	50,000.00
11/30/2012	2	Pulis Registered Capital I Inc. - Bonds	215,000.00	2,150.00
12/10/2012	2	Purepoint Uranium Group Inc. - Common Shares	410,020.00	6,308,000.00
10/11/2012	35	Rackla Metals Inc - Units	849,000.00	13,612,500.00
10/11/2012	34	Rackla Metals Inc. - Units	300,000.00	13,612,500.00
10/24/2012 to 11/02/2012	9	Redstone Investment Corporation - Notes	835,000.00	N/A
09/19/2012	2	Return On Innovation Advisors Ltd - Units	169,400.00	169,400.00
08/28/2012	2	Return On Innovation Capital Ltd. - Units	464,625.00	464,625.00
11/02/2012	5	Royal Caribbean Cruises Ltd. - Notes	10,537,800.00	5.00
11/07/2012	5	Royal Caribbean Cruises Ltd. - Notes	10,470,600.00	5.00
11/20/2012	5	Ruckus Wireless, Inc. - Common Shares	3,663,975.00	245,000.00
11/08/2012	96	Saguaro Resources Ltd. - Common Shares	25,000,000.00	12,500,000.00
09/24/2012 to 09/27/2012	4	Sberbank Of Russia - Common Shares	49,310,791.20	3,950,000.00
11/09/2012	17	Sea NG Corporation - Common Shares	7,020,000.00	4,520,000.00
10/29/2012	8	Shearer's Escrow Corporation - Notes	19,373,130.00	19,350.00
12/12/2012	13	Shoal Point Energy Ltd. - Units	788,449.98	12,489,167.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/12/2012 to 11/20/2012	3	Sinclair-Cockburn Mortgage Investment Corporation - Common Shares	337,763.00	337,763.00
11/12/2012 to 11/15/2012	46	Skyline Apartment Real Estate Investment Trust - Units	5,250,740.00	477,340.00
11/27/2012 to 11/30/2012	29	Slam Exploration Ltd. - Flow-Through Shares	509,500.00	N/A
11/02/2012 to 11/08/2012	6	Solar Income Fund LP #2 - Units	150,000.00	150.00
11/06/2012	2	Spara Acquisition One Corp. - Common Shares	36,815.30	368,153.00
10/30/2012	24	Sphere 3D Inc. - Common Shares	1,309,002.55	1,540,003.00
10/02/2012	12	Statesman Resources Ltd. - Units	2,180,000.00	21,800,000.00
11/30/2012	86	Stella-Jones Inc. - Receipts	80,002,000.00	1,176,500.00
11/26/2012	2	Straen Ltd. - Common Shares	75,000.00	9,375.00
10/18/2012	1	Swift Energy Company - Notes	1,029,840.00	1,000,000.00
12/04/2012	1	Taranis Resources Inc. - Units	10,500.00	70,000.00
10/29/2012	1	Telesat Canada - Note	1,035,414.00	1.00
10/29/2012	1	Telesat Canada/Telesat LLC - Note	1,035,414.00	1.00
10/25/2012	3	UBS AG, Zurich - Certificates	1,529,100.58	3.00
09/14/2012	3	Unhaggle Inc. - Preferred Shares	500,125.00	20,005.00
10/19/2012	36	United Hydrocarbon International Corp. - Common Shares	10,040,000.00	10,040,000.00
11/22/2012 to 11/30/2012	47	Valterra Resource Corporation - Common Shares	1,287,300.00	N/A
11/20/2012	1	Vector Group Ltd. - Note	2,000,000.00	1.00
11/30/2012	37	Vertex Fund - Trust Units	1,905,054.92	N/A
11/30/2012	27	Vertex Managed Value Portfolio - Trust Units	1,670,005.42	N/A
10/30/2012	3	Virgin Media Finance PLC - Notes	7,245,650.00	3.00
09/07/2012	28	Vital Financial CD Diagnostics Investors, LLC - Units	1,090,052.00	1,090,052.00
09/13/2012	16	Walton Alliston Development IC - Common Shares	413,870.00	41,387.00
09/13/2012	15	Walton GA Yargo Township LP - Units	595,360.00	61,000.00
09/13/2012	16	Walton NC Concord Investment Corporation - Common Shares	297,300.00	29,730.00
09/13/2012	4	Walton NC Concord LP - Units	443,845.76	45,476.00
11/08/2012	24	Walton Suburban DC Land Investment - Common Shares	966,480.00	96,648.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/08/2012	16	Walton Suburban DC Land LP - Limited Partnership Units	1,508,484.91	151,698.00
11/23/2012	2	Woodland Biofuels Inc. - Preferred Shares	1,000,000.00	909,091.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
CI Investments Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
$1,000,000,000.00 - Debt Securities (unsecured)
Fully and unconditionally guaranteed by CI FINANCIAL CORP.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1996929

Issuer Name:
Dynamic Advantage Bond Class
Dynamic Alternative Yield Class
Dynamic Aurion Total Return Bond Class
Dynamic Corporate Bond Strategies Class
Dynamic Strategic Yield Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 11, 2012
NP 11-202 Receipt dated December 17, 2012
Offering Price and Description:
Series E Securities
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC Ltd.
Project #1997932

Issuer Name:
FAM Real Estate Investment Trust
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated December 13, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
$ * - * Offered Units
Price $10.00 per Offered Unit
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
HUNTINGDON CAPITAL CORP.
Project #1982729

Issuer Name:
Fidelity Dividend Plus Class
Fidelity Global Dividend Investment Trust
Fidelity U.S. Dividend Portfolio Fund
Fidelity U.S. Growth Class
Fidelity U.S. Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 13, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
Series A, B and F Securities, Series F5, F8, T5, T8, S5 and S8 Shares
Series O, T5, T8, S5, S8, F5 and F8 Units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #1997734

Issuer Name:
Friday Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated December 11, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
Minimum $600,000.00 - 6,000,000 Common Shares
Maximum $800,000.00 - 8,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Michael Davidson
Project #1996537

Issuer Name:
Loblaw Companies Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 14, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
$1,000,000,000.00:
Debentures (unsecured)
Second Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1997896

Issuer Name:
Marlin Gold Mining Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 11, 2012
Offering Price and Description:
Rights to Subscribe for up to * Common Shares
at a Price of $* per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1996347

Issuer Name:
MEG Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
$400,125,000.00 - 12,125,000 Common Shares
Price: $33.00 per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
BARCLAYS CAPITAL CANADA INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
HSBC SECURITIES (CANADA) INC.
MORGAN STANLEY CANADA LIMITED
Promoter(s):
-
Project #1997093

Issuer Name:
NCE Diversified Flow-Through (13) Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 14, 2012
NP 11-202 Receipt dated December 17, 2012
Offering Price and Description:
Maximum: $125,000,000.00 - 5,000,000 Limited Partnership Units
Minimum: $5,000,000.00 - 2,000,000 Limited Partnership Units
Subscription Price: $25.00 per Unit
Minimum Subscription: 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Manulife Securities Incorporated
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
Petro Assets Inc.
Project #1998042

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 13, 2012
Offering Price and Description:
CAN$180,000,000.00 - 225,000,000 Common Shares
Price: CAN$0.80 per Offered 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:
Allon Therapeutics Inc.
Principal Regulator - British Columbia
Type and Date:
Final Base Shelf Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 13, 2012
Offering Price and Description:
$50,000,000.00:
Common Shares
Warrants
Units
Preferred Shares
Subscription Receipts
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1986341

Issuer Name:
Appia Energy Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Non-Offering Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Tom Drivas
Anastasios (Tom) Drivas
Project #1964725

Issuer Name:
Blue Ribbon Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 11, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
Maximum $40,005,000
3,500,000 Units
Price: $11.43 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
MACKIE RESEARCH CAPITAL
Promoter(s):
-
Project #1989511

Issuer Name:
BMO Covered Call Dow Jones Industrial Average Hedged to CAD ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 23, 2012 to the Long Form Prospectus dated January 27, 2012
NP 11-202 Receipt dated December 11, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
BMO ASSET MANAGEMENT INC.
Project #1843417

Issuer Name:
Braeval Mining Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 11, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
$10,000,200.00 - 16,667,000 Common Shares Price per Common Share: $0.60
Underwriter(s) or Distributor(s):
Dundee Securities Ltd.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CLARUS SECURITIES INC.
CORMARK SECURITIES INC.
PARADIGM CAPITAL INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
John Burzynski
Project #1971715

Issuer Name:
Brigata Diversified Portfolio (formerly Brigata Canadian Balanced Fund)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated December 7, 2012
NP 11-202 Receipt dated December 11, 2012
Offering Price and Description:
Series A Units and Series F Units of @ Net Asset Value
Underwriter(s) or Distributor(s):
Independent Planning Group Inc.
Promoter(s):
Brigata Capital Management Inc.
Project #1973581

Issuer Name:
BTB Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
$20,001,300.00 - 4,598,000 Units $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:
Lakeview Disciplined Leadership Canadian Equity Fund
(Class A, F and I Units)
Lakeview Disciplined Leadership High Income Fund
(Class A, F and I Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 30, 2012 to the Simplified Prospectus and Annual Information Form dated July 26, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
Class A, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1915734

Issuer Name:
Canadian Fixed Income Pool
(Class A, E, F, I and W Units)
Canadian Fixed Income Corporate Class
(Class A, E, ET8, F, W, WT8, I and IT8 Shares)
and
US Equity Value Pool
(Class A, E, F, I and W Units)
US Equity Small Cap Pool
(Class A, E, F, I and W Units)
US Equity Value Corporate Class
(Class A, E, ET8, F, W, WT8, I and IT8 Shares)
US Equity Small Cap Corporate Class
(Class A, E, ET8, F, W, WT8, I and IT8 Shares)
US Equity Value Currency Hedged Corporate Class
(Class E, ET8, I and IT8 Shares)
Principal Regulator - Ontario
Type and Date:
Amendment No. 1 dated November 27, 2012 to the Simplified Prospectuses and Annual Information Form for the Canadian Fixed Income Pool and Canadian Fixed Income Corporate Class and to the Annual Information Form for the US Equity Value Pool, US Equity Small Cap Pool, US Equity Value Corporate Class, US Equity Small Cap Corporate Class and US Equity Value Currency Hedged Corporate Class dated July 26, 2012
NP 11-202 Receipt dated December 17, 2012
Offering Price and Description:
Class A, E, F, I and W Units and Class A, E, ET8, F, W, WT8, I and IT8 Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
ASSANTE CAPITAL MANAGEMENT LTD.
ASSANTE FINANCIAL MANAGEMENT LTD.
Assante Capital Management Ltd.
Assante Capital Management Ltd.
Promoter(s):
CI Investments Inc.
Project #1916118

Issuer Name:
Canexus Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 12, 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:
CMX Gold & Silver Corp.
Principal Regulator - Alberta
Type and Date:
Final Long Form Prospectus dated December 13, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
MINIMUM $3,000,000.00 - 20,000,000 UNITS; MAXIMUM $4,200,000.00 - 28,000,000 UNITS PRICE: $0.15 PER UNIT
Underwriter(s) or Distributor(s):
WOLVERTON SECURITIES LTD
Promoter(s):
Jan Alston
Project #1976571

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 11, 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:
Harvest Sustainable Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 12, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
Series A, Series F and Series R Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Harvest Portfolios Group Inc.
Project #1969007

Issuer Name:
Horizons Winter-Term NYMEX® Crude Oil ETF
Horizons Winter-Term NYMEX® Natural Gas ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 12, 2012 to the Long Form Prospectus dated June 18, 2012
NP 11-202 Receipt dated December 17, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #1905973

