The Ontario Securities Commission

OSC Bulletin

February 28, 2013

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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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February 28, 2013

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- - - - - - - - - - - - - - - - - - - -

Temporary Change of Location of Ontario Securities Commission Proceedings

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

ASAP Reporting Services Inc.
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Christopher Portner	—	CP
Judith N. Robertson	—	JNR
AnneMarie Ryan	—	AMR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

March 4, 2013 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 S. Horgan in attendance for Staff Panel: EPK
March 5, 2013 10:00 a.m.	**New Hudson Television LLC & Dmitry James Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
March 5, 2013 2:00 p.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 J. Feasby in attendance for Staff Panel: MGC
March 5, 2013 2:00 p.m.	**Ground Wealth Inc., Michelle Dunk, Adrion Smith, Joel Webster, Douglas DeBoer, Armadillo Energy Inc., Armadillo Energy, Inc., and Armadillo Energy LLC** s. 127 J. Feasby in attendance for Staff Panel: MGC

March 6, 2013 10:00 a.m.	**Quadrexx Asset Management Inc., Quadrexx Secured Assets Inc., Offshore Oil Vessel Supply Services LP, Quibik Income Fund and Quibik Opportunity Fund** s. 127 D. Ferris in attendance for Staff Panel: JEAT
March 6, 2013 11:00 a.m.	**JV Raleigh Superior Holdings Inc., Maisie Smith (also known as Maizie Smith) and Ingram Jeffrey Eshun** s. 127 S. Schumacher in attendance for Staff Panel: AJL
March 7, 2013 11:00 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: MGC
March 11, 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
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 13, 2013 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: EPK
March 15, 2013 10:00 a.m.	**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: EPK/PLK
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

March 19, 2013 10:00 a.m.	**Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein** s. 127 A. Clark/J. Friedman in attendance for Staff Panel: JEAT
March 21, 2013 9:00 a.m.	**Knowledge First Financial Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
March 21, 2013 9:00 a.m.	**Heritage Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
March 22, 2013 10:00 a.m.	**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: PLK/JNR
March 25, March 27-28, April 8, April 10-12, April 17, April 19, May 13-17, May 22 and June 24-28, 2013 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA
April 2, 2013 10:00 a.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: VK
April 3-5, 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
April 4, 2013 10:00 a.m.	**Sandy Winick, Andrea Lee McCarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Corp., (aka Liquid Gold International Inc.) and Nanotech Industries Inc.** s. 127 J. Feasby in attendance for Staff Panel: JDC
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 10, 2013 10:00 a.m.	**Blackwood & Rose Inc., Steven Zetchus and Justin Kreller (also known as Justin Kay)** s. 37, 127 and 127.1 C. Rossi in attendance for Staff Panel: JEAT
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 18, 2013 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 C. Price in attendance for Staff Panel: CP
April 25, 26 and May 13, 2013 10:00 a.m.	**Matthew Robert White and White Capital Corporation** s. 8 S. Horgan/C. Weiler in attendance for Staff Panel: JEAT
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
June 3, June 5-17 and June 19-25, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
June 3, 5-6, 10-12, 14-17, 19-20 and July 22-26, 2013 10:00 AM	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: CP/SBK/PLK

June 6, 2013 10:00 a.m.	**New Hudson Television Corporation,** **New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
July 31, 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
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
October 15-21, October 23-29, 2013 10:00 a.m.	**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
May 5-16 and May 20 – June 20, 2014 10:00 a.m.	**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	**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

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

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

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 **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 **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 **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 **Ernst & Young LLP**

s. 127 and 127.1

A. Clark in attendance for Staff

Panel: TBA

TBA **Newer Technologies Limited, Ryan Pickering and Rodger Frey**

s. 127 and 127.1

B. Shulman in attendance for staff

Panel: TBA

TBA

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: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Fawad Ul Haq Khan and Khan Trading Associates Inc. carrying on business as Money Plus

s. 60 and 60.1 of the *Commodity Futures Act*

T. Center in attendance for Staff

Panel: TBA

TBA

Northern Securities Inc., Victor Philip Alboini, Douglas Michael Chornoboy and Frederick Earl Vance

s. 21.7 and 8

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

Global RESP Corporation and Global Growth Assets Inc.

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA

Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA

Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Educational Trust Foundation and Margaret Singh

s. 127 and 127.1

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA

Children's Education Funds Inc.

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA

MI Capital Corporation and One Capital Corp. Limited

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA **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 : TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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 2012 Enforcement Report

The *Canadian Securities Administrators 2012 Enforcement Report* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

CANADIAN SECURITIES ADMINISTRATORS

2012 Enforcement Report

CSA ACVM

Canadian Securities Administrators

About CSA

The Canadian Securities Administrators (CSA) is the council of the 10 provincial and three territorial securities regulators in Canada. The mission of the CSA is to facilitate Canada's securities regulatory system, providing protection to investors from unfair, improper or fraudulent practices and to promote fair, efficient and transparent capital markets, through the development of harmonized securities regulation, policy and practice.

The CSA seeks to streamline the regulatory process for companies that wish to raise capital and for individuals and companies working in the investment industry. In enforcement matters, while most enforcement activity is conducted locally, CSA members also coordinate multi-jurisdictional investigations and share tools and techniques that help their staff investigate and prosecute securities law violations that cross borders.

RESPONSIVE

Responsive enforcement acts quickly and appropriately in cases of misconduct.

COLLABORATIVE

Collaborative enforcement prevents misconduct from spreading across borders and promotes efficiency across jurisdictions.

EFFECTIVE

Effective enforcement strengthens public confidence in Canadian capital markets.

Message From The Chair

Bill Rice
Chair, CSA

In protecting investors and the integrity of the Canadian capital markets, CSA members work hard to combat securities fraud and we place particular emphasis in our enforcement work on those securities law violations that constitute fraud. Fraudulent behaviour can cause tremendous harm.

In this fifth year of the annual CSA enforcement report, we have changed how we report on securities fraud. In order to distinguish fraud cases more clearly and to track the numbers of such cases, we have added fraud as a stand-alone category of securities offence. Fraud cases have previously been included within the other categories of violation.

We provide examples of several different types of fraud in this report, including Ponzi schemes, affinity frauds, and foreign exchange trading scams. The Arbour Energy case is a notable example of a deliberately complex, coordinated, far-reaching fraudulent investment scheme. The proceedings in the case were led by the Alberta Securities Commission, with assistance from five other CSA members as well as the Securities and Exchange Commission in the U.S. Total sanctions of nearly $54 million were imposed in that case, and some respondents are also facing criminal charges.

A helpful tool in our efforts to fight fraud is the public survey conducted by the CSA every three years, which covers investment knowledge, investor behaviour and incidence of investment fraud in Canada. The 2012 CSA Investor Index provides context around the investment climate in Canada and the factors that can enable fraud to occur. While the study demonstrates some encouraging trends – more Canadians are saving for retirement and more are using financial advisors than in previous years – the results also show that most Canadians have unrealistically high expectations of the returns they should expect on their investments. When interest rates are as low as they are today, investors naturally seek higher returns. A promise of high, risk-free returns is one of the clearest warning signs of a fraudulent scheme.

> “A PROMISE OF HIGH, RISK-FREE RETURNS IS ONE OF THE CLEAREST WARNING SIGNS OF A FRAUDULENT SCHEME.”

The 2012 Investor Index also found that almost 30 per cent of Canadians believe they have been approached with an investment fraud at some point in their lives. However, only 29 per cent of those who believed they had been approached reported the possible fraud to authorities. Since tips from the public represent an important source of information for our enforcement teams, we encourage Canadians to report questionable promotions to their provincial or territorial securities regulator.

We are making good progress on our objective of prosecuting more frauds and other securities violations in the courts. Courts have the authority to impose jail sentences for serious violations. Courts in five provinces handed down jail time for seven individuals in 2012. The Prosecution in the Courts page of the report gives examples of some of the notable prosecutions from the past year.

Finally, while this report focuses on a few of the more egregious cases of fraud and other wrongdoing addressed by CSA members in 2012, it is worth noting that the handful of cases profiled here are just a small sub-set of the 135 cases concluded by securities regulators across the country over the past year. In all their efforts, from prosecuting high-profile frauds to the everyday work of upholding securities laws and regulations, the securities enforcement teams of CSA members are enforcing the security, reliability and fairness of the Canadian capital markets to the benefit of all investors.

Bill Rice
Chair, CSA

Key Players in Enforcement

In Canada, a number of laws and rules govern capital markets and market participants; different agencies enforce these laws and rules. Each fulfills different roles in the overall regulation of capital markets. CSA members administer and enforce the securities legislation in each jurisdiction, whereas criminal authorities enforce the *Criminal Code*.

The Canadian Securities Market

Market Capitalization[1]	$ 2.16 trillion
Total Issuers[2]	5,253
Total Registrants (firms)[3]	2,440
Total Registrants (individuals)[3]	123,442
Registered Plan Assets[4]	$ 1.02 trillion
Pension Fund Assets[4]	$ 1.31 trillion
Total Financial Wealth[4]	$ 2.97 trillion
Size of Exempt Market[5]	approx. $ 150 billion

1 Data from the TMX Market Intelligence Group Report at September 30, 2012 (includes only equity).

2 Total number of issuers compiled from SEDAR and includes listed and unlisted issuers. Does not include investment fund issuers.

3 Data compiled from the National Registration Database, and includes registered and exempt firms and registered and permitted individuals.

4 Data from Investor Economics, Household Balance Sheet, as of December 2011. Pension fund assets include CPP and QPP. Registered plan assets include assets in RRSPs, DPSPs, TFSAs, RDSPs, and RRIFs.

5 Data from reports of exempt distribution filed in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia for investments made by Canadian resident companies, institutional investors, investment funds and individuals using prospectus exemptions in 2011. The figure includes only investments made under five of the available prospectus exemptions that trigger reporting requirements under securities laws.

Securities Laws and Regulators

Securities laws in each province and territory are comprised of a *Securities Act*, which provides the legal foundation for regulatory requirements related to the capital markets, along with any regulations or rules under each Act and any blanket rulings, orders and decisions issued by securities regulators. Securities laws impose duties on issuers, registrants and other market participants.

An effective regulatory enforcement regime is rooted in strategies that focus on investor protection and the prevention of harm. CSA members, as securities regulators, investigate suspected securities-related misconduct, such as breaches of obligations by registrants with respect to clients, illegal sales of securities, or other securities law infractions.

Securities regulators may bring allegations of securities misconduct to a hearing before a securities commission or an associated tribunal. Securities legislation authorizes CSA members to seek or impose administrative sanctions for securities-related misconduct, including monetary sanctions and prohibitions from market participation or access. Such sanctions are intended to deter misconduct and to protect investors from harm.

Securities legislation also establishes quasi-criminal offences for contraventions of regulatory requirements and prohibitions of certain activities related to the capital markets. Penalties for committing these types of offences can include a term of imprisonment and a significant fine. In some jurisdictions, staff may directly prosecute such cases in court. In others, securities regulators may refer cases of certain quasi-criminal offences to Crown counsel for prosecution in the courts. CSA members have no authority to order a term of imprisonment; this can only be done by a judge.

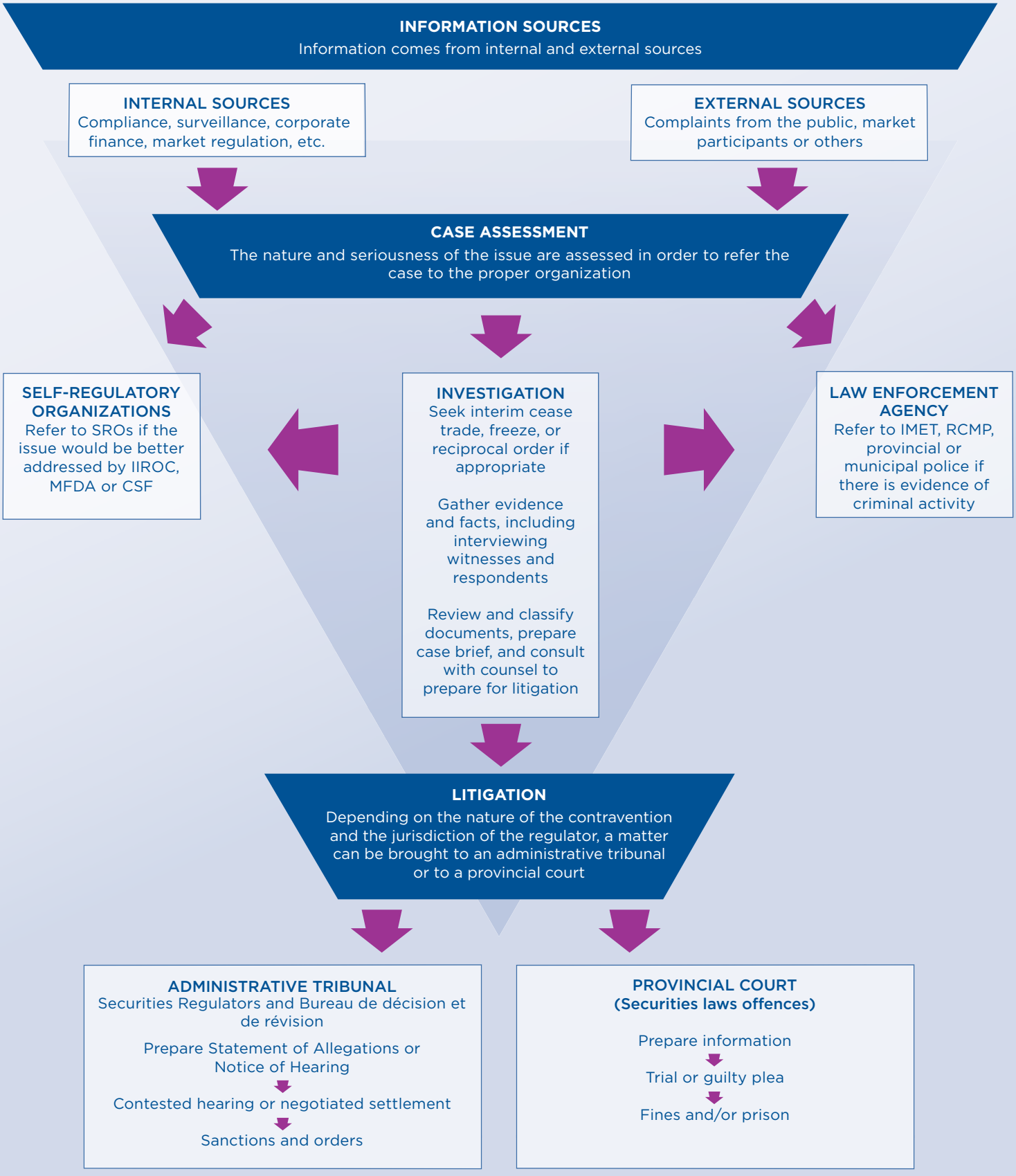
Criminal Code and Authorities

The *Criminal Code*, a federal statute, establishes both specific securities-related criminal offences (such as market manipulation), and more general economic crimes (such as fraud) that could also capture some securities-related misconduct. Penalties imposed by the courts for criminal offences are intended to, among other things, punish those persons who have committed securities-related misconduct. Penalties for committing offences can include a lengthy term of imprisonment and a significant fine under the *Criminal Code*. The pursuit of an offence under the *Criminal Code* requires charges to be laid by law enforcement, the Crown or, in Québec, the Director of Criminal and Penal Prosecutions. The prosecution is then pursued by Crown counsel or the Director.

Self-Regulatory Organizations (SROs)

Canadian securities regulators have recognized self-regulatory organizations (SROs) to regulate investment dealers and mutual fund dealers, under the oversight of CSA members. The key SROs in Canada are the Investment Industry Regulatory Organization of Canada (IIROC), the Chambre de la sécurité financière (CSF), and the Mutual Fund Dealers Association of Canada (MFDA). SROs can discipline member dealers or their employees for breaching SRO rules. Sanctions include suspension or termination of membership or market access and monetary penalties.

The Enforcement Process



2012 Results

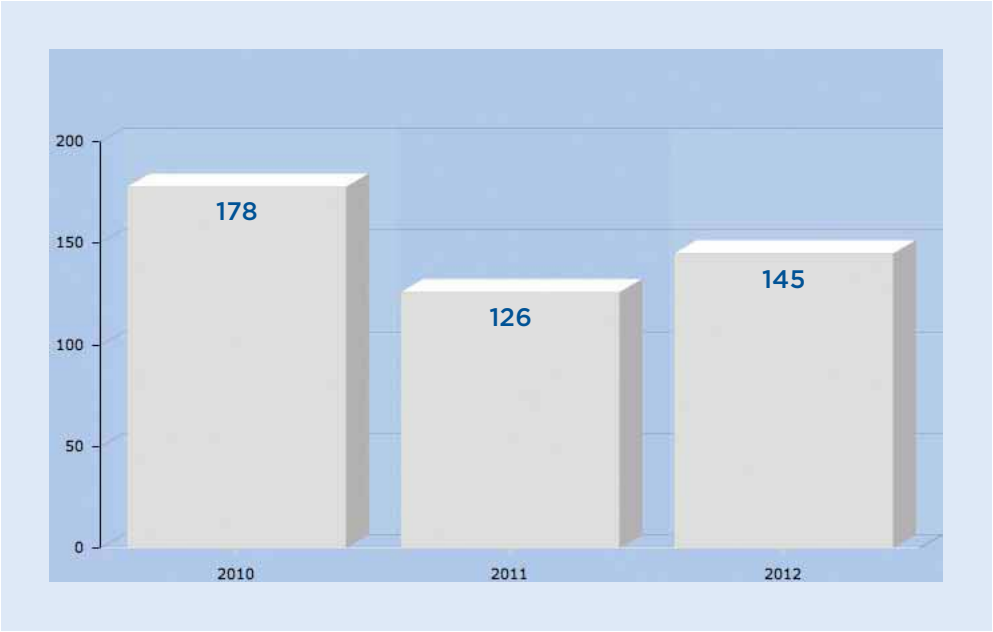
This section presents data in several enforcement categories. The results vary considerably from year to year. Cases differ widely in their complexity and in the number of respondents and victims involved. The time required to conclude a case can range from a few weeks to a year or longer, with complex cases requiring substantial resources. These results should therefore be considered in aggregate; changes in one category are not necessarily a trend.

Proceedings Commenced

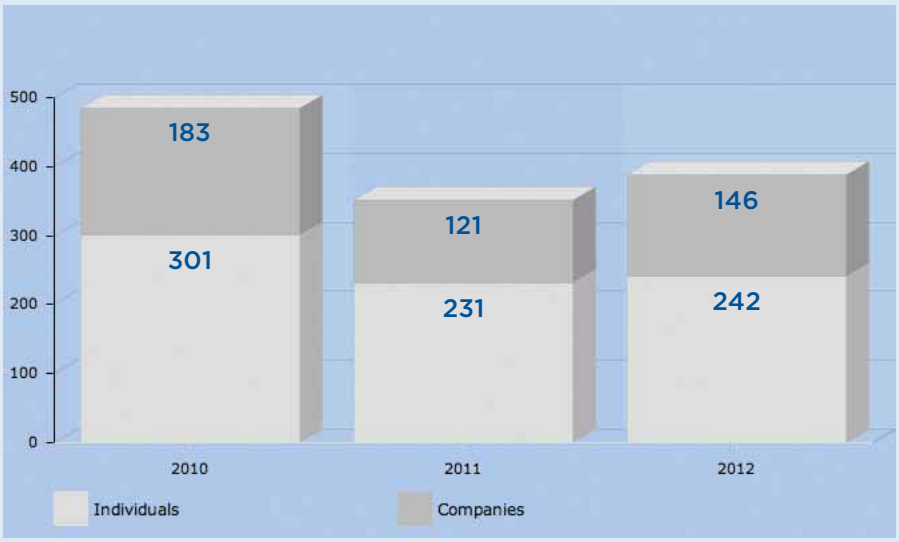
Proceedings commenced are cases in which Commission staff have filed a statement of allegations or sworn an Information before the courts (or in Québec, where a statement of offence has been served on the defendant), any of which allege wrongdoing. Many of the proceedings commenced in 2012 were still underway at the end of the year, and in such cases, decisions have yet to be rendered.

One proceeding, targeting an illegal distribution scheme, for example, might involve several individuals and one or more companies. The 145 total proceedings commenced in 2012 involve, in aggregate, 242 individuals and 146 companies. By comparison the 126 total proceedings commenced in 2011 included 231 individuals and 121 companies.

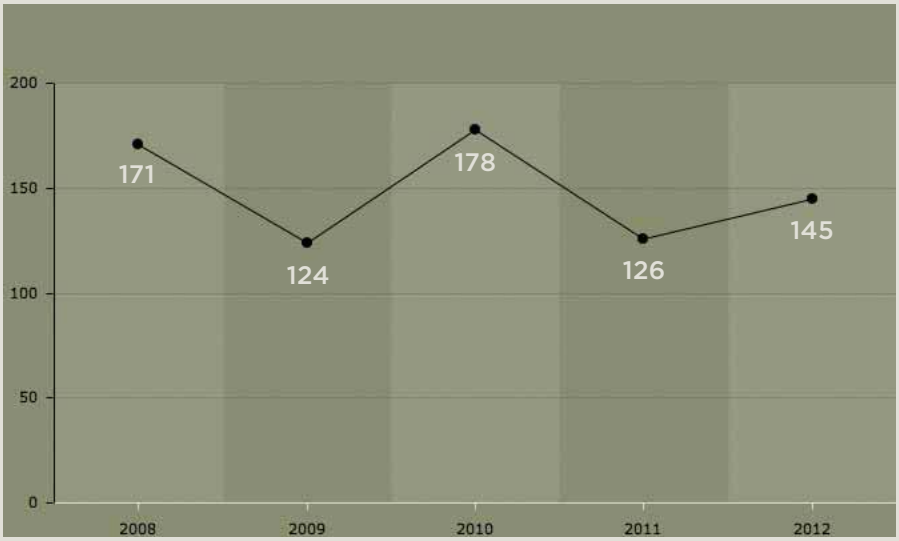
Proceedings Commenced



Respondents



Proceedings Commenced: 5-Year Results



Tables 1 and 2 below show how the proceedings commenced break down by category of wrongdoing over the last three years. The first table shows the breakdown by proceeding (each of which can involve several respondents), while the second table shows the breakdown by individual or company respondent. The pie charts give a visual representation of the 2012 data, showing the proportion of activity in each category. As outlined in the Message from the Chair, a fraud category has been added for 2012. Many of the fraud proceedings would have been classified as illegal distributions in past years; hence there is a drop in illegal distributions proceedings in 2012.

Table 1: Proceedings Commenced by Category

Type of Offence	2010	2011	2012
Illegal Distributions	122	77	53
Fraud*	n/a	n/a	34
Misconduct by Registrants	20	14	21
Illegal Insider Trading	12	9	4
Disclosure Violations	7	14	10
Market Manipulation	4	2	6
Other Cases	13	10	17
Total	**178**	**126**	**145**

* Fraud offences were included among other offences prior to 2012.

Table 2: Respondents by Category

Type of Offence	2010	2011	2012
Illegal Distributions	356	239	159
Fraud*	n/a	n/a	113
Misconduct by Registrants	40	33	38
Illegal Insider Trading	31	31	19
Disclosure Violations	10	18	14
Market Manipulation	19	12	13
Other Cases	28	19	32
Total	**484**	**352**	**388**

* Fraud offences were included among other offences prior to 2012.

Proceedings Commenced 2012

Respondents 2012

Concluded Matters

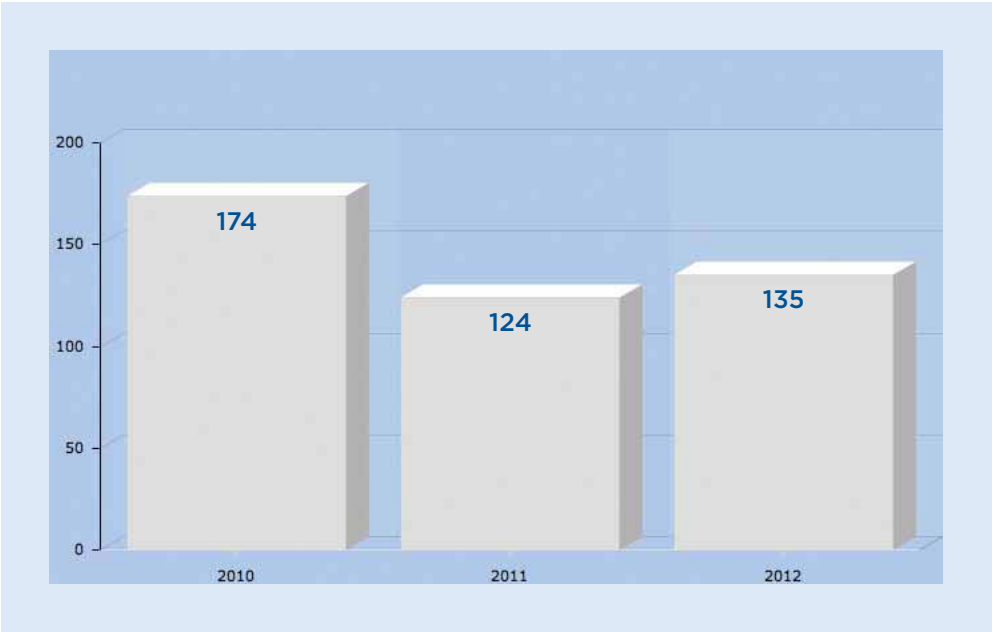
The first chart below shows the number of concluded enforcement cases in each of the last three years. The second chart shows the number of individual and company respondents against whom matters have been concluded.

The data points in the two charts below are not directly related to one another in any given year. A single enforcement case often names several individuals and one or more companies as respondents. Large or complex cases can have long lists of respondents. While cases are typically counted as concluded in the year that the first component of the case is settled, proceedings against other respondents can often carry on into the next year or beyond. Some of the respondents counted in 2012 may actually relate to cases that counted as concluded in previous years. The data in the charts below should therefore be treated independently.

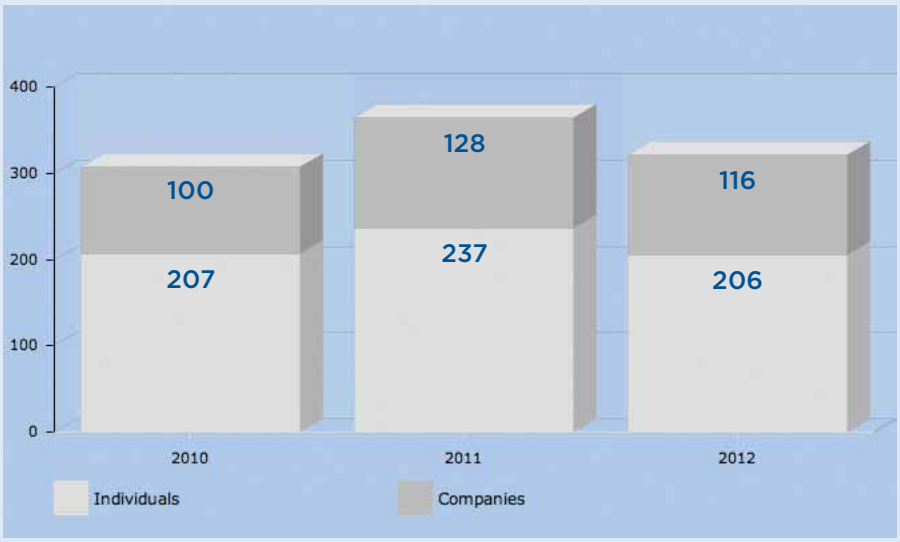
CSA members concluded an aggregate total of 135 cases in 2012, compared to 124 concluded cases in 2011. The tables provide more detail about these cases and how they were concluded. Each case is counted just once, even if more than one person or company was sanctioned in a single case. All 135 cases are listed in the concluded cases database.

In 2012, CSA members concluded matters involving 206 individuals and 116 companies, or 322 total respondents. By comparison, concluded matters in 2011 involved 237 individuals and 128 companies (365 respondents). As explained above, not all of these individual proceedings are connected to cases that concluded in 2012.

Concluded Cases



Respondents



Concluded Cases: 5-Year Results

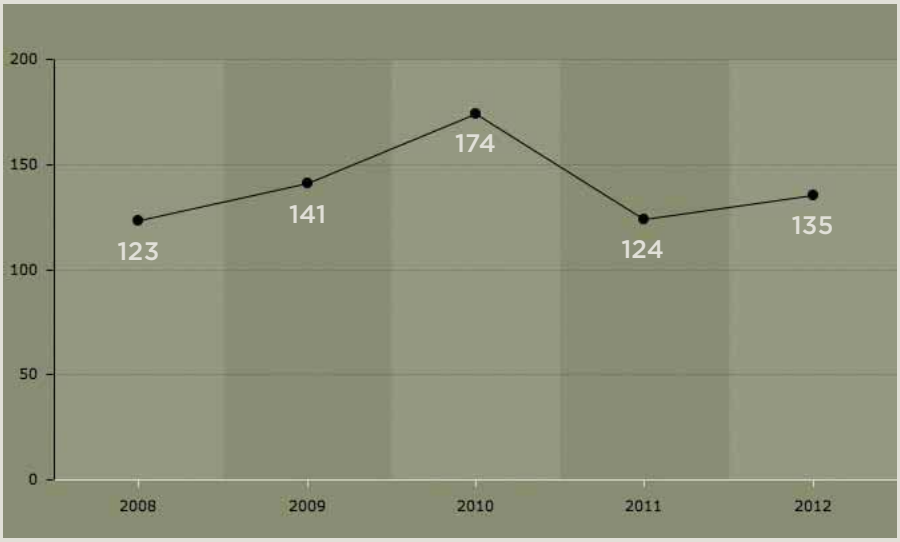


Table 3 shows completed Canadian enforcement matters against individual and company respondents, by category of wrongdoing, for 2010, 2011, and 2012. The pie chart gives a visual representation of the proportion of respondents in each category. Illegal distributions (distributing securities without registration or a prospectus) continue to form the largest category, although with the addition of the new fraud category, many cases that would previously have been categorized as illegal distributions now appear in the fraud category.

Table 3: Respondents by Category[1]

Type of Offence	2010	2011	2012
Illegal Distributions	215	224	133
Fraud[2]	n/a	n/a	66
Misconduct by Registrants	31	37	61
Illegal Insider Trading	17	16	16
Disclosure Violations	22	15	15
Market Manipulation	4	11	4
Other Cases	18	62	27
Total	**307**	**365**	**322**

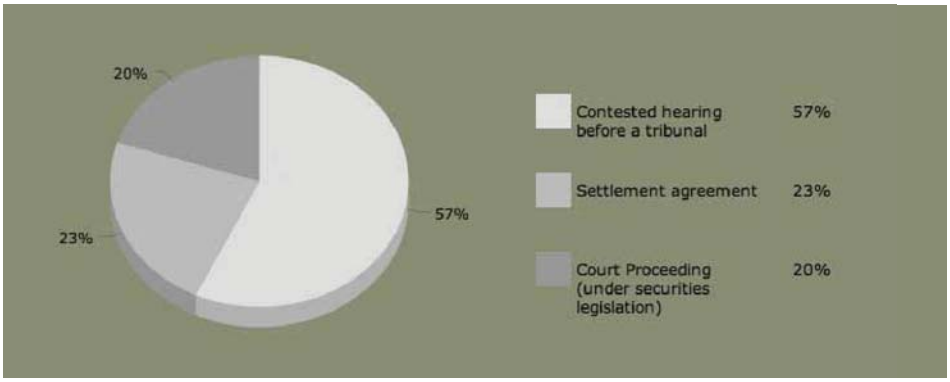
1 Reciprocal orders and interim cease trade orders have not been counted in this table.
2 Fraud offences were included among other offences prior to 2012.

Respondents by Category 2012

How Proceedings Against Respondents Were Concluded

The pie chart below provides a breakdown of how matters against respondents were concluded in 2012, whether by a tribunal decision, a settlement agreement with a CSA member, or a court proceeding under securities legislation. Matters were concluded against 185 respondents following contested hearings, 74 respondents by settlement agreements and 63 respondents by court decision.

How Matters Were Concluded 2012



Penalties

The sanctions imposed for securities law violations or conduct that is contrary to the public interest range from bans on future activity, such as trading in securities or acting as a director or officer of a public company, to financial penalties and jail terms. Tables 4 and 5 outline monetary orders imposed by securities regulators and the courts over the last three years, including settlements.

Total penalties can vary considerably year to year, depending on the nature of the cases in any given year. In 2012, approximately $36.6 million was ordered in fines and administrative penalties. While penalties, costs and other monetary sanctions/orders can be difficult to collect, every effort is made by the regulator to do so, including using the services of collection agencies.

Table 4: Fines and Administrative Penalties

Type of Offence	2010	2011	2012
Illegal Distributions	$ 53,592,614	$ 40,928,558	$ 15,678,547
Fraud*	n/a	n/a	$ 17,459,625
Misconduct by Registrants	$ 4,971,418	$ 1,958,000	$ 1,750,550
Illegal Insider Trading	$ 1,835,974	$ 3,076,288	$ 684,927
Disclosure Violations	$ 3,148,500	$ 2,360,200	$ 451,500
Market Manipulation	$ 56,000	$ 1,900,000	$ 54,000
Other Cases	$ 222,500	$ 1,928,500	$ 566,500
Total	**$ 63,827,006**	**$ 52,151,546**	**$ 36,645,649**

* Fraud offences were included among other offences prior to 2012.

Restitution, compensation and disgorgement are powers available in specific circumstances to some regulators or courts under securities legislation. Restitution is a remedy that aims to restore a person to the position he or she would have been in had it not been for the improper conduct of another. Compensation is a payment to an aggrieved investor to compensate for losses, either in whole or in part. An order for disgorgement requires the payment to the regulator of amounts obtained as a result of a failure to comply with or a contravention of securities laws.

Table 5: Restitution, Compensation and Disgorgement

Type of Offence	2010	2011	2012
Illegal Distributions	$ 57,000,617	$ 42,298,519	$ 10,533,827
Fraud[1]	n/a	n/a	$ 99,743,113[2]
Misconduct by Registrants	$ 1,554,866	-	$ 9,280,798
Illegal Insider Trading	-	$ 362,772	$ 959,938
Disclosure Violations	-	-	-
Market Manipulation	-	$ 5,600,000	-
Other Cases	-	$ 1,290,631	$ 45,280
Total	**$ 58,555,483**	**$ 49,551,922**	**$ 120,562,956**

1 Fraud offences were included among other offences prior to 2012.
2 $48.6 million of this total is the disgorgement amount ordered in the Arbour case.

As well as fines and administrative penalties, respondents are also often ordered by the regulators or courts to pay part or all of the costs of the proceedings. Total costs assigned to respondents by CSA members in 2012 were $3,911,441 as compared to $2,494,154 in 2011.

In addition to monetary orders, courts in Ontario, Alberta, British Columbia, Manitoba and New Brunswick ordered jail terms for seven individuals in 2012, ranging from 30 days to three years. In total, approximately nine years of jail time was handed down to offenders in 2012.

Legislation provides for a statutory right of appeal of both tribunal and court decisions, and securities regulators expend significant resources responding to appeals brought by respondents. Occasionally a CSA member will appeal a court decision. As well as the appeals of decisions included in the table below, procedural appeals are also quite common as cases proceed through the enforcement system.

Table 6: Appeals

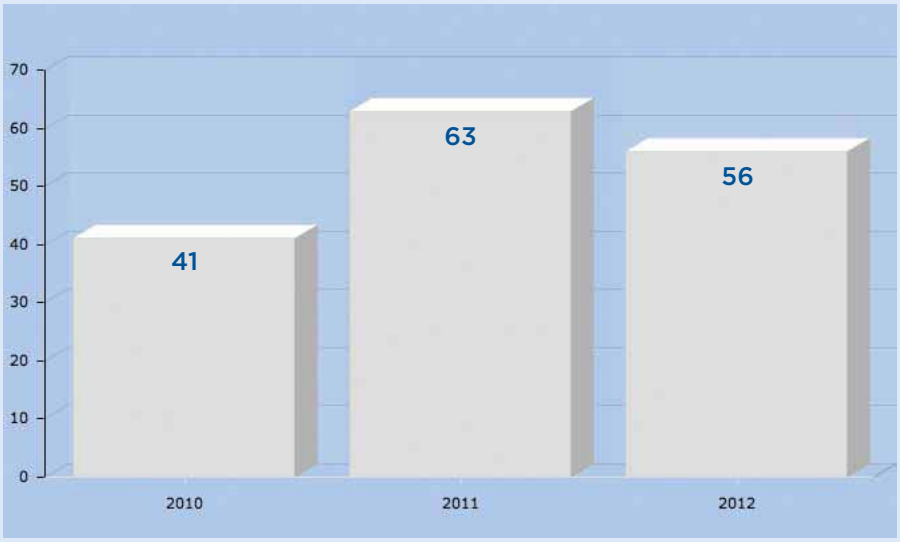
Appeals	2010	2011	2012
Cases appealed	19	31	30
Appeal decisions rendered	6	19	19

Preventive Measures

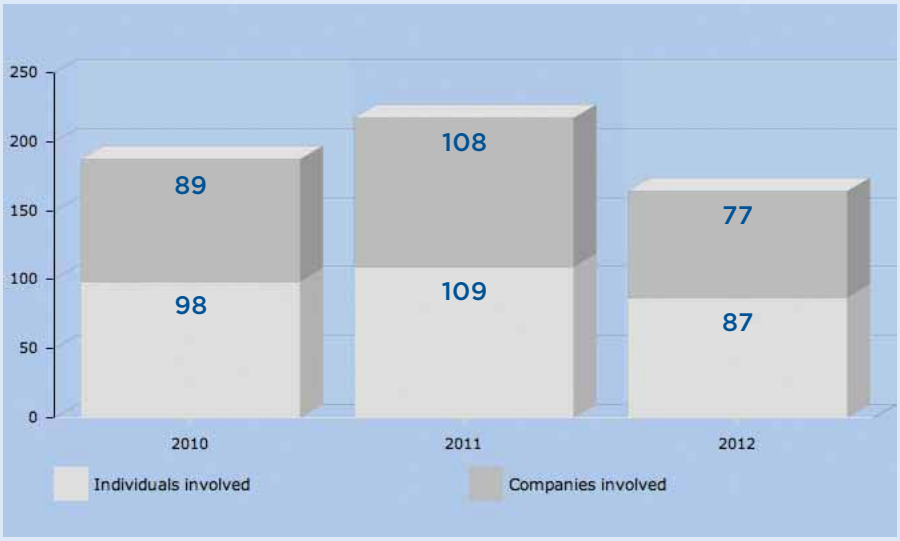
As the charts below illustrate, CSA members continue to use measures such as interim cease trade and asset freeze orders to protect investors by prohibiting or inhibiting a potentially illegal activity while an investigation is underway.

Under the 56 interim orders and asset freeze orders issued in 2012, trading and other restrictions were placed on 87 individuals and 77 companies. In 2011, that number was 63 interim orders and asset freeze orders, and trading restrictions were placed on 109 individuals and 108 companies.

Interim and Asset Freeze Orders



Respondents

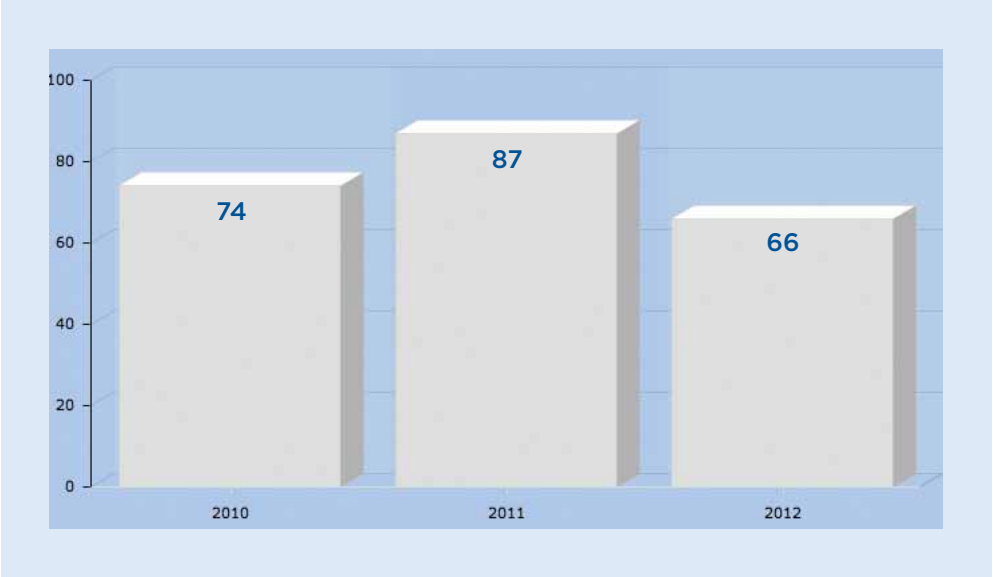


Asset freeze orders are used by securities regulators to prevent the dissipation of assets pending completion of an investigation. Where circumstances merit, regulators can also apply to the court to appoint a receiver to manage assets that have been frozen to facilitate an orderly distribution of assets back to investors. Assets can include bank accounts and personal property such as vehicles, buildings and other physical assets. In 2012, CSA members froze assets relating to 23 individuals and 14 companies, representing a total of $18,211,977 in bank accounts.

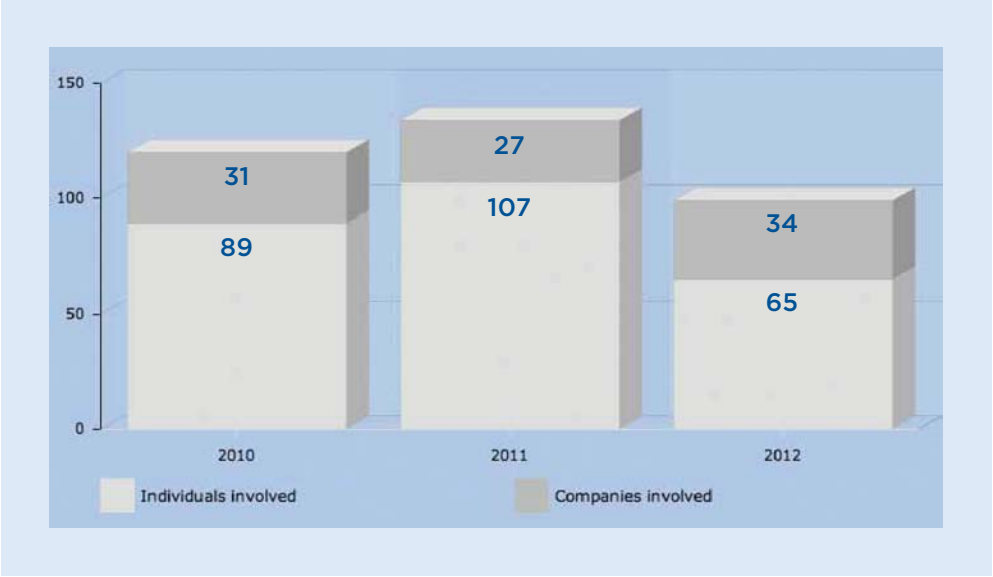
Reciprocal Orders

Orders issued by a court or other securities regulatory authorities may be reciprocated. Reciprocal orders prevent individuals or companies from carrying on their conduct in the reciprocating jurisdiction. The use of reciprocal orders demonstrates the commitment of CSA members to strengthening investor protection and enforcement coordination across Canada. The charts below indicate the number of reciprocal orders issued in each of the last three years, and the number of individual and company respondents affected by those reciprocal orders.

Reciprocal Orders



Respondents



Cases Concluded by SROs

Self-regulatory organizations (SROs) are an important part of the enforcement mosaic in Canada. The three key SROs, as overseen by CSA members, are the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association of Canada (MFDA), and the Chambre de la sécurité financière (CSF). These three organizations concluded 128 enforcement cases in 2012, compared with 133 in 2011.

Enforcement cases typically fall into one of six categories, although some cases are relevant to more than one category. We have shortened case names here for simplicity; the concluded cases database contains full case names.

Categories

Fraud

In 2012, the CSA added fraud as a distinct category of securities law violation. In the past, fraud cases had been integrated into the five previously existing categories for the purposes of this report. A separate category for fraud cases reflects the priority placed by CSA members on countering fraud in the Canadian capital markets.

While the precise definition of fraud varies by jurisdiction, the consistent elements in fraud cases are deceit and deprivation.

In the Alberta fraud case of Arbour Energy, the Alberta Securities Commission (ASC) ordered the largest total monetary sanctions in its history. Sanctions of nearly $54 million were imposed against Milowe Brost, The Institute for Financial Learning Group of Companies Inc., Gary Sorenson, Merendon Mining Corporation Ltd., and Dennis Morice. The Institute for Financial Learning (IFFL) was an investment club. Among the investments that it recommended to its members were illegitimate companies controlled by the respondents. Members received statements that claimed solid returns, but payouts to members actually came from other members' investments. The respondents were found to have deliberately perpetrated a complex, coordinated and far-reaching fraudulent investment scheme that not only placed investors at risk, but also seriously impaired the reputation of the Alberta capital market. Along with the monetary sanctions, Brost, Sorenson and Morice all received trading, purchasing and director and officer bans. The investigation of this massive fraud, which involved hundreds of investors throughout North America, is an example of the cooperation that occurs among securities regulators and law enforcement agencies, as discussed further on the Inter-jurisdictional Collaboration page.

> "All of the respondents were involved in perpetrating a systemic massive fraud on Alberta and other investors, involving a complicated web of domestic and offshore corporate and other entities, bank accounts and offerings. Investment fraud is reprehensible and completely unacceptable capital-market misconduct."
>
> - *ASC Panel, ruling on the Arbour case*

The Arbour case was a large Ponzi scheme, in which the promised rate of return was paid to the initial investors using funds provided by subsequent investors. These schemes eventually collapse because there is usually no underlying asset and the perpetrator is ultimately unable to make payments to investors. The William Priest case in New Brunswick, described below, is another Ponzi scheme example.

CSA members addressed several cases of affinity fraud in 2012, which preys on the affiliation and trust among members of a group, such as religious or ethnic organizations.

The New Brunswick case of William Priest is both an affinity fraud, perpetrated in a small community by a trusted community member, and also a Ponzi scheme. William Priest, a mortgage advisor, was found to have offered clients investments in real estate projects in which he claimed to be involved. Priest used these investments to cover his personal expenses and to pay back other clients. He exploited family and community relationships to fraudulently obtain $600,000. Priest was charged with, and pleaded guilty to, nine counts of fraud under the New Brunswick Securities Act. He was sentenced to nine separate sentences of three years each, to be served concurrently.

The Ontario case of Marlon Gary Hibbert et al. was a large affinity fraud. The Ontario Securities Commission (OSC) found that Hibbert, and a number of corporate entities of his creation, had been involved in a fraudulent investment scheme involving an illegal distribution of securities. Hibbert was the pastor and founder of Dominion World Outreach Ministries Dominion Worship Center Inc., and a founding member of Fight For Justice, which had a mandate to improve the lives of members of the African-Canadian community. Through these organizations, Hibbert solicited investors by falsely claiming foreign exchange trading success and by promising high rates of return, with the principal guaranteed. He collected $8.4 million from more than 200 investors and misappropriated $1.1 million, with $673,000 diverted for his personal use. In September 2012, the OSC ordered Hibbert to disgorge $4,672,780 and to pay an administrative penalty of $750,000 and an additional $200,000 in costs. He was also permanently banned from trading.

> "In 32 years of adjudication, I have never encountered a more vile, more heinous fraud than that perpetrated by Hibbert on his unsuspecting parishioners. Investors who testified stressed the implicit trust they had in Hibbert because he was a "Man of God".
>
> - *OSC Panel, ruling on the Hibbert case*

In a high-profile case, the OSC found that Sextant Capital Management Inc. and Otto Spork, both of whom were registrants, had perpetrated a complex investment fund fraud by selling investment fund units at falsely inflated values, taking millions of dollars in fees based on these values, and directly misappropriating funds. At least 246 Canadians invested $23 million in Sextant. The OSC ordered Spork to pay an administrative penalty of $1 million and to disgorge $6.35 million, along with banning him from trading, registering and serving as a director or officer. This matter is under appeal.

In the case of Irwin Boock, Stanton DeFreitas and Jason Wong, the OSC reached settlement agreements with the respondents for having participated in a fraudulent investment scheme in which defunct U.S. public companies were 'hijacked' and traded in the over-the-counter securities market in the U.S. The schemes were facilitated by transfer agents, which the respondents had a role in creating or operating. The OSC ordered Boock and DeFreitas to pay an administrative penalty of $70,000 each and Wong to pay $35,000. Boock, DeFreitas and Wong were ordered to disgorge $145,300, $70,000 and $39,000 respectively, and varying lengths of trading, registration and director/officer bans were imposed.

In B.C., Michael Robert Shantz was found guilty of committing fraud through his company, Canada Pacific Consulting Inc. (CPC). A British Columbia Securities Commission (BCSC) panel found that Shantz had solicited German and Swiss residents to open trading accounts with CPC, claiming that the company would conduct gold futures or foreign exchange trading on their behalf. The panel found that CPC lied to investors about the nature of its business and its plans to invest their money. None of the funds were invested as promised. Shantz was ordered to pay the BCSC the $1.5 million he obtained from his illegal activity and an administrative penalty of $630,000.

Investors who are taken in by frauds seldom recover their money. This is why, in addition to shutting down these schemes, CSA members work to educate investors on how to recognize and avoid suspicious or fraudulent investments by way of provincial and territorial securities regulator websites, programs and investor resources. The CSA's website page on avoiding fraud is a good public education resource.

Illegal Distributions

An illegal distribution is a sale or attempted sale of securities to investors that does not comply with securities law registration, trading or disclosure requirements. Some illegal distributions also constitute fraud. For examples of such cases in 2012, see the fraud pages of the case highlights section.

Offering an investment opportunity generally requires issuing a prospectus, unless certain exemptions are available. A prospectus is a document that describes the investment and the associated risks to the investor. Anyone in the business of advising or trading in securities in Canada must register with the relevant securities regulator, again unless certain exemptions are available.

Certain investment opportunities may be sold without a prospectus or sold by unregistered people or firms if they fall in the category of "exempt market securities." Exempt market securities must be sold under strict restrictions, such as limiting the investment opportunity to family, friends or business associates, selling securities worth a minimum of $150,000 per transaction or selling investments to accredited investors (persons, corporations or investment funds meeting specific net worth or income requirements).

In the Concrete Equities case in Alberta, the respondents sold $110 million worth of real estate securities without a prospectus for any of the investments. The Alberta Securities Commission (ASC) imposed sanctions totalling $5.6 million (including the ASC's largest administrative penalty to date against an individual) on Varun Vinny Aurora, David Humeniuk, David Jones and Vincenzo De Palma. They were sanctioned both for illegally distributing securities and also for making misleading and untrue statements in offering documents. They also received bans of various lengths from trading in securities or acting as directors or officers of issuing companies.

> "Had [investors] been given a prospectus, and had they been afforded the benefit of the involvement of a registered salesperson knowledgeable about securities, capital markets and the investors themselves… the losses we heard of – and the sometimes heartrending effects on lives and families – might have been avoided."
>
> - *ASC Panel, ruling on the Concrete Equities case*

Perpetrators of illegal distributions often build a high level of trust with their victims through community, church or other affiliations. In the case of Arvindbhai Patel in B.C., investors were relying on the former mutual fund salesperson and financial planner to provide sound investment guidance. Instead, he introduced investors, many of whom were his family, coworkers and clients at the credit union where he was previously employed, to investments with little due diligence of his own. Notably, Patel introduced approximately 90 investors to an investment opportunity through Rashida Samji, then a notary public in B.C. Almost $29 million was invested, much of which was lost. Patel received a permanent market ban from the British Columbia Securities Commission (BCSC) for his actions. He voluntarily transferred his interests in five properties to a receiver that had been appointed by the Supreme Court of British Columbia at the request of the BCSC.

Misconduct by Registrants

Any person or company in the business of advising or trading in securities in Canada must be registered under the securities laws of each Canadian jurisdiction in which they conduct this activity, unless an exemption is provided in legislation or by order from the securities regulators. Misconduct by registrants occurs when a registered person or company violates securities laws. It is also misconduct to fail to register when required to do so, or to fail to adhere to the conditions of a registration exemption. The cases involving registered firms showcase the importance of diligence both in the supervision of portfolio advisers, who manage large investment funds, and also in disclosure to investors. The individual cases provide useful examples of the severity of penalties applied to registrants found guilty of misconduct.

The Ontario case of Portus Alternative Asset Management Inc. showcases the large scale on which misconduct by registrant cases can occur. In 2012, the Ontario Securities Commission (OSC) approved settlement agreements with Boaz Manor, the co-founder and associate portfolio manager of Portus, and its compliance officers, Michael Labanowich and John Ogg, as a result of the collapse of Portus' hedge funds in 2005. Approximately 26,000 individuals invested $750 million in the hedge funds, but roughly $100 million was never actually invested and $41 million was used towards the company's operating expenses. The OSC ordered Manor to disgorge $8.8 million and imposed trading, registration and director and officer bans on him. He had previously pleaded guilty to criminal charges and was sentenced to four years in prison. At the request of the OSC, a receiver was appointed by the court and most investors have received approximately 95 per cent of their funds.

The Trapeze Asset Management Inc. case in Ontario offers an example of a registered firm failing to ensure that certain investments were suitable for all of its clients. Trapeze and Randall and Herbert Abramson, two of the company's senior officers and directors, also failed to accurately assess the risk associated with many of the investments purchased on behalf of clients in managed accounts. Under terms of a settlement agreement, Trapeze agreed to submit to a review of its practices and to conduct account reviews. The OSC also ordered the respondents to pay an administrative penalty of $1 million and an additional $250,000 in costs.

In Nova Scotia, John George Frederick Campbell was ruled to have failed to deal fairly, honestly and in good faith with a client when he falsified a client document. Campbell had verbal direction from a client, but he scanned the client's signature onto a letter of direction and used a signature guarantee stamp to confirm that it was a valid signature. A Nova Scotia Securities Commission (NSSC) panel settlement agreement required Campbell to pay an administrative penalty of $7,500 and $5,000 in costs, reinforcing the importance of diligent and honest administrative practices by registrants.

In Québec, the Autorité des marchés financiers (AMF) pursued several cases in 2012 targeting not only registrant firms but also the registered individuals having compliance regulatory obligations within those firms. For example, in Service Financier Rimac, Inc., a mutual fund dealer, the AMF found that the chief compliance officer and the ultimate designated person had not fulfilled their obligations to monitor and control the activities of Rimac. At the request of the AMF, the Bureau de décision et de révision (BDR) suspended Rimac's registration, ordered the firm to appoint a new chief compliance officer and ultimate designated person, and imposed $10,000 in penalties. Following Rimac's failure to fulfill the requirements imposed by the BDR, Rimac's registration has been cancelled. The deficiencies at Rimac came to light during a routine inspection of the firm's premises by the regulator.

Illegal Insider Trading

Illegal insider trading involves buying or selling a security of an issuer while possessing undisclosed material information about the issuer, and includes related violations such as "tipping" information and trading by the person "tipped." Material information (or "privileged information" in some jurisdictions) can include everything from financial results to executive appointments to operational events. Illegal insider trading cases highlight the care any company employee must take when buying or selling his or her company's shares.

Disclosure Violations

Confidence in the capital markets requires confidence in the accuracy of the information that companies disclose about their business activities. Timely, accurate and complete financial statements are the core of good disclosure practice. In disclosure cases, the victims are typically company shareholders. Continuous disclosure review programs undertaken by CSA members aim to ensure that investors have accurate and timely information about public companies on which to base their investment decisions. When appropriate, continuous disclosure reviews may result in a referral to the enforcement branch of a CSA member.

The Alberta Securities Commission's (ASC) case against Matthew Russell highlights the responsibility of executives to ensure that company disclosure is correct and that executive qualifications are appropriate. The ASC sanctioned Russell, the president and CEO of Azteca Gold Corp., for making, and causing the company to make, misleading and untrue statements in numerous 2009 news releases. Russell was also sanctioned for acting as Azteca's "qualified person" when he lacked the requisite experience to do so. As a result, an ASC panel banned Russell from acting as a director or officer of any issuer until June 13, 2017 and ordered him to pay an administrative penalty of $150,000 and additional costs of $40,000.

While the responsibility for timely and accurate disclosure primarily falls to company management, the board of directors also has oversight responsibility for disclosure. In the Québec case of Les condos du Lac Taureau, the Autorité des marchés financiers (AMF) charged both management and the directors of this condo corporation for failing to file audited annual income statements for 2006 to 2009. The Bureau de décision et de révision imposed a total of $107,000 in penalties against the respondents, including the five directors of the corporation.

Three 2012 cases demonstrate the measures that regulators will take to enforce the rules around filing insider reports. In the Philip Renaud case in Québec, the AMF launched penal proceedings against Renaud for failing to report a change in his control over the securities of a mining company. Renaud pleaded guilty to three counts for a total fine of $36,000. Similarly, in the Guy Goulet case, Goulet repeatedly failed to provide timely disclosure of changes in his control over the securities of two companies for which he was an insider. The AMF launched penal proceedings against Goulet for failing to comply with insider reporting deadlines. He pleaded guilty to 26 counts for a total fine of $57,000. Finally, in the Nova Scotia case of Adams, Weir et al., three senior officers of Heilical Inc, Timothy Adams, Lowell Weir and Carol MacLaughlin-Weir, repeatedly failed to file insider trading reports over a significant period of time. A Nova Scotia Securities Commission (NSSC) panel assessed total penalties of $51,600.