Issuer Name:
Imperial Money Market Pool
Imperial Short-Term Bond Pool
Imperial Canadian Bond Pool
Imperial Canadian Diversified Income Pool
Imperial International Bond Pool
Imperial Equity High Income Pool
Imperial Canadian Dividend Income Pool
Imperial Global Equity Income Pool
Imperial Canadian Equity Pool
Imperial U.S. Equity Pool
Imperial International Equity Pool
Imperial Overseas Equity Pool
Imperial Emerging Economies Pool
(Class A units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 12, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
Class A Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1976156

Issuer Name:
Offering Advisor Series, Series F, Series FT6, Series C, Series CT6,
Series L, Series LT6 and Series T6 Securities (unless otherwise indicated) of:
Manulife Canadian Equity Private Pool*
Manulife Dividend Income Private Pool*
Manulife Global Equity Private Pool*
Manulife U.S. Equity Private Pool*
Manulife Balanced Income Private Pool*
Manulife Canadian Balanced Private Pool*
Manulife Balanced Private Pool*
Manulife Balanced Equity Private Pool*
Manulife Canadian Fixed Income Private Pool*
Manulife Corporate Fixed Income Private Pool*
Manulife Global Fixed Income Private Pool*
Manulife Canadian Fixed Income Private Trust
Manulife Corporate Fixed Income Private Trust
Manulife Global Fixed Income Private Trust
Manulife Money Market Private Trust (offering Advisor Series, Series F and Series C only)
*Shares of Manulife Investment Exchange Funds Corp.
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 14, 2012
NP 11-202 Receipt dated December 14, 2012
Offering Price and Description:
ADVISOR SERIES, SERIES F, SERIES FT6, SERIES C, SERIES CT6, SERIES L, SERIES LT6 AND SERIES T6 SECURITIES
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #1971066

Issuer Name:
Mawson West Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 14, 2012
NP 11-202 Receipt dated December 17, 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:
Final Short Form Prospectus dated December 14, 2012
NP 11-202 Receipt dated December 14, 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:
Final Short Form Prospectus dated December 12, 2012
NP 11-202 Receipt dated December 12, 2012
Offering Price and Description:
Cdn$93,300,000.00 - 30,000,000 Common Shares Cdn$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:
Timbercreek Senior Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 14, 2012
NP 11-202 Receipt dated December 17, 2012
Offering Price and Description:
Minimum Offering: $20,000,001.45 (2,030,457 Class A Shares or 2,000,001 Class B Shares)
Maximum Offering: $100,000,007.25 (10,152,285 Class A Shares or 10,000,000 Class B Shares)
Price: $9.85 per Class A Share or $10.00 per Class B Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Raymond James Ltd.
RBC Dominion Securities Inc.
TD Securities Inc.
GMP Securities L.P.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Macquarie Capital Markets Canada Ltd.
Manulife Securities Incorporated
Canaccord Genuity Corp.
Promoter(s):
TIMBERCREEK ASSET MANAGEMENT LTD.
Project #1984547

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated December 10, 2012
NP 11-202 Receipt dated December 11, 2012
Offering Price and Description:
$1,500,000,000.00 - DEBENTURES (unsecured
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1994288

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Louisbourg Investments Inc.	From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	December 11, 2012
Consent to Suspension (pending Surrender)	Big Rock Capital Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	December 12, 2012
Voluntary Surrender of Registration	Beacon II Inc.	Mutual Fund Dealer	December 12, 2012
Change in Registration Category	I.G. Investment Management, Ltd./Societe de Gestion d'investissement, I.G. Ltee	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	December 12, 2012
New Registration	Callidus Capital Management Inc.	Exempt Market Dealer and Investment Fund Manager	December 14, 2012
Change in Registration Category	Trez Capital Fund Management Limited Partnership	From: Exempt Market Dealer To: Exempt Market Dealer and Investment Fund Manager	December 14, 2012
New Registration	Black Swan Dexteritas Inc.	Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	December 17, 2012

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Primevest Capital Corp.	From: Exempt Market Dealer To: Exempt Market Dealer and Investment Fund Manager	December 18, 2012

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC Rules Notice 12-0385 – Request for Comment – Dealer Member Rules – Disclosure Requirements for Research Reports

DISCLOSURE REQUIREMENTS FOR RESEARCH REPORTS

12-0385
December 20, 2012

Summary of Nature and Purpose of Proposed Amendments

On November 28, 2012, the Board of Directors ("Board") of the Investment Industry Regulatory Organization of Canada ("IIROC") approved the publication, for comment, of proposed amendments ("Proposed Amendments") to Requirement 15 of Dealer Member Rule 3400 ("Rule 3400"), in order to allow Dealer Members to direct readers to the disclosures required under Rule 3400 ("Rule 3400 Disclosures") where the research report is delivered by electronic means.

The primary objective of the Proposed Amendments is to create a regulatory framework that facilitates the practical and effective disclosure of required information through the use of technology and in a way that promotes the protection of the investing public.

Issues and Specific Proposed Amendments

Relevant History

Over the past several years, technological advances have given rise to various means of delivering research reports and investors accessing research reports, which in turn afford Dealer Members a variety of ways to comply with their Rule 3400 Disclosure obligations. Through the embedding of hyperlinks in electronic versions of research reports, the Dealer Member is able to provide readers with quick and easy access to the Rule 3400 Disclosures that are not located in the research report itself. As such, Dealer Members are able to comply with their Rule 3400 Disclosure obligations in an efficient and practical way, without compromising the investor protections that flow from the Rule 3400 Disclosures. In furtherance of IIROC's objective, it is appropriate to permit Dealer Members to direct readers to the Rule 3400 Disclosures in research reports that are transmitted electronically.

Current Rules

Currently, Rule 3400 requires Dealer Members to include the Rule 3400 Disclosures in all research reports in a clear, comprehensive and prominent form. Where, however, an electronic or paper-based research report covers six or more issuers ("Compendium Report"), Requirement 15 permits Dealer Members to direct readers to where the Rule 3400 Disclosures may be found (i.e. the Rule 3400 Disclosures do not have to be included in the body of the research report itself). As a result, readers of certain research reports must seek out the mandatory Rule 3400 Disclosures, as they are not included in the research report itself.

Proposed Rules

Proposed Amendments

The Proposed Amendments would result in the repeal of Dealer Member Rule 3400, Requirement 15 in its entirety and replace it with a requirement that in effect would:

(a) where the research report is paper-based and covers less than six issuers, require the inclusion of the Rule 3400 Disclosures in the body of the report;

(b) where the research report is a paper-based Compendium Report covering six or more issuers, permit Dealer Members to, in the body of the Compendium Report, direct readers to where the Rule 3400 Disclosures may be found; and

(c) where the research report is delivered by electronic means, require Dealer Members to either (i) include the Rule 3400 Disclosures in the body of the research report; or (ii) allow readers to access the Rule 3400 Disclosures by electronic means from within the research report, such as through the provision of a hyperlink.

A copy of the Proposed Amendments is attached as Attachment A.

Comparison with Similar Regulatory Requirements

We have examined the treatment of this issue in the United States and the United Kingdom. In the United States, the Financial Industry Regulatory Authority ("FINRA") permits its members to direct readers in a clear manner to the required disclosures in electronic or paper-based Compendium Reports. In addition, FINRA offers interpretative guidance permitting members to use hyperlinks to direct readers to the required disclosures in all electronically transmitted research reports, regardless of the number of subject companies covered in the report. The Proposed Amendments will align the IIROC Dealer Member Rule requirements with the FINRA requirements and guidance.

In the United Kingdom, the Financial Services Authority ("FSA") requirements permit dealers to make clear and prominent reference in the research report to the place where the required disclosure can be directly and easily accessed by the public, if the length of the research report is disproportionate in relation to the length of the disclosures. The FSA requirements do not differentiate between research reports delivered in paper or electronic format, nor the number of issuers covered. Instead, the dealer is required to determine whether the length of the required disclosure is disproportionate to the length of the research report. It is IIROC's view that, as regards the Proposed Amendments, a prescriptive approach, similar to FINRA requirements, will provide Dealer Members with greater clarity and guidance than would be achieved through a principles-based approach. This will facilitate better understanding of, and compliance with, such requirements. Furthermore, a major consideration in developing the Proposed Amendments, given the significant amount of research that is distributed within Canada from the United States, was to harmonize, where appropriate, with the FINRA requirements.

Prominence of Disclosure

Disclosures, and references to disclosures, must be clear, comprehensive and prominent. Paper-based Compendium Reports must provide either a toll-free number to call or a postal address to write to for the required disclosures. Dealer Members may use hyperlinks to direct readers to the required disclosures in all electronically transmitted reports, including electronic Compendium Reports, or as an additional point of reference in paper-based research reports. Regardless of whether it is a paper-based or electronic research report, the disclosure section should include a heading such as "Important Disclosures" or "Required Disclosures" in a font size that is legible and distinguishable from the body text and disclaimers.

Issues and alternatives considered

IIROC staff has considered the possibility of maintaining the status quo; however, staff rejected this alternative and is committed to promoting and facilitating the efficient dissemination of research reports, including the required regulatory disclosures.

IIROC staff has also considered the possibility of, in addition to making the Proposed Amendments, requiring that all paper-based research reports include the appropriate Rule 3400 Disclosures in the body of the report. In considering whether to pursue this possibility or the approach we are proposing, IIROC staff consulted with IIROC advisory committees, including the Compliance and Legal Section ("CLS Quotes"), the CLS Executive Committee and the CLS Institutional Subcommittee. During these consultations, concerns were expressed that extending the current requirement to include the required disclosures to all paper-based research reports, including Compendium Reports, represents a new and unnecessary regulatory and cost burden to Dealer Members. Staff have assessed these concerns and have decided not to pursue this possibility, due primarily to the fact that we have received little to no complaints about the existing disclosure approach used for paper-based Compendium Reports.

Classification of Proposed Amendments

Statements have been made elsewhere as to the nature and effects of the Proposed Amendments. The purpose of the Proposed Amendments is to:

- foster fair, equitable and ethical business standards and practices.

Due to the extent and substantive nature of the Proposed Amendments, they have been classified as Public Comment Rule proposals.

Effects of the Proposed Amendments on Stakeholders

The Proposed Amendments will not have any significant effects on Dealer Members, market structure or competition. Furthermore, it is not expected that the Proposed Amendments will give rise to any incremental costs of compliance. Rather, the Proposed Amendments would:

(a) promote the more efficient dissemination of electronic-based research reports without compromising investor protection concerns.

The Proposed Amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's mandate.

The IIROC Board has determined that the Proposed Amendments are not contrary to public interest.

Technological implications and implementation plan

IIROC anticipates that the Proposed Amendments will be effective on a date to be determined by IIROC staff after receiving notification of approval by the recognizing regulators. Given that the Proposed Amendments do not introduce any new costs or compliance challenges to Dealer Member, the Proposed Amendments will be implemented without a transition period.

Request for public comment

Comments are sought on the Proposed Amendments. Comments should be made in writing. Two copies of each comment letter should be delivered within 90 days from the publication date of this notice. One copy should be addressed to the attention of:

Angie F. Foggia
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, Ontario, M5H 3T9

The second copy should be addressed to the attention of:

Manager, Market Regulation
Ontario Securities Commission
19th Floor, Box 55
20 Queen Street West
Toronto, Ontario, M5H 3T9
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca) under the heading "IIROC Rule Book – Dealer Member Rules – Policy Proposals and Comment Letters Received".