> "[Russell's conduct] impaired the ability of investors to make properly informed investment decisions. The potential harm is broad and foreseeable. Investors who bought Azteca securities in the first half of 2009, in the face of improper disclosure, appear to have been directly and quantifiably harmed."
>
> - *ASC Panel, ruling in the Matthew Russell case*

> "A person who agrees to sit on the Board of Directors of a reporting issuer should expect to fulfill obligations which are important for investor protection and financial market efficiency."
>
> - *Bureau de décision et de révision, ruling in the Les condos du Lac Taureau case*

Market Manipulation

Market manipulation involves efforts to artificially increase or decrease the price of a security, including a company's shares. Examples of market manipulation include high closing activities, volume manipulation and "pump and dump" schemes. The latter term describes schemes that involve talking up a company's share price with untrue or exaggerated information, in order to sell shares at a profit before the inevitable crash in the share price when the company's true position becomes evident.

In the Manitoba case against Olav Kenneth Gilleshammer, the respondent entered buy orders in shares of R Split III Corp., a thinly traded mutual fund corporation, on two trading accounts that he controlled. The buy orders were placed immediately before the end of the trading day, and they expired at the end of that trading day. The trades resulted in multiple days where the closing price of the stock was higher than it would have been without the buy orders. The unusual trading pattern was identified by IIROC market monitoring and referred to the Manitoba Securities Commission (MSC) for investigation. Gilleshammer was ordered to pay an administrative penalty of $4,000, costs of $500 and was prohibited from trading within 30 minutes of the close of any trading day.

Proactive Measures

A high priority for each CSA member is to detect and disrupt securities misconduct before harm is caused. CSA members take proactive measures, such as issuing interim cease trade orders or asset freeze orders, whenever possible to safeguard Canadian investors while investigations are in progress. Freeze orders are used to secure funds or other assets while a matter is fully investigated.

In the case of Orbite Aluminae Inc. in Québec, the Autorité des marchés financiers (AMF) requested an interim cease trade order, as a technical report filed by Orbite did not comply with the requirements of *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*. The technical report contained several material shortcomings with respect to information concerning rare earth elements that made it impossible to analyze the information used to establish mineral resource estimates. Eventually, with cooperation from Orbite and additional information for investors through an auditor's report, the order restricting trading activity was lifted following a joint request by the AMF and Orbite.

In Ontario, the Ontario Securities Commission (OSC) imposed terms and conditions on the registration of four scholarship plan dealers: Children's Education Funds Inc., Global RESP Corporation, Heritage Education Funds Inc. and Knowledge First Financial Inc. These interim orders were imposed following compliance reviews that identified significant compliance deficiencies, including failure to ensure suitability of the investment for the client and to adequately collect and assess client information. Each dealer is required to retain a compliance consultant to develop and implement a compliance plan and a monitor to ensure that all sales are suitable.

Two British Columbia Securities Commission (BCSC) cases are examples of the type of proactive searches of electronic media undertaken by CSA members to identify potentially inappropriate solicitations of investments. Following searches of Craigslist – an on-line classified advertisements site – the BCSC took proactive measures to forestall two attempted frauds.

In the Paul Lester Stiles case, Stiles had been promoting investments in Velocity Entertainment Inc., promising highly unrealistic returns. A BCSC investigator responded to a Velocity advertisement posing as an investor, was promised a "totally secure" return of 100 per cent in six months, and given instructions for how to transfer funds to Stiles' bank account. The BCSC permanently banned Stiles from the B.C. capital markets and imposed an administrative penalty of $35,000.

Similarly, in the Samuel Richard Allaby case, Allaby was using Craigslist to promote an investment in Gaia Equity Investments, a company that purportedly invested in renewable energy projects internationally. Again, a BCSC investigator posed as an investor, and was given several false statements. The investigator was told that Gaia investors had averaged a 257 per cent return annually since 2008, and that the returns were guaranteed by the World Bank and the International Monetary Fund. Allaby was permanently banned from the capital markets and assessed a $50,000 administrative penalty.

> "This is an attempted fraud and the orders we make in the public interest should reflect that. Attempted frauds have the same potential to seriously impair the integrity and reputation of our markets as do actual frauds, especially if it were to appear that attempted frauds drew consequences significantly less serious than actual ones."
>
> - *BCSC panel, ruling in the Paul Lester Stiles case*

Prosecution in the Courts

In some cases, Canadian securities regulators are able to pursue charges related to securities law violations in the courts, either on their own or through a Crown prosecutor, where jail terms can be imposed upon conviction.

In Ontario, Abel Da Silva was sentenced to 18 months in jail, including nine months for the illegal distribution of securities of Moncasa Capital and nine months for breaching three separate cease trading orders. Da Silva sold securities of Moncasa Capital to 57 investors throughout Canada, raising $1.2 million, none of which has been returned to investors. He sold shares to the public on the pretence that the capital raised would fund the acquisition of luxury properties in the Caribbean. The sentence imposed was concurrent to a 27 month sentence Da Silva is currently serving for fraud and illegal distribution relating to another company. The OSC appealed the concurrent sentence and sought an 18 month consecutive sentence. The Superior Court found the concurrent sentence imposed on Da Silva was unfit and that a total sentence of 45 months was not disproportionate to the gravity of the offences.

In Alberta, Jason Yiu-Kwan Chan was found guilty of 30 counts of breaching Alberta securities laws, including fraud, making false statements to investors and trading in securities without registration or a prospectus. He was sentenced to three years in a federal penitentiary. He was also ordered to pay restitution of $62,167.05 to investors who had advised Chan that they wanted their money invested in low-risk investments. Instead, Chan invested $1.1 million of their money in Terra Nova Capital and Comdev Financial, two trade names that were registered to his name. The funds were then transferred to the personal bank account of Chan and his wife and used to purchase real estate in Alberta and Montana. When the real estate market turned for the worst, property values dropped and the funds were lost.

In Manitoba, James Harvey Cameron was sentenced to nine months in prison, followed by one year of supervised probation and 100 hours of community service, for pleading guilty to six counts of trading in securities without registration and one count of acting as a securities advisor without registration. The Provincial Court of Manitoba based its sentencing on the severity of the violations and Cameron's prior record of *Securities Act* violations.

The William Priest case, highlighted in the fraud section, included a guilty plea on nine counts of fraud under the New Brunswick *Securities Act*. Priest was sentenced to nine separate sentences of three years, to be served concurrently.

Inter-jurisdictional Collaboration

Collaboration among securities regulators and law enforcement officials takes many forms. CSA members routinely share information, and will conduct joint investigations or even joint hearings in cases that cross jurisdictional boundaries.

Canadian securities regulators also work with international regulators, such as the Securities and Exchange Commission (SEC) and state-level regulators in the U.S., and the Financial Services Authority in the U.K. This collaboration happens both through formal organizations such as the North American Securities Administrators Association and through informal contacts across the jurisdictions. Pursuant to international agreements, enforcement personnel assist their counterparts in other jurisdictions with regulatory investigations. They also share best practices and intelligence about emerging trends.

An example of collaboration between two agencies is highlighted in the Suman and Rahman matter. The Ontario Securities Commission (OSC) and the SEC coordinated their investigations and initiated proceedings concurrently. In 2012, an OSC panel found that Shane Suman (who lived in Ontario) tipped his wife, Monie Rahman (who lived in the U.S.), about the proposed acquisition of Molecular Devices Corporation by MDS Inc. Suman, an employee of MDS, and Rahman purchased Molecular securities, which they then sold after the acquisition announcement for a profit of $954,938. Suman worked in the IT group of a subsidiary of MDS. The SEC obtained a judgment ordering the disgorgement of $1,039,440 (USD). Even though Molecular was not a reporting issuer in Ontario, the conduct of Suman and Rahman was deemed to be contrary to the underlying policy objectives of the *Ontario Securities Act's* insider trading provisions. The OSC ordered Suman to disgorge $954,938 and to pay an administrative penalty of $250,000 and for both respondents to pay costs of $250,000. Permanent cease trading and director and officer bans were also imposed.

The Arbour Energy Ponzi scheme, highlighted in the fraud section of the report, is an example of collaboration among securities regulators and law enforcement officials across North America. Not only did the Alberta Securities Commission (ASC) share with and obtain information and strategy from other Canadian securities authorities including the OSC, Autorité des marchés financiers (AMF), Manitoba Securities Commission (MSC), Saskatchewan Financial Services Commission (SFSC), and British Columbia Securities Commission (BCSC), it also worked with the SEC in the United States and the Washington State Department of Financial Institutions, Division of Securities. In addition, the ASC cooperated with the Alberta office of the RCMP's Integrated Market Enforcement Team (IMET) as it conducted its own investigation and prosecution of the matter under the fraud provisions of the *Criminal Code*.

Other Cases

The case of Gibraltar Global Securities Inc., a company registered in the Bahamas, shows the willingness of CSA members to pursue international companies that do not follow Canadian securities laws. Gibraltar provides offshore securities brokerage, investment management and advisory services. A British Columbia Securities Commission (BCSC) panel found that Gibraltar provided service on behalf of B.C. residents without being registered to do so. Gibraltar also repeatedly refused to provide BCSC staff with the names and account information for the B.C. residents who beneficially held accounts with Gibraltar. The panel assessed a penalty of $300,000 and ordered that Gibraltar be permanently banned from trading or purchasing securities in B.C. As well, Gibraltar was ordered to state on its website that it is permanently prohibited from having clients who are resident in B.C.

In the case of Dirk Christian Lohrisch, a BCSC panel permanently banned the former investment advisor from the B.C. capital markets based on a July 26, 2010 decision from the Investment Industry Regulatory Organization of Canada (IIROC). An IIROC panel found that Lohrisch breached the IIROC dealer member rules when he submitted a registration form that was misleading about his credentials, submitted a forged transcript and attempted to obstruct an IIROC investigation into his conduct. On a review of the IIROC panel decision, the BCSC panel found that Lohrisch's conduct was contrary to the public interest and warranted orders broader than those able to be imposed by IIROC.

Finally, the Québec case of Gilbert Fournier shows the importance of cooperating with securities investigators when they are conducting an investigation. In 2006, an investigator from the Autorité des marchés financiers (AMF) served a subpoena compelling Fournier to appear before him to be examined and requiring him to bring certain documents. During the examination, Fournier, assisted by his lawyer, refused to answer the investigator's questions, alleging that they were not relevant to the investigation. The Québec Court of Appeal (QCA) ruled that if an objection is raised by the lawyer, it is up to the investigator to decide whether it is well-founded. Any person who refuses to answer questions asked in the context of an investigation must be made aware of the consequences of this refusal. A $1,000 sanction was imposed on Fournier.

> "The integrity of registrants is especially important to investor confidence…Not only has Lohrisch followed a path of dishonesty, he shows no remorse. How could investors have confidence in a market that would tolerate that misconduct? On what basis could we impose less than permanent sanctions when there is no evidence that he acknowledges that he had done anything wrong?"
>
> - *BCSC Panel, ruling on the Lohrisch case*

> "Of course, the questions asked must be related to the purpose of the AMF investigation, but doubts cannot be raised about their relevance at the least question. In this case, the repeated refusal to give any information whatsoever on the grounds of irrelevance testifies more to a systematic refusal to answer."
>
> - *Québec Court of Appeal, ruling on the Fournier case*

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- Ameron Oil and Gas (ON)
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  - Merits decision re: Aurora, Varun Vinny; Humeniuk, David; Jones, David; and De Palma, Vincenzo
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• Merits decision re: Shire International Real Estate Investments Ltd.; Shire Asset Management Ltd.; Hawaii Fund; Bearspaw at 144th Avenue Ltd.; and Couch, Jeanette Cleone
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1.1.3 Livent Inc. et al.

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

AND

IN THE MATTER OF
LIVENT INC.
GARTH H. DRABINSKY
MYRON I. GOTTLIEB
GORDON ECKSTEIN
ROBERT TOPOL

NOTICE OF WITHDRAWAL
LIVENT INC. AND ROBERT TOPOL

WHEREAS on July 3, 2001 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c.S.5, as amended (the "Act") in respect of Livent Inc. ("Livent"), Garth H. Drabinsky ("Drabinsky"), Myron I. Gottlieb ("Gottlieb"), Gordon Eckstein ("Eckstein") and Robert Topol ("Topol");

AND WHEREAS Drabinsky and Gottlieb each gave an undertaking to the Director of Enforcement of the Commission (the "Director") that pending the conclusion of the proceedings before the Commission (the "Commission Proceeding"), they would not apply to become a registrant or an employee of a registrant, or an officer or director of a reporting issuer without the express written consent of the Director or an Order of the Commission releasing them from the undertaking, as described in the Order of the Commission made on February 22, 2002;

AND WHEREAS Eckstein and Topol each gave an undertaking to the Director that pending the conclusion of the Commission Proceeding, they would not apply to become a registrant or an employee of a registrant, or a Chief Executive Officer, Chief Financial Officer or Chief Operating Officer or director of a reporting issuer without the express written consent of the Director or an Order of the Commission releasing them from the undertaking, as described in the Order of the Commission made on February 22, 2002;

AND WHEREAS on October 22, 2002, Drabinsky, Gottlieb, Eckstein and Topol (together, the "Individual Respondents") were charged with multiple counts of criminal fraud in relation to their conduct as directors and officers of Livent and contrary to the *Criminal Code of Canada* (the "Criminal Code");

AND WHEREAS the Individual Respondents agreed to certain bail conditions in relation to the proceeding brought against them under the Criminal Code ("the Criminal Proceeding"), including agreement by them to refrain from: acting as an officer or director of a "reporting issuer" as that term is defined in the Act (except that in the case of Eckstein, he refrain from acting as a Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or a director of a "reporting issuer" as that term is defined in the Act); applying to become a "registrant" or from being an employee of a "registrant" as that term is defined in the Act; becoming a director of any company; and engaging directly or indirectly in the solicitation of investment funds from the general public, with the exception of an "accredited investor" as that term is defined in Commission rules and regulations;

AND WHEREAS by Order dated November 15, 2002, the Commission adjourned the hearing of the Commission Proceeding *sine die* pending the outcome of the Criminal Proceeding;

AND WHEREAS on or about November 19, 1998, Livent filed for protection under the *Companies' Creditors Arrangement Act* in Canada, and courts subsequently approved the sale of substantially all of Livent's assets, property and undertakings to a third party;

AND WHEREAS on September 29, 1999, the Ontario Superior Court of Justice approved Livent's request to appoint Ernst & Young Inc. as receiver and manager of all of the remaining property, assets and undertakings of Livent;

AND WHEREAS on February 26, 2007, Eckstein pled guilty in the Criminal Proceeding to one count of criminal fraud over $5000;

AND WHEREAS on June 22, 2007, charges against Topol in the Criminal Proceeding were dismissed without trial by the Ontario Superior Court of Justice after it concluded that there had been an unreasonable delay in bringing the case against him to trial;

AND WHEREAS on March 25, 2009, Drabinsky and Gottlieb were found guilty in the Criminal Proceeding of two counts of criminal fraud over $5000 and one count of forgery;

AND WHEREAS Drabinsky and Gottlieb appealed their convictions in the Criminal Proceeding to the Ontario Court of Appeal and their convictions were upheld on September 13, 2011;

AND WHEREAS Drabinsky and Gottlieb sought leave from the Supreme Court of Canada to appeal the ruling of the Ontario Court of Appeal, but their application was dismissed without reasons on March 29, 2012;

AND WHEREAS on February 19, 2013, Staff of the Commission issued an Amended Statement of Allegations in the Commission Proceeding against Drabinsky, Gottlieb and Eckstein in relation to the criminal fraud convictions entered against them in the Ontario Superior Court of Justice;

TAKE NOTICE that Staff of the Commission withdraw the allegations in the Commission Proceeding as against Livent and Topol, and Topol is hereby released from the undertaking recited in the February 22, 2002 Order of the Commission.

DATED at Toronto this 20th day of February, 2013.

1.1.4 OSC Staff Notice 54-702 – Corporate Finance Guidance – Notice-and-access: Interaction with National Policy 11-201 Electronic Delivery of Documents and the Ontario Business Corporations Act

CORPORATE FINANCE GUIDANCE

Notice-and-access: Interaction with National Policy 11-201 *Electronic Delivery of Documents* and the Ontario *Business Corporations Act*

OSC Staff Notice 54-702

February 28, 2013

The purpose of this staff notice is to provide staff guidance to reporting issuers, intermediaries and others involved in the sending of proxy-related materials to registered holders and beneficial owners of an issuer's securities (collectively, **shareholders**) on:

- the interaction of notice-and-access with National Policy 11-201 *Electronic Delivery of Documents* (**NP 11-201**); and
- whether reporting issuers incorporated under the *Ontario Business Corporations Act* (**OBCA**) can use notice-and-access.

This notice represents the views of Commission staff which do not have the force of law. These views are also not legal advice and should not be relied on as such.

Introduction to notice-and-access and interaction with NP 11-201

1. What is notice-and-access?

Notice-and-access is a method for reporting issuers to send proxy-related materials to shareholders that is set out in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of a Reporting Issuer* (**NI 54-101**). Amendments to NI 51-102 and NI 54-101 adopting notice-and-access came into force on February 11, 2013. In particular, notice-and-access can be used to deliver proxy-related materials for meetings that take place on or after March 1, 2013.

Under notice-and-access, a reporting issuer can send proxy-related materials to a shareholder by:

- posting the relevant management information circular and other proxy-related materials on a website that is not SEDAR;
- sending (by prepaid mail, courier or the equivalent, or any other agreed-upon method) a notice package consisting of:
    - a notice informing shareholders that the proxy-related materials have been posted, and an explanation of how to access the materials; and
    - the relevant voting document (a form of proxy or voting instruction form); and
- providing a toll-free telephone number for the shareholder to request a paper copy of the information circular (and if applicable, other proxy-related materials) at no charge.

Notice-and-access therefore incorporates the use of documents in electronic form that are posted on a website as a method of satisfying the obligation to send proxy-related materials. A reporting issuer generally will send shareholders a paper copy of the notice of meeting and the form of proxy. However, it will not send a paper copy of the management information circular. Instead, the circular is sent through a combination of (i) the issuer posting the information circular on a website, and (ii) the shareholder being notified of its availability and how to access the electronic document. The shareholder is also notified that the shareholder can call the toll-free number provided by the issuer to request that a paper copy of the information circular be sent to him or her free of charge. Upon receiving the request, the reporting issuer must send the information circular by first class mail, courier or the equivalent, within specified timeframes.

2. How does notice-and-access interact with NP 11-201?

NP 11-201 sets out the Commission's views on how the delivery requirements of Ontario securities legislation can be satisfied through electronic delivery – see in particular section 2.1(1) of NP 11-201.[1] The Commission has stated, in connection with delivering proxy-related materials and annual financial statements and MD&A under section 4.6(5) of NI 51-102, that notice-and-access is consistent with the principles for electronic delivery set out in NP 11-201. The Commission also has provided guidance on interpreting the provisions of NI 51-102 and NI 54-101 relating to notice-and-access in the Companion Policies to those instruments.

Notice-and-access is not the only means by which a reporting issuer can satisfy its obligations to send proxy-related materials using electronic delivery or electronic documents. While there is no specific requirement under securities legislation to obtain the consent of an intended recipient prior to using electronic delivery, the Commission has stated that prior consent should be obtained when issuers deliver proxy-related materials using methods other than (i) notice-and-access; or (ii) prepaid mail, courier or the equivalent.[2] The process of obtaining express consent, and then delivering the document in accordance with that consent, can enable the issuer to achieve some of the basic components of electronic delivery under NP 11-201.[3]

Notice-and-access and reporting issuers incorporated under the OBCA

We do not think that it is necessary for reporting issuers incorporated under the OBCA to obtain exemptive relief from the Commission under section 113 of the OBCA in order to use notice-and-access. In our view, and as explained in more detail below, the OBCA does not prevent a reporting issuer from sending proxy-related materials using notice-and-access in compliance with NI 51-102 and NI 54-101.

The OBCA does not contain any provisions regarding the sending of proxy-related materials to beneficial owners. The OBCA does, however, contain provisions regarding the sending of proxy-related materials to registered shareholders.[4] The OBCA also requires that an OBCA corporation send a copy of the annual financial statements and auditor's report to all registered shareholders who have informed the corporation that they wish to receive a copy of those documents.[5]

The definition of the term "send" in the OBCA is inclusive, and includes to "deliver" and "mail." It does not prohibit the use of electronic delivery or electronic documents, including the procedures contemplated by notice-and-access. Nor does the OBCA impose an obligation that a reporting issuer obtain consent in order for a reporting issuer to use electronic delivery methods to send proxy-related materials. The OBCA also provides that a document or notice "may" be sent by:

- prepaid mail;
- personal delivery; or
- electronic means in accordance with the *Electronic Commerce Act, 2000* (the **ECA**).[6]

We note that the ECA states that a recipient cannot be required to use or accept a document in electronic form without his or her consent. Our view is that under notice-and-access, a shareholder is not required to use or accept the electronic form of information circular (or any other relevant proxy-related materials) since shareholders have the option of requesting a paper copy at no charge to the shareholder. The ECA also states that electronic information or an electronic document is not provided if the information or document is merely posted on a website. Under notice-and-access, issuers must do more than merely post their proxy-related materials on a website. In particular, issuers must mail the notice package to shareholders in advance of a meeting, which will inform them of, among other things, the website posting of the proxy-related materials.[7]

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1 See section 3.5 of the Companion Policy to NI 51-102 (**51-102CP)** and section 5.4(10) of the Companion Policy to NI 54-101 (**54-101CP**).

2 See section 5.1 of 54-101CP.

3 See section 2.2 of NP 11-201. The Commission also has noted in section 5.5 of 54-101CP that where documents are sent electronically under NI 54-101, it may still be appropriate to obtain consent in order to achieve the basic components of electronic delivery set out in section 2.1 of NP 11-201.

4 See sections 96 (notice of meeting), 111 (form of proxy) and 112 (circular) of the OBCA.

5 See section 154(3) of the OBCA.

6 The Commission previously has reviewed the legal framework for electronic delivery under the ECA, and has stated that the components of electronic delivery in NP 11-201 are compatible with the legal framework for electronic delivery under the ECA. See section 2.1(2) of NP 11-201.

7 See also section 4.1(3) of NP 11-201, which states that merely making proxy documents available for access on a website will not constitute delivery of these documents in accordance with the four components of effective delivery set out in NP 11-201.

Questions

Questions may be referred to:

Winnie Sanjoto, Senior Legal Counsel
Tel: 416.593.8119
Email: wsanjoto@osc.gov.on.ca

1.1.5 CSA/IIROC Joint Notice 23-315 – Summary of Comments on CSA/IIROC Joint Notice 23-312 — Request for Comments — Transparency of Short Selling and Failed Trades

CSA/IIROC JOINT NOTICE 23-315

SUMMARY OF COMMENTS ON CSA/IIROC JOINT NOTICE 23-312 —
REQUEST FOR COMMENTS — TRANSPARENCY OF SHORT SELLING AND FAILED TRADES

February 28, 2013

Introduction

The Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) published for comment a joint notice (Joint Notice) on transparency of short selling and failed trades on March 2, 2012.[1] This Notice summarizes the comments received on the Joint Notice and provides the CSA's and IIROC's response to those comments and an update on recent international developments.

Substance & Purpose

The purpose of the Joint Notice was to:

- explain the approach taken by a working group (the "Working Group") of CSA and IIROC staff to issues regarding the regulation of short sales and failed trades;
- provide a background on CSA and IIROC regulation of short sales and failed trades in Canada;
- provide an overview of recent international developments regarding the regulation of short sales and failed trades; and
- solicit feedback on whether further measures are needed or desirable to:
  - (i) enhance the regulatory reporting and transparency of short sales, or
  - (ii) introduce some transparency of failed trades in Canadian markets.

The comment period closed on May 31, 2012. We received six[2] comment letters in response to the Joint Notice. We have considered the comments received and thank all of the commenters for their submissions. A list of those who submitted comments and summary of the comments are attached as **Appendix A** to this notice.

There was no clear consensus among the commenters that specific improvements were needed; the majority of respondents believe that the current requirements in the Universal Market Integrity Rules (UMIR), including amendments that became effective on October 15, 2012[3] (UMIR Amendments), are adequate. The UMIR Amendments included IIROC's new short-marking exempt order rule, which requires purchase and sale orders for accounts that in the ordinary course do not take a directional position with respect to the trading of a security to be identified as such.[4] Orders that are marked as "short-marking exempt" no longer are marked as "short".

Response to the Comments

After reviewing the comments, data on short sales and failed trades and recent international developments in the regulation of short sales and failed trades, the Working Group does not believe that additional measures are needed or desirable at this time beyond those described above.

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1 See Request for Comment – CSA-IIROC Joint Notice 23-312 *Transparency of Short Selling and Failed Trades*, March 2, 2012 (2012) 35 OSCB 2099.

2 An additional comment letter was received that commented only on IIROC Notice 12-0079 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (March 2, 2012) and is not summarized in this notice. That comment letter is summarized in IIROC Notice 12-0301 – Rules Notice – Request for Comments – UMIR – *Summary of Comments Received Respecting Proposed Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (October 11, 2012).

3 See IIROC Notice 12-0078 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012) and IIROC Notice 12-0158 – Rules Notice – Notice of Implementation – UMIR – *Changes to Implementation Date for Provisions Respecting Regulation of Short Sales and Failed Trades and for Provisions Respecting Dark Liquidity* (May 8, 2012).

4 UMIR 6.2(1)(b)(ix). Generally speaking, client accounts which would use the "short-marking exempt" designation must have fully-automated order generation and entry and have at the end of each trading day only a nominal position, either long or short, in a particular security. For more information on the use of the short-marking exempt order designation, see IIROC Notice 12-0300 – Rule Notice – Guidance Note – UMIR – *Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (October 11, 2012).

IIROC intends to update empirical studies it previously undertook to determine the effect, if any, of the UMIR Amendments on trends in trading activity, short sales and failed trades.[5] The updates by IIROC of the empirical studies will include data for the one year period following the implementation of the UMIR Amendments. The Working Group believes that it would be prudent to await the results of the empirical studies, which will help to inform the discussion of whether additional measures may be either needed or desirable in the regulation of short sales and failed trades or to improve transparency.

The Working Group will also continue to monitor international developments[6] in the regulation of short sales and failed trades, as well as other short-selling and failed-trades related issues that may need to be addressed in future notices or regulatory proposals.

Recent Developments

Effective June 1, 2011, IIROC implemented a requirement to file an "Extended Failed Trade Report" if a trade that was executed on a marketplace and was to settle through the continuous net settlement (CNS) facilities of CDS Clearing and Depository Services Inc. (CDS) failed to settle on the settlement date and remained unresolved for ten trading days following the settlement date. Since its introduction, IIROC has received an average of 24 Extended Failed Trade Reports per month (during a period when the number of trades per month ranged from a low of almost 24 million to a high of 39 million). The number of Extended

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[5] See IIROC Notice 11-0078 – Rules Notice – Technical – UMIR – *Trends in Trading Activity, Shorts Sales and Failed Trades (for the period May 1, 2007 to April 30, 2010)* (February 25, 2011) and IIROC Notice 11-0077 – Rules Notice – Technical – UMIR – *Price Movement and Short Sale Activity: The Case of the TSX Venture Exchange (for the period May 1, 2007 to April 30, 2010)* (February 25, 2011).

[6] The following is a summary of international developments in the regulation of short sales and failed trades since the issuance of the Joint Notice on March 2, 2012:

- European Union (EU) – Effective November 1, 2012, the *Regulation on Short Selling and Credit Default Swaps* seeks to ensure member states have clear powers to intervene in exceptional situations, create a harmonized framework for coordinated action by the European Securities and Markets Authority (ESMA), increase transparency on short positions held by investors in EU securities, reduce settlement risks due to naked short selling and reduce risks to the stability of the sovereign debt markets. In particular, the *Regulation on Short Selling and Credit Default Swaps*:
  1. Introduces a requirement that investors disclose significant net short positions in shares to regulators at 0.2% of the issued share capital, and to the public at 0.5%;
  2. Introduces a requirement that investors notify regulators of significant net short positions in EU sovereign bonds, including notification of significant credit default swap positions relating to sovereign debt issuers;
  3. Gives ESMA the power to intervene in response to threats to financial markets, if the EU national regulator has either failed to act or to do so adequately, and adopt temporary measures with the effect of prohibiting or restricting short selling;
  4. Gives the EU national regulators the power to require further transparency or restrict short selling and certain derivative transactions for a wide range of instruments in the case of adverse developments that constitute a serious threat to financial stability or market confidence in the EU or a Member State;
  5. Gives the EU national regulators the power to restrict short selling or limit transactions in a financial instrument if the price of that financial instrument falls by a significant amount (10% from the previous day's close in the case of liquid shares with the restriction lasting up to the end of the trading day following the day the price of the financial instrument fell, unless the price falls further);
  6. Introduces a pre-borrow or "locate" type requirement where an investor, before entering a short sale for shares or for sovereign debt, would be required:
     - to have borrowed the instruments concerned,
     - to have entered into an agreement to borrow the instruments in order to deliver them by the settlement date, or
     - to have an arrangement with a third party to locate the instruments concerned and to have a "reasonable expectation" of being able to borrow them to affect settlement when it is due;
  7. Requires central counterparties in the EU to ensure that there are adequate arrangements in place for the buy-in of shares if there is a failure to settle a transaction, and requiring that daily fines be imposed for non-settlements;
  8. Introduces a ban on holding an uncovered credit default swap position in EU sovereign debt; and
  9. Provides an exemption from the regulation for market making and primary market operations, and for shares whose principal trading venue is outside the EU.