Questions may be referred to:

Angie F. Foggia
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
416.646.7203
afoggia@iiroc.ca

Attachments

Attachment A – Board Resolution and Proposed Amendments to Requirement 15 of Dealer Member Rule 3400

ATTACHMENT A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DISCLOSURE REQUIREMENTS FOR RESEARCH REPORTS

BOARD RESOLUTION

BE IT RESOLVED ON THE 28 DAY OF NOVEMBER, 2012 THAT:

1. The English and French versions of the proposed amendments regarding disclosure requirements for research reports, in the form presented to the Board of Directors:

    a. be approved for publication for public comment for 90 days;

    b. be approved for submission to the Recognizing Regulators for review and approval;

    c. be determined to be in the public interest; and

    d. be approved for implementation if there are no material public comments or material comments from the Recognizing Regulators.

2. The President be authorized to approve such non-material changes to the proposed amendments prior to publication and/or implementation as the President considers necessary and appropriate.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DISCLOSURE REQUIREMENTS IN RESEARCH REPORTS DELIVERED ELECTRONICALLY

PROPOSED AMENDMENTS

1. Requirement 15 of Dealer Member Rule 3400 is repealed in its entirety and replaced as follows:

> "15. When a Dealer Member distributes:
>
> (i) a research report covering six or more issuers, the report may direct the reader to where the disclosures required under Rule 3400 may be found; or
>
> (ii) a research report electronically, the report may direct the reader to where the disclosures required under Rule 3400 may be accessed by electronic means, such as through the use of a hyperlink."

13.2 Marketplaces

13.2.1 TSX and TSXV Consultation Paper on Emerging Market Issuers

Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSXV) are publishing this Consultation Paper as part of their review of the listing requirements applicable to Emerging Market Issuers. Comments on the Consultation Paper may be directed to TSX and TSXV in accordance with Part 7 of the Consultation Paper.

CONSULTATION PAPER ON
EMERGING MARKET ISSUERS

December 2012

The main headings in this Consultation Paper are:

1. INTRODUCTION

Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**") (collectively, the "**Exchanges**") are in the process of reviewing their respective listing requirements applicable to issuers with a significant connection to an emerging market jurisdiction ("**Emerging Market Issuers**"). For the purposes of this Consultation Paper, an emerging market jurisdiction means any jurisdiction outside of Canada, the United States, Western Europe, Australia and New Zealand.

This Consultation Paper is part of the Exchanges' review of the listing requirements applicable to Emerging Market Issuers. The principal purposes of this Consultation Paper are to:

(a) present the potential risks associated with listing Emerging Market Issuers that have been identified by the Exchanges;

(b) provide preliminary guidance to issuers and their advisors with respect to listing considerations applicable to Emerging Market Issuers; and

(c) solicit comments from market participants on matters related to listing Emerging Market Issuers, including possible new guidance or requirements that TSX or TSXV may implement.

TSXV is also soliciting comments and feedback on a proposed TSXV policy document, Appendix 2B – *Listing of Emerging Market Issuers* ("**Appendix 2B**"), which is attached as Schedule B to this Consultation Paper. Appendix 2B sets forth specific guidance and requirements applicable to the listing of Emerging Market Issuers on TSXV.

The Exchanges invite the public to review this Consultation Paper (and, as applicable, TSXV's Appendix 2B) and submit their comments to the Exchanges by **February 28, 2013**. Please refer to Part 7 of this Consultation Paper for details on submitting comments.

At the conclusion of the consultation period, each of TSX and TSXV will review the comments and assess whether to implement new guidance or requirements for listing Emerging Market Issuers. TSX and TSXV are separate stock exchanges with different regulatory processes. If TSX proposes amendments to the TSX Company Manual (the "**Manual**"), they will be subject to regulatory approval and public comment prior to implementation. If TSX issues guidance by way of a Staff Notice, it will be effective when published. If TSXV determines to proceed with implementing Appendix 2B, implementation will be subject to regulatory approval.

2. BACKGROUND TO THE EXCHANGES' EMERGING MARKET ISSUER REVIEW

Last year, the Exchanges commenced an extensive review of issues and considerations applicable to listing Emerging Market Issuers (the "**Review**").

The primary objectives of the Review are to:

(a) identify the potential risks associated with Emerging Market Issuers;

(b) assess the adequacy of the Exchanges' respective listing requirements in addressing the potential risks associated with listing Emerging Market Issuers;

(c) consider guidance or requirements in connection with listing Emerging Market Issuers that should be provided or implemented by the Exchanges; and

(d) if determined appropriate, draft and implement new guidance or requirements for listing Emerging Market Issuers.

As part of the Review, the Exchanges conducted numerous consultations with their respective listing advisory committees, market participants, listed issuers, other stakeholders and regulatory organizations including the Canadian Securities Administrators, the Canadian Public Accounting Board and the Investment Industry Regulatory Organization of Canada. The primary purpose of these consultations was to identify potential risks associated with listing Emerging Market Issuers.

The potential risks identified by the Exchanges are summarized in Part 3 of this Consultation Paper. The Exchanges have also considered measures that may mitigate the identified risks. These are reflected in the questions for public consultation in Parts 5 and 6 of this Consultation Paper and, for TSXV, in proposed Appendix 2B.

3. POTENTIAL RISKS ASSOCIATED WITH LISTING EMERGING MARKET ISSUERS

The Exchanges have identified the following principal areas relevant to listing in which there may be greater risks associated with Emerging Market Issuers.

3.1 Management and Corporate Governance:

(a) **Knowledge of Canadian Regulatory Requirements:** If management lacks experience and familiarity with Canadian securities law requirements and TSX or TSXV requirements, as applicable, the likelihood of non-compliance with, or misunderstanding of, such requirements potentially increases. This may result in:

(i) inadequate corporate governance standards and practices;

(ii) less sensitivity to market concerns and regulatory requirements associated with related party transactions which, in turn, may increase the likelihood of inadequate disclosure of such transactions and non-compliance with applicable shareholder approval and/or valuation requirements; and

(iii) inadequate compliance with applicable continuous and timely disclosure requirements.

(b) **Communication:** Communication issues may exist if the board of directors or management are not all fluent in a common language, are not fluent in the language in which the issuer conducts business or are not within close geographic proximity. In such situations, there is the potential for various communication-related issues to arise such as:

(i) inadequate oversight of senior management by the board of directors;

(ii) the inability of advisors (such as legal counsel and auditors) to adequately communicate with senior management and the board of directors;

(iii) the inability of the chief financial officer ("**CFO**") to properly carry out his/her duties;

(iv) the inability of the audit committee to properly carry out its duties; and

(v) the inability of senior management to adequately communicate with the Exchanges and the applicable securities regulatory authorities.

(c) **Local Business Knowledge:** If management lacks experience and familiarity with the laws and requirements of the jurisdiction where the issuer is principally carrying out its business activities, the likelihood of non-compliance with, or misunderstanding of, the legal and regulatory requirements applicable to its operations potentially increases.

3.2 Financial Reporting:

(a) **Qualifications of Auditors:** For an issuer with principal operations in an emerging market jurisdiction, if the issuer's Canadian auditors lack sufficient experience and expertise in the applicable jurisdiction, the likelihood of errors or oversights in the audit process, and correspondingly in the issuer's financial statements and related disclosure, may increase.

(b) **Adequacy of Internal Controls:** For an issuer with principal operations in an emerging market jurisdiction, inadequate internal controls over financial reporting matters may increase the likelihood of errors and misstatements in the issuer's financial statements. Although inadequacy of internal controls is a potential risk for any issuer, certain factors may raise the risk profile for Emerging Market Issuers. These factors may include:

(i) differences in banking systems and controls between jurisdictions;

(ii) differences in business cultures and business practices between jurisdictions; and

(iii) rules or limitations on the flow of funds between jurisdictions.

(c) **Qualifications of CFO and Audit Committee:** For an issuer with principal operations in an emerging market jurisdiction, if the issuer's CFO or audit committee lacks sufficient expertise and experience with applicable audit practices and procedures, in particular as pertaining to international audit engagements for public companies, the likelihood of errors or oversights in the audit process, and correspondingly the issuer's financial statements, may increase.

3.3 Non-Traditional Corporate/Capital Structures:

(a) **Complexity of Corporate and Capital Structures:** The Exchanges understand that tax or foreign ownership restrictions in certain jurisdictions may encourage or necessitate more complex corporate or capital structures. These may include, for example, structures in which the issuer does not hold a direct ownership interest in its principal assets and instead holds its rights indirectly through contractual arrangements with a foreign-domiciled entity (e.g. a variable interest entity structure) or structures in which a foreign-domiciled entity is granted an earn-in or similar right that permits it to acquire a controlling or substantial share position in the issuer for nominal consideration (e.g. a "slow walk" arrangement structure). Where such corporate or capital structures are utilized, there may be potential risks, such as:

(i) if the structure requires that legal ownership of the issuer's operating assets be vested in a non-affiliated entity, title to and control over such assets by the issuer may be compromised, a potential risk which may be amplified depending on the rule of law in the applicable jurisdiction;

(ii) the structure may limit or otherwise inhibit the ability of the shareholders to have recourse against the assets of the issuer; and

(iii) inadequate public disclosure of the nature, material characteristics and risks associated with the structure.

3.4 Legal Matters Relating to Title and Ability to Conduct Operations:

(a) **Validity of Title to Principal Operating Assets:** Legitimacy and certainty of title to principal operating assets are key listing requirements and fundamental to the listing of an issuer. An issuer must validly own and be able to operate the business upon which its listing is based. For an issuer with principal operations in an emerging market jurisdiction, there may be an increase in title risk or difficulty demonstrating that these key listing requirements are satisfied.

(b) **Legal Right to Conduct Operations:** The Exchanges understand that many jurisdictions require specific permits or business licenses in order for an Issuer to carry out its business operations. In particular, there may be specific requirements if the Issuer is considered foreign in the jurisdiction of its business operations. For an issuer with principal operations in an emerging market jurisdiction, such requirements may impact its ability to carry out its business operations.

4. PRE-FILING CONFERENCES

In light of the potential risks associated with the listing of Emerging Market Issuers, the Exchanges strongly recommend that any issuer with significant connections to an emerging market jurisdiction that is contemplating listing on either Exchange arrange a pre-filing meeting with the applicable Exchange. Issuers must satisfy the applicable Exchange that it is able to meet all applicable listing requirements as well as mitigate the potential risks. The meetings will provide a forum to:

(a) introduce TSX or TSXV, as applicable, to the issuer, its business and key individuals;

(b) discuss any questions related to the listing process identified by the issuer and its advisors;

(c) identify the requirements and procedures that TSX or TSXV expects will be applicable to the issuer's application; and

(d) identify potential issues and areas of concern that TSX or TSXV may have with the proposed listing.

Senior management, key directors and the sponsor of the applicant must be in attendance. These meetings are mutually beneficial, allowing the Exchanges and the applicant to communicate directly and identify concerns, if any, at an early stage and consider how such concerns could be addressed. These meetings also provide an early opportunity for senior management and key representatives of the applicant to ask questions and understand the applicable rules and listing requirements. These meetings can be accommodated at any of TSX's or TSXV's offices in Canada.

5. TSX QUESTIONS FOR PUBLIC CONSULTATION

5.1 Potential Risks Associated with Listing Emerging Market Issuers

(a) Part 3 of this Consultation Paper provides a summary of the potential risks associated with listing Emerging Market Issuers identified by the Exchanges. Are there any additional potential risks that TSX should take into consideration?

5.2 Definition of Emerging Market Issuer

Generally, TSX will consider the following factors in determining whether an applicant or issuer may be an "Emerging Market Issuer":

- residency of "mind and management";
- jurisdiction of the principal business operations and assets;
- jurisdiction of incorporation;
- nature of the business; and
- corporate structure.

The presence of any one or more of these factors may lead to consideration as an Emerging Market Issuer.

TSX is focusing on jurisdictions outside of Canada, the United States, the United Kingdom, Western Europe, Australia and New Zealand.

TSX considers certain emerging market risk factors to be mitigated in respect of resource issuers that have produced independent technical reports, since there has been an independent expert review conducted on the principal assets and matters such as title and permitting, particularly where such issuers' management (including board members) reside, or historically have principally been resident in Canada or one of the jurisdictions noted above.

(a) Should TSX consider other factors when determining if an issuer should be considered an Emerging Market Issuer? If so, what are they?

(b) Should any specific factor or factors be determinative in deeming an issuer an Emerging Market Issuer? If yes, please identify such factor(s).

(c) Should TSX's focus exclude jurisdictions other than Canada, the United States, the United Kingdom, Western Europe, Australia and New Zealand?

(d) Should resource issuers that have independent technical reports be automatically exempted from the definition, provided that the only factor that would otherwise cause them to be an Emerging Market Issuer is the jurisdiction of their principal business operations and assets?

5.3 Management and Corporate Governance

(a) What, if any, specific attributes and experience do independent directors require in order to properly oversee management of an Emerging Market Issuer? For example, TSX seeks at least one independent director with both public company experience and significant knowledge and experience in the principal business jurisdiction of the issuer.

(b) How many directors (or what percentage of the board) should be independent directors with public company and local business experience?

(c) Should TSX require an independent chair for all Emerging Market Issuers? Is it sufficient to require an independent chair only if other risk factors are present, such as when a significant security holder is also a senior officer of the issuer?

(d) If an independent chair is not required or present, is an independent lead director sufficient?

(e) Are there additional corporate governance measures TSX should consider for Emerging Market Issuers?

5.4 Financial Reporting

(a) ***CFO.*** The CFO plays a key role in structuring financial reporting systems, and ensuring that financial reporting is completed accurately and on a timely basis, in accordance with all applicable rules and regulations. TSX considers several factors in assessing the suitability of a CFO, including a professional accounting designation; relevant education; North American public company experience in a senior financial role; experience applying International Financial Reporting Standards; understanding of Canadian securities laws related to financial reporting matters; understanding of the business environment, as well as business customs and practices that may be unique to the environment the applicant operates in; and the ability to design and apply effective internal controls over financial reporting.

(i) Are there additional factors that are relevant to an individual's suitability as CFO for an Emerging Market Issuer?

(ii) How important is demonstrated local business knowledge and experience for the CFO?

(b) ***Audit Committee.*** The role of the audit committee is important in supporting compliance with financial reporting obligations. Transactions by Emerging Market Issuers may raise unique issues due to geographic, language or cultural differences which may increase the complexity of financial reporting. TSX considers several factors in making a determination about the adequacy of the audit committee, such as: financial reporting skills; relevant work or board experience in the jurisdiction and industry in which the issuer principally operates; understanding of the legal and political environment, as well as cultural and business practices; and experience in supervising international audit engagement for public companies.

(i) Are there additional factors that are relevant to the suitability of audit committee members for an Emerging Market Issuer?

(ii) How important is demonstrated local business knowledge and experience for the audit committee?

(c) ***Auditors.*** TSX assesses the adequacy of auditors in light of an applicant's principal jurisdiction of operations, industry and other specific facts. In making its assessment, TSX considers the experience and expertise of the auditors in the jurisdiction where the principal operations of the issuer are carried out; size and general resources of the firm; experience in auditing other Canadian reporting issuers, including industry expertise for those issuers; effective oversight by Canadian regulatory authorities, including an ability to remove working papers and audit files from the foreign jurisdiction upon request by such authorities; good standing with the Canadian Public Accountability Board; an ability to communicate effectively with management and the board; and an ability to directly execute the audit field work.

(i) Are there additional factors that are relevant in assessing the appropriateness of an auditor for an Emerging Market Issuer?

(ii) How important is demonstrated local business knowledge and experience for the auditors?

5.5 Internal Controls

Once listed, issuers are subject to CEO/CFO certification under National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**"), subject to any applicable exemptions under that instrument.

(a) Should TSX require comfort around internal controls in the form of a certification, management report or other similar report on internal control systems to be submitted by an auditor at the time of original listing for Emerging Market Issuers? If yes, should TSX require it for all Emerging Market Issuers or only on a discretionary basis? Should any particular category of issuer be exempt, such as exploration issuers for which internal control risks may be more limited?

(b) Who is appropriate to provide a useful evaluation report on internal controls for Emerging Market Issuers? For example, the auditor, the sponsor or other third party?

(c) What costs would be related to imposing such a requirement? Please note if you foresee any negative consequences of such a requirement.

5.6 Related Party Transactions

Related party transactions are generally subject to additional scrutiny by TSX. In particular, related party transactions of non-exempt issuers are subject to additional oversight under Section 501 of the Manual. The decision as to whether an issuer is non-exempt is made by TSX at the time the issuer is originally approved for listing. The requirements for eligibility for exemption from Section 501 are set out in Subsections 309.1, 314.1 and 319.1. If these requirements are not met at the time of original listing, the exemption may be granted at a later time as they are met. In TSX experience, related party transactions may be prevalent among Emerging Market Issuers that have a controlling security holder. However, such transactions may sometimes not meet the strict definition of "related party transactions" under securities law.

(a) Should TSX take an expanded view of "related party transactions" to capture transactions where an Emerging Market Issuer appears to be engaging in non-arm's length transactions that do not meet the definition for related party transactions? If so, what additional elements should be included in the definition to capture such transactions? Should TSX make such decisions on a discretionary basis?

(b) Should TSX classify all Emerging Market Issuers that have a controlling security holder as non-exempt and therefore subject to Part V of the Manual regardless of their listing category? Alternatively, should all Emerging Market Issuers be classified as non-exempt?

5.7 Non-Traditional Corporate/Capital Structure

(a) Should TSX refuse to list Emerging Market Issuers that have adopted non-conventional corporate structures? Are there certain corporate structures that should be refused, but others that may be acceptable? If yes, please explain and support your response.

(b) Should sponsorship be required to comment on the necessity of a non-traditional corporate structure?

(c) Should a legal opinion be required to support the validity of the corporate structure? Should a legal opinion from the jurisdiction of the principal operations of the issuer be required?

5.8 Other Requirements

(a) ***Sponsorship.*** Sections 312, 317, 322 and 326 of the Manual describe TSX sponsorship requirements and are reproduced as Schedule A to this Consultation Paper. The Manual sets out when sponsorship is required. However, historically, sponsorship may have been waived for certain applicants completing an initial public offering or brokered financing, or graduating from TSXV. In assessing Emerging Market Issuers, sponsorship may be particularly helpful and TSX is unlikely to waive the requirement. For Emerging Market Issuers with principal operations in an emerging market, TSX requires a site visit and commentary by the sponsor.

(i) Is it material information for an investor to know whether an applicant was sponsored, exempt from sponsorship or received a waiver from sponsorship? If you believe it is material information and a waiver from sponsorship is granted, should it be made public by the issuer or TSX?

(ii) If TSX publishes the name of sponsors in its original listing bulletins (or indicates if there was no sponsor), do you foresee any impact, positive or negative?

(iii) Should TSX require sponsorship for all Emerging Market Issuers? If not, are the current exemptions from sponsorship in the Manual adequate?

(iv) Should sponsorship reports be made public by Emerging Market Issuers?

(v) The sponsor must be a participating organization of TSX. Should there be other standards for sponsorship work? If so, what organization is suitable to adopt and enforce such standards? What should the standards be? If you think TSX is the appropriate body to adopt and enforce sponsorship procedures, should they be part of the Manual? In your response, please consider costs of enforcing standards and who will bear such costs.

(vi) Should sponsors' work be audited or otherwise subject to review? If yes, who would be appropriate to review their work? What recourse or liability should sponsors face for deficient work? What costs and consequences, positive and negative, do you foresee if sponsors' work is required to be audited or subject to review?

(vii) Are there items in addition to those set out in the Manual (primarily in section 326) on which the sponsor should provide comments for Emerging Market Issuers?

(b) ***Ongoing Requirements.*** As part of an original listing, in its discretion, TSX may require supplemental ongoing requirements to mitigate particular risks in addition to requirements set out in the Manual. Supplemental requirements may include pre-clearance of a change of auditors and pre-clearance of new board members or new senior management. TSX would impose any supplemental ongoing requirement at the time of the original listing and could periodically re-consider these requirements as an issuer's risk profile changes over time.

(i) Please comment on whether TSX should require the following additional items for Emerging Market Issuers in all cases, or in its discretion based on the presence of certain risk factors:

I. a review of interim financial statements by an issuer's auditors;

II. a review of internal control systems by an issuer's auditors on an annual basis; and

III. an update of sponsorship on an annual basis.

(ii) Are there other supplemental ongoing requirements that TSX should consider?

(c) ***Costs.*** TSX currently may recover expenses that it incurs relating to due diligence, research or assessment procedures which TSX deems necessary in connection with any notice or application that has been filed. At the conclusion of the consultation period, TSX may determine to impose fees to cover additional internal costs associated with reviewing an application or supplemental ongoing requirements from an Emerging Market Issuer.

(i) Please comment on the additional costs that an applicant or issuer may incur as a result of the additional conditions TSX may impose.

6. TSXV QUESTIONS FOR PUBLIC CONSULTATION

As stated above, TSXV is publishing proposed Appendix 2B simultaneously with this Consultation Paper. Appendix 2B sets forth specific additional and supplemental requirements applicable to the listing of Emerging Market Issuers that TSXV proposes to implement. The full text of Appendix 2B is included as Schedule B to this Consultation Paper**.**

A primary purpose of this Consultation Paper and the consultation process is to solicit comments and feedback from market participants on Appendix 2B. TSXV invites market participants to submit comments on any aspect of Appendix 2B, however, TSXV is particularly interested in feedback to the following questions.

6.1 Potential Risks Associated with the Listing of Emerging Market Issuers

(a) Part 3 of this Consultation Paper provides a summary of the potential risks associated with the listing of Emerging Market Issuers identified by the Exchanges. Are there any additional potential risks that TSXV should take into consideration?

6.2 Definition of Emerging Market Issuer

(a) With reference to the proposed definition of "Emerging Market Issuer" in section 2.1 of Appendix 2B, should TSXV consider other factors when determining if an issuer should be considered an Emerging Market Issuer? If so, what are they?

(b) With respect to the definition of "Emerging Market Jurisdiction" in section 2.1 of Appendix 2B (which forms an important component of the definition of "Emerging Market Issuer"), TSXV has provided the following Guidance Note in Appendix 2B:

> **On a case by case basis, the Exchange will consider excluding other jurisdictions from the definition of Emerging Market Jurisdiction if the Exchange is satisfied that the jurisdiction has substantially comparable business practices, business culture, corporate law requirements, securities law requirements and rule of law as Canada. This is something that an Issuer should discuss with the Exchange at a pre-filing conference (refer to section 4.1 below).**

The Exchange has not formalized a list of such other comparable jurisdictions, but it is expected that at the outset it would include the United States, Western Europe, Australia and New Zealand. Should the Exchange consider any other jurisdictions as comparable jurisdictions to Canada for these purposes?

(c) "Excluded Resource Issuers" (as defined in section 2.1 of Appendix 2B) are specifically excluded from the definition of "Emerging Market Issuer". Please comment on the proposed definition of Excluded Resource Issuer.