     On September 17, 2012, ESMA published a consultation paper, setting out draft guidelines on market making and the application of exemption for market making activities and primary market operations under the *Regulation on Short Selling and Credit Default Swaps*.
- Hong Kong – On June 18, 2012, the Securities and Futures Commission of Hong Kong (the "SFC-HK") adopted a rule that, among other things,
  1. introduces a requirement for weekly reporting of short positions in specified shares that exceed on a net basis either: 0.2% of the issued share capital or HK$30 million. This requirement applies to both covered and uncovered short positions;
  2. applies to positions taken through the Hong Kong Stock Exchange or an authorized automated trading system specified by the SFC-HK;
  3. applies to shares that are constituents of the Hang Seng Index or the Hang Seng Enterprises Index, and to designated financial stocks and any other security designated by the SFC-HK; and
  4. allows the SFC-HK to require daily reporting of short positions when needed, if the financial stability of Hong Kong is threatened.

Failed Trade Reports which has been filed to date is in line with expectations and these reports have not indicated any unusual patterns or trends. Effective April 15, 2013, the requirement to file an Extended Failed Trade Report will be extended to trades using the "Trade-for-Trade" settlement facility of CDS (which generally represents less than 10% of trades in listed equity securities).[7] Based on test data which IIROC has received from CDS, IIROC expects to receive only a limited number of additional reports when the requirement is extended to "Trade-for-Trade" settlements.

CDS also provides regular information to the Ontario Securities Commission (OSC) on failed trades in CDS' CNS system. This information has not shown any trends that would give rise to concerns about fails. We will continue to monitor this information.

As of January 2013, IIROC is publishing semi-monthly a summary of short sales on Canadian marketplaces for every listed security.[8] This short sale summary is in addition to the "Consolidated Short Position Report," which will continue to be produced on the same semi-monthly basis.

Also commencing in 2013, new international standards governing financial market infrastructures (FMIs) will require FMIs such as CDS to disclose to the public certain basic data on transaction volumes and values, including information on the timeliness of settlements.[9]

Questions:

Please refer your questions to any of the following CSA or IIROC staff:

Bonnie Kuhn
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Alberta Securities Commission
(403) 355-3890
bonnie.kuhn@asc.ca

Serge Boisvert
Analyste en réglementation
Direction principale de l'encadrement des structures de marché
Autorité des marchés financiers
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7 For details on the extension of the reporting requirement, see IIROC Notice 13-0014 – Rules Notice – Technical – UMIR – *Implementation Date for the "Trade-for-Trade" Reporting of Extended Failed Trades* (January 14, 2013).

8 The report is available on the IIROC website at: http://www.iiroc.ca/news/Pages/Short-Sale.aspx . For details on the report, see IIROC Notice 13-0020 – Rules Notice – Technical – UMIR – *Issuance of Initial Short Sale Trading Summary Report* (January 21, 2013).

9 See Principle 23 on the disclosure of rules, key procedures and market data of the April 2012 report *Principles for Financial Market Infrastructures* published by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) (available online at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf). The CPSS and IOSCO are currently developing a framework for setting out a common set of quantitative information that an FMI should disclose regularly.

Appendix A

Summary of Comments

Comment letters were received from:

- TD Asset Management
- OpsRisk Limited
- Investment Industry Association of Canada (IIAC)
- Caisse de dépôt et placement du Québec
- CNSX Markets Inc.
- Canadian Foundation for Advancement of Investor Rights (FAIR Canada)

The comment letters are available on the OSC's and IIROC's websites (www.osc.gov.on.ca; www.iiroc.ca)

Question 1: Do you believe that more frequent aggregate short sale summaries should be made publicly available? If so, what should be the frequency of such short sale summaries (e.g. weekly, daily)? What would be the costs and benefits to issuers, investors and Participants from making this information public?

One commenter believed that existing order marking requirements were sufficient to detect abusive activity. Further, if a reporting requirement is implemented, it should only be to the regulator, as a short sale summary report could be misleading without access to trade data on all domestic and foreign markets on which a security trades. Publishing the report could also result in gaming. Another commenter believed that more current data may inform better investment decisions.

There was no consensus on the ideal frequency of short sale summaries, with one commenter suggesting weekly, another semi-monthly and a third suggesting that monthly reporting would not be sufficient.

As noted above, IIROC now publishes a semi-monthly summary of short sales on Canadian marketplaces in addition to the consolidated short position report.

Question 2: In addition to semi-monthly (or more frequent) aggregate short sale summaries, should there be public disclosure of individual short sale transaction data on an anonymous basis? If so, should the publication of this information be time deferred (e.g. one day, one month, etc.)? What would be the costs and benefits to market participants from making this information public?

Letters that specifically responded to this question did not support disclosure of individual short sale data. One noted that short sales are often part of a complex strategy and details of individual sales would not be useful. Another agreed that anonymous information would not provide sufficient information to discern patterns or a trading strategy, and so would not be more useful than aggregate data.

One commenter noted that the short sale marker is intended to identify potentially abusive behaviour, not to provide information, and that the information could be misleading as many short positions are offset.

Another commenter stated that if this requirement is adopted, it should be on an anonymous basis unless there is a size threshold for public disclosure. The commenter added that it should not be necessary to defer publication provided an investor has an opportunity to request an exemption from immediate reporting.

Question 3: Should data on the usage of the "short-marking exempt" designation in relation to trading activity of a particular security be made publicly available? If so, what should be the frequency of the release of such data?

Two commenters believed the information would be of limited or no use. Another believed it would be useful, but not as useful as information on directional short sales, and might not need to be reported as frequently as directional short sales.

Question 4: Is the existing public disclosure of short positions adequate? If not, should the information be available for unlisted securities such as debt securities and foreign-listed securities traded on alternative trading systems? Should there be one report covering all securities traded on marketplaces? Should custodians and dealers that are not Participants report their short positions?

Two commenters believed that in theory short reports should cover all securities and entities. However, they noted that it may be unduly costly to expand the requirement, there may not be demand for information about foreign-listed and debt securities, and requiring custodians and non-Participants to report may not result in data that is materially different from what is contained in existing reports.

One commenter believed the current data is inaccurate and misleading, and regulators should rely instead on IIROC's ability to monitor short selling activity.

One commenter believed the 100 largest short positions in TSX-listed securities and the 100 largest changes in short position in those securities should be published. In addition, public disclosure of individual short positions should be required when a threshold (e.g. 5%) is crossed.

Question 5: Is the information in the Consolidated Short Position Report (CSPR) timely? Should this information be made available on a more frequent basis?

One commenter believed that CSPR information is timely and sufficient and the cost of more frequent reporting needs to be considered. Another believed the CSPR is inaccurate and should be discontinued.

Question 6: Currently, are measures for failed trades transparency warranted? If you agree:

- ***What types of information on failed trades would be most useful to participants (some options are described above) and what should be the frequency of such disclosure?***
- ***In addition to equity and other securities processed through the CNS facilities at CDS, do other types of securities or products (e.g. fixed income securities) have FTD rates suggesting that similar failed trade transparency measures should apply to those securities? Please be specific in your answer.***
- ***What would be the costs and benefits, if any, to market participants in implementing such measures?***

If you believe that measures for failed trades transparency are currently not required, why do you think this information would not be helpful to issuers, investors or Participants?

Two commenters noted that previous IIROC studies showed that fails are not a problem in Canada and that IIROC and the OSC receive fails-to-deliver data from CDS. One of those commenters added that it will be difficult for Participants to assess and analyse the data. The other commenter suggested that, instead, regulators consider a larger, full review of aged fails, both long and short and including debt securities, with a focus on recurring names and Participants.

One commenter believed more extensive failed trade reporting was needed. Data on fails and short interest are necessary for ongoing monitoring and analysis of operational risk, and better data is available in the United States. The commenter stated that the magnitude, volatility and pattern of short selling and fails are operational risks.

One commenter believed that failed trade reporting might better inform trading decisions, but that the current UMIR failed trade reporting provisions were sufficient to identify problems.

General Comments

One commenter generally supported the proposed measures.

One commenter noted with respect to several of the options that any additional costs must be weighed against the benefits.

One commenter generally believed that measures to increase transparency of short selling and failed trades would only be useful to indicate potential problems in borrowing a security.

1.2 Notices of Hearing

1.2.1 HEIR Home Equity Investment Rewards Inc. et al. – s. 127 and Rule 12 of Commission's Rules of Procedure

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

AND

IN THE MATTER OF
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.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND
ERIC DESCHAMPS

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

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the temporary offices of the Commission, at ASAP Reporting Services, 333 Bay Street, Suite 900, Toronto, ON, M5H 2T4 on February 25, 2013 at 9:30 a.m., or as soon thereafter as the hearing can be held:

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement between Staff of the Commission and Eric Deschamps;

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff of the Commission dated February 14, 2012, and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 19th day of February, 2013.

"Josée Turcotte"
per John Stevenson
Secretary to the Commission

1.2.2 Garth A. Drabinsky et al.

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY, MYRON I. GOTTLIEB
AND GORDON ECKSTEIN

NOTICE OF HEARING

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of ASAP Reporting Services Inc. located at 333 Bay Street, Suite 900, Toronto, on Tuesday, March 19, 2013 at 10:00 a.m. or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission to make an order that:

(a) trading in any securities by Garth H. Drabinsky, Myron I. Gottlieb, and Gordon Eckstein (collectively, 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 other 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) each of the Respondents be reprimanded;

(e) each of the Respondents resign all positions that they hold as an officer or director of any issuer, registrant or investment fund manager;

(f) each of the Respondents be prohibited from becoming or acting as an officer or director of any issuer, registrant or investment fund manager;

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

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

(i) each of the Respondents be ordered to pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission; and

(j) to make such other order or orders as the Commission considers appropriate.

BY REASON OF the allegations set out in the Amended Statement of Allegations dated February 20, 2013, and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 20th day of February, 2013.

"Josée Turcotte"
for: John Stevenson
Secretary to the Commission

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

AND

**IN THE MATTER OF
GARTH H. DRABINSKY, MYRON I. GOTTLIEB
AND GORDON ECKSTEIN**

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

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

I Convictions of Garth Drabinsky, Myron Gottlieb and Gordon Eckstein

1. On February 26, 2007, Gordon Eckstein pled guilty in the Ontario Superior Court of Justice to one count of criminal fraud over $5000 in connection with misrepresentations made in the financial statements of Livent Inc. ("Livent") and its predecessor companies while he was an officer of these companies.

2. On March 25, 2009, Garth H. Drabinsky and Myron I. Gottlieb were found guilty in the Ontario Superior Court of Justice of two counts of criminal fraud over $5000 and one count of forgery in connection with misrepresentations made in the financial statements of Livent and its predecessor companies while they were directors and officers of these companies.

3. The convictions against Eckstein, Drabinsky and Gottlieb (together, the "Respondents") involved financial statements used to promote the initial public offering of Livent on the Toronto Stock Exchange (the "IPO"). The financial statements, which were included in the prospectus for the IPO, materially overstated the amount of company assets and concealed a kickback scheme.

4. The convictions against the Respondents also involved material misrepresentations made in financial statements that Livent issued after it became a public company. These financial statements were manipulated by the Respondents to reduce Livent's reported expenses and to increase its reported net income, so that the company would appear to potential investors and lenders to be meeting its financial projections.

5. Pursuant to his conviction, Eckstein received a conditional sentence of 2 years less a day, including one year of house arrest. Drabinsky received a sentence of 4 years of incarceration for misrepresentations related to the IPO and 7 years for misrepresentations related to post-IPO period, to be served concurrently. Gottlieb received a sentence of 4 years for misrepresentations related to the IPO and 6 years for misrepresentations related to post-IPO period, also to be served concurrently.

6. Drabinsky and Gottlieb appealed their convictions and their sentences. On September 13, 2011, the Ontario Court of Appeal upheld the convictions, but reduced Drabinsky's sentences to a total of 4 years and 6 years and reduced Gottlieb's sentences to a total of 3 years and 4 years, with each defendant's sentences to be served concurrently.

7. Drabinsky and Gottlieb sought leave from the Supreme Court of Canada to appeal the ruling of the Ontario Court of Appeal, but their application was dismissed without reasons on March 29, 2012.

II The Respondents

Garth H. Drabinsky

8. Drabinsky held various director and officer positions with Livent. From May 17, 1993 until June 12, 1998, Drabinsky was Chairman of the Board of Directors and Chief Executive Officer of Livent. On June 12, 1998, Drabinsky transitioned from these positions to become Vice-Chairman of the Board of Directors and Chief Creative Director, holding both of these titles until November 18, 1998.

9. Prior to the IPO, Drabinsky held various positions in Livent's privately-held predecessor entities, including positions as General Partner of MyGar Partnership, an Ontario general partnership, as Director of MyGar Realty Inc., an Ontario corporation, and as Chairman and Chief Executive Officer of Live Entertainment of Canada Inc. ("LECI"), an Ontario corporation.

Myron I. Gottlieb

10. Gottlieb held the position of President of Livent from May 17, 1993 until June 12, 1998, at which time he became Executive Vice-President, Canadian Administration until November 18, 1998. Throughout his tenure at Livent, Gottlieb was a director of the company.

11. Prior to the IPO, Gottlieb held various positions in Livent's privately-held predecessor entities, including positions as General Partner of MyGar Partnership, as Director of MyGar Realty Inc., and as Director, President and Chief Operating Officer of LECI.

Gordon Eckstein

12. Eckstein held the position of Vice-President, Finance and Administration at Livent from May 17, 1993 through November 13, 1996, at which time he assumed the position of Senior Vice-President, Finance and Administration until July 29, 1998.

13. Prior to the IPO, Eckstein held the position of Vice-President, Finance and Administration of MyGar Partnership and LECI.

III Background

Livent's Predecessor Entities and IPO

14. Prior to May 1993, Drabinsky and Gottlieb operated and controlled several entities involved in the live entertainment business, including LECI, MyGar Partnership, and MyGar Realty Inc. Eckstein supervised the accounting staff and helped prepare the companies' financial statements.

15. On or about May 7, 1993, Livent conducted its IPO (under the name of LECI, its immediate corporate predecessor) and acquired all the assets of MyGar Partnership and all the outstanding shares of MyGar Realty Inc. in the course of the offering. Livent's shares were subsequently listed for trading on the Toronto Stock Exchange and the company became a reporting issuer in Ontario.

Fraud Allegations, Bankruptcy and Cease-Trading

16. In the summer of 1998, new management took control of Livent pursuant to an investment agreement, and learned of allegations that the company's prior financial statements contained misrepresentations.

17. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act"), publicly announcing that an internal investigation had revealed serious irregularities in the company's financial records. The announcement stated that it was virtually certain that Livent's financial results for 1996 and 1997 and the first quarter of 1998 would need to be restated.

18. On November 18, 1998, Livent announced that it had filed a voluntary petition for bankruptcy in New York. The stated purpose of the petition was to pursue a comprehensive financial restructuring which had become necessary as a result of serious accounting irregularities uncovered at the company. Livent subsequently filed for protection under the *Companies' Creditors Arrangement Act* in Canada, and courts in Toronto and New York approved the sale of substantially all of Livent's assets, property, and undertakings to a third party.

19. On September 29, 1999, the Superior Court of Justice approved Livent's request to appoint Ernst & Young Inc. as receiver and manager of all of the remaining property, assets and undertakings of Livent.

20. On February 6, 2001, shares of Livent were cease traded by the Ontario Securities Commission (the "Commission") in response to the company's failure to file the financial statements required by the Act.

Commission Proceedings, Adjournment and Criminal Proceedings

21. On July 3, 2001, Staff issued a Notice of Hearing and Statement of Allegations against the Respondents, as well as former Livent Chief Operating Officer Robert Topol, in relation to their conduct as directors and officers of Livent.

22. Subsequently, the Respondents each gave undertakings to the Director of Enforcement of the Commission that, pending the conclusion of the proceedings, they would not apply to become a registrant, an employee of a registrant, or act in certain officer or director positions of a reporting issuer without the express written consent of the Director or an Order of the Commission.

23. On October 22, 2002, the Royal Canadian Mounted Police charged the Respondents and Topol with multiple counts of criminal fraud, and Commission proceedings against the Respondents were adjourned sine die on November 15, 2002 pending resolution of the criminal charges.

24. On June 22, 2007, the Ontario Superior Court of Justice dismissed the criminal charges against Topol after it concluded that there had been an unreasonable delay in bringing the case against him to trial.

25. On May 5, 2008, the criminal trial against Drabinsky and Gottlieb commenced in Superior Court before Madam Justice Benotto sitting alone. The trial was held over 65 days and, on March 25, 2009, Drabinsky and Gottlieb were found guilty of violating Sections 380(1)(a) and Section 368 (1)(b) of the Criminal Code of Canada.

IV Findings of the Superior Court Against Drabinsky and Gottlieb

26. As set forth in the decision of the Superior Court, Drabinsky and Gottlieb raised over $500 million from the capital markets between 1993 and 1998, signing and presenting company financial statements to investors during this period. However, as detailed in the decision, the financial statements included two types of fraudulent misrepresentations, each created pursuant to Drabinsky's and Gottlieb's direction.

Financial Statements in Prospectus Concealed Kickback Scheme and Overstated Assets

27. The first type of misrepresentation involved the financial statements of Livent's predecessor entities (the "MyGar Entities"), which were included in the Prospectus when Livent held its IPO. These financial statements overstated the amount of company assets by concealing a kickback scheme.

28. Under the kickback scheme, Drabinsky and Gottlieb used funds from the MyGar Entities to pay two contractors for fictitious services. The contractors then funneled the diverted funds back to Drabinsky and Gottlieb.

29. The funds transferred under this arrangement should have been recorded in company records as advances to Drabinsky and Gottlieb. Instead, however, Drabinsky and Gottlieb directed that most of the payments be booked as either fixed assets or preproduction costs.

30. By recording the payments in this way, the MyGar Entities' balance sheets indicated that the companies held more assets than they actually did.

31. Before the IPO, Drabinsky and Gottlieb were advised that the MyGar Entities needed to write down $4 million to $6 million to remove overstated asset amounts from company balance sheets, but neither of them authorized a write-down. Instead, they decided to leave the overstated entries in the companies' financial statements, indicating that a write-down would "look terrible" and would interfere with the marketing of the IPO.

32. As a result, the overstated asset amounts remained in the MyGar Entities' financial statements, and were subsequently incorporated into the financial statements contained in the Prospectus.

Financial Statements Filed by Livent After the IPO Concealed Improper Financial Manipulations

33. The second fraudulent scheme involved the manipulation of financial statements that Livent filed as a public company. Under the scheme, Drabinsky and Gottlieb directed Eckstein to manipulate the company's financial statements to reduce reported expenses and increase reported income so that Livent would appear to potential investors and lenders to be meeting its financial expectations.

34. During regular reporting cycles, Eckstein and his accounting staff prepared detailed statements summarizing Livent's actual financial results. Drabinsky and Gottlieb would then direct Eckstein to alter the statements so that they would match Livent's financial projections. These directions were often communicated explicitly, with Drabinsky and Gottlieb discussing specific areas of the statements that needed to be manipulated to improve the company's reported results.

35. Following Drabinsky's and Gottlieb's direction, Eckstein instructed members of his accounting staff to adjust the financial statements. Changes were made through various improper means, including deferring operating costs from current reporting periods to future reporting periods, transferring expenses associated with one project to another project, and transferring operating and preproduction costs to fixed asset accounts relating to theatre construction.

36. New financial statements were then created to incorporate the adjusted results, and executive meetings were held to discuss the revised statements.

37. Once the executive meetings took place and the final financial statements were signed by Drabinsky and Gottlieb, they were distributed to the Audit Committee and subsequently to the Board of Directors.

38. In this manner, false financial statements which overstated company income were prepared on numerous occasions and publicly filed.

39. Livent raised funds from capital markets repeatedly during the post-IPO period, including the following offerings itemized in the Superior Court's decision:

Date of Offering	Offering	Approximate Funds Raised ($ million)
September 20, 1993	Special Warrants Private Placement	$20
February 3, 1995	Subordinated Convertible Notes Offering	$15
February 3, 1995	Personal Shares of Mr. Drabinsky and Mr. Gottlieb	$17
April 2, 1996	U.S. Public Offering	$43
July 29, 1996	Subordinated Convertible Debentures	$12
December 4,1996	CIBC Credit Facility (loan agreement)	$50
December 10, 1996	Senior Secured Debentures	$73
May 8,1997	Secondary Public Offering	$28
October 16, 1997	Senior Notes Offering	$173
June 12,1998	Private Placement: Lynx Ventures	$29
June 12,1998	Private Placement: Roy Furman	$3
June 23,1998	Private Placement : Southam	$18
June 23,1998	Private Placement: Great Pacific	$1
June 23,1998	Private Placement: Allen & Co.	$1

V Admissions in the Guilty Plea of Gordon Eckstein

40. In connection with his February 26, 2007 plea, Eckstein consented to the filing of an Agreed Statement of Facts, including facts substantially similar to those established by the findings of the Superior Court.

41. Specifically, Eckstein acknowledged that he participated in certain improper manipulations relating to the financial statements of the MyGar Entities. The manipulations involved the concealment of a kickback scheme and the artificial inflation of company assets, as outlined above.

42. In addition, Eckstein acknowledged that he accepted direction from Drabinsky and Gottlieb to falsify various figures in Livent's post-IPO financial statements in order to meet financial projections. To execute these falsifications, Eckstein acted as the conduit between Livent's senior management team and its accounting staff, directing members of the staff to make specific manipulations and then reviewing the adjusted financial results in executive meetings, as outlined above.

43. The results of these manipulations made Livent's financial statements false and deceptive, and Eckstein knew that members of the public relied upon these financial statements.

44. Eckstein also supervised the creation of false supporting accounting records. Some of these records were created by modifying the computer software used to run the company's general ledger and helped to conceal the improper manipulations that had been made.

45. On the basis of the Agreed Statement of Facts and his plea, the Superior Court of Justice found Eckstein guilty of violating Section 380(1)(a) of the *Criminal Code of Canada*.

VI Conduct Contrary to the Public Interest

46. Staff plead and rely upon the guilty plea of Eckstein entered February 26, 2007 and the decision of the Superior Court regarding Drabinsky and Gottlieb entered March 25, 2009, as outlined above.

47. The conviction of each Respondent for fraud involving financial statements distributed pursuant to the Act constitutes a basis pursuant to s. 127(10) of the Act for an order in the public interest under s.127(1) of the Act.

48. In addition, by engaging in the conduct described above, the Respondents acted in a manner contrary to the public interest, and an order is warranted pursuant to section 127(1) of the Act.

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

DATED at Toronto this 20th day of February, 2013.

1.2.3 JV Raleigh Superior Holdings Inc. et al. – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
JV RALEIGH SUPERIOR HOLDINGS INC.,
MAISIE SMITH (also known as MAIZIE SMITH) and
INGRAM JEFFREY ESHUN

NOTICE OF HEARING
(Subsections 127(1) and 127(10))

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act"), at the temporary offices of the Commission, 333 Bay Street, Suite 900, Toronto, Ontario, commencing on March 6, 2013 at 11:00 a.m.;

TO CONSIDER whether, pursuant to paragraph 4 of subsection 127(10) of the Act, it is in the public interest for the Commission:

1. to make an order against JV Raleigh Superior Holdings Inc. ("JV Raleigh") that:

    a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of JV Raleigh cease permanently;

2. to make an order against Maisie Smith (also known as Maizie Smith) ("Smith") that:

    a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Smith cease permanently, except that she may trade and purchase securities and exchange contracts through accounts in her own name at the registered dealer referred to in the order of the British Columbia Securities Commission dated December 24, 2012 (the "BCSC Order"), provided she gives a copy of the BCSC Order to that dealer;

    b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Smith cease permanently;

    c. pursuant to paragraph 7 of subsection 127(1) of the Act, Smith resign any positions that she holds as director or officer of an issuer;

    d. pursuant to paragraph 8 of subsection 127(1) of the Act, Smith be prohibited permanently from becoming or acting as an officer or director of an issuer;

    e. pursuant to paragraph 8.1 of subsection 127(1) of the Act, Smith resign any positions that she holds as director or officer of a registrant;

    f. pursuant to paragraph 8.2 of subsection 127(1) of the Act, Smith be prohibited permanently from becoming or acting as an officer or director of a registrant; and

    g. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Smith be prohibited permanently from becoming or acting as a registrant or as a promoter; and

3. to make an order against Ingram Jeffrey Eshun ("Eshun") that:

    a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Eshun cease permanently;

    b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Eshun cease permanently;

    c. pursuant to paragraph 7 of subsection 127(1) of the Act, Eshun resign any positions that he holds as director or officer of an issuer;

d. pursuant to paragraph 8 of subsection 127(1) of the Act, Eshun be prohibited permanently from becoming or acting as an officer or director of an issuer;

e. pursuant to paragraph 8.1 of subsection 127(1) of the Act, Eshun resign any positions that he holds as director or officer of a registrant;

f. pursuant to paragraph 8.2 of subsection 127(1) of the Act, Eshun be prohibited permanently from becoming or acting as an officer or director of a registrant; and

g. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Eshun be prohibited permanently from becoming or acting as a registrant or as a promoter; and

4. to make such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated February 15, 2013 and by reason of an order of the British Columbia Securities Commission dated December 24, 2012, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on March 6, 2013 at 11:00 a.m., Staff will bring an application to proceed with the matter by written hearing, in accordance with Rule 11 of the Ontario Securities Commission *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and any party to the proceeding may make submissions in respect of the application to proceed by written hearing;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing;

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

DATED at Toronto this 22nd day of February, 2013.

“Josée Turcotte”
for: John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
JV RALEIGH SUPERIOR HOLDINGS INC.,
MAISIE SMITH (also known as MAIZIE SMITH) and
INGRAM JEFFREY ESHUN

STATEMENT OF ALLEGATIONS OF STAFF OF
THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") allege:

I. OVERVIEW

1. JV Raleigh Superior Holdings Inc. ("JV Raleigh"), Maisie Smith (also known as Maizie Smith) ("Smith") and Ingram Jeffrey Eshun ("Eshun") (together, the "Respondents") are subject to an order made by the British Columbia Securities Commission (the "BCSC") dated December 24, 2012 (the "BCSC Order") that imposes sanctions, conditions, restrictions or requirements on them.

2. In its findings on liability dated July 27, 2012 (the "Findings"), a panel of the BCSC found that the Respondents engaged in unregistered trading contrary to section 34 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "BC Act"), and in an illegal distribution contrary to section 61 of the BC Act. The panel further found that, as directors of JV Raleigh, Smith and Eshun contravened sections 34 and 61 pursuant to section 168.2 of the BC Act.

3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the BCSC Order, pursuant to paragraph 4 of subsection 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

4. The conduct for which the Respondents were sanctioned took place between July 2006 and January 2009.

II. THE BCSC PROCEEDINGS

The BCSC Findings

5. In its Findings, a panel of the BCSC made the following findings:

   a. the Respondents traded in securities in British Columbia without being registered to do so contrary to section 34 of the BC Act;

   b. the Respondents distributed those securities without filing a prospectus contrary to section 61 of the BC Act; and

   c. Smith and Eshun authorized, permitted or acquiesced in JV Raleigh's contraventions of sections 34 and 61 of the BC Act; therefore they also contravened sections 34 and 61 pursuant to section 168.2 of the BC Act.