6.3 Qualifications of Management and Corporate Governance

(a) The CFO plays a key role in structuring financial reporting systems, and ensuring that financial reporting is completed accurately and on a timely basis, in accordance with all applicable rules and regulations. Sections 4.2(d)(ii) to (v) of Appendix 2B set forth certain additional qualification requirements that TSXV will impose on a CFO of an Emerging Market Issuer.

(i) Are there additional factors that are relevant to an individual's suitability as CFO?

(ii) How important is demonstrated local business knowledge and experience for the CFO?

(b) The role of the audit committee is important in supporting compliance with financial reporting obligations. Sections 4.2(e)(i) to (iii) of Appendix 2B set forth certain additional qualification requirements that TSXV will impose on the audit committee of an Emerging Market Issuer.

(i) Are there additional factors that are relevant to the suitability of audit committee members?

6.4 Qualification of Auditors

Auditors for Emerging Market Issuers must be pre-cleared by the Exchange. The principal factors the Exchange will take into consideration in respect of this assessment are outlined in section 4.4 of Appendix 2B.

(a) Are there additional factors that are relevant in assessing the appropriateness of an auditor in these circumstances?

(b) How important is demonstrated local business knowledge and experience for the auditors?

6.5 Financial Reporting and Adequacy of Internal Controls

Section 4.5 of Appendix 2B sets forth substantive new additional requirements that will be applicable to Emerging Market Issuers (excluding, in most cases, Emerging Market Issuers whose operations are not revenue generating).

(a) Under section 4.5(a), the Exchange will require that the issuer engage its auditors to perform review of the issuer's interim period financial statements for each interim period in the two years following the listing of the Issuer.

(i) Should the requirements under section 4.5(a) be applicable to all Emerging Market Issuers (i.e. even those whose operations are not revenue generating)?

(ii) Is the two year period appropriate or should it be longer?

(b) Under section 4.5(b), the Exchange will effectively require the issuer to comply with the full CEO/CFO certification requirements under NI 52-109 from the time of listing. This will require, among other things, that the issuer's internal controls over financial reporting be reviewed and evaluated by the issuer's auditors prior to listing. Should the requirements under section 4.5(b) be applicable to all Emerging Market Issuers (i.e. even those whose operations are not revenue generating)?

6.6 Non-Traditional Corporate/Capital Structure

Section 4.6 of Appendix 2B sets forth additional requirements that will be applicable to Issuers that intend to employ a non-traditional corporate structure or share capital structure (e.g. a variable interest entity structure or a "slow walk" arrangement structure).

(a) Should TSXV refuse to list Issuers that have adopted a non-traditional corporate structure or share capital structure? Are there certain structures that should be refused, but others that may be acceptable? If yes, please explain and support your response.

(b) Should a legal opinion be required to support the validity of the structure?

6.7 Sponsorship Requirements

Policy 2.2 – *Sponsorship and Sponsorship Requirements* and Appendix 2A – *Review Procedure Guidelines* currently set out TSXV's sponsorship requirements. In connection with the implementation of Appendix 2B, certain modifications to the sponsorship requirements will be implemented. These will include changes to the availability of certain sponsorship exemptions (refer to section 4.8(a) of Appendix 2B). In addition, as set out in section 4.8(b) of Appendix 2B, TSXV will more actively request detailed sponsor reports where sponsorship of an Emerging Market Issuer is required.

(a) A primary role of the sponsor is to provide independent due diligence and review of the listing merits of the issuer. In the context of Emerging Market Issuers, the expectation of TSXV will be that the sponsor's due diligence and review will address the issues and listing considerations associated with Emerging Market Issuers that are identified in Appendix 2B including, without limitation, qualifications of management, corporate governance matters and adequacy of internal controls. These matters are already required to be reviewed by the sponsor under Appendix 2A, however, pursuant to section 4.8(b) of Appendix 2B, TSXV will require specific comment and detailed information on these matters in the final sponsor report. Please comment on the scope of TSXV's expectations of the sponsor and whether what is required under Policy 2.2, Appendix 2A and Appendix 2B is appropriate in the context of Emerging Market Issuers.

(b) Is it material information for an investor to know whether an issuer's listing was sponsored, exempt from sponsorship or received a waiver from sponsorship? If a waiver from sponsorship is granted, should it be made public by the issuer or TSXV?

(c) If the Exchange publishes the name of the sponsor in the listing bulletin (or indicates that there was no sponsor), do you foresee any impact, positive or negative?

(d) Should the work of sponsors be audited or otherwise subject to review? If yes, who would be appropriate to review their work? What recourse or liability should sponsors face for deficient work? What costs and consequences, positive and negative, do you foresee if sponsors' work is required to be audited or subject to review?

7. SUBMISSION OF COMMENTS

In carrying out the Review, the Exchanges have actively solicited the input and views of various market participants. One of the primary purposes of this Consultation Paper and the consultation process is to allow the Exchanges to solicit and receive comments from additional market participants before making a final determination on whether it is necessary to implement

additional guidance or requirements applicable to the listing of Emerging Market Issuers. In this regard, the Exchanges welcome comments and responses to the questions in Parts 5 and 6 of this Consultation Paper.

The Exchanges invite market participants to submit their written comments to the Exchanges by February 28, 2013.

Submissions should be sent by e-mail to:

Ms. Michal Pomotov
Legal Counsel, Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario
M5X 1J2

Email: requestforcomments@tsx.com

and

Zafar Khan, Policy Counsel
TSX Venture Exchange
650 West Georgia Street
P.O. Box 11633
Vancouver, British Columbia
V6B 4N9

E-mail: zafar.khan@tsx.com

Comments may be made publicly available unless confidentiality is requested.

SCHEDULE A

TSX'S CURRENT SPONSORSHIP REQUIREMENTS

Sec. 312. Sponsorship or Affiliation

Sponsorship of an applicant company by a Participating Organization of the Exchange is required for companies applying to list under the paragraphs 309(a), 309(b), 309(c) and 309(d). Sponsorship, or affiliation with an established enterprise, can be a significant factor in the determination of the suitability of the company for listing, particularly where the company only narrowly meets the prescribed minimum listing requirements. Consideration will be given to the nature of the sponsorship or affiliation. In addition to the requirements detailed in Section 326 for Sponsorship of Companies Seeking Listing on The Exchange, sponsors for industrial applicants should also be responsible for reviewing and commenting on:

a) all visits to and/or inspections of the applicant's principal facilities and/or offices;

b) any future-oriented financial information that has been provided with the application;

c) management's experience and technical expertise relevant to the company's business; and

d) all other relevant factors including those listed in footnotes 7 and 8 applicable for technology companies and 10 and 11 applicable for research and development companies.

..*.*.*

Sec. 317. Sponsorship or Affiliation

Sponsorship of an applicant company by a Participating Organization of the Exchange is required for companies applying to list under the paragraphs 314(a) and 314(b). Sponsorship, or affiliation with an established enterprise, can be a significant factor in the determination of the suitability of the company for listing, particularly where the company only narrowly meets the prescribed minimum listing requirements. Consideration will be given to the nature of the sponsorship or affiliation. In addition to the requirements detailed in Section 326 for Sponsorship Of Companies Seeking Listing On The Exchange, sponsors for mining applicants should also be responsible for reviewing and commenting on:

a) the company's management-prepared 18 month projection of sources and uses of funds to ensure that it reflects all of the company's planned and anticipated exploration and development programmes, general and administrative costs, property payments and other capital expenditures;

b) any site visits to the applicant's properties by the Sponsor;

c) issues and material agreements relating to land tenure for the company's principal properties, including the political risk, legal system, ability to mine, terms for maintaining mineral rights, legal impediments and any impediments to maintaining or securing the property: and

d) management's experience and technical expertise relevant to the company's mining projects.

..*.*.*

Sec. 322. Sponsorship or Affiliation

Sponsorship of an applicant company by a Participating Organization of the Exchange is required unless the company meets the requirements for listing under Section 319.1. Sponsorship, or affiliation with an established enterprise, can be a significant factor in the determination of the suitability of the company for listing, particularly where the company only narrowly meets the prescribed minimum listing requirements. Consideration will be given to the nature of the sponsorship or affiliation. In addition to the requirements detailed in Section 326 for Sponsorship of Companies Seeking Listing on The Exchange, sponsors for oil and gas applicants should also be responsible for reviewing and commenting on:

a) the common issues specific to oil and gas companies;

b) the company's management-prepared 18-month projection of sources and uses of funds to ensure that it reflects all of the company's planned and anticipated general, administrative and capital expenditures, as well as debt service;

c) the company's price sensitivity analysis, if required;

d) any site visits to the applicant's properties by the sponsor; and

e) management's experience and technical expertise relevant to the company's oil and gas projects.

..*.*.*.*

Sec. 326. Sponsorship

A company seeking listing on the Exchange must meet certain financial requirements. Management of the company is also important in the evaluation of a listing application by the Exchange. Sponsorship by a Participating Organization of the Exchange, as well as being a significant factor in the consideration of an applicant, is mandatory for all companies that are applying to list under the criteria for non-exempt companies.
The weight attached to sponsorship in any particular case depends upon the financial and managerial strength of an applicant. It may be a determining factor in some instances. While the terms of any sponsorship are to be a matter of negotiation between the sponsor and the applicant company, in the view of the Exchange, the sponsor is responsible for reviewing and providing comments in writing on the following, as applicable:

a) the company's qualifications for meeting all relevant listing criteria;

b) the listing application together with all supporting documentation filed with the application for adequacy and completeness;

c) all matters related to the applicant company and the adequacy of disclosure made to the Exchange;

d) the company, its financial position and history, its business plan, its managerial expertise, any material transactions and all business affiliations or partnerships, and the likelihood of future profitability or viability of any exploration programme;

e) any forecasts, projections, capital expenditure budgets, and independent technical reports, including the assumptions used in their development, submitted in support of the company's listing application;

f) the company's press releases and financial disclosures during at least the past twelve months to assess whether the company has complied with appropriate disclosure standards;

g) the past conduct of officers, directors, promoters and major shareholders of the company with a view' to ensuring that the business of the company will be conducted with integrity, in the best interests of its security holders and the investing public, and in compliance with the rules and regulations of the Exchange and all other regulatory bodies having jurisdiction. The sponsor should satisfy itself in particular, that:

   i) the company can be expected to prepare and publish all information required by the Exchange’s policy on timely disclosure;

   ii) the company's directors appreciate the nature of the responsibilities they will be undertaking as directors of a listed company; and

   iii) the directors, officers, employees and insiders of the company appreciate the "insider trading" rules set out in the OSA;

h) matters applicable specifically to industrial, mining and oil and gas companies as detailed in Sections 312, 317 and 322; and

i) all other factors deemed relevant by the sponsor.

The Exchange also considers the sponsor's responsibilities to include acting as a source of information for the company's security holders, providing advisory assistance to the applicant company, and assisting in maintaining active and orderly trading in the market for the company's securities.

The Exchange considers sponsorship to involve a relationship between the Participating Organization and its client applicant company for the first part and the Exchange for the second part. The terms of a sponsorship must, therefore, be confirmed by letter notice to the Exchange from the sponsoring Participating Organization, as part of a listing application. The weight attached to a particular sponsorship by the Exchange in reviewing a listing application will depend upon the nature of the sponsorship.

SCHEDULE B

TSXV'S PROPOSED APPENDIX 2B – *LISTING OF EMERGING MARKET ISSUERS*

APPENDIX 2B

LISTING OF EMERGING MARKET ISSUERS

The main headings in this Appendix are:

1. Introduction
2. Defined Terms
3. Rationale for Additional Listing Requirements
4. Requirements/Procedures For Listing of Emerging Market Issuers
5. Summary of Requirements and Procedures

1. INTRODUCTION

1.1 Overview

This Appendix sets out and provides guidance in respect of the requirements and procedures applicable to the listing of Emerging Market Issuers. The Exchange is providing this guidance to improve transparency in respect of the Exchange's practices and procedures that may apply to Emerging Market Issuers seeking a listing on the Exchange.

This Appendix complements existing policy requirements, in particular as set forth in Policy 2.1 – *Initial Listing Requirements* ("**Policy 2.1**"), Policy 2.2 – *Sponsorship and Sponsorship Requirements* ("**Policy 2.2**"), Policy 2.3 – *Listing Procedures* ("**Policy 2.3**"), Policy 3.1 – *Directors, Officers, Other Insiders & Personnel and Corporate Governance* ("**Policy 3.1**") and Appendix 2A – *Review Procedure Guidelines* ("**Appendix 2A**"), and should be read in conjunction therewith.

The principal purpose of this Appendix is to set out and provide guidance in respect of the Exchange's requirements and procedures applicable to the listing of Emerging Market Issuers, and the rationale underlying such requirements, with a view to facilitating the listing process.

1.2 Applicability to Other Transactions

Although the requirements and procedures set out in this Appendix are principally intended to apply to New Listing transactions, the Exchange may, at its discretion, apply the requirements and procedures to any transaction or series of transactions that will result in an Issuer becoming an Emerging Market Issuer.

2. DEFINED TERMS

2.1 Definitions

Defined terms used in this Appendix that are not specifically defined in this Appendix shall have the meanings ascribed thereto in Policy 1.1 – *Interpretation*.

In this Appendix:

"CEO" means the Chief Executive Officer of an Issuer.

"CFO" means the Chief Financial Officer of an Issuer.

"Emerging Market Issuer" means an Issuer, other than an Excluded Resource Issuer, whose principal business operations or operating assets are located in an Emerging Market Jurisdiction.

Guidance Notes:

N.1 In determining whether an Issuer is an Emerging Market Issuer, the Exchange will take into account the expected characteristics of the Issuer at the time of listing. For example, in the case of a Reverse Takeover, the characteristics of the Resulting Issuer upon completion of the transactions involved in the Reverse Takeover will be of relevance and not the characteristics of the Issuer prior to the completion of the transactions.

N.2. For greater certainty, an Excluded Resource Issuer will not be considered an Emerging Market Issuer for the purposes of this Appendix. It should be noted, however, that certain of the guidance and requirements set forth in this Appendix remain applicable to Excluded Resource Issuers to the extent that they correspond with requirements applicable to an

Excluded Resource Issuer under other Exchange policies such as, without limitation, Policies 2.1, 2.2, 2.3 or 3.1. Refer to Part 5 of this Appendix for a summary of these matters.

"Emerging Market Jurisdiction" means any jurisdiction outside of Canada, the United States, Western Europe, Australia and New Zealand.

Guidance Note:

N.1 On a case by case basis, the Exchange will consider excluding other jurisdictions from the definition of Emerging Market Jurisdiction if the Exchange is satisfied that the jurisdiction has substantially comparable business practices, business culture, corporate law requirements, securities law requirements and rule of law as Canada. This is something that an Issuer should discuss with the Exchange at a pre-filing conference (refer to section 4.1 below).

"Excluded Resource Issuer" means an Issuer that is either a Mining Issuer or an Oil & Gas Issuer (under Policy 2.1) and for which the following persons have not been resident in an Emerging Market Jurisdiction for a majority of the ten years preceding the Issuer's Application for Listing:

(a) a majority of the Issuer's senior officers;

(b) a majority of the Issuer's directors; or

(c) any director or senior officer of the Issuer that is also a Control Person of the Issuer or an Associate of a Control Person of the Issuer.

3. RATIONALE FOR ADDITIONAL LISTING REQUIREMENTS

3.1 Mitigation of Potential Risks

It is essential that all Issuers listed on the Exchange and accessing the Canadian capital markets adhere to the same high standard in regards to suitability for listing, corporate governance and disclosure.

The Exchange recognizes that, from a suitability for listing perspective, some Emerging Market Issuers may have a different risk profile as compared to non-Emerging Market Issuers due to various jurisdiction-related factors that are not generally applicable to a non-Emerging Market Issuer including, without limitation:

- differences in business culture and business practices from jurisdiction to jurisdiction;
- differences in the nature of the rule of law from jurisdiction to jurisdiction; and
- differences in applicable legal and regulatory requirements from jurisdiction to jurisdiction.

To help mitigate such risks, Exchange policies have historically imposed and will continue to impose certain additional requirements on Emerging Market Issuers at the listing stage. The additional requirements are not intended as a commentary on the business culture, laws or regulatory requirements of Emerging Market Jurisdictions. The additional requirements are designed to help achieve the goals of ensuring satisfactory listing standards and consistent governance and disclosure standards for all Issuers.

3.2 Potential Risks Associated with the Listing of Emerging Market Issuers

The Exchange has identified the following principal areas relevant to listing where there may be greater risks associated with the listing of Emerging Market Issuers:

(a) Management and Corporate Governance:

- **Knowledge of Canadian Regulatory Requirements:** If management lacks experience and familiarity with Canadian securities law and TSXV requirements, the likelihood of non-compliance with, or misunderstanding of, Canadian securities law requirements and the policies of the Exchange potentially increases. This may result in:

  i. inadequate corporate governance standards and practices;

  ii. less sensitivity to market concerns and regulatory requirements associated with Related Party Transactions which, in turn, may increase the likelihood of inadequate disclosure of such

transactions and non-compliance with applicable shareholder approval and/or valuation requirements; and

iii. inadequate compliance with applicable continuous and timely disclosure requirements.

- **Communication:** Communication issues may exist if the board of directors or management are not all fluent in a common language, are not fluent in the language in which the Issuer conducts business or are not within close geographic proximity. In such situations, there is the potential for various communication-related issues to arise such as:

  i. inadequate oversight of senior management by the board of directors;

  ii. the inability of advisors (such as legal counsel and auditors) to adequately communicate with senior management and the board of directors;

  iii. the inability of the CFO to properly carry out its duties;

  iv. the inability of the audit committee to properly carry out its duties; and

  v. the inability of senior management to adequately communicate with the Exchange and the applicable Securities Commissions.

- **Local Business Knowledge:** If management lacks experience and familiarity with the laws and requirements of the jurisdiction where the Emerging Market Issuer is principally carrying out its business activities, the likelihood of non-compliance with, or misunderstanding of, the legal and regulatory requirements applicable to its operations potentially increases.

(b) Financial Reporting:

- **Qualifications of Auditors:** If the Emerging Market Issuer's Canadian auditors lack sufficient experience and expertise in the applicable Emerging Market Jurisdiction, the likelihood of errors or oversights in the audit process, and correspondingly the Issuer's financial statements and related disclosure, may increase.

- **Adequacy of Internal Controls:** Inadequate internal controls over financial reporting matters may increase the likelihood of errors and misstatements in an Emerging Market Issuer's financial statements. Although inadequacy of internal controls is a potential risk for any Issuer, certain factors may raise the risk profile for Emerging Market Issuers. These factors may include:

  i. differences in banking systems and controls between jurisdictions;

  ii. differences in business cultures and business practices between jurisdictions; and

  iii. rules or limitations on the flow of funds between jurisdictions.

- **Qualifications of CFO and Audit Committee:** If the Emerging Market Issuer's CFO or audit committee lacks sufficient expertise and experience with applicable audit practices and procedures, in particular as pertaining to international audit engagements for public companies, the likelihood of errors or oversights in the audit process, and correspondingly the Issuer's financial statements, may increase.

(c) Non-Traditional Corporate/Capital Structures:

- **Complexity of Corporate and Capital Structures:** The Exchange understands that tax or foreign ownership restrictions in certain jurisdictions may encourage or necessitate more complex corporate or capital structures. These may include, for example, structures in which the Issuer does not hold a direct ownership interest in its principal assets and instead holds its rights indirectly through contractual arrangements with a foreign-domiciled entity (e.g. a variable interest entity structure) or structures in which a foreign-domiciled entity is granted an earn-in or similar right that permits it to acquire a controlling or substantial share position in the Issuer for nominal consideration (e.g. a "slow walk" arrangement structure). Where such corporate or capital structures are utilized, there may be potential risks, such as the following:

  (i) if the structure requires that legal ownership of the Issuer's operating assets be vested in a non-affiliated entity, title to and control over such assets by the Issuer may be compromised, a potential risk which may be amplified depending on the rule of law in the applicable jurisdiction;

(ii) the structure may limit or otherwise inhibit the ability of the shareholders to have recourse against the assets of the Issuer; and

(iii) inadequate public disclosure of the nature, material characteristics and risks associated with the structure.

(d) Legal Matters Relating to Title and Ability to Conduct Operations:

- **Validity of Title to Principal Operating Assets:** Legitimacy and certainty of title to principal operating assets are key listing requirements and fundamental to the listing of an Issuer. An Issuer must validly own and be able to operate the business upon which its listing is based. For Emerging Market Issuers, there may be an increase in title risk or difficulty demonstrating that these key listing requirements are satisfied.

- **Legal Right to Conduct Operations:** The Exchange understands that many jurisdictions require specific permits or business licenses in order for an Issuer to carry out its business operations. In particular, there may be specific requirements if the Issuer is considered foreign in the jurisdiction of its business operations. For an Emerging Market Issuer, such requirements may impact its ability to carry out its business operations.

4. REQUIREMENTS/PROCEDURES FOR LISTING OF EMERGING MARKET ISSUERS

The following requirements and procedures are applicable to the listing of Emerging Market Issuers pursuant to any New Listing transaction. The purpose and intent of these requirements and procedures is to mitigate, in part, the potential risks associated with the listing of Emerging Market Issuers identified by the Exchange.

The Exchange may, at its discretion, waive the application of any of the stated requirements and procedures that may be applicable to a particular Issuer. Any such waiver will be considered on a case by case basis taking into account the facts specific to the Issuer.

For greater certainty, Emerging Market Issuers will be required to comply with the applicable listing requirements and procedures set forth in this Appendix in addition to such other requirements and procedures that may be applicable under Exchange policies including, without limitation, Policies 2.1, 2.2, 2.3 and 3.1.

4.1 Pre-Filing Conference

As set out in section 1.2(b) of Policy 2.7 – *Pre-Filing Conferences* ("**Policy 2.7**"), it is strongly recommended that any Issuer that may be considered an Emerging Market Issuer have a pre-filing conference with the Exchange in advance of initiating its Application for Listing.

The principal purposes of the pre-filing conference will be to:

(a) introduce the Exchange to the Issuer, its business and key individuals;

(b) discuss any questions related to the listing process identified by the Issuer and its advisors;

(c) identify the requirements and procedures set out in this Appendix that the Exchange expects will be applicable to the Issuer's application; and

(d) identify potential issues or areas of concern the Exchange may have with the proposed listing.

The Exchange recommends that members of management (in particular the CEO and CFO), the Issuer's counsel, the Issuer's auditors and the Sponsor all attend the pre-filing conference. These meetings are mutually beneficial, allowing the Exchange and the Issuer to communicate directly and identify concerns, if any, at an early stage and consider how such concerns could be addressed. These meetings also provide an early opportunity for senior management and key representatives of the applicant to ask questions and understand the Exchange's listing requirements.

Issuers should refer to Part 4 of Policy 2.7 for the types of documentation and information that are recommended to be filed with the Exchange in advance of a pre-filing conference so as to maximize its utility.

As referenced in section 1.3 of Policy 2.7, failure to hold a pre-filing conference will in all likelihood result in the listing process taking additional time to be completed.