The BCSC Order

6. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

   a. upon JV Raleigh:

      i. pursuant to subsection 161(1)(b) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, securities of JV Raleigh; and

      ii. pursuant to subsection 161(1)(g) of the BC Act, that JV Raleigh pay any amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the BC Act, of not less than $5.7 million;

b. upon Smith:

i. pursuant to subsection 161(1)(b) of the BC Act, that Smith permanently cease trading in, and be permanently prohibited from purchasing, securities and exchange contracts, except that she may trade and purchase securities and exchange contracts through accounts in her own name at one registered dealer, provided that she gives a copy of the BCSC Order to the registered dealer;

ii. pursuant to subsections 161(1)(d)(i) and (ii) of the BC Act, that Smith resign any position she holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;

iii. pursuant to subsection 161(1)(d)(iii) of the BC Act, that Smith is permanently prohibited from becoming or acting as a registrant or promoter;

iv. pursuant to subsection 161(1)(d)(iv) of the BC Act, that Smith is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

v. pursuant to subsection 161(1)(d)(v) of the BC Act, that Smith is permanently prohibited from engaging in investor relations activities;

vi. pursuant to subsection 161(1)(g) of the BC Act, that Smith pay any amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the BC Act, of not less than $5.7 million; and

vii. pursuant to section 162 of the BC Act, that Smith pay an administrative penalty in the amount of $500,000;

c. upon Eshun:

i. pursuant to subsection 161(1)(b) of the BC Act, that Eshun permanently cease trading in, and be permanently prohibited from purchasing, securities and exchange contracts;

ii. pursuant to subsections 161(1)(d)(i) and (ii) of the BC Act, that Eshun resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;

iii. pursuant to subsection 161(1)(d)(iii) of the BC Act, that Eshun is permanently prohibited from becoming or acting as a registrant or promoter;

iv. pursuant to subsection 161(1)(d)(iv) of the BC Act, that Eshun is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

v. pursuant to subsection 161(1)(d)(v) of the BC Act, that Eshun is permanently prohibited from engaging in investor relations activities;

vi. pursuant to subsection 161(1)(g) of the BC Act, that Eshun pay any amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the BC Act, of not less than $5.7 million; and

vii. pursuant to section 162 of the BC Act, that Eshun pay an administrative penalty in the amount of $750,000.

d. Maximum disgorgement

i. The aggregate amount paid to the BCSC under paragraphs 6(a)(ii), 6(b)(vi) and 6(c)(vi) not exceed the greater of $5.7 million and the actual amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the BC Act.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

7. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements on them.

8. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.

9. Staff allege that it is in the public interest to make an order against the Respondents.

10. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

11. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Ontario Securities Commission *Rules of Procedure*.

DATED at Toronto, this 15th day of February, 2013.

1.3 News Releases

1.3.1 CSA Regulators' Enforcement Report Highlights Fraud

FOR IMMEDIATE RELEASE
February 21, 2013

CANADIAN SECURITIES REGULATORS'
ENFORCEMENT REPORT HIGHLIGHTS FRAUD

Calgary – The Canadian Securities Administrators (CSA) today released its fifth annual *Enforcement Report* that outlines how securities regulators are actively working to protect investors and the integrity of Canada's capital markets. As securities fraud can cause tremendous harm to investors and Canada's capital markets, this year's report highlights the CSA's fraud enforcement efforts.

"CSA members work hard to combat securities fraud and we place particular emphasis in our enforcement work on the violations that constitute fraud," said Bill Rice, CSA Chair and CEO and Chair of the Alberta Securities Commission. "In addition to these efforts, CSA members stress that education is a valuable tool in deterring investors from becoming victims of fraud and others types of securities laws violations."

The CSA's *2012 Enforcement Report* brings into focus the enforcement work done by CSA members against those who commit wrongdoing in Canada's capital markets. CSA members concluded cases against 322 individuals and companies. Concluded securities fraud cases involved 66 individuals and companies.

Key highlights of the *2012 Enforcement Report*:

- 10 (seven per cent) of the concluded cases were in the fraud category and involved 33 individuals and 33 companies.
- 135 concluded cases involved a total of 206 individual and 116 companies that resulted in:
  - Fines and administrative penalties of almost $37 million.
  - More than $120 million in restitution, compensation and disgorgement.
  - Jail sentences against seven individuals.
- Concluded matters against 185 respondents following a contested hearing, 74 respondents by settlement agreement and 63 respondents by court decision.
- 145 matters commenced against a total of 242 individuals and 146 companies.
- 56 interim orders and asset freeze orders were issued against 87 individuals and 77 companies.

For the second year, the CSA's *Enforcement Report* is available in HTML format, which allows users to navigate specific sections of the report quickly and easily. The report comes out in advance of Fraud Prevention Month in March, which highlights tools and resources Canadians can use to recognize and avoid investment fraud, and lets them know they can turn to securities regulators for help. The CSA will continue to use its Twitter account to share information about the CSA and its programs, beginning with key sections of the enforcement report. People interested in investor protection or education news and programs are encouraged to follow the CSA on Twitter (@CSA_News).

The *2012 Enforcement Report* is now accessible from the CSA website www.securities-administrators.ca and from the websites of various CSA members.

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

For more information:

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1.4 Notices from the Office of the Secretary

1.4.1 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
HERMAN TSE, DEVON RICKETTS
and MARK GRIFFITHS

TORONTO – The Commission issued an Order in the above named matter which provides that a further confidential pre-hearing conference shall be held on February 28, 2013 at 12:00 p.m.

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

A copy of the Order dated February 19, 2013 is available at www.osc.gov.on.ca.

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1.4.2 Steven Vincent Weeres and Rebekah Donszelmann

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
STEVEN VINCENT WEERES and
REBEKAH DONSZELMANN

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

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

2. Staff's material in respect of the hearing shall be served and filed no later than February 22, 2013; and

3. the Respondents' responding materials, if any, shall be served and filed no later than March 4, 2013.

A copy of the Order dated February 19, 2013 is available at www.osc.gov.on.ca.

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1.4.3 Blackwood & Rose Inc. et al.

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
BLACKWOOD & ROSE INC., STEVEN ZETCHUS and JUSTIN KRELLER (also known as JUSTIN KAY)

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

(i) the Temporary Order is extended to April 11, 2013 or until further order of the Commission;

(ii) the hearing date scheduled for March 6, 2013 to consider a further extension of the Temporary Order is vacated; and

(iii) the hearing is adjourned to April 10, 2013 at 10:00 a.m., or to such other date or time as provided by the Office of the Secretary and agreed to by the parties, for the purpose of conducting a pre-hearing conference and to consider a further extension of the Temporary Order.

A copy of the Temporary Order dated February 19, 2013 is available at www.osc.gov.on.ca.

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1.4.4 Inmet Mining Corporation and First Quantum Minerals Ltd. and its wholly-owned subsidiary FQM (Akubra) Inc.

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
INMET MINING CORPORATION AND FIRST QUANTUM MINERALS LTD. AND ITS WHOLLY-OWNED SUBSIDIARY FQM (AKUBRA) INC.

TORONTO – Take notice that the Application of First Quantum Minerals Ltd. through its wholly-owned subsidiary FQM (Akubra) Inc. dated February 8, 2013 has been withdrawn and the hearing date of February 25, 2013 is vacated.

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1.4.5 Peter Sbaraglia

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
PETER SBARAGLIA

TORONTO – Take notice that the confidential Pre-Hearing Conference, previously scheduled for February 22, 2013 at 10:00 a.m., has been adjourned to February 27, 2013, immediately following the Motion Hearing.

The Pre-Hearing Conference will be held *in camera*.

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1.4.6 HEIR Home Equity Investment Rewards Inc. et al.

FOR IMMEDIATE RELEASE
February 20, 2013

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

AND

IN THE MATTER OF
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.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION

AND

ERIC DESCHAMPS

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve the settlement agreements entered into between Staff of the Commission and Eric Deschamps. The hearing will be held at the temporary offices of the Commission, located at ASAP Reporting Services Inc. Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, ON. M5H 2T4 on Monday, February 25, 2013 at 9:30 a.m., or as soon thereafter as the hearing can be held.

A copy of the Notice of Hearing dated February 19, 2013 is available at www.osc.gov.on.ca.

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1.4.7 Northern Securities Inc. et al.

FOR IMMEDIATE RELEASE
February 21, 2013

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

AND

IN THE MATTER OF
NORTHERN SECURITIES INC.,
VICTOR PHILIP ALBOINI,
DOUGLAS MICHAEL CHORNOBOY
AND FREDERICK EARL VANCE

AND

IN THE MATTER OF
DECISIONS OF A HEARING PANEL OF
THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA
DATED JULY 23, 2012 and NOVEMBER 10, 2012

TORONTO – The Commission issued an Order in the above named matter, which provides that pursuant to section 21.7 and subsection 8(4) of the Act, the sanctions and penalties imposed by the IIROC Hearing Panel are stayed until 30 days after the issuance of the decision and reasons for the Hearing and Review or until further order of the Commission.

A copy of the Order dated February 20, 2013 is available at www.osc.gov.on.ca.

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1.4.8 Livent Inc. et al.

FOR IMMEDIATE RELEASE
February 21, 2013

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

AND

IN THE MATTER OF
LIVENT INC.,
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB,
GORDON ECKSTEIN AND
ROBERT TOPOL

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against the Respondents, Livent Inc. and Robert Topol as of February 20, 2013 in the above noted matter.

A copy of the Notice of Withdrawal dated February 20, 2013 is available at www.osc.gov.on.ca.

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1.4.9 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
February 21, 2013

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY, MYRON I. GOTTLIEB
AND GORDON ECKSTEIN

TORONTO – The Office of the Secretary issued a Notice of Hearing on February 20, 2013 setting the matter down to be heard on March 19, 2013 at 10:00 a.m. at the offices of ASAP Reporting Services Inc. located at 333 Bay Street, Suite 900, Toronto or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated February 20, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 20, 2013 are available at www.osc.gov.on.ca.

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1.4.10 Quadrexx Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
February 21, 2013

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

AND

IN THE MATTER OF
QUADREXX ASSET MANAGEMENT INC.,
QUADREXX SECURED ASSETS INC.,
OFFSHORE OIL VESSEL SUPPLY
SERVICES LP, QUIBIK INCOME FUND
AND QUIBIK OPPORTUNITY FUND

TORONTO – The Commission issued an Order in the above named matter with certain provisions and that the hearing to consider whether to: (i) further extend any of the terms of the Temporary Order: (ii) vary or add any terms and conditions to Quadrexx's registration as a PM or as an IFM; and/or (iii) suspend Quadrexx's registration as a PM or as an IFM, will proceed on March 6, 2013 at 10:00 a.m.

A copy of the Order dated February 19, 2013 is available at www.osc.gov.on.ca.

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1.4.11 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
February 25, 2013

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

AND

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

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

(i) the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until March 5, 2013, or until further order of the Commission;

(ii) a public hearing will be held on March 4, 2013 at 10:00 a.m. to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment.

A copy of the Order dated February 21, 2013 is available at www.osc.gov.on.ca.

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1.4.12 Factorcorp Inc. et al.

IMMEDIATE RELEASE
February 25, 2013

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

AND

IN THE MATTER OF
FACTORCORP INC.,
FACTORCORP FINANCIAL INC., AND
MARK IVAN TWERDUN

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

The Commission also issued an Order which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, commencing on April 18, 2013 at 10:00 a.m.

A copy of the Reasons for Decision and the Order dated February 22, 2013 are available at www.osc.gov.on.ca.

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1.4.13 Majestic Supply Co. Inc. et al.

IMMEDIATE RELEASE
February 25, 2013

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC.,
SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP,
MARY KRICFALUSI, KEVIN LOMAN and
CBK ENTERPRISES INC.

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 on March 15, 2013 at 10:00 a.m.; and 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.

A copy of the Reasons and Decision and the Order dated February 21, 2013 are available at www.osc.gov.on.ca.

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1.4.14 JV Raleigh Superior Holdings Inc. et al.

FOR IMMEDIATE RELEASE
February 25, 2013

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

AND

IN THE MATTER OF
JV RALEIGH SUPERIOR HOLDINGS INC.,
MAISIE SMITH (also known as MAIZIE SMITH) and
INGRAM JEFFREY ESHUN

TORONTO – The Office of the Secretary issued a Notice of Hearing on setting the matter down to be heard on March 6, 2013 at 11:00 a.m. at the temporary offices of the Commission, 333 Bay Street, Suite 900, Toronto, Ontario, or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated February 22, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 15, 2013 are available at www.osc.gov.on.ca.

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1.4.15 HEIR Home Equity Investment Rewards Inc. et al.

FOR IMMEDIATE RELEASE
February 25, 2013

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

AND

IN THE MATTER OF
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; LACENCIA ESTATES DEVELOPMENT, LTD.; COPAL RESORT DEVELOPMENT GROUP, LLC; RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.; AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND ERIC DESCHAMPS

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Eric Deschamps.

A copy of the Order dated February 25, 2013 and Settlement Agreement dated February 14, 2013 are available at www.osc.gov.on.ca.

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1.4.16 Systematech Solutions Inc. et al.

FOR IMMEDIATE RELEASE
February 26, 2013

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: (i) the hearing on the merits will start on November 4, 2013 at 10:00 a.m. and continue on November 6, 7, 8, 11, 12, 13, 14, 15 and 18, 2013; and (ii) that another confidential pre-hearing conference will take place on September 4, 2013 at 10:00 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 February 20, 2013 is available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Spartan Oil Corp. – 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).

February 19, 2013

Borden Ladner Gervais LLP
Centennial Place, East Tower, 1900, 520 - 3rd Ave. SW
Calgary, AB T2P 0R3

Attention: Scott Cedergren

Dear Sir:

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

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.2 Western Financial Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 1(10)(a)(ii).
National Instrument 45-106 Prospectus & Registration Exemptions.
National Instrument 45-102 Resale of Securities.

February 15, 2013

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

AND

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

AND

IN THE MATTER OF
WESTERN FINANCIAL GROUP INC.
(the Filer)

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

General

1. The Filer is a corporation governed by the *Business Corporations Act* (Alberta) (the **ABCA**).

2. The Filer's head office is located at 101 - 24th Street SE, High River, Alberta T1V 2A6 and its registered office is located at Suite 3700, 400 - 3rd Ave SW, Calgary, Alberta T2P 4H2.

3. The Filer is a reporting issuer in each of the Jurisdictions and no other Canadian territories.

4. The Filer is not in default of any of its obligations under the securities legislation of the Jurisdictions as a reporting issuer.

5. Each of the System for Electronic Document Analysis and Retrieval (**SEDAR**) and System for Electronic Disclosure by Insiders (**SEDI**) profiles of the Filer are up to date and there are no outstanding fees under the securities legislation of the Jurisdictions required to be paid by the Filer.

6. The Filer is unable to rely on the simplified procedure set out in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (**CSA 12-307**) because the Filer will not meet the requirement under CSA 12-307 of having fewer than 15 security holders in each of the provinces of Canada and fewer than 51 security holders worldwide.

Outstanding Securities

Authorized Share Capital

7. The Filer's authorized share capital consists of (i) an unlimited number of common shares (**Common Shares**), (ii) an unlimited number of redeemable preferred shares (the **Redeemable Preferred Shares**), (iii) an unlimited number of first preferred shares, which are issuable in series (the **First Preferred Shares**), and (iv) an unlimited number of second preferred shares, which are issuable in series (the **Second Preferred Shares**).

8. There are currently no issued and outstanding Redeemable Preferred Shares or First Preferred Shares.

Common Shares

9. There are currently 315,295,796 Common Shares issued and outstanding, all of which are owned by Desjardins Financial Corporation Inc. (**Desjardins**).

10. On April 15, 2011, Desjardins acquired approximately 95.5% of the Common Shares pursuant to an offer made by Desjardins on January 21, 2011. On July 12, 2011, pursuant to a second-stage transaction, the Filer amalgamated with 1610338 Alberta Ltd., a direct wholly owned subsidiary of Desjardins, resulting in all of the issued and outstanding Common Shares being held by Desjardins.

11. The Filer's Common Shares were delisted from the TSX Exchange (the **Exchange**) effective as of close of trading on July 13, 2011.

Credit Facilities

12. The Filer has an unsecured credit facility in place with Caisse Centrale Desjardins (**CCD**), a wholly owned subsidiary of Desjardins, of up to $10 million for the Filer and up to $20 million for Bank West, a wholly owned subsidiary of the Filer.

13. The Applicant also has a $55 million advance, a $50 million demand loan and a $32 million subordinated term loan from CCD.

14. Bank West also has a $150 million revolving loan and an additional $1.5 million line of credit from CCD.

First Preferred Shares

15. On January 1, 2013 (the **Redemption Date**) the Filer redeemed all of the issued and outstanding First Preferred Shares, series four (the **Series Four Shares**) at a price of $100 per share plus accrued and unpaid dividends. Notice of the redemption was delivered on November 12, 2012, was announced by a press release and a copy is available on SEDAR. The Series Four Shares were delisted from the Exchange as of the close of trading on December 31, 2012

16. The Filer therefore has no outstanding securities traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

17. As of the close of trading on the Redemption Date, the only security holders of the Filer are Desjardins, CCD and employees of the Filer holding Employee Preferred Shares (as defined below).

18. The Filer has no plans to conduct a financing through any public offering or private placement of its securities in Canada.

Employee Preferred Shares

19. The Filer has issued 3,180,371 Second Preferred Shares, series one, which were created and issued by the Filer to its employees on a voluntary basis (the **Employee Preferred Shares**) pursuant to an Employee Preferred Ownership and Deferred Bonus Plan (the **Plan**), which was created after the Common Shares were acquired by Desjardins. The Plan was created to provide a retention mechanism and long term performance-based compensation plan that promotes a strong sense of ownership among employees and executives of the Filer.

20. The Employee Preferred Shares are issued at a price of $1.00 per share (the **Redemption Amount**). The holders of Employee Preferred Shares are entitled to receive, if and when declared by the board of directors out of the monies of the Filer properly applicable to the payment of dividends, a preferential, non-cumulative dividend in respect of each calendar year at a rate per annum, from 0% to 10%, as may be determined by the board of directors at the time of such declaration. The dividend rate under the Plan is designed to approximate the rate of increase in free operating cash flow, if any, of the Filer. The Employee Preferred Shares can be redeemed by the Filer at any time at the Redemption Amount, plus accrued and unpaid dividends, if any. Holders of Employee Preferred Shares may also require the Filer to redeem the Employee Preferred Shares at the Redemption Amount at any time. The holders of Employee Preferred Shares are not entitled to receive notice of, to attend or to vote at any meeting of shareholders other than meetings of holders of the Employee Preferred Shares.

21. Under the Plan, after a deferral period which is typically three years from the end of the contribution period during which the Employee Preferred Shares were issued, holders of Employee Preferred Shares are generally entitled to receive a cash bonus equal to a multiple of the amount of Employee Preferred Shares purchased under the Plan during such contribution period.

22. In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Filer, holders of Employee Preferred Shares are entitled to receive, in priority to holders of Common Shares and any other shares ranking junior to the Employee Preferred Shares, an amount equal to the Redemption Amount per share.

23. All Employee Preferred Shares held by an employee of the Filer are automatically redeemed at the Redemption Amount when employment with the Filer ceases. The articles also expressly prevent non-employees from holding Employee Preferred Shares. Under the terms of the Plan no

transfers are permitted unless authorized by the board. Therefore, actual and potential holders of Employee Preferred Shares are limited to individuals actively employed by the Filer.

24. There are currently 3,180,371 issued and outstanding Employee Preferred Shares held by 947 employees of the Filer. The number and location of holders of Employee Preferred Shares are as follows: 172 in British Columbia; 416 in Alberta; 80 in Saskatchewan; 267 in Manitoba; 4 in Ontario; and 8 in Québec.

25. The Employee Preferred Shares have been issued pursuant to the employee prospectus exemption (the **Employee Exemption**) contained in section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions*. They are therefore subject to the conditions in section 2.6 of National Instrument 45-102 *Resale of Securities*, which include the condition that a first trade of Employee Preferred Shares, after the initial distribution, is a distribution unless the Filer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade. If the Filer were not a reporting issuer, it would still be entitled to rely on the Employee Exemption to issue Employee Preferred Shares without qualifying them with a prospectus.

26. The issuance of Employee Preferred Shares pursuant to the Plan aligns the interests of employees and the Filer, is a fundamental part of the Filer's incentive compensation program and entitles employees to share in future growth of the business.

27. Holders of Employee Preferred Shares have the right, upon 10 days notice, to cause the Filer to redeem the Employee Preferred Shares at the Redemption Amount.

28. The Filer provides the employees with regular updates on its affairs and financial position, in particular:

    (a) the quarterly and annual financial results of the Filer are posted on the employee accessible internal intranet;

    (b) the leadership team of the Filer has quarterly meetings to discuss the financial results of the Filer and is encouraged to report and explain such results to the rest of the employees; and

    (c) the Chief Executive Officer holds a monthly town hall meeting accessible by satellite to all employees to update all employees on the business of the Filer.

29. Desjardins' parent company, Fédération des caisses Desjardins du Québec (**Desjardins' Parent**), is a reporting issuer in Québec and is required to file continuous disclosure documents. In addition, Desjardins' Parent press releases its financial results on a quarterly basis which is available to holders of Employee Preferred Shares through SEDAR. Thus, holders of Employee Preferred Shares will have access to current information on the entity that indirectly owns all of the Common Shares of the Filer.

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 Filer is deemed to have ceased to be a reporting issuer.

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

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

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus to March 30, 2013 – additional time needed for the 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).

February 19, 2013

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 February 19, 2013, is March 30, 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 Columbia, 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 issuer in each of the Jurisdictions.

4. Neither the Funds, nor the Filer, are in default of securities legislation in any jurisdiction.

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 pro-

posed 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. On December 14, 2012, OSC Staff granted a lapse date extension to the Funds to February 19, 2013. This means that absent the Requested Relief, the Funds must file their pro forma prospectus and annual information form by January 19, 2013, which being a Saturday, such filing must be done by January 21, 2013.

9. The Filer expected that regulatory approval for Change of Manager would be granted by the OSC by January 21, 2013, 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 PFAM expected to file a preliminary and pro forma simplified prospectus and annual information form for the Funds in its capacity as the new manager of the Funds on January 21, 2013.

10. The Current Lapse Date for the Current Prospectus is February 19, 2013. Accordingly, under the Legislation, distribution of the securities of the Funds would cease on March 1, 2013 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 March 1, 2013; and (iii) a receipt for the final simplified prospectus is obtained within 20 days of the Current Lapse Date.

11. 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.

12. Since a *pro forma* prospectus for the Funds was not filed by January 21, 2013, absent the Requested Relief, continued distribution of the securities of the Funds would cease on March 1, 2013.

13. The requested extension date of March 30, 2013 takes into account that approval for the Change of Manager will not be granted until PFAM has satisfactorily addressed all of the outstanding inquiries that the OSC may have in connection with the Change of Manager. The Filer submits that the requested extension under the circumstances is not prejudicial to the public interest.

14. 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.

15. Should any material changes be proposed in the interim, the prospectus of the Funds, as appropriate, will be amended accordingly.

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.

"Raymond Chan"
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")

2.1.4 Global Champions Split Corp.

Headnote

National Policy 11-203 Process for Exemptive relief Applications in Multiple Jurisdictions – Exemptive relief granted to an exchange traded mutual fund from certain mutual fund requirements and restrictions on borrowing and form of payment of redemptions – Since investors will generally buy and sell shares through the TSX, requirements intended principally for conventional mutual funds in continuous distribution are largely not applicable – requested relief would not be prejudicial to investors – National Instrument 81-102 – Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.6(a), 10.4(3), 19.1.

February 12, 2013

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
GLOBAL CHAMPIONS SPLIT CORP.
(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) that the following provisions of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) and will not apply to the Filer with respect to the Offering of the Preferred Shares (as defined below) (the **Exemption Sought**):

1. section 2.6(a) of NI 81-102, which restricts a mutual fund in borrowing cash or providing a security interest over its portfolio assets; and

2. section 10.4(3) of NI 81-102, which requires a mutual fund to pay the redemption price for securities that are the subject of a redemption order in cash or, with consent of the holder, by delivery of portfolio assets.

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a mutual fund corporation incorporated under the Business Corporations Act (Ontario) on November 27, 2012 with its head office in Toronto, Ontario. Brookfield Investment Management (Canada) Inc. (the **Manager**) is the manager of the Filer with its head office in Toronto, Ontario.

2. The Filer is a "mutual fund" under applicable securities legislation because it is an issuer of securities which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the Filer, within a specified period after demand.

3. The Filer and any other relevant party are not in default of securities legislation in any jurisdiction.

The Offering

4. The Filer will make an offering (the **Offering**) to the public of Class A Preferred Shares, Series 1 (the **Preferred Shares**) of the Filer. Concurrently with the Offering of the Preferred Shares, the Filer will issue one capital share (the **Capital Shares**) to BAM Investments Corp. (**BAM Investments**) and one or more affiliates of Brookfield Asset Management Inc. for each Preferred Share sold. BAM Investments will acquire at least a majority of the Capital Shares issued.

5. The Filer intends to file a long form final prospectus to be dated shortly after the date of this decision (the **Prospectus**) in respect of the Offering of the Preferred Shares with the securities regulatory authorities in each of the provinces of Canada.

6. The Offering is a one-time offering and the Filer will not offer the Preferred Shares on a continuous basis.

7. The proceeds of the Offering and the proceeds from the issuance of the Capital Shares will be invested in a diversified portfolio (the **Portfolio**) of large capitalization companies that the Manager believes are best in class within their respective industries. The Portfolio and any cash held by the Filer will be the only material assets of the Filer.

8. The Filer is authorized to borrow money required to fund the payment of dividends on the Preferred Shares on a temporary basis and may pledge its assets as collateral for such loans. The Filer will limit this borrowing to a maximum of 5% of the Filer's net assets. This borrowing is disclosed in the Prospectus.

9. All of the Preferred Shares will be redeemed by the Filer on or about July 31, 2019.

The Preferred Shares

10. The Filer's investment objectives with respect to the Preferred Shares are:

(a) to provide holders of Preferred Shares with fixed cumulative preferential quarterly cash distributions in the amount set out in the Prospectus; and

(b) on or about July 31, 2019, to pay the holders of Preferred Shares the original issue price of $25.00 of those shares, through the redemption of each Preferred Share held on such date.

11. The Filer's investment objectives with respect to the Capital Shares are to provide their holders with a leveraged investment, the value of which is linked to changes in the market price of the Portfolio.

12. The Preferred Shares will be listed and posted for trading on the Toronto Stock Exchange (**TSX**).

13. The record date for quarterly distributions to holders of Preferred Shares will be the last business day of March, June, September and December in each year with payments being made on or before the 15th day of the following month.

14. The Preferred Shares will be retractable at the option of the shareholder on a monthly basis at a price computed with reference to the value of a proportionate interest in the net assets of the Filer.

15. Shares may be surrendered at any time for retraction by the Filer and shareholders will

receive payment pursuant to a retraction request on the 15th day of each month (the **Retraction Payment Date**), provided they are surrendered at least 5 business days before last business day of the preceding month (the **Retraction Valuation Date**).

16. In lieu of receiving the retraction price in cash, a retracting holder of a Preferred Share will receive an unsecured debenture of the Filer or BAM Investments (in either case, a **Debenture**), with a principal amount equal to the retraction price. Each Debenture will have a principal amount of $25.00, an interest rate which is higher than the yield per annum on the Preferred Shares and will mature on the final redemption date for the Preferred Shares. The Debentures will be redeemable by the issuer at any time for cash. As a debt security, the Debentures, if issued by the Filer, will rank ahead of the Preferred Shares.

17. The Debentures will be issued in compliance with registration and prospectus requirements under the Legislation or exemption therefrom. The Debentures will not be listed on the TSX. BAM Investments possesses and is expected to possess a credit profile with respect to the Debentures at least as strong as the credit profile that the Filer is expected to possess.

18. As described in the Prospectus, the issuance of Debentures by the Filer will be subject to certain terms and conditions, including a limitation that the Debentures may not be issued by the Filer if following such issuance (i) the aggregate principal amount of Debentures outstanding would be greater than 5% of the net asset value of the Filer determined as of the date of issuance, or (ii) such issuance would cause the annual income of the Company for the following year, net of expected operating expenses and interest obligations on the Debentures for that period, to fall below the amount required to pay distributions to holders of Preferred Shares, unless in either case DBRS or its successor has confirmed that such issuance would not affect the then current rating of the Preferred Shares. Accordingly, the issuance of Debentures by the Filer is not expected to have any material adverse impact on the ability of the Filer to make dividend payments to the remaining holders of Preferred Shares.

19. The principal terms of the Debentures will be equivalent in all material respects regardless of whether the Debentures are issued by the Filer or by BAM Investments. The terms of each of the indentures under which the Debentures will be issued and which will be put in place by the Filer and by BAM Investments will also be equivalent in all material respects.

20. If any Debentures are issued and outstanding, the Filer will provide investors (in the same manner as the net asset value is made available to investors as described in the Prospectus) on a monthly basis with the outstanding amount of Debentures which have been issued by the Filer as well as the par value of the outstanding Preferred Shares.

21. The Prospectus contains disclosure of the terms of the Preferred Shares, including the fact that upon retraction a holder of Preferred Shares will receive Debentures as the retraction consideration. The Prospectus also contains a risk factor relating to the payment of the retraction price in Debentures that also explains that the Debentures will be illiquid investments. The Prospectus will also give holders of Preferred Shares a contractual right of rescission against the Filer in case of retractions of their Preferred Shares and will include information about the method of exercising the right and cautionary language about the limited nature of such right. The tax opinion provided in the Prospectus under "Principal Canadian Federal Income Tax Considerations" will include disclosure regarding the tax implications of holding and selling Debentures. Once entered into, any trust indenture or supplemental trust indenture for the Debentures will be filed on SEDAR. The Prospectus also incorporates by reference information on BAM Investments. Accordingly, the Prospectus contains all material disclosure pertaining to the Preferred Shares such that potential investors may make an informed decision.