4.2 Qualifications of Management and Corporate Governance

(a) **Public Company Experience:** Section 5.10(b) of Policy 3.1 requires that an Issuer's management team have adequate reporting issuer experience in Canada or a similar jurisdiction. As outlined in section 5.12 of Policy 3.1, the Exchange takes numerous factors into consideration when assessing this matter.

In applying section 5.10(b) of Policy 3.1 within the context of an Emerging Market Issuer, the Exchange will require that:

i. Each of the CEO and CFO and, when taken as a whole, the board of directors must have adequate knowledge and experience with Canadian public company requirements (i.e. Canadian securities law requirements and the policies of the Exchange). This may be demonstrated by the individuals in question having recent experience as directors or senior officers of Exchange or TSX-listed issuers with a positive track record of compliance with applicable Canadian public company requirements. Reference should be made to section 5.12 of Policy 3.1 for additional guidance as to the factors the Exchange may take into consideration.

ii. In the case of the CEO and CFO, where the individual does not have recent experience as a director or senior officer of Exchange or TSX-listed issuers, the individual will need to demonstrate to the Exchange's satisfaction that he/she has otherwise obtained or will obtain prior to listing an adequate knowledge of Canadian public company requirements. As referenced in section 5.12(a)(viii) of Policy 3.1 this may, for example, be accomplished through the individual's satisfactory completion of one or more corporate governance or reporting issuer management courses acceptable to the Exchange for these purposes.

(b) **Jurisdiction Experience:** Section 5.10(a) of Policy 3.1 requires that an Issuer's management team have adequate experience and technical expertise relevant to the Issuer's business and industry. As outlined in section 5.11 of Policy 3.1, the Exchange takes numerous factors into consideration when assessing this matter.

In applying section 5.10(a) of Policy 3.1 within the context of an Emerging Market Issuer, the Exchange will require that the senior officers and board of directors, when taken as a whole, have adequate industry and, as applicable, technical experience in the applicable Emerging Market Jurisdiction.

Guidance Notes:

N.1 Satisfaction of the foregoing requirement will be assessed by the Exchange on a case by case basis taking into account the experience and expertise of the Issuer's management team. In general, the Exchange will require that at least one of the Issuer's senior officers and one of its directors (who are not the same person) have experience and familiarity with the laws and requirements of the relevant jurisdiction that are applicable to the relevant industry. This may be demonstrated by the individuals having recent industry experience in the relevant jurisdiction. Reference should be made to section 5.11 of Policy 3.1 for additional guidance as to the factors the Exchange may take into consideration.

By way of example, in the case of a mineral exploration company that is an Emerging Market Issuer, the Issuer may address the Exchange's jurisdiction experience requirements by demonstrating that one of the Issuer's senior officers and one of its directors (who are not the same person) have recent experience in the mineral exploration industry of the jurisdiction in which the Issuer's Qualifying Property is situated and that such experience has allowed them to develop a familiarity with the laws and requirements of such jurisdiction that are applicable to the mineral exploration industry.

(c) **Communication:** In order to satisfy the Exchange that potential communication issues have been adequately mitigated, the Exchange will require that:

i. The Issuer must identify to the Exchange which senior officers and directors are bilingual in either English or French and the primary language of the relevant Emerging Market Jurisdiction.

ii. Where some or all of an Issuer's senior officers and board members are not fluent in either English or French and the primary language of the relevant Emerging Market Jurisdiction, the Issuer must demonstrate to the Exchange how the language barrier will be overcome within the Issuer's management team and also, as applicable, between the Issuer's management team and its advisors (e.g. legal counsel and auditors) and between the Issuer's management team and its operating staff in the Emerging Market Jurisdiction. This may, without limitation, require that the Issuer have a formal communication plan that is satisfactory to the Exchange which sets out the measures that will be taken to mitigate potential communication related issues.

iii. For all material agreements and documentation that the Issuer is required to file with the Exchange, both at the time of listing as well as post-listing, that are prepared in a language other than English or French, the Issuer must file an English or French translation with the Exchange that has been prepared by a duly certified translator.

(d) **Chief Financial Officer:** The Exchange considers a properly qualified and experienced CFO as critically important in mitigating various of the potential risks identified by the Exchange in respect of the listing of Emerging Market Issuers. In this regard, Emerging Market Issuers must demonstrate to the Exchange's satisfaction that the following requirements are met:

i. The CFO is financially literate (as defined in National Instrument 52-110 – *Audit Committees* ("**NI 52-110**") (per section 5.8(b) of Policy 3.1, this is a requirement for a CFO of any Issuer).

ii. The CFO has the ability to apply applicable Canadian GAAP, including disclosure standards, to all material foreign transaction streams and balances.

iii. The CFO has a strong understanding of Canadian securities laws related to financial reporting.

iv. The CFO has a strong understanding of the business environment in the jurisdiction in which most of the Issuer's transactions are conducted.

v. The CFO has the capability to design and apply effective internal controls over financial reporting to all transaction streams conducted in accordance with the customs of the relevant jurisdiction.

In addition, the Issuer must confirm to the Exchange at the time of listing, based on the nature and complexity of the Issuer's operations, to what frequency the CFO will need to travel to the operation sites, in order to fully exercise his/her mandate.

Satisfaction of the requirements outlined in items i. to v. above is required both at the time of listing and on an ongoing basis post-listing.

(e) **Audit Committee:** The Exchange considers a properly qualified and experienced audit committee as critically important in mitigating various potential risks identified by the Exchange in respect of the listing of Emerging Market Issuers. In this regard, an Emerging Market must demonstrate to the Exchange's satisfaction that the following requirements are met:

i. Every member of the audit committee is financially literate (as defined in NI 52-110).

ii. Every member of the audit committee is independent (i.e. as per section 21(b) of Policy 3.1, they must not be Officers, employees (or equivalent) or Control Persons of the Issuer or any of its Associates or Affiliates).

iii. At least one member of the audit committee has the following skills: (1) Canadian financial reporting skills; and (2) experience with audit engagements for public companies.

Satisfaction of the requirements outlined in items i. to iii. Above is required both at the time of listing and on an ongoing basis post-listing.

Guidance Notes:

N.1. With regards to the requirement in item iii.(2), satisfaction of this requirement will be assessed by the Exchange on a case by case basis taking into account the experience and expertise of the individual in question. In general, the Exchange will consider the requirement satisfied if the individual has recent experience either: (a) as an audit committee member of a public company of a comparable size and nature to the Issuer; or (b) auditing financial statements of a public company of a comparable size and nature to the Issuer.

(f) **Independent Oversight of Related Party Transactions:** Exchange policies currently contain various requirements in respect of Related Party Transactions and transactions with Non-Arm's Length Parties to an Issuer. In addition to being required to comply with said requirements, an Emerging Market Issuer will be required to adopt specific internal written policies in respect of Related Party Transactions and transactions with Non-Arm's Length Parties to the Issuer. These internal policies should address such matters as, without limitation, independent director oversight and approval, adequate timely disclosure to the public, adequate disclosure in the Issuer's financial statements and compliance with all applicable regulatory requirements.

4.3 Background and Corporate Searches

Exchange policies require that a Form 2A – *Personal Information Form* (a "**PIF**") be filed in respect of each director, officer and Insider of an Issuer. Upon receipt of a duly completed PIF, the Exchange conducts background searches on the individual including, as applicable, searches in all jurisdictions where the individual has resided in the preceding ten years.

In addition to background searches on the directors, officers and Insiders of an Issuer, for an Emerging Market Issuer the Exchange may, at its discretion, conduct corporate due diligence searches in the relevant jurisdiction(s).

Some or all of the foregoing searches may require that the Exchange retain a third party to complete the searches in the relevant jurisdiction(s). Issuers will be required to pay the costs associated with these searches to the Exchange in advance of the searches being initiated.

4.4 Qualifications of Auditors

Subject to limited exceptions, auditors for an Emerging Market Issuer must be pre-cleared by the Exchange. This applies to the auditors at the time of listing and in respect of any proposed change of auditors post-listing.

In order to be cleared by the Exchange, auditors for an Emerging Market Issuer must demonstrate satisfactory experience and expertise in the relevant jurisdiction. The principal factors the Exchange will take into consideration in respect of this assessment will include the following:

- demonstrated satisfactory experience and expertise in the relevant jurisdiction by the audit partners and staff including the adoption of quality controls to ensure compliance with Canadian standards of quality control;
- the size and general resources of the firm;
- whether the firm is in good standing with the Canadian Public Accountability Board;
- the ability to communicate effectively with the Issuer's CFO, audit committee and board of directors; and
- the ability to directly execute the audit field work necessary to support the audit opinion.

4.5 Financial Reporting and Adequacy of Internal Controls

(a) **Auditor Review of Interim Period Statements:** Emerging Market Issuers will be required to engage their auditors to perform reviews of the Issuer's interim period financial statements for each interim period in the two years following the listing of the Issuer.

(b) **Internal Controls Over Financial Reporting:** Subject to certain exceptions (see the Guidance Notes to section 4.5), Emerging Market Issuers will be required to have a system of internal controls over financial reporting in place at the time of listing and following listing. In connection therewith, the following requirements will be applicable:

i. As a condition to listing the following steps must be taken (listed in chronological order):

(1) The Issuer's internal controls must be reviewed and evaluated by the Issuer's auditors prior to listing.

(2) The auditors must report the results of their evaluation to the Issuer's CEO, CFO and audit committee.

(3) The Issuer's CEO and CFO must confirm to the Exchange in writing that the Issuer's internal controls over financial reporting provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP (the "**Confirmation**"). If the Confirmation is made subject to certain limitations or material weaknesses relating to the design of the internal controls, the Confirmation must specifically include:

- a description of the material weaknesses;
- the impact of the material weaknesses on the Issuer's financial reporting and its internal controls; and
- the Issuer's current plans, if any, or any actions already undertaken, for remediating the material weaknesses.

(4) The Exchange must be satisfied with the form of the Confirmation, the adequacy of the internal controls and the scope and nature of any identified material weaknesses.

(5) The Issuer must include the Confirmation in the applicable principal disclosure document the Issuer prepares in connection with its listing.

ii. Up to and including the filing of the Issuer's annual financial statements for the second full financial year of the Issuer following listing, the Exchange will require that:

(1) Concurrently with the SEDAR filing of the Issuer's annual financial statements, the Issuer must SEDAR file and make public the CEO and CFO certification in the form prescribed by Form 52-109F1 – *Certification of Annual Filings Full Certificate* of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") (or applicable successor form and instrument).

(2) Concurrently with the SEDAR filing of the Issuer's interim period financial statements, the Issuer must SEDAR file and make public the CEO and CFO certification in the form prescribed by Form 52-109F2 – *Certification of Interim Filings Full Certificate* of NI 52-109 (or applicable successor form and instrument).

iii. The Issuer's CFO must be responsible for reporting to the audit committee on the effectiveness of the Issuer's internal controls on an annual basis. This should be specifically provided for in the audit committee's charter.

Guidance Notes:

N.1 The requirements in section 4.5(b) will not generally be applicable to Emerging Market Issuers whose business operations are not revenue generating.

N.2 Given the scope and nature of the stated requirements in section 4.5, the Exchange will assess the applicability of such requirements to an Issuer on a case by case basis with a view to the facts specific to the Issuer. It is strongly recommended that Issuers discuss the possible applicability of these requirements with the Exchange at a pre-filing conference.