22. Since the Preferred Shares will be listed on the TSX, holders of such shares will not be relying solely on the retraction privilege to provide liquidity for their investment.

23. Section 10.4(3) of NI 81-102 allows for the payment of redemption proceeds other than with cash, subject to obtaining securityholder consents. With regards to the Preferred Shares, since the Prospectus contains all material disclosure pertaining to the Preferred Shares an investor who purchases Preferred Shares will do so with full knowledge that they would be issued Debentures if they request a retraction of their investment in the Preferred Shares and thereby implicitly consents to the payment of retraction proceeds by the Filer with Debentures.

24. The Manager is of the view that the retraction feature is a fundamental term of the Preferred Shares and that it would be onerous to add such feature subsequent to the Offering as the Filer would incur significant additional costs in order to obtain the requisite shareholder consents and approvals.

25. As of the date hereof, BAM Investments is not an affiliate of the Manager or an associate of any partner, director or officer of the Filer or the Manager. In addition, as of the date hereof, no

substantial securityholder of the Manager has a significant interest in BAM Investments and no responsible person or an associate of a responsible person at the Manager is a partner, officer or director of BAM Investments.

26. The Offering of Preferred Shares of the Filer is not an indirect offering of Debentures of the Filer or BAM Investments, which are issuable by the Filer or BAM Investments, as applicable, upon retraction of the Preferred Shares since neither the Filer nor BAM Investments has any control over whether any holder of Preferred Shares excises their retraction rights.

27. Other than the Exemption Sought, the Filer will otherwise comply with 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 on the following basis:

(a) section 2.6(a) of NI 81-102 - to enable the Filer to borrow money for working capital purposes and provide a security interest over its assets, as described in paragraph 8 above, so long as the outstanding amount of any such borrowing by the Filer does not exceed 5% of the net assets of the Filer taken at market value at the time of the borrowing, not including the aggregate principal amount of Debentures issued by the Filer; and

(b) sections 2.6(a) and 10.4(3) of NI 81-102 - to permit the Filer to pay the retraction price for the Preferred Shares in the form of Debentures, so long as the issuance of Debentures meets all terms and conditions as specified in the Prospectus and that the cover page of the prospectus contains prominent disclosure indicating that, upon retraction, holders of Preferred Shares will receive payment in the form of Debentures rather than cash.

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

2.1.5 Total Capital S.A. and Total Capital Canada Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer deemed to be no longer a reporting issuer under securities legislation – 2% de minimis threshold for debt securities held not met by 6 of 39 series but met on an aggregate basis.

Applicable Alberta Statutory Provisions

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

February 21, 2013

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

AND

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

AND

IN THE MATTER OF
TOTAL CAPITAL S.A. (TOTAL CAPITAL)
AND TOTAL CAPITAL CANADA LTD.
(TOTAL CAPITAL CANADA AND,
TOGETHER WITH TOTAL CAPITAL, THE FILERS)

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

Background

1. Total Capital is a *société anonyme* incorporated under the laws of France. The head office of Total Capital is located in Courbevoie, France.

2. Total Capital is a direct subsidiary of Total S.A. (**Total**), a *société anonyme* incorporated under the laws of France. With the exception of six shares of Total Capital that are held by directors of Total Capital, Total beneficially owns all of the issued and outstanding shares of Total Capital.

3. Total Capital was incorporated to access capital markets to raise funds, which it lends to Total subsidiaries. Total Capital has minimal assets, operations, revenues and cash flows other than those relating to the issuance, administration and repayment of securities that it distributes.

4. Total Capital Canada is a corporation incorporated under the laws of Alberta. The head office of Total Capital Canada is located in Calgary, Alberta.

5. Total Capital Canada is a direct wholly-owned finance subsidiary of Total.

6. Total Capital Canada was incorporated to access Canadian and foreign capital markets to raise funds, which it lends to Total subsidiaries. Total Capital Canada has minimal assets, operations, revenues and cash flows other than those relating to the issuance, administration and repayment of securities that it distributes.

7. Total has American Depositary Shares evidenced by American Depositary Receipts (**ADRs**) listed on the New York Stock Exchange under the stock symbol "TOT" and Total is a "SEC issuer" within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) because the ADRs are registered under section 12 of the United States *Securities Exchange Act of 1934*, as amended (the **1934 Act**). Total is not a reporting issuer in any province or territory of Canada.

8. Total is subject to the reporting requirements of the 1934 Act. Total has filed, for all applicable periods, all reports required to be filed with the U.S. Securities and Exchange Commission (**SEC**) including annual reports on Form 20-F and current reports on Form 6-K. Total is in compliance with the requirements of the United States *Securities Act of 1933*, as amended, and the 1934 Act.

9. Total is an electronic filer under the Electronic Data Gathering, Analysis, and Retrieval system of the SEC.

10. Total is an SEC registrant and delivers all disclosure material required by U.S. federal securities laws to be delivered to holders of its securities in the United States. This disclosure material is also available to holders of Total's securities through the SEC's website at www.sec.gov (the **SEC Website**).

Canadian Disclosure

11. The Filers filed on September 14, 2010 a final short form base shelf prospectus (the **Canadian MTN Prospectus**) pursuant to the procedures set forth in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) and National Instrument 44-102 Shelf Distributions in Canada to qualify for distribution medium term notes of the Filers which, upon issuance, are to be unconditionally and irrevocably guaranteed as to payment of principal and interest by Total. Upon receiving a receipt for the Canadian MTN Prospectus, the Filers became reporting issuers in each of the Jurisdictions.

12. The Filers obtained a decision document, dated June 16, 2010 (the **Decision Document**), under Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* with respect to:

    (a) the eligibility of the Filers to file the Canadian MTN Prospectus;

    (b) the exemption of the Filers from the requirement to include certain disclosure in the Canadian MTN Prospectus;

    (c) the satisfaction by the Filers of certain Canadian continuous disclosure requirements; and

    (d) the obligations of insiders of the Filers to file insider reports.

13. The Decision Document provides that, amongst other things, the Filers are not subject to the filing obligations applicable to Canadian issuers set out in NI 51-102, provided that: (a) all annual reports on Form 20-F of Total; (b) all

quarterly reports on Form 6-K of Total; and (c) all current reports on Form 6-K of Total, excluding certain Non-Essential 6-Ks (as defined in the Decision Document) are filed on SEDAR at the same time, or as soon as practicable after, such documents are filed with the SEC.

14. The Canadian MTN Prospectus lapsed on October 14, 2012 and the Filers have no current intention to renew the Canadian MTN Prospectus.

15. The Filers have not issued any medium term notes under the Canadian MTN Prospectus or any other long-term debt (except as described in paragraph 18 below) or equity securities in Canada.

Total Capital Canada U.S. Notes

16. Total Capital Canada has issued USD$750 million principal amount of 1.625% Guaranteed Notes Due 2014, USD$750 million principal amount of Floating Rate Guaranteed Notes Due 2014 and USD$1 billion principal amount of Floating Rate Guaranteed Notes Due 2013 (collectively, the **TCC U.S. Notes**) under its U.S. shelf registration statement (the **U.S. Shelf Program**). All of the TCC U.S. Notes are rated AA- by S&P and Aa1 by Moody's, each being an "approved rating" under NI 44-101.

17. The purchase agreements between Total Capital Canada and the underwriters who distributed the TCC U.S. Notes provided that each underwriter represented, warranted and agreed not to offer, sell, solicit an offer to purchase or take any other action in furtherance of a trade in the TCC U.S. Notes in Canada or any province or territory thereof unless such offer, sale, solicitation or other action was made pursuant to an exemption from the requirements to file a prospectus with the relevant Canadian securities regulators and only by a dealer properly registered under applicable provincial or territorial securities laws or, alternatively, pursuant to an exemption from the dealer registration requirement in the relevant province or territory of Canada in which such offer, sale, solicitation or other action was made or taken.

18. To the knowledge of Total Capital Canada, after due enquiry, other than USD$10 million principal amount of Floating Rate Guaranteed Notes Due 2013 distributed to a single purchaser in the Province of Alberta pursuant to a prospectus exemption under National Instrument 45-106 *Prospectus and Registration Exemptions*, none of the TCC U.S. Notes were initially distributed by the underwriters in Canada or any province or territory thereof.

19. Beneficial ownership of the TCC U.S. Notes is held in book-entry form through Cede & Co., a nominee for The Depositary Trust Company (**DTC**), which is the sole registered holder of the TCC U.S. Notes.

20. Total Capital Canada requested from DTC a geographic breakdown of the residency of beneficial holders of each series of the TCC U.S. Notes by their respective CUSIP numbers. Based on the information provided by DTC, as far as Total Capital Canada is able to determine, as at September 5, 2012, there were 119 DTC participants holding the TCC U.S. Notes worldwide, four of whom appear to be located in Canada and who hold, in the aggregate, USD$4,825,000 (or approximately 0.19%) of the aggregate principal amount of TCC U.S. Notes outstanding.

21. The DTC participant position listings do not identify the residency of beneficial owners, thereby making it theoretically possible, for example, that a Canadian beneficial owner could hold securities through a DTC participant not located in Canada or that a non-Canadian beneficial owner could hold securities through a DTC participant located in Canada. The foregoing would reasonably suggest that there are relatively few beneficial owners of TCC U.S. Notes located in Canada.

Total Capital Canada Euro Notes

22. Total Capital Canada has a European medium term note programme (the **Euro Medium Term Note Programme**) pursuant to which it issues, from time to time, bearer medium term notes, which are unconditionally and irrevocably guaranteed as to payment of principal and interest by Total.

23. On February 4, 2011 Total Capital Canada issued AUD (Australian Dollars) 100 million principal amount of bearer medium term notes at a coupon of 5.75% which mature on February 4, 2014 (the **5.75% Euro Notes**) under its Euro Medium Term Note Programme pursuant to a debt issuance programme prospectus dated November 19, 2010 (the **2010 Euro Prospectus**) approved by the *Autorité des marches financiers* of France (**AMF**).

24. On July 7, 2011 Total Capital Canada issued NOK (Norwegian Krone) 600 million principal amount of bearer medium term notes at a coupon of 4.00% which mature on July 7, 2016 (the **4.00% Euro Notes**) under its Euro Medium Term Note Programme pursuant to a debt issuance programme prospectus dated June 17, 2011 (the **2011 Euro Prospectus** and, together with the 2010 Euro Prospectus, the **Euro Prospectuses**) approved by the AMF.

25. On July 13, 2011 Total Capital Canada issued SEK (Swedish Krona) 600 million principal amount of bearer medium term notes at a coupon of 3.625% (the **3.625% Euro Notes** and collectively with the 5.75% Euro Notes and the 4.00% Euro Notes, the **TCC Euro Notes**) which mature on July 13, 2016 pursuant to the 2011 Euro Prospectus approved by the AMF.

26. Information relating to the TCC Euro Notes is available on the website of the AMF in France at www.amf-france.org (the **AMF Website**).

27. All of the TCC Euro Notes are rated AA- by S&P and Aa1 by Moody's, each being an "approved rating" under NI 44-101.

28. The TCC Euro Notes were initially only offered and sold to institutional investors by Total Capital Canada under the Euro Prospectuses and, other than one holder resident in Canada holding AUD$62,000 principal amount of 5.75% Euro Notes, as at July 30, 2012 none of the TCC Euro Notes were held by residents of Canada based on information provided by Euroclear and Clearstream and the relevant Managers (as defined herein).

29. The 5.75% Euro Notes were offered and sold by Daiwa Capital Markets Europe Limited and Deutsche Bank AG, London Branch (the **Joint Lead Managers**) and by Australia and New Zealand Banking Group Limited, Bank Vontobel AG, Zurich, Fortis Bank NV/SA, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank International), Royal Bank of Canada Europe Limited, The Toronto-Dominion Bank and Zurich Cantonalbank (the **Co-Lead Managers** and together with the Joint Lead Managers, the **Managers**). The 4.00% Euro Notes were offered and sold by Toronto-Dominion Bank and Deutsche Bank AG, London Branch (the **Joint Lead Managers**) and by Bank Vontobel AG, Zurich, Daiwa Capital Markets Europe Limited, KBC Bank NV, Royal Bank of Canada Europe Limited and Zurich Cantonalbank (the **Co-Lead Managers** and together with the Joint Lead Managers, the **Managers**). The 3.625% Euro Notes were offered and sold by Daiwa Capital Markets Europe Limited and Deutsche Bank AG, London Branch (the **Joint Lead Managers**) and by Bank Vontobel AG, Zurich, Fortis Bank NV/SA, KBC Bank NV, Royal Bank of Canada Europe Limited, The Toronto-Dominion Bank and Zurich Cantonalbank (the **Co-Lead Managers** and together with the Joint Lead Managers, the **Managers**). The dealer agreement relating to the Euro Medium Term Note Programme, as amended by the relevant subscription agreement relating to each issuance of TCC Euro Notes between Total Capital Canada and the relevant Managers, contained restrictions on the sale of the TCC Euro Notes, including an acknowledgment and agreement from each Manager that it did not offer or sell, and that it would not offer or sell, any TCC Euro Notes, directly or indirectly, in Canada, or to, or for the benefit of, any resident thereof in contravention of the securities legislation of the Jurisdictions.

30. As the TCC Euro Notes were only issued a European International Securities Identification Number (**ISIN**), holders of the TCC Euro Notes can only hold interests in the TCC Euro Notes either directly as participants in the European clearing system, Euroclear Bank S.A./N.A. (**Euroclea**r) and Clearstream Banking, *société anonyme* (**Clearstream**), if they are participants in such system or indirectly through participants in such system and cannot hold interests in the TCC Euro Notes directly or indirectly as participants in CDS Clearing and Depository Services Inc. (**CDS**) since the TCC Euro Notes have not been issued a Canadian ISIN and are not eligible for entry in CDS.

31. Total Capital Canada does not maintain a register of beneficial holders of the TCC Euro Notes.

32. The TCC Euro Notes were issued in bearer form. By virtue of the nature of a bearer security, it is only possible to make limited enquiries in order to obtain information regarding the beneficial ownership of the TCC Euro Notes held by residents in Canada. Based on such enquiries of Euroclear and Clearstream of the geographic breakdown of the residency of the beneficial holders of each series of TCC Euro Notes by their respective ISINs, of the total number of 289 custodians of TCC Euro Notes worldwide, only one holder of the 5.75% Euro Notes was resident in Canada holding a principal amount of AUD$62,000.

Total Capital Debt Securities

33. As at June 30, 2012, Total Capital had 39 series of long term debt securities (the **TC Debt Securities**) outstanding, which are unconditionally and irrevocably guaranteed as to payment of principal and interest by Total. Since June 30, 2012, no additional long-term debt securities have been issued by TC and one issue of long-term debt has expired.

34. The TC Debt Securities have been issued under the U.S. Shelf Program, the Euro Medium Term Note Programme and in the Switzerland market. TC Debt Securities issued in Swiss Francs in Switzerland are listed on the SWX Swiss Exchange. All of the TC Debt Securities are rated AA- by S&P and Aa1 by Moody's for those series issued since August 2005, each being an "approved rating" under NI 44-101.

35. Total Capital does not maintain a register of beneficial holders of the TC Debt Securities.

36. Beneficial ownership of the TC Debt Securities issued under the U.S. Shelf Program is held in book-entry form through Cede & Co., a nominee for DTC, which is the sole registered holder of the TC Debt Securities issued under the U.S. Shelf Program. Total Capital requested from DTC a geographic breakdown of the residency of beneficial holders of each series of the TC Debt Securities issued under the U.S. Shelf Program by their respective CUSIP numbers. Based on the information provided by DTC, as far as Total Capital is able to determine, as at September 5, 2012, there were 363 DTC participants holding the TC Debt Securities issued under the U.S. Shelf Program worldwide, 20 of whom appear to be located in Canada and who hold, in the aggregate, USD$57,034,000 (or approximately 0.98%) of the aggregate principal amount of TC Debt Securities issued under the U.S. Shelf Program outstanding as at September 5, 2012.

37. The DTC participant position listings do not identify the residency of beneficial owners, thereby making it theoretically possible, for example, that a Canadian beneficial owner could hold securities through a DTC participant not located in Canada or that a non-Canadian beneficial owner could hold securities through a DTC participant located in Canada. The foregoing would reasonably suggest that there are relatively few beneficial owners of TC Debt Securities issued under the U.S. Shelf Program located in Canada.

38. As the TC Debt Securities issued under the Euro Medium Term Note Programme were only issued a European ISIN, holders of the TC Debt Securities issued under the Euro Medium Term Note Programme can only hold interests in the TC Debt Securities either directly as participants in Euroclear and Clearstream, if they are participants in such systems or indirectly through participants in such systems and cannot hold interests in the TC Debt Securities directly or indirectly as participants in CDS since the TC Debt Securities have not been issued a Canadian ISIN and are not eligible for entry in CDS.

39. The TC Debt Securities issued under the Euro Medium Term Note Programme were issued in bearer form. By virtue of the nature of a bearer security, it is only possible to make limited enquiries in order to obtain information regarding the beneficial ownership of the TC Debt Securities issued under the Euro Medium Term Note Programme held by residents in Canada. Based on such enquiries of Euroclear and Clearstream of the geographic breakdown of the residency of the beneficial holders of each series of TC Debt Securities issued under the Euro Medium Term Note Programme by their respective ISINs, as at July 31, 2012, Total Capital has been informed that there were 39 custodians of TC Debt Securities issued under the Euro Medium Term Note Programme or the Swiss market who are resident in Canada, which represent approximately 0.96% of the total number of 4,071 holders of TC Debt Securities issued under the Euro Medium Term Note Programme or listed on the Swiss market and that such persons held an aggregate principal amount of USD$112,229,336 of TC Debt Securities which represents approximately 0.5% of the aggregate principal amount of TC Debt Securities as of July 31, 2012.

Commercial Paper

40. As at June 30, 2012, Total Capital Canada had approximately USD$3,014.5 million of short term negotiable promissory notes with maturities of less than one year from the date of issue (the Total Capital Canada Commercial Paper) outstanding in the United States, which is unconditionally and irrevocably guaranteed as to payment of principal and interest by Total.

41. As at June 30, 2012, Total Capital had approximately USD$100 million of short term negotiable promissory notes with maturities of less than one year from the date of issue (the **Total Capital Commercial Paper**) outstanding in the United States, which is unconditionally and irrevocably guaranteed as to payment of principal and interest by Total.

42. All of the Total Capital Canada Commercial Paper and Total Capital Commercial Paper (together the Commercial Paper) is rated A-1+ by S&P and P-1 by Moody's, each being an "approved rating" under National instrument 81-102 *Mutual Funds*.

43. The Commercial Paper was distributed throughout the United States to predominantly institutional investors and as of the date hereof, none of the Commercial Paper has been distributed in Canada. The Commercial Paper is traded in the customary manner among dealers involved in the commercial paper market. This group of dealers may constitute a "marketplace" under National Instrument 21-101 *Marketplace Operation* (**NI 21-101**).

Summary

44. The TCC U.S. Notes, the TCC Euro Notes, the TC Debt Securities and the Commercial Paper are the only securities of the Filers that are held by the public.

45. The Filers are unable to rely on the simplified procedure set out in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because the TCC U.S. Notes, TCC Euro Notes, TC Debt Securities and/or Commercial Paper may, from time to time, be traded on a "marketplace" as that term is defined in NI 21-101. The Filers

are unable to voluntarily surrender their reporting issuer status under BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because the outstanding securities of each of the Filers are beneficially owned, directly or indirectly, by more than 50 persons.

46. In order to determine the ownership of the TCC U.S. Notes, TCC Euro Notes and TC Debt Securities by residents of Canada the Filers have: (i) requested from DTC a geographic breakdown of the residency of beneficial holders of each series of TCC U.S. Notes and TC Debt Securities issued under the U.S. Shelf Program by their respective CUSIP numbers and have received from DTC lists of participants clearing through DTC which hold TCC U.S. Notes and/or TC Debt Securities issued under the U.S. Shelf Program which indicate that a de minimis number of participants are located in Canada and which would reasonably suggest that there are relatively few beneficial owners of TCC U.S. Notes and TC Debt Securities issued under the U.S. Shelf Program located in Canada; (ii) made reasonable enquiries of the U.S. underwriters with respect to the distribution of the TCC U.S. Notes; (iii) requested from Euroclear and Clearstream a geographic breakdown of the residency of the beneficial holders who hold each series of the TCC Euro Notes and TC Debt Securities, by their respective ISINs, issued under the Euro Medium Term Note Programme or listed on the Swiss market which indicates that a de minimis number of custodians of the TCC Euro Notes or TC Debt Securities issued under the Euro Medium Term Note Programme or listed on the Swiss market are residents of Canada. However, Euroclear and Clearstream are unable to provide information on the underlying beneficial holders of the TCC Euro Notes or TC Debt Securities; and (iv) made reasonable enquiries of the Managers with respect to the distribution of the TCC Euro Notes.

47. Accordingly, based upon the above information and the diligent enquiries set out above:

    (a) as at July 30, 2012, the total value of outstanding securities of Total Capital Canada held by a total of five residents of Canada was USD$4,890,071 (representing 0.2% of the total value of all issued and outstanding securities of Total Capital Canada worldwide (excluding Total Capital Canada Commercial Paper)), and such five Canadian resident securityholders represent approximately 1.22% of the total number of 408 securityholders of Total Capital Canada worldwide (excluding holders of Total Capital Canada Commercial Paper); and

    (b) residents of Canada do not, directly or indirectly: (i) hold or beneficially own more than 2% of each class or series of outstanding securities of Total Capital Canada worldwide; or (ii) comprise more than 2% of the total number of securityholders of Total Capital Canada worldwide.

48. Accordingly, based upon the above information and the diligent enquiries set out above:

    (a) as at July 30, 2012, the total value of outstanding securities of Total Capital held by a total of 59 residents of Canada was USD$169,263,336 (representing approximately 0.8% of the total value of all issued and outstanding securities of Total Capital worldwide (excluding Total Capital Commercial Paper)), and such 59 Canadian resident securityholders represent approximately 1.33% of the total number of 4,434 securityholders of Total Capital worldwide (excluding holders of Total Capital Commercial Paper); and

    (b) residents of Canada do not, directly or indirectly, hold or beneficially own more than 2% of each class or series of outstanding securities of Total Capital worldwide, except for:

        (i) the 5.5% GBP350 million bond maturing on January 29, 2013, of which GBP21,010,000, representing approximately 6% of the aggregate principal amount is held by three holders resident in Canada, representing 1.8% of the total number of 168 holders worldwide of such series;

        (ii) the 4.25% GBP300 million bond maturing on December 8, 2017, of which GBP17,925,000, representing approximately 6% of the aggregate principal amount is held by two holders resident in Canada, representing 1.2% of the total number of 170 holders worldwide of such series;

        (iii) the 2.875% USD$250 million bond maturing on March 18, 2015, of which USD$8,688,000, representing approximately 3.5% of the aggregate principal amount is held by four holders resident in Canada, representing 3.4% of the total number of 119 holders worldwide of such series;

        (iv) the 2.5% CAD$150 million bond maturing on August 26, 2014, of which CAD$4,460,000, representing approximately 3% of the aggregate principal amount is held by two holders resident in Canada, representing 1.6% of the total number of 126 holders worldwide of such series;

        (v) the 3.875% GBP500 million bond maturing on December 14, 2018, of which GBP14,148,000, representing approximately 2.8% of the aggregate principal amount is held by two holders resident in Canada, representing 1.3% of the total number of 158 holders worldwide of such series; and

(vi) the 2.3% USD$1 billion bond maturing on March 15, 2016, of which USD$25,578,000, representing approximately 2.6% of the aggregate principal amount is held by five holders resident in Canada, representing 6.5% of the total number of 77 holders worldwide of such series;

(c) on an aggregate basis, residents of Canada do not, directly or indirectly, hold or beneficially own more than 2% of the total aggregate principal amount of outstanding securities of Total Capital worldwide; and

(d) residents of Canada do not, directly or indirectly comprise more than 2% of the total number of securityholders of Total Capital worldwide.

49. The filings the Filers have made on SEDAR since becoming reporting issuers are reproductions of documents previously filed on the SEC Website. By virtue of the Filers being subsidiaries of Total and Total providing a full and unconditional guarantee of the payments to be made by the Filers under the TCC U.S. Notes, TCC Euro Notes, TC Debt Securities and Commercial Paper, it is the financial condition of Total that is relevant to the holders of such securities. Total will continue to file and make publicly available continuous disclosure documents on the SEC Website in accordance with its, and so long as it has, obligations under the 1934 Act. Information related to the TCC Euro Notes is available on the AMF Website. The TCC U.S. Notes, TCC Euro Notes, TC Debt Securities and Commercial Paper do not require the Filers to maintain reporting issuer status in the Jurisdictions.

50. The Filers have not taken steps to create a market for their securities in Canada in the past 12 months and did not take any action to draw on or distribute securities under their Canadian MTN prospectus. The Filers did not withdraw the Canadian MTN prospectus because it lapsed in accordance with relevant securities rules on October 14, 2012. The Filers have not established or maintained a listing on a Canadian marketplace or exchange in the past 12 months.

51. The Filers have no current intention to seek public financing by way of a prospectus offering of their securities in Canada.

52. The Filers are applying for an order that they are not reporting issuers in all jurisdictions of Canada in which they are currently reporting issuers.

53. The Filers have provided advance notice via news release that they have applied to the Decision Makers for a decision that they are not reporting issuers in the Jurisdictions and, if that decision is made, the Filers will no longer be reporting issuers in any jurisdiction in Canada.

54. The Filers are not in default of any of the requirements of the securities legislation of the Jurisdictions.

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 Filers are deemed to have ceased to be reporting issuers.

“original signed by”
Blaine Young
Associate Director, Corporate Finance

2.1.6 Andor Mining Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An issuer proposes to complete a reverse take-over transaction with a target company – The proposed transaction, if completed, will serve as the issuer's qualifying transaction under Policy 2.4 Capital Pool Companies of the TSX Venture Exchange (TSXV) – In connection with the transaction, target company will also complete an acquisition of mining claims (Property) from a vendor – The issuer applied for relief from the requirements in section 4.10(2)(a)(ii) of National Instrument 51-102 Continuous Disclosure Obligations and Item 5.2 of Form 51-102F3 Material Change Report to file historical audited annual financial statements of the Property – Mineral claims comprising the Property were held in various entities within the vendor's group of companies and the expenses for those claims were also incurred in various legal entities – Vendor has not prepared historical financial statements for the Property or for the vendor – Vendor has represented that historical financial statements in compliance with IFRS would be difficult if not impossible to prepare – Issuer to provide alternative financial disclosure of Property - Relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 4.10(2)(a)(ii).
Form 51-102F3 Material Change Report, Item 5.2.

February 1, 2013

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
ANDOR MINING INC.
(Andor or 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 in subparagraph 4.10(2)(a)(ii) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and item 5.2 of Form 51-102F3 *Material Change Report* (**Form 51-102F3**) to file audited annual financial statements for each of the three most recently completed financial years for the Property (defined below) (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 (the **Principal Regulator**), 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 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 meanings if used in this decision, unless otherwise defined.

Representations

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

Filer

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on January 4, 2011. The Filer is a capital pool company whose common shares (**Andor 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. The Filer's financial year end is December 31.

2. The head office of the Filer is located at 50 Richmond Street East, Suite 101, Toronto, Ontario, M5C 1N7.

3. The Filer is a reporting issuer under the Legislation in each of the Jurisdictions and is not in default of securities legislation in any Jurisdiction.

Trident

4. Trident Gold Corp (**Trident**) was incorporated under the *Canada Business Corporations Act* on November 30, 2010. Entities in the Trident group of companies commenced operations on June 9, 2010. Trident's financial year end is December 31. Trident is a privately held company and is not a reporting issuer in any jurisdiction in Canada. Trident is not in default of securities legislation in any jurisdiction.

5. On October 12, 2011, Trident Gold Corporation N.V., a wholly-owned subsidiary of Trident organized under the laws of Curaçao, entered into an option agreement (the **Option Agreement**) with Bullet Holding Corp. (**Bullet**), a privately held corporation organized under the laws of Panama. Pursuant to the Option Agreement, Trident was granted the right to acquire up to a 51% interest in certain mineral claims that comprise the Marquesa Gold Project (the **Property**) for aggregate consideration of $2,000,000, to be paid to Bullet or as expenditures on the Property in accordance with the Option Agreement. To date, Trident has earned a 49% interest in the Property.

6. Pursuant to an agreement dated December 31, 2012 (the **Share Exchange Agreement**), Bullet has agreed to transfer its remaining 51% interest in the Property to Trident in exchange for such number of common shares of Trident (**Trident Shares**) as will result in Bullet holding 51% of the issued and outstanding Trident Shares immediately prior to the completion of the Qualifying Transaction, and such number of share purchase warrants of Trident (**Trident Warrants**) as will result in Bullet holding Trident Warrants representing 51% of the aggregate number of Trident Warrants and options to acquire Trident Shares outstanding immediately prior to the completion of the Qualifying Transaction. Upon completion of this transaction, Trident will own a 100% beneficial interest in the Property.