N.3 With respect to the review and evaluation of the Issuer's internal controls per section 4.5(b)i.(1), the Exchange will not require an audit/attestation of the internal controls by the Issuer's auditors. Within the context of NI 52-109, in preparing the CEO/CFO certifications pertaining to internal controls, the Exchange's understanding is that a diligent issuer would engage the auditors to review and provide comments on the internal controls before the CEO and CFO could provide the necessary certifications, but that this process would not necessarily involve a formal audit of the internal controls. The Exchange's expectation for compliance with section 4.5(b)i.(1) is that an Emerging Market Issuer would carry out the same process prior to listing as would be carried out by a diligent issuer in complying with NI 52-109.

N.4 With regards to the requirements in section 4.5(b)(ii), if the Exchange determines to apply said requirements to an Issuer, the Issuer must comply with these requirements irrespective of whether they may be exempt under NI 52-109 from having to file the noted certificates.

N.5 For greater certainty with regards to the timeframe in which the requirements in section 4.5(b)(ii) will be applicable, the following example is provided. An Issuer with a financial year end of December 31 completes its listing transaction on February 15, 2013. The requirements of section 4.5(b)(ii) will be applicable up to and including the filing of its annual financial statements for the financial year ended December 31, 2015 (i.e. in this example, the two full financial years following completion of the listing transaction on February 15, 2013 will be the financial years ended December 31, 2014 and 2015).

4.6 Non-Traditional Corporate/Capital Structure

In circumstances where an Emerging Market Issuer intends to employ a non-traditional corporate structure or share capital structure (e.g. a variable interest entity structure or a "slow walk" arrangement structure), the Exchange will impose the following requirements:

(a) Satisfactory Reason for Using Structure: The Issuer must provide an explanation to the Exchange why the non-traditional corporate structure is necessary in the given circumstances. In the absence of the Exchange being satisfied that the non-traditional corporate structure is necessary, the Exchange may refuse listing on this basis.

(b) **Legal Opinion on Validity of Structure:** Where the Exchange has concerns over the validity of the structure, the Exchange may require a legal opinion addressing the noted concerns.

(c) **Adequate Disclosure:** Full, true and plain disclosure of the nature, material characteristics and associated risks of the corporate/capital structure must be disclosed in the applicable principal disclosure document the Issuer prepares in connection with its listing. This disclosure should include, without limitation, disclosure related to the ability of shareholders to have recourse against the assets of the Issuer. Post-listing, the Issuer will be required, on an annual basis, to include the same disclosure in either: (i) its management discussion and analysis for its audited annual financial statements; or (ii) its annual information form (or equivalent document under applicable Securities Laws) if one is filed by the Issuer.

4.7 Legal Matters Relating to Title and Ability to Conduct Operations

With regards to title and the Issuer's ability to conduct its operations, the Exchange will require the following in connection with the listing of an Emerging Market Issuer:

(a) **Title Opinion:** Per section 1.17 of Policy 2.3, if an Issuer's principal properties or assets are located outside Canada or the United States, the Issuer will generally be required to provide a satisfactory title opinion or other appropriate confirmation of title to the Exchange. If title to the principal properties or assets is held through an affiliated entity, the Issuer will generally be required to also provide a satisfactory corporate opinion confirming the validity of the Issuer's ownership of such affiliated entity.

(b) **Opinion on Necessary Licenses and Permits:** The Issuer will be required to provide a satisfactory legal opinion that the Issuer has all required permits, licenses and other applicable governmental and regulatory approvals to carry out its business operations in the relevant jurisdiction.

4.8 Sponsorship Requirements

The Exchange is of the view that the due diligence and review completed by a Sponsor in respect of the listing of an Emerging Market Issuer plays an important role in ensuring that the Issuer meets the requirements and expectations of the Exchange. In order to enhance the utility provided by a Sponsor in this regard, the following requirements are applicable.

(a) **Sponsorship for Listing of Emerging Market Issuers:** Policy 2.2 sets forth both the circumstances where sponsorship for a New Listing transaction is required as well as the circumstances when a New Listing transaction may be exempt from sponsorship. With respect to the requirement for sponsorship for a New Listing involving an Emerging Market Issuer, the following shall also apply in addition to the provisions of Policy 2.2:

(i) Section 3.1(a) of Policy 2.2 provides a general exemption to the sponsorship requirement in the case of a New Listing made in conjunction with an IPO where the prospectus is executed by at least one Member. Except as may be determined by the Exchange at its discretion, this exemption to the sponsorship requirement will not be available to Emerging Market Issuers.

(ii) Section 3.4(a)(ii) of Policy 2.2 sets forth an exemption to the sponsorship requirement that is predicated upon the significant involvement of a bank or other major financial institution in the transaction or the completion of a concurrent brokered financing with the agent to such financing confirming that it has completed appropriate due diligence that is generally in compliance with the relevant standards and guidelines set forth in Policy 2.2. Except as may be determined by the Exchange at its discretion, this exemption to the sponsorship requirement will not be available to Emerging Market Issuers.

(b) **Detailed Sponsor Reports:** As provided for in section 7.4(b) of Policy 2.2, the Exchange has the discretion to require that a Sponsor prepare and complete a detailed Sponsor Report that includes, in addition to the requirements of Form 2H – *Sponsor Report* ("**Form 2H**"), disclosure as to the completion of the applicable review procedures set forth in Appendix 2A. In this regard, if there are issues or listing requirements for which the Exchange considers specific comment from the Sponsor as prudent or necessary, the Exchange will require that the Sponsor provide a Sponsor Report that specifically comments on these matters. In respect of any listing of an Emerging Market Issuer for which sponsorship is required, the additional detailed information to be required in a Sponsor Report may vary from listing to listing, but it is expected that the following detailed information will be required by the Exchange (to the extent applicable to a particular Issuer):

i. The Sponsor must provide specific comment on its evaluation of the level and adequacy of the public company knowledge and experience of senior management and the board of directors on an individual and collective basis.

ii. The Sponsor must provide specific comment on its evaluation of the level and adequacy of industry experience held by senior management and the board of directors (on an individual and collective basis) in the jurisdiction where the Issuer's principal operations are situated.

iii. Where some or all of an Issuer's senior officers and board members are not fluent in either English or French and the primary language of the jurisdiction where the Issuer's principal operations are situated, the Sponsor must provide specific comment on the adequacy of the Issuer's plans to mitigate any potential communication issues.

iv. The Sponsor must provide specific comment on the adequacy of the CFO's qualifications.

v. The Sponsor must provide specific comment on the adequacy of the Issuer's internal policies in respect of Related Party Transactions and transactions with Non-Arm's Length Parties to the Issuer.

vi. Regarding internal controls over financial reporting, the Sponsor must provide specific comment on the matters set forth in item ©(iv) of Appendix 2A if section 4.5(b) of this Appendix is applicable to the Issuer. The Exchange's expectation is that the Sponsor will review the Confirmation and discuss the existence and effectiveness of the Issuer's internal controls with the Issuer's auditors, CEO, CFO and audit committee including whether the Issuer needs to implement or adjust those controls. In the Sponsor Report, the Sponsor will be required to specifically confirm that it has completed this process, summarize whether it is satisfied with the form and contents of the Confirmation and provide any other related information the Sponsor considers relevant based upon its discussions with the auditors, CEO, CFO and audit committee.

vii. If the Exchange has concerns regarding the rule of law in the relevant jurisdiction, the Exchange may require the Sponsor to provide specific comment on the nature of the rule of law in the relevant jurisdiction.

It should be noted that although a Sponsor's conclusion and confirmation that an Issuer satisfies the Exchange's listing requirements and is suitable for listing on the Exchange is important to the Exchange's consideration of the Issuer's listing merits, the Sponsor's conclusions and confirmations in this regard are in no manner binding upon the Exchange. The final decision as to whether an Issuer satisfies the Exchange's listing requirements and is suitable for listing on the Exchange rests with the Exchange.

4.9 Ongoing Compliance with Exchange Policy Requirements

The Exchange will require that all Emerging Market Issuers continue to comply with the requirements set forth in this Appendix on an ongoing basis, as applicable. Issuers should at all times be mindful of the potential impact of corporate actions such as, without limitation, changes of directors or senior officers, changes to the composition of the Issuer's audit committee and change of auditors as these actions may impact the Issuer's continued compliance with the applicable requirements set forth in this Appendix. Furthermore, the Exchange may from time to time, at its discretion, require an Emerging Market Issuer to satisfy the Exchange that the Issuer remains in compliance with the applicable requirements set forth in this Appendix.

5. SUMMARY OF REQUIREMENTS AND PROCEDURES

The table on the following page sets out in summary form the requirements and procedures for the listing of Emerging Market Issuers set out in Part 4 of this Appendix. For ease of reference, the table also sets out the requirements and procedures in this Appendix that are applicable to Excluded Resource Issuers (on the basis that they are otherwise applicable under Exchange policies such as, without limitation, Policies 2.1, 2.2, 2.3 or 3.1).

The table is provided for reference purposes only and is qualified by the more detailed information set out in this Appendix.

	Emerging Market Issuer	Excluded Resource Issuer
Pre-filing conference (s. 4.1)	Y	Y
CEO/CFO Public company experience (s. 4.2(a)): Each of CEO and CFO and, collectively, the board must have Canadian public company knowledge/experience.	Y	N(1)
Jurisdiction experience (s. 4.2(b)): Senior officers and board, as a whole, have adequate industry experience in the jurisdiction in which principal operations are situated.	Y	Y
Address communication issues (s. 4.2(c))	Y(2)	Y(2)
Enhanced CFO requirements (s. 4.2(d))	Y	N
Enhanced audit committee requirements (s. 4.2(e))	Y	N
Internal policies for Related Party Transactions (s. 4.2(f))	Y	N
Background and corporate searches (s. 4.3)	Y(3)	Y(3)
Pre-clearance of auditors (s. 4.4)	Y	N
Auditor review of interim period financial statements for 2 years (s. 4.5(a))	Y(4)	N
Evaluation of internal controls over financial reporting (s. 4.5(b))	Y(4)	N
Requirements related to non-traditional corporate/capital structures (s. 4.6)	Y(5)	Y(5)
Legal opinions re: title and necessary permits/licenses (s. 4.7)	Y	Y
Ability to rely on IPO exemption to sponsorship requirement (s. 4.8(a))	N	Y
Ability to rely on brokered financing exemption to sponsorship requirement (s. 4.8(b))	N	Y
Detailed Sponsor Report	Y	Y(6)

(1) The public company experience requirements prescribed by section 5.10(b) of Policy 3.1 are still applicable.

(2) Only applicable if some or all of an Issuer's senior officers and board members are not fluent in either English or French and the primary language of the jurisdiction.

(3) Exchange will conduct background searches on all directors, officers and other Insiders. Corporate searches may be required, at the Exchange's discretion, if the Issuer or its material operating subsidiary are domiciled outside of Canada.

(4) The requirement will not generally be applicable to Issuers whose business operations are not revenue generating.

(5) Only applicable if the Issuer intends to employ a non-traditional corporate structure or share capital structure.

(6) Per Policy 2.2 and Appendix 2A, the Exchange may, at its discretion, require a Sponsor to provide specific detailed information in a Sponsor Report. For an Excluded Resource Issuer, this would be assessed on a case by case basis.

Chapter 25

Other Information

25.1 Approvals

25.1.1 Hamilton Capital Partners Inc. – s. 213(3)(b) of the LTCA

Headnote:

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited:

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 14, 2012

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Vanessa Hansford

Dear Sirs/Medames:

Re: Hamilton Capital Partners Inc. (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application No. 2012/0731

Further to your application dated November 15, 2012, (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of HCP Financials Market Neutral Fund and any other future mutual fund trusts that the Applicant may establish and manage from time to time, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of HCP Financials Market Neutral Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Edward P. Kerwin"

"Vern Krishna"

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