7. The negotiation of the Option Agreement and the Share Exchange Agreement and Trident's acquisition of the Property was conducted at arm's length. At the time of the Qualifying Transaction, the Property will be Trident's sole asset.

Qualifying Transaction

8. On November 8, 2012, the Filer entered into an amalgamation agreement, amended as of December 6, 2012 (the **Amalgamation Agreement**) with its wholly-owned subsidiary, 2302557 Ontario Inc. and Trident. Pursuant to the Amalgamation Agreement, Trident will amalgamate with 2302557 Ontario Inc. and all of the outstanding Trident Shares will be exchanged for Andor Shares on the basis of one Andor Share for every 10.75 Trident Shares (the **Transaction**), after giving effect to the consolidation of the Andor Shares on a 0.220:1 basis. The outstanding Trident Warrants and Trident Options will also be exchanged for warrants and options of Andor on a 1:10.75 basis.

9. Upon completion of the Transaction, Andor (the **Resulting Issuer**) will carry out the business previously carried out by Trident, being the exploration and development of the Property.

10. The Transaction will be a "reverse takeover" as defined in NI 51-102 and will serve as the Filer's "qualifying transaction" under TSXV Policy 2.4 Capital Pool Companies. In connection with the qualifying transaction, the Filer will be filing its filing statement (the **Filing Statement**) in the form of Form 3B2 *Information Required in a Filing Statement for a Qualifying Transaction* (**TSXV Form 3B2**) pursuant to the policies of the TSXV. TSXV Form 3B2 requires disclosure of financial statements of the Filer and Trident prescribed by National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**). In addition to applying to the Principal Regulator for the Exemption Sought, the Filer has also applied to the TSXV for a waiver from the equivalent financial statement requirements in TSXV Form 3B2.

Historical Financial Statements

11. The Filer will include in the Filing Statement the following financial statements (the **Filer Financial Statements**):

    (a) audited annual financial statements of the Filer for the period from incorporation on January 4, 2011 to December 31, 2011;

    (b) unaudited (reviewed) interim financial statements of the Filer for the nine-month period ended September 30, 2012 (with comparatives); and

    (c) pro forma financial statements of the Filer required by item 48 of TSXV Form 3B2, including a pro forma balance sheet as at the date of the Filer's most recent balance sheet (September 30, 2012) included in the Filing Statement as if the acquisition had taken place as at that date.

    The Filer will be relying on the exception contained in item 48.2 of TSXV Form 3B2 and will not be including a pro forma income statement of the Filer in the Filing Statement.

12. Trident will include in the Filing Statement the following financial statements (the **Trident Financial Statements**):

    (a) audited annual consolidated financial statements of Trident for (i) the period from incorporation of the first entity in the Trident Group on June 9, 2010 to December 31, 2010 and (ii) the twelve-month period ended December 31, 2011; and

    (b) unaudited (reviewed) consolidated interim financial statements for Trident for the nine-month period ended September 30, 2012.

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 51-103F3 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 NI 41-101 and Form 41-101F1. Item 32.1 of Form 41-101F1 includes the following requirements:

    > *The financial statements of an issuer required under this item to be included in a prospectus must include:*
    >
    > *(a) the financial statements of any predecessor entity that formed, or will form, the basis of the business of the issuer, even though the predecessor entity is, or may have been, a different legal entity, if the issuer has not existed for 3 years,*
    >
    > *(b) the financial statements of a business or businesses acquired by the issuer within 3 years before the date of the prospectus or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired, by the issuer, [emphasis added] and*
    >
    > *(c) …*

16. Subsection 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.

17. As the Property will be the sole asset of the Resulting Issuer upon completion of the Qualifying Transaction, it may be concluded that a reasonable investor would regard the Property as the primary business of Trident. Accordingly, absent the Exemption Sought, the Filer will be required to file audited financial statements for the Property in accordance with item 32.2 of Form 41-101F1 including, *inter alia*, a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for certain periods preceding the acquisition of the Property by Trident.

18. Trident acquired the Property from Bullet through arm's length negotiations. No other assets were transferred nor were any liabilities assumed by Trident in connection with the acquisition of the Property.

19. Bullet, the prior owner of the Property, has not prepared historical financial statements for the Property or for the Bullet group of companies generally. The mineral claims comprising the Property were held by various entities within the Bullet group of companies and the expenses for those claims were also incurred in various different legal entities. Consequently, it would be extremely difficult, if not impossible, for Bullet to prepare financial statements for the mineral claims comprising the Property. Bullet is certain that it could not prepare accurate historical financial statements in compliance with IFRS.

20. Further, Bullet has confirmed that even if historical financial statements of the group were prepared, a combination of the following factors would render the audit of Bullet annual financial statements, consisting of an income statement, a statement of retained earnings and a cash flow statement for the twelve-month period ended December 31, 2009, the twelve-month period ended December 31, 2010 and the period from January 1, 2011 to October 11, 2012, extremely difficult if not impossible to conduct as:

    (a) stand-alone group or individual IFRS compliant financial statements were not prepared for the Bullet group or the relevant subsidiaries, as indicated in paragraph 19;

    (b) for the twelve-month period ended December 31, 2009, the twelve-month period ended December 31, 2010 and for the period January 1, 2011 to October 11, 2012, Bullet has confirmed that although basic source documents for these periods may exist, it would be extremely difficult if not impossible to locate sufficient source documentation in the degree necessary to conduct a "stand alone audit", and it is not possible to obtain detailed supporting analysis, including but not limited to, objective external evidence with respect to (i) Bullet general assets (for clarification not allocable to any particular project) on hand at these points in time (including fixed assets and consumables, which require physical verification), (ii) cut off procedures for the Bullet group of companies as a whole, (iii) stage of exploration and development and potential liabilities of other properties within the extensive Bullet portfolio of properties, and (iv) allocating assets (capitalization of costs), liabilities, and expenses to the respective entities or group for that matter; and

    (c) a significant number of management and staff of Bullet during the periods in question are no longer employed by Bullet and are thus not available to answer audit questions or help reconstruct related supporting information. As Bullet is a complex group with multiple ongoing projects at any one time, reliance on these management and staff would be required to satisfy an auditor in connection with an audit of financial statements.

21. In lieu of audited financial statements containing the requirements specified in item 32.2 of Form 41-101F1 as identified in paragraph 17 above, the Filer will include in the Filing Statement the following (the **Proposed Financial Disclosure**):

    (a) an audited statement of exploration expenditures (expensed) for the Property with related notes for the following periods:

        (i) the twelve month-period ended December 31, 2009;

        (ii) the twelve month-period ended December 31, 2010; and

        (iii) the period from January 1, 2011 to October 11, 2011, being the date prior to the entering into of the Option Agreement and the formation of the joint venture between Trident and Bullet; and

    (b) disclosure of the estimated future overhead expenditures to be incurred by the Resulting Issuer on the Property.

22. The Filer Financial Statements, the Trident Financial Statements and the Proposed Financial Disclosure, together with the other disclosure prescribed by TSXV Form 3B2, will provide disclosure of all material facts relating to the Filer, Trident, the Resulting Issuer and the Property and will contain sufficient information to permit investors to make a reasoned assessment of the Resulting Issuer's business following completion of the Transaction.

23. In connection with the Transaction and pursuant to the requirements of the TSXV, Trident has submitted a technical report prepared by GeoServa Exploration Ltd. on the Property dated December 13, 2012 (the **Technical Report**) to the TSXV. The Technical Report complies with the requirements in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted provided that:

1. the Filing Statement includes the Proposed Financial Disclosure; and

2. the Filing Statement and the Technical Report are filed on SEDAR forthwith following acceptance by the TSXV.

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

2.1.7 Enbridge Income Fund Holdings Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer exempt from the requirement to incorporate by reference certain opinions (which were provided by professional advisors of the Filer and included in an information circular relating to a special meeting of the shareholders) into a short form base shelf prospectus and related prospectus supplements.

Applicable Legislative Provisions

Form 44-101F1 Short Form Prospectus Distributions, items 11.1, 11.2.

Citation: Enbridge Income Fund Holdings Inc., Re, 2013 ABASC 61

February 22, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
ENBRIDGE INCOME FUND HOLDINGS INC.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to incorporate by reference the Reports (as defined herein) which were included in the Management Information Circular of the Filer dated November 7, 2012 relating to the special meeting of the shareholders of the Filer held on December 7, 2012 (the **Circular**) into the short form base shelf prospectus of the Filer dated August 31, 2012 (the **Base Prospectus**) and any prospectus supplement relating to the Base Prospectus, including the prospectus supplement dated February 15, 2013, as required by Items 11.1 and 11.2 of Form 44-101F1 *Short Form Prospectus Distributions* (the **Exemptive Relief Sought**).

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

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

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

(c) this 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* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is incorporated under the laws of Alberta. Its head office is located in Calgary, Alberta and its registered office is located in Calgary, Alberta.

2. The Filer's common shares are listed on the Toronto Stock Exchange and the Filer is a reporting issuer in all of the provinces in Canada.

3. The Filer is not in default of securities legislation in any jurisdiction.

4. The Filer filed the Base Prospectus and obtained a receipt dated August 31, 2012 from the Alberta Securities Commission, on its own behalf and on behalf of the regulators in each of the provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

5. The Filer filed the Circular dated November 7, 2012 on SEDAR.

6. The Circular contained a formal valuation and fairness opinion prepared by BMO Nesbitt Burns Inc., an independent engineer's report prepared by AMEC Americas Limited and Zephyr North Limited, an independent engineer's report prepared by Black & Veatch Canada Company and the independent engineer's reports prepared by WorleyParsons Canada Services Ltd. (collectively, the **Reports**).

7. Consents for each of the Reports were obtained and filed in connection with the Circular.

8. The Reports are incorporated by reference into the Base Prospectus by reason of being included in the Circular.

9. The Reports were not prepared by the auditors of the Filer.

10. The Reports related to a transaction which was completed on December 10, 2012 and for which the Filer sought the approval of a majority of disinterested shareholders.

11. The completed transaction is unrelated to the distribution of securities contemplated by the Base Prospectus and the distribution of common shares contemplated by the prospectus supplement dated February 15, 2013.

12. The Filer filed a business acquisition report dated December 18, 2012 in respect of the completed transaction, which was incorporated by reference in the prospectus supplement dated February 15, 2013.

13. Neither the Reports nor any information contained therein are referred to in the Base Prospectus or any prospectus supplement relating to the Base Prospectus.

14. To date, the only securities offered under the Base Prospectus were the common shares offered under the prospectus supplement dated February 15, 2013.

15. It was never contemplated that the Reports would be relied on in any context other than the proposed transaction described in the Circular and none of BMO Nesbitt Burns Inc., AMEC Americas Limited, Zephyr North Limited, Black & Veatch Canada Company and WorleyParsons Canada Services Ltd. could expect that their Reports would be utilized or relied upon for any other purpose or that they would potentially become liable under securities laws or otherwise in respect of any subsequent transaction or public offering undertaken by the Filer.

16. The Filer will include specific disclosure in each subsequently filed prospectus supplement to the Base Prospectus describing the Exemptive Relief Sought under the heading "Exemptions from NI 44-101" as follows:

> *The Corporation has sought and obtained exemptive relief to permit the following not to be incorporated by reference in this Prospectus Supplement: (a) the technical report entitled "Technical Assessment of Greenwich Wind Farm" dated October 23, 2012 prepared by AMEC Americas Limited and Zephyr North Limited and the summary thereof from page 37 to 39 of the 2012 Circular; (b) the technical report entitled "Amberstburg and Tilbury Solar Photovoltaic Projects – Independent Engineering Report" dated October 25, 2012 prepared by Black & Veatch Canada Company and the summary thereof from page 39 to 41 of the 2012 Circular; (c) the technical reports entitled "Enbridge Hardisty Contract Terminal and Storage Caverns", "Phase I Environmental Site Assessment – Hardisty Caverns (SE-31 and NE-30-042-09 W4M)" and "Phase*

I Environmental Site Assessment – Hardisty Contract Terminals (19-042-09 W4M)" each dated October 25, 2012 prepared by WorleyParsons Canada Services Ltd. and the summaries thereof from page 41 to 42 of the 2012 Circular; and (d) the valuation and fairness opinion dated October 25, 2012 prepared by BMO Nesbitt Burns Inc. appended as Appendix A to the 2012 Circular and the summary thereof at pages 42 and 43 of the 2012 Circular.

Decision

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

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

"Blaine Young"
Associate Director, Corporate Finance

2.1.8 The Great-West Life Assurance Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted – section 1(10) of the Securities Act (Ontario).

Applicable Legislative Provisions

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

February 25, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
MANITOBA, ALBERTA, SASKATCHEWAN,
ONTARIO, QUEBEC, NEW BRUNSWICK,
NOVA SCOTIA, PRINCE EDAWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF
THE GREAT-WEST LIFE ASSURANCE COMPANY
(the Filer)

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

1. The Filer was incorporated on August 28, 1891 by an Act of the Parliament of Canada and commenced operations in 1892. Letters Patent were issued to the Filer under the Canadian and British Insurance Companies Act on May 28, 1970.

2. The Filer's head office is located at 100 Osborne Street North, Winnipeg, Manitoba, R3C 3A5.

3. On October 31, 2010, the Filer redeemed the last of its outstanding publicly held securities.

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

5. No securities of the Filer, including debt securities, are traded on a marketplace as defined in National Instrument 21-101 marketplace Operation.

6. No securities of the Filer, including debt securities, are traded in Canada or another country on marketplace as defined in Regulation 21-101 respecting Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

7. Filer has no intention to proceed with an offering of its securities in a jurisdiction of Canada by way of private placement or public offering

8. The Filer is applying for a decision that the Filer is not a reporting issuer in all the jurisdictions in Canada in which it is currently a reporting issuer.

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

10. The Filer is unable to rely on CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (CSA Staff Notice 12-307). The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except that the Filer has not filed an Issuer Profile Supplement on SEDI. The failure of the Filer to file an Issuer Profile Supplement was an oversight on the part of the Filer, caused by the fact that Great-

West Lifeco Inc. is and has been since 1999 the sole holder of all of the outstanding common shares of the Filer, that no common shares of the Filer have been listed on any stock exchange or have otherwise been available for public trading since [ ], and that the Filer currently has no listed securities.

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 Maker under the Legislation is that the Exemptive Relief sought is granted.

"Chris Besko"
Deputy Director
The Manitoba Securities Commission

2.2 Orders

2.2.1 Morgan Dragon Development Corp. 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
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
HERMAN TSE, DEVON RICKETTS
and MARK GRIFFITHS

ORDER
(Section 127)

WHEREAS on March 22, 2012, 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") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 22, 2012, to consider whether it is in the public interest to make certain orders against Morgan Dragon Development Corp. ("MDDC"), John Cheong (aka Kim Meng Cheong) ("Cheong"), Herman Tse ("Tse"), Devon Ricketts ("Ricketts") and Mark Griffiths ("Griffiths") (collectively, the "Respondents");

AND WHEREAS the Commission issued an Amended Notice of Hearing pursuant to sections 127 and 127.1 of the Act on March 26, 2012 (the "Amended Notice of Hearing");

AND WHEREAS on April 19, 2012, a first appearance hearing was held and the matter was adjourned to a confidential pre-hearing conference on June 4, 2012;

AND WHEREAS on April 25, 2012, the Commission was informed that a confidential pre-hearing conference would not be required and the Commission ordered that a hearing would take place on June 4, 2012 at 9:30 a.m. to provide the panel with a status update;

AND WHEREAS on June 4, 2012, the Commission heard submissions from Staff and counsel for MDDC and Cheong, and the matter was adjourned to August 15, 2012 for a further status update;

AND WHEREAS on August 15, 2012, the Commission heard submissions from Staff and counsel for MDDC and Cheong, and the matter was adjourned to September 20, 2012 for a further status update;

AND WHEREAS on September 20, 2012, the hearing on the merits in this matter was scheduled to commence on April 11, 2013 and continue on April 12, 15

to 19, 22 and 24, 2013, and the matter was adjourned to a confidential pre-hearing conference on January 11, 2013;

AND WHEREAS on January 11, 2013, a confidential pre-hearing conference was held and the matter was adjourned to February 19, 2013;

AND WHEREAS on February 19, 2013, a confidential pre-hearing conference was held and the Commission heard submissions from Staff and counsel for the Respondents Cheong, Tse, Ricketts and MDDC;

AND WHEREAS Griffiths did not appear, though properly served with notice of the hearing;

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

IT IS HEREBY ORDERED that a further confidential pre-hearing conference shall be held on February 28, 2013 at 12:00 p.m.

DATED at Toronto this 19th day of February, 2013.

"James E. A. Turner"

2.2.2 Steven Vincent Weeres and Rebekah Donszelmann – s. 127

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

AND

IN THE MATTER OF
STEVEN VINCENT WEERES and
REBEKAH DONSZELMANN

ORDER
(Section 127)

WHEREAS on February 6, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Steven Vincent Weeres ("Weeres") and Rebekah Donszelmann ("Donszelmann") (collectively, the "Respondents");

AND WHEREAS on January 31, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 19, 2013, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the 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 the Respondents did not appear, although properly served;

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

IT IS HEREBY ORDERED THAT:

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

2. Staff's material in respect of the hearing shall be served and filed no later than February 22, 2013; and

3. the Respondents' responding materials, if any, shall be served and filed no later than March 4, 2013.

DATED at Toronto this 19th day of February, 2013.

"James E. A. Turner"

2.2.3 Blackwood & Rose Inc. et al. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
BLACKWOOD & ROSE INC., STEVEN ZETCHUS and JUSTIN KRELLER (also known as JUSTIN KAY)

TEMPORARY ORDER
(Subsections 127(7) and 127(8) of the Act)

WHEREAS on January 29, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5 as amended (the "Act") accompanied by a Statement of Allegations of Staff of the Commission dated January 29, 2013 with respect to Blackwood & Rose Inc. ("Blackwood"), Steven Zetchus ("Zetchus") and Justin Kreller ("Kreller") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the temporary offices of the Commission on February 19, 2013;

AND WHEREAS on February 19, 2013, Staff attended the hearing and no one appeared on behalf of the Respondents;

AND WHEREAS Staff filed the Affidavit of Peaches Barnaby sworn February 14, 2013 demonstrating service of the Notice of Hearing and Statement of Allegations on the Respondents;

AND WHEREAS the Commission previously made a temporary order in connection with this proceeding on December 18, 2012 (the "Temporary Order");

AND WHEREAS on December 31, 2012, the Commission extended the Temporary Order to March 7, 2013 and adjourned the hearing to consider a further extension to March 6, 2013 at 10:00 a.m.;

AND WHEREAS on February 19, 2013, Staff requested that a pre-hearing conference be scheduled in this matter and that the Temporary Order be extended to the day following the pre-hearing conference to permit the parties to make submissions on a further extension of the Temporary Order at the pre-hearing conference;

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

IT IS HEREBY ORDERED that:

(i) the Temporary Order is extended to April 11, 2013 or until further order of the Commission;

(ii) the hearing date scheduled for March 6, 2013 to consider a further extension of the Temporary Order is vacated; and

(iii) the hearing is adjourned to April 10, 2013 at 10:00 a.m., or to such other date or time as provided by the Office of the Secretary and agreed to by the parties, for the purpose of conducting a pre-hearing conference and to consider a further extension of the Temporary Order.

DATED at Toronto this 19th day of February, 2013.

"James E. A. Turner"

2.2.4 Brandywine Global Investment Management LLC – s. 80 of the CFA

Headnote

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

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.
Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 80.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.26.

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

AND
IN THE MATTER OF
BRANDYWINE GLOBAL INVESTMENT MANAGEMENT LLC

ORDER
(Section 80 of the CFA)

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

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

AND WHEREAS for the purposes of this Order;

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

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

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

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

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

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

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

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

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a limited liability company organized under the laws of the State of Delaware, United States and was established in 1986. The Applicant's principal place of business is located in the State of Pennsylvania in the United States.

2. The Applicant is a wholly-owned subsidiary of Legg Mason Inc., a global asset management firm listed on the New York Stock Exchange.

3. The Applicant is registered in the United States with the SEC as an investment adviser under the United States *Investment Advisers Act of 1940*, as amended.

4. The Applicant engages in the business of an adviser with respect to securities and with respect to Contracts in the U.S.A. In the U.S.A, the Applicant manages an array of equity, fixed income and balanced portfolios that invest in U.S., international and global markets. As of December 31, 2012, the Applicant managed US$42 billion in assets.

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

6. The Applicant advises Ontario clients that are Permitted Clients with respect to foreign securities in reliance on the International Adviser Exemption and, therefore, is not registered under the OSA.

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

8. In addition to providing advice in respect of securities as described in paragraph 6 above, the Applicant proposes to act also as an adviser to Permitted Clients in Ontario in respect of commodity futures contracts and/or commodity futures options traded primarily on one or more organized exchanges located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada (collectively, the **Foreign Contracts**) in connection principally with respect to foreign currency futures, options and forwards. It will provide its advice on a fully discretionary basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. the Applicant notifies the Commission of any regulatory action after the date of this order in respect of the Applicant, or any predecessors, or specified affiliates of the Applicant, by completing and filing Appendix "B" within 10 days of the commencement of such action; and

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

Dated this 15 of February, 2013.

"Judith Robertson"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

APPENDIX "A"
SUBMISSION TO JURISDICTION AND
APPOINTMENT OF AGENT FOR SERVICE

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

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

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

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

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

Name:
E-mail address:
Phone:
Fax:

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

[ ] Section 8.18 [*international dealer*]

[ ] Section 8.26 [*international adviser*]

[ ] Other [specify]:

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

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

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

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

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

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

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

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

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

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

Dated: _____

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

_____
(Name of signatory)

_____
(Title of signatory)

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

APPENDIX B
NOTICE OF REGULATORY ACTION

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

Yes _____ No _____

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

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

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

	Yes	No
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than en exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

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

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

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

Yes _____ No _____

If yes, provide the following information for each investigation:

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

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

Date (yyyy/mm/dd)

Witness

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

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

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

2.2.5 Northern Securities et al. – ss. 21.7, 8

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

AND

**IN THE MATTER OF
NORTHERN SECURITIES INC.,
VICTOR PHILIP ALBOINI,
DOUGLAS MICHAEL CHORNOBOY AND
FREDERICK EARL VANCE**

AND

**IN THE MATTER OF
DECISIONS OF A HEARING PANEL OF
THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA
DATED JULY 23, 2012 and NOVEMBER 10, 2012**

**ORDER
(Sections 21.7 and 8 of the Securities Act)**

WHEREAS on August 20, 2012, the applicants Northern Securities Inc. ("NSI"), Victor Philip Alboini ("Alboini"), Douglas Michael Chornoboy ("Chornoboy") and Frederick Earl Vance ("Vance") (collectively the "Applicants") filed with the Ontario Securities Commission (the "Commission") a notice of application (the "Application"), pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for hearing and review of the decision of a hearing panel (the "Hearing Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") dated July 23, 2012 (the "Initial Decision");

AND WHEREAS on November 10, 2012, the Hearing Panel issued its final decision (the "Final Decision" and together with the Initial Decision, the "Decision");

AND WHEREAS on November 15, 2012, the Applicants brought a motion for an order granting a stay of the sanctions and penalties imposed on the applicants by the IIROC Hearing Panel in the Decision pending the determination of the Application and such further and other relief as counsel may advise and the Commission may determine is appropriate (the "Stay Motion");

AND WHEREAS on November 19, 2012 the Commission held a hearing to consider the Stay Motion;

AND WHEREAS the Commission heard submissions from counsel for the Applicants, counsel for IIROC Staff and counsel for Commission Staff;

AND WHEREAS the Commission received the Applicants' motion record, memorandum of argument, book of authorities and the affidavit of Alboini sworn November 19, 2012, IIROC Staff's motion record, memorandum of argument and authorities, and the supplementary affidavit of Louis Piergeti sworn November 19, 2012, and Commission Staff's submissions and book of authorities;

AND WHEREAS upon considering the submissions of the Applicants, IIROC Staff and Commission Staff, the Commission ordered an interim stay, pursuant to section 21.7 and subsection 8(4) of the Act, of the sanctions and penalties imposed by the Decision, to continue until December 18, 2012 (the "Interim Stay");

AND WHEREAS the Applicants, IIROC Staff and Commission Staff agreed and the Commission ordered that a further hearing should be scheduled for December 17, 2012 at 11:00 a.m., for the purposes of setting a date for hearing of the Application and, if necessary, considering whether the Interim Stay should be continued or a stay pending disposition of the Application should be granted;

AND WHEREAS on December 7, 2012, the Applicants filed with the Commission an Amended Application for Hearing and Review pursuant to section 21.7 of the Act for hearing and review of the Decision (the "Hearing and Review");

AND WHEREAS on December 17, 2012, the Commission heard submissions from counsel for the Applicants, counsel for IIROC Staff and counsel for Commission Staff;

AND WHEREAS the Commission received the affidavit of Alboini sworn December 17, 2012;

AND WHEREAS upon considering the submissions of the Applicants, IIROC Staff and Commission Staff, the Commission was of the opinion that it was in the public interest to continue the Interim Stay;

AND WHEREAS the Applicants, IIROC Staff and Commission Staff agreed that the Hearing and Review would be heard on February 14, 15 and 20, 2013 and the Interim Stay should be continued until the conclusion of the Hearing and Review;

AND WHEREAS on December 17, 2012 the Commission ordered that the Hearing and Review was scheduled for February 14, 15 and 20, 2013 and, pursuant to section 21.7 and subsection 8(4) of the Act, that the sanctions and penalties imposed by the IIROC Hearing Panel were stayed until February 22, 2013, or further order of the Commission;

AND WHEREAS upon considering the submissions of the Applicants, IIROC Staff and Commission Staff, the Commission is of the opinion that it is in the public interest to continue the Interim Stay;

AND WHEREAS the Applicants, IIROC Staff and Commission Staff agreed that the Interim Stay should be continued until 30 days after the issuance of the decision and reasons for the Hearing and Review;

IT IS HEREBY ORDERED THAT pursuant to section 21.7 and subsection 8(4) of the Act, the sanctions

and penalties imposed by the IIROC Hearing Panel are stayed until 30 days after the issuance of the decision and reasons for the Hearing and Review or until further order of the Commission.

DATED at Toronto this 20th day of February 2013.

"James E. A. Turner"

"Judith N. Robertson"

2.2.6 Quadrexx Asset Management Inc. et al. – ss. 127(1), (7) and (8)

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

AND

IN THE MATTER OF
QUADREXX ASSET MANAGEMENT INC.,
QUADREXX SECURED ASSETS INC.,
OFFSHORE OIL VESSEL SUPPLY SERVICES LP,
QUIBIK INCOME FUND
AND QUIBIK OPPORTUNITY FUND

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

WHEREAS on February 6, 2013, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and (5) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act") with respect to Quadrexx Asset Management Inc. ("Quadrexx") and with respect to Quadrexx Secured Assets Inc. ("QSA"), Offshore Oil Vessel Supply Services LP ("OOVSS"), and Quibik Income Fund ("QIF") and Quibik Opportunity Fund ("QOF"), collectively the "Quadrexx Related Securities" ordering that:

1. Pursuant to paragraph 2 of subsection 127(1) of the Act that all trading in the securities of Quadrexx and Quadrexx Related Securities shall cease;

2. Pursuant to paragraph 1 of subsection 127(1) of the Act that the following terms and conditions apply to the registration of Quadrexx as an exempt market dealer ("EMD"):

   a) Quadrexx shall be entitled to trade only in securities that are not Quadrexx and Quadrexx Related Securities;

   b) before trading with or on behalf of any client after the date hereof, Quadrexx and any dealing representative shall (i) advise such client that Quadrexx has a working capital deficiency as at December 31, 2012, and (ii) deliver a copy of this Order to such client; and

   c) Quadrexx and any dealing representatives shall not accept any new clients or open any new client accounts of any kind;

3. Pursuant to paragraph 1 of subsection 127(1) of the Act that the following terms apply to the registration of Quadrexx as a portfolio manager ("PM") and as an investment fund manager ("IFM"):

a) Quadrexx's activities as a portfolio manager and investment fund manager shall be applied exclusively to the Managed Accounts and to the Quadrexx Funds; and

b) Quadrexx shall not accept any new clients or open any new client accounts of any kind; and

4. Pursuant to subsection 127(6) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS the investigation by Staff of the Commission is ongoing;

AND WHEREAS on February 6, 2013, Staff filed the affidavit of Yvonne Lo sworn February 1, 2013 and the affidavit of Susan Pawelek sworn February 1, 2013 in support of extending the Temporary Order and made oral submissions in support of extending the Temporary Order;

AND WHEREAS on February 6, 2013, counsel for the Respondents filed the affidavit of Ken Thomson, president of Universal Financial Corp. ("Universal"), sworn February 6, 2013 and made oral submissions opposing Staff's request for extension of the Temporary Order;

AND WHEREAS on February 6, 2013, Ken Thomson advised the Commission that Universal had signed Letter of Intent dated February 6, 2013 with Quadrexx under which the Quadrexx's assets would be purchased in exchange for the assumption of Quadrexx's senior debentures in the principal amount of $900,000;

AND WHEREAS on February 16, 2013, Quadrexx delivered to Staff an updated Form 31-103F1 – *Calculation of Excess Working Capital* which indicated that Quadrexx had a working capital deficiency of $852,617 as at January 31, 2013;

AND WHEREAS on February 19, 2013, Ken Thomson advised the Commission that it is unlikely that Universal will proceed with the transaction contemplated in the Letter of Intent dated February 6, 2013;

AND WHEREAS on February 19, 2013, counsel for the Respondents advised the Commission that the Respondents are not opposed to the suspension of the registration of Quadrexx as an exempt market dealer and requested fourteen days before the suspension of Quadrexx as a portfolio manager (a "PM") and as an investment fund manager ("IFM") in order to deal with the transfer of the managed accounts for which Quadrexx is the PM to another registrant and to consider options for the Quadrexx Related Securities which are currently subject to the Temporary Order;

AND WHEREAS it appears to the Commission that Quadrexx has and will continue to have a capital deficient contrary to subsection 12.1(2) of NI 31-103 and may have engaged in conduct that is contrary to the Act;

AND WHEREAS on February 19, 2013, Staff filed the affidavit of Michael Ho sworn February 18, 2013 updating the Commission on Quadrexx's current working capital deficiency and providing details on information received from Quadrexx and Mr. Thomson;

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

IT IS HEREBY ORDERED pursuant to paragraph 1 of subsection 127(1) of the Act that the registration of Quadrexx as an exempt market dealer is suspended effective immediately;

IT IS FURTHER ORDERED pursuant to subsection 127(7) of the Act that the portion of the Temporary Order issued under paragraph 1 of subsection 127(1) attaching terms and conditions to the registration of Quadrexx as a PM and as an IFM is extended to March 7, 2013;

IT IS FURTHER ORDERED pursuant to subsection 127(8) of the Act that the portion of the Temporary Order issued under paragraph 2 of subsection 127(1) ordering all trading to cease in the securities of Quadrexx and Quadrexx Related Securities is extended to March 7, 2013;

IT IS FURTHER ORDERED that Quadrexx will provide Quadrexx's PM and exempt market dealer clients with notice, in a form to be approved by Staff, of this ongoing Commission proceeding, the effect of the two Commission orders and the status of the clients' accounts; and

IT IS FURTHER ORDERED that the hearing to consider whether to: (i) further extend any of the terms of the Temporary Order: (ii) vary or add any terms and conditions to Quadrexx's registration as a PM or as an IFM; and/or (iii) suspend Quadrexx's registration as a PM or as an IFM, will proceed on March 6, 2013 at 10:00 a.m.

DATED at Toronto this 19th day of February, 2013.

"James E. A. Turner"

2.2.7 Galway Gold Inc.

Headnote

Subsection 1(11)(b) - Issuer designated as a reporting issuer in Ontario -- Issuer already a reporting issuer in Alberta and British Columbia -- Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario.

Statutes Cited

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

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

AND

IN THE MATTER OF
GALWAY GOLD INC.

ORDER
(Subsection 1(11)(b))

UPON the application of Galway Gold Inc. (the Applicant) to the Ontario Securities Commission (the Commission) for an order pursuant to subsection 1(11)(b) of the Act designating the Applicant as a reporting issuer for the purposes of Ontario securities law;

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

AND UPON the Applicant representing to the Commission as follows:

1. The name of the Applicant is Galway Gold Inc.

2. The Applicant is a mining exploration and development company focused on the exploration of gold and other metals in South America and the Applicant holds interests in a mineral project in Colombia.

3. The Applicant was incorporated on May 9, 2012 under the laws of New Brunswick, with its head office at 36 Toronto Street, Suite 1000, Toronto, ON M5C 2C5.

4. The authorized capital of the Applicant consists of an unlimited number of common shares without par value, of which as at January 18, 2013, there were 166,261,932 common shares outstanding.

5. The Applicant's financial year end is December 31.

6. The Applicant became a reporting issuer under the *Securities Act* (British Columbia) (the BC Act) and the *Securities Act* (Alberta) (the Alberta Act) on December 20, 2012, and is not in default of any requirement of the securities legislation of such jurisdictions. The Applicant is not a reporting issuer or the equivalent in any other jurisdiction.

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

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

9. The Applicant's securities are listed on the TSX Venture Exchange (the TSX-V) under the stock symbol "GLW".

10. The Applicant believes it has a significant connection to Ontario on the basis of the most recent Broadridge Report (the "**Report**") obtained by Galway Resources Ltd. dated October 7, 2011. The Report indicates that 35.75% of the shareholders of Galway Resources Ltd. were resident in Ontario as of the date of the Report. Pursuant to a plan of arrangement which became effective December 20, 2012, holders of common shares of Galway Resources Ltd. received one (1) share of the Applicant for each share of Galway Resources Ltd. held. The Applicant believes it is

reasonable to conclude that a similar percentage of the shares of the Applicant are held by shareholders resident in Ontario.

11. Other than in respect of failing to comply with Section 18.2 of Policy 3.1 of the TSX Venture Exchange Corporate Finance Manual, the Applicant is in good standing with the TSX-V and is not in default of any of the rules or regulations of the TSX-V.

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

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

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

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

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

    (a) any known ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority, or

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

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

14. None of the officers or directors of the Applicant, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

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

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

15. As the Applicant has a significant number of non-resident directors and one non-resident officer, the Applicant has filed with the Commission on SEDAR a "Non-Issuer Submission to Jurisdiction and Appointment of Agent for Service of Process" form executed by each non-resident director and officer of the Applicant.

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

IT IS HEREBY ORDERED pursuant to subsection 1(11)(b) of the Act that the Applicant be designated as a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto on this 8th day of February, 2013.

“Shannon O’Hearn”
Manager, Corporate Finance
Ontario Securities Commission

2.2.8 Noventa Limited

February 1, 2013

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

AND

IN THE MATTER OF
NOVENTA LIMITED
(THE "FILER")

ORDER

UPON the Director having received an application from the Filer for an order under subparagraph 1(10)(a)(ii) of the Act that the Filer is not a reporting issuer in Ontario (the **"Requested Order"**);

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **"Commission"**);

AND UPON the Filer representing to the Commission as follows:

1. The Filer is a company established under the *Companies (Jersey) Law 1991* (as amended).

2. The registered and head office of the Filer is located at Third Floor, Mielles House, La Rue des Mielles, St. Helier, Jersey, JE2 3QD, Channel Islands. The operational headquarters of the Filer is located at Rua de Mukumburra, nº386, Maputo, Mozambique.

3. The Filer has no operations, employees or offices in Canada.

4. The Filer is a producer of tantalum pentoxide concentrate, a rare specialty metal used widely in the consumer electronics industry. The Filer's mining assets are located in the Zambezia province of north eastern Mozambique and include its open cast mine, the Marropino mine and the Morrua project.

5. The Filer's ordinary shares (the **"Ordinary Shares")** have been listed on AIM since March 20, 2007 and on the Plus Stock Exchange (now the Growth Market of the ICAP Securities and Derivatives Exchange or **"ISDX Growth Market"**) since April 11, 2011.

6. On December 23, 2010, the Ordinary Shares were listed on the Toronto Stock Exchange (the **"TSX"**).

7. On March 4, 2011, the articles of the Filer were amended by special resolution to consolidate every twenty existing £0.0004 Ordinary Shares into one new £0.008 Ordinary Shares and to increase the authorised share capital to £7,500,000 by the creation of 7,000,000 preference shares of £1.00 each (the **"Preference Shares"**). The Ordinary Shares began trading on a post-consolidation basis on March 11, 2011. On April 11, 2011, the Preference Shares were listed on the Plus Stock Exchange. The only securities that the Filer currently has outstanding are the Ordinary Shares and the Preference Shares.

8. The Filer is not a reporting issuer in any other jurisdiction in Canada other than Ontario.

9. The Filer had discussions with the TSX regarding a voluntary delisting of its Ordinary Shares from the TSX and the TSX delisted the Ordinary Shares at the close of trading on March 8, 2012.

10. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 – *Marketplace Operation* and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.

11. The Filer is not in default of any reporting or other requirement of AIM or the ISDX Growth Market.

12. The Filer is not in default of any of its obligations under the *Securities Act* (Ontario) as a reporting issuer.

13. To the knowledge of the Filer, residents of Canada do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide. The due diligence conducted by the Filer in support of the foregoing representation is as follows:

    a. Using a record date of September 25, 2012, the Filer caused Broadridge Financial Services, Inc. (**"Broadridge"**) to conduct a search to confirm the residency of the beneficial holders of the Ordinary Shares held through intermediaries who are clients of Broadridge. The search found that 129 residents of Canada beneficially held 1,028,400 Ordinary Shares, broken down by province as follow:

    - Alberta – 29 shareholders holding 193,455 Ordinary Shares;
    - British Columbia – 28 shareholders holding 55,250 Ordinary Shares;
    - Manitoba – 4 shareholders holding 5,451 Ordinary Shares;
    - Northwest Territories – 1 shareholder holding 1,600 Ordinary Shares;
    - Ontario – 49 shareholders holding 710,915 Ordinary Shares;
    - Quebec – 15 shareholders holding 56,624 Ordinary Shares;
    - Saskatchewan – 2 shareholders holding 4,105 Ordinary Shares; and
    - Unknown – 1 shareholder holding 1,000 Ordinary Shares,

b. An additional search of the Jersey share register by the Filer's transfer agent, Computershare Investor Services PLC ("Computershare UK"), indicated there were an additional 4 registered nominees/brokers and 2 registered shareholders with a Canadian address as of September 17, 2012. These registered holders together held 339,053 shares at that time.

c. As of September 17, 2012, there were 119,658,819 Ordinary Shares issued and outstanding. Therefore, based on the information provided by Computershare UK and Broadridge and assuming Canadian registered nominees/brokers hold Ordinary Shares only on behalf of Canadian resident beneficial shareholders, Canadian residents beneficially owned can be no more than 1.14% of the total outstanding Ordinary Shares.

14. To the knowledge of the Filer, residents of Canada do not directly or indirectly comprise more than 2% of the total number of shareholders of the Filer worldwide. The due diligence conducted by the Filer in support of the foregoing representation is as follows:

    a. According to the Jersey share register, as of September 17, 2012, there were 573 registered holders, 386 of which were nominees/brokers. According to Allenby Capital Limited, the Filer's Nominated Advisor, and Computershare UK, the only way to obtain information about beneficial holders indirectly holding Ordinary Shares worldwide is to contact each nominee/broker directly by mailing an inquiry letter to each of the nominee/brokers. the Filer believes that the majority of nominees/brokers would likely not respond. As such, information concerning the total number of shareholders holding Ordinary Shares indirectly worldwide is practically impossible to obtain.

    b. However, given the percentage of Canadian registered nominees/brokers holding Ordinary Shares directly is approximately 1.04% (4 nominees/brokers with Canadian addresses divided by 386 nominees/brokers in total) and assuming the percentage of Canadian registered nominees/brokers holding Ordinary Shares directly is proportional to the percentage of Canadian beneficial shareholders holding Ordinary Shares indirectly, it is reasonable to conclude that the percentage of Canadian beneficial shareholders holding Ordinary Shares indirectly is also approximately 1.04%.

    c. Based on the information above, assuming that each Canadian registered nominee/broker holds Ordinary Shares on behalf of, on average, 32 (129 beneficial holders divided by 4 registered brokers) Canadian beneficial shareholders and that this average is representative of the holdings of non-Canadian nominees/brokers, it is reasonable to conclude that there are a total of 12,925 beneficial and registered shareholders of the Filer worldwide and that the percentage of Ordinary Shares held by residents of Canada is approximately 1.04%.

    d. Alternatively, assuming that each registered nominee/broker holds Ordinary Shares on behalf of at least 15 beneficial shareholders on average, it is reasonable to conclude that there are a total of at least 6,363

registered and beneficial shareholders of the Filer worldwide and that the percentage of Ordinary Shares held by residents of Canada is no more than approximately 2%.

15. All Preference Shares are beneficially owned, directly or indirectly, by non-Canadians or non-residents of Canada.

16. In the past 12 months, the Filer has not taken steps to create a market in Canada for the Ordinary Shares or Preference Shares and, in particular, never offered securities to the public in Ontario or in any other jurisdiction in Canada by way of a prospectus offering. The Filer only attracted a de minimis number of Canadian investors and the daily average volume of trading of the Ordinary Shares in the 12 months prior to delisting from the TSX was approximately 28,000 Ordinary Shares, which accounted for approximately 8% of the Filer's worldwide daily trading volumes. In contrast, the average daily volume on AIM for the same period represented approximately 313,000 Ordinary Shares.

17. The Filer files continuous disclosure reports under U.K. securities laws and follows the exchange requirements of AIM and the ISDX Growth Market.

18. The Filer qualifies as a "Designated Foreign Issuer" under National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**"NI 71-102"**) and has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to Designated Foreign Issuers under Part 5 of NI 71-102.

19. The Filer has provided advance notice to Canadian resident securityholders in a press release dated December 14, 2012 that it has applied to the Commission for a decision that it is not a reporting issuer in Canada and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

20. The Filer undertakes to concurrently deliver to its Canadian securityholders all disclosure it would be required under U.K. securities law or exchange requirements to deliver to U.K. resident securityholders.

21. The Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Commission granting the relief requested.

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

IT IS HEREBY ORDERED pursuant to subparagraph 1(10)(a)(ii) of the Act that, for the purposes of Ontario securities law, the Filer is not a reporting issuer.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

2.2.9 FactorCorp 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
FACTORCORP INC.,
FACTORCORP FINANCIAL INC., AND
MARK TWERDUN

ORDER
(Sections 127 and 127.1)

WHEREAS on May 12, 2009, the Ontario Securities Commission (the **"Commission"**) issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **"Act"**) in relation to a Statement of Allegations of the same date filed by Staff of the Commission (**"Staff"**), as amended by an Amended Statement of Allegations filed by Staff on October 13, 2011, in respect of FactorCorp Inc. (**"FCI"**), FactorCorp Financial Inc. (**"FFI"**) and Mark Twerdun (**"Twerdun"**) (collectively, the **"Respondents"**);

AND WHEREAS a hearing on the merits in this matter was held before the Commission on October 3, 5, 6, 7, 12, 13, 14 and 17, 2011 and November 24, 2011;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on February 22, 2013;

IT IS ORDERED that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, commencing on April 18, 2013 at 10:00 a.m.;

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 22nd day of February, 2013.

"Christopher Portner"

2.2.10 Firestar Capital Management Corp. et al. – ss. 127(1), 127(7), 127(8)

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

AND

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

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

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

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

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

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

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

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

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

Temporary Orders were continued until November 24, 2005;

AND WHEREAS on November 21, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until January 30 and 31, 2006 and the Temporary Orders were continued until January 31, 2006;

AND WHEREAS on January 30, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until July 31, 2006 and the Temporary Orders were continued until July 31, 2006;

AND WHEREAS on July 31, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2006 and the Temporary Orders were continued until October 12, 2006;

AND WHEREAS Ciavarella and Mitton were charged on September 26, 2006 under the Criminal Code with offences of fraud, conspiracy to commit fraud, laundering the proceeds of crime, possession of proceeds of crime and extortion for acts related to this matter;

AND WHEREAS on October 12, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2007 and the Temporary Orders were continued until October 12, 2007;

AND WHEREAS Staff advised that on March 22, 2007, Mitton was convicted of numerous charges under the Criminal Code and sentenced to a term of imprisonment of seven years;

AND WHEREAS on October 12, 2007, the hearing to consider whether to continue the Temporary Orders was adjourned until March 31, 2008 and the Temporary Orders were continued until March 31, 2008;

AND WHEREAS on March 31, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until June 2, 2008 and the Temporary Orders were continued until June 2, 2008;

AND WHEREAS on June 2, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until December 1, 2008 and the Temporary Orders were continued until December 1, 2008;

AND WHEREAS on December 1, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until January 11, 2010 and the Temporary Orders were continued until January 11, 2010;

AND WHEREAS on January 11, 2010, the hearing to consider whether to continue the Temporary Orders was adjourned until March 7, 2011 and the Temporary Orders were continued until March 8, 2011;

AND WHEREAS on March 7, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until April 26, 2011 and the Temporary Orders were continued until April 27, 2011;

AND WHEREAS on April 26, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until May 31, 2011 and the Temporary Orders were continued until June 1, 2011;

AND WHEREAS on May 17, 2011, a settlement agreement in this matter between Staff and Ciavarella was approved by the Commission;

AND WHEREAS Staff advised that on May 18, 2011, the Criminal Code charges against Ciavarella before the Superior Court of Justice (Ontario) were stayed;

AND WHEREAS on May 31, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS on May 31, 2011, the Temporary Orders were continued against the remaining Respondents until July 28, 2011 and the hearing to consider whether to continue the Temporary Orders was adjourned until July 27, 2011;

AND WHEREAS on July 27, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS on July 27, 2011 Staff requested that the hearing be adjourned for one month for the purpose of exploring settlement with certain Respondents;

AND WHEREAS on July 27, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton be further continued until August 30, 2011 and the hearing to consider whether to continue the Temporary Orders be adjourned to August 29, 2011;

AND WHEREAS on August 29, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the other remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the August 29, 2011 hearing;

AND WHEREAS on August 29, 2011, counsel for Firestar Capital and Firestar Investment advised the Panel that he had only recently been retained and requested additional time to consider his client's position and Staff did not oppose a short adjournment;

AND WHEREAS on August 29, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until October 4, 2011 and the hearing to consider whether to continue the Temporary Orders be adjourned to October 3, 2011;

AND WHEREAS on October 3, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the other remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the October 3, 2011 hearing;

AND WHEREAS on October 3, 2011, Staff requested that the hearing be adjourned to November 23, 2011, for the purpose of continuing to explore settlement with certain Respondents;

AND WHEREAS on October 3, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until November 24, 2011, and the hearing to consider whether to continue the Temporary Orders be adjourned to November 23, 2011;

AND WHEREAS on November 23, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the November 23, 2011 hearing;

AND WHEREAS on November 23, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until January 31, 2012, and the hearing to consider whether to continue the Temporary Orders be adjourned to January 30, 2012;

AND WHEREAS on December 9, 2011, a settlement agreement between Staff and Mitton was approved by the Commission;

AND WHEREAS on January 30, 2012, Staff appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the January 30, 2012 hearing;

AND WHEREAS on January 30, 2012, the Commission ordered that that the hearing be adjourned to March 29, 2012 at 10:00 a.m. for the purposes of a pre-hearing conference and that the Temporary Orders in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until March 30, 2012;

AND WHEREAS on March 29, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and commenced the pre-hearing conference and no one appeared on behalf of Kamposse;

AND WHEREAS on March 29, 2012, the Commission ordered that that the hearing be adjourned to June 20, 2012 at 9:00 a.m. for the purposes of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until June 21, 2012;

AND WHEREAS on June 20, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on June 20, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on June 20, 2012, the Commission ordered that that the hearing be adjourned to August 15, 2012 for the purpose of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until August 16, 2012;

AND WHEREAS on August 15, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on August 15, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on August 15, 2012, the Commission ordered that that the hearing be adjourned to October 18, 2012 for the purpose of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until October 22, 2012;

AND WHEREAS on October 18, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on October 18, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on October 18, 2012, the Commission ordered that the hearing be adjourned to January 17, 2013 for the purpose of continuing the confidential pre-hearing conference, that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued

until January 18, 2013 or until further order of the Commission and that a public hearing will be held following the continuation of the confidential pre-hearing conference on January 17, 2013 to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment;

AND WHEREAS on January 17, 2013, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on January 17, 2013, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on January 17, 2013, the Commission ordered that the hearing be adjourned to February 21, 2013 for the purpose of continuing the confidential pre-hearing conference, that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until February 22, 2013 or until further order of the Commission and that a public hearing will be held following the continuation of the confidential pre-hearing conference on February 21, 2013 to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment;

AND WHEREAS on February 21, 2013, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on February 21, 2013, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended to March 5, 2013, which was not opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS Staff agreed to make written submissions by end of business day on February 26, 2013 and counsel for Firestar Capital and Firestar Investment agreed to respond by 12:00 p.m. on March 1, 2013;

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 Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until March 5, 2013, or until further order of the Commission;

IT IS FURTHER ORDERED that a public hearing will be held on March 4, 2013 at 10:00 a.m. to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment.

DATED at Toronto this 21st day of February, 2013.

"Edward P. Kerwin"

2.2.11 Majestic Supply Co. Inc. et al. – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC.,
SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP,
MARY KRICFALUSI, KEVIN LOMAN and
CBK ENTERPRISES INC.

ORDER
(Sections 37, 127 and 127.1 of the Securities Act)

WHEREAS on October 20, 2010 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in connection with a Statement of Allegations dated October 20, 2010 filed by Staff of the Commission ("Staff") in respect of Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.;

AND WHEREAS a hearing on the merits in this matter was held before the Commission on November 7, 9, 10, 11, 14, 15, 16, 17, 28, 29, 2011 and May 18, 2012;

AND WHEREAS, following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on February 21, 2013;

IT IS ORDERED that the hearing to determine sanctions and costs will be held on March 15, 2013 at 10:00 a.m.;

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 21st day of February, 2013.

"Edward P. Kerwin"

"Paulette L. Kennedy"

2.2.12 HEIR Home Equity Investment Rewards 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
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; LACENCIA ESTATES DEVELOPMENT, LTD.; COPAL RESORT DEVELOPMENT GROUP, LLC; RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.; AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND ERIC DESCHAMPS

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on March 29, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Eric Deschamps ("Deschamps") and others. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated March 29, 2011 and amended February 14, 2012;

AND WHEREAS Deschamps entered into a Settlement Agreement with Staff of the Commission dated February 14, 2013 (the "Settlement Agreement") in which Deschamps agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 29, 2011, subject to the approval of the Commission;

AND WHEREAS on February 19, 2013 , the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Deschamps;

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

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

IT IS HEREBY ORDERED THAT:

(a) The settlement agreement is approved;

(b) pursuant to paragraph 6 of subsection 127(1) of the Act, Deschamps shall be reprimanded;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Deschamps cease for a period of seven (7) years from the date of this Order;

(d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Deschamps is prohibited for a period of seven (7) years from the date of this Order;

(e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Deschamps, for a period of seven (7) years from the date of this Order;

(f) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Deschamps shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph (g) below);

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Deschamps is prohibited for a period of seven (7) years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Deschamps is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as he, his spouse, and/or his immediate family are the only holders of the securities of the corporation;

(h) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Deschamps is prohibited for a period of seven (7) years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Deschamps shall pay to the Commission an administrative penalty of $7,233.52 for his failure to comply with Ontario securities law, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 10 of subsection 127(1) of the Act, Deschamps shall disgorge to the Commission the sum of $7,766.48, obtained as a result of non-compliance with Ontario securities

law, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(k) After the payments set out in paragraphs (i) and (j) are made in full, as an exception to the provisions of paragraphs (c), (d) and (e), Deschamps is permitted to trade in or acquire securities in his personal registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or for any registered education savings plan ("RESP") accounts for which he is a beneficiary or a sponsor;

(l) Until the entire amount of the payments set out in paragraphs (i) and (j) is paid in full, the provisions of paragraphs (c), (d) and (e) shall continue in force without any limitation as to time period; and

(m) In regard to the payments ordered above, Deschamps agrees to make a payment of $625.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement. Deschamps further agrees to pay at least $625.00 by cheque one month after the Commission approves this Settlement Agreement and to pay by cheque at least $625.00 every month thereafter until the entire amount of the payments set out in paragraphs (i) and (j) is paid in full. Deschamps will not be reimbursed for, or receive a contribution toward, these payments from any other person or company other than voluntary assistance from his immediate family.

DATED at Toronto this 25th day of February, 2013.

"James E. A. Turner"

2.2.13 Systematech Solutions Inc. et al. – s. 127(1)

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

AND

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

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

AND WHEREAS on October 31, 2012, 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") (the "Notice of Hearing") in connection with a Statement of Allegations dated October 31, 2012, filed by Staff of the Commission ("Staff"), to consider whether it is in the public interest to make certain orders against Systematech Solutions Inc., ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively the "Respondents");

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 WHEREAS on December 11, 2012, Staff advised that it provided electronic disclosure to counsel for the Respondents on November 21, 2012;

AND WHEREAS on December 11, 2012, the Commission extended a temporary cease trade order with respect to the Respondents until the conclusion of the proceeding, including the sanctions hearing, if any, and ordered that a confidential pre-hearing conference take place on February 20, 2013;

AND WHEREAS on December 13, 2012, the Commission issued an Amended Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the Act in connection with the Statement of Allegations dated October 31, 2012 and counsel for the Respondents has advised that he accepted service of the Amended Notice of Hearing;

AND WHEREAS on February 20, 2012, a confidential pre-hearing conference was held and Staff and counsel for the Respondents appeared before the Commission and made submissions;

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 on the merits will start on November 4, 2013 at 10:00 a.m. and continue on November 6, 7, 8, 11, 12, 13, 14, 15 and 18, 2013; and

IT IS FURTHER ORDERED that another confidential pre-hearing conference will take place on September 4, 2013 at 10:00 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 20th day of February, 2013.

"Edward P. Kerwin"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Factorcorp Inc. et al. – s. 127

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

AND

IN THE MATTER OF
FACTORCORP INC., FACTORCORP FINANCIAL INC., AND
MARK TWERDUN

REASONS FOR DECISION
(Section 127 of the Act)

Hearing:	October 3, 5, 6, 7, 12, 13, 14 and 17, 2011 November 24, 2011		
Decision:	February 22, 2013		
Panel:	Christopher Portner	–	Commissioner and Chair of the Panel
Appearances:	Cullen Price	–	For Staff of the Commission
	James Grout	–	For FactorCorp Inc. and FactorCorp Financial Inc.
	Mark Twerdun	–	Represented himself

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REASONS FOR DECISION

I. BACKGROUND

A. Overview

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether FactorCorp Inc. ("**FCI**"), FactorCorp Financial Inc. ("**FFI**") and Mark Twerdun ("**Twerdun**" and, together with FCI and FFI, the "**Respondents**") breached the Act and acted contrary to the public interest. In these Reasons, "**FactorCorp**" means FCI or FFI as the context requires and FCI and FFI together will be referred to as the "**Companies**".

[2] The proceeding arose from a Notice of Hearing issued by the Commission on May 12, 2009 and a Statement of Allegations filed by Staff of the Commission ("**Staff**") on May 12, 2009, as amended on October 13, 2011. Staff alleges that, during the period from 2004 to 2007 (the "**Material Time**"), the Companies sold non-prospectus qualified debentures issued by FFI (the "**Debentures**") to approximately 700 Ontario investors for proceeds of approximately $58.0 million.

[3] Staff further alleges that FactorCorp's offering memoranda (collectively, the "**OMs**"), which Staff also alleges that FactorCorp failed to file with the Commission in accordance with OSC Rule 45-501 – *Exempt Distributions*[1] ("**Rule 45-501**"), and

[1] Following September 14, 2005, the requirement to file an offering memorandum, if one is used in connection with a distribution of securities in reliance on the accredited investor exemption, is set out in OSC Rule 45-501 – *Ontario Prospectus and Registration Exemptions*.

various documents used by the Companies to promote the Debentures, including a document entitled "FactSheet", a brochure, a Question and Answer Sheet, a document entitled "Investor Information" and quarterly reports issued by FactorCorp (collectively, the "**Promotional Materials**"), include statements that were materially misleading or untrue, contrary to subsections 122(1)(b) and 126.2(1) of the Act. For example, in the OMs and Promotional Materials provided to investors, the Companies were represented as being in the business of providing short-term financing to commercial clients through factoring and other secured asset-backed loans. It was also represented that the Companies would implement risk management practices to ensure acceptable risk levels in the use of investors' funds. According to Staff, however, these statements were materially misleading or untrue. Many of the loans made by FactorCorp were not short-term as represented. In addition, the loans were either not secured or were inadequately secured or had unenforceable security and the risk management practices implemented to ensure acceptable risk levels in the use of investors' funds were inadequate.

[4] Staff alleges that the materially misleading or untrue statements in the OMs and the Promotional Materials were the result of Twerdun's negligent and reckless disregard for ensuring that the representations made to investors were fulfilled. Staff submits that Twerdun was not duly diligent and thus cannot avail himself of the due diligence defence.

[5] Further, Staff alleges that the Companies improperly relied on the accredited investor exemption in the sale of the Debentures.

[6] Staff also alleges that FFI and Twerdun redeemed certain FFI securities in breach of an order issued by the Commission, contrary to subsection 122(1)(c) of the Act, and that Twerdun made materially misleading or untrue statements in evidence in a proceeding before the Commission, contrary to subsection 122(1)(a) of the Act.

[7] Staff alleges that Twerdun, as the sole director and officer of the Companies, was responsible for the breaches by the Companies of Ontario securities law pursuant to subsection 122(3) and section 129.2 of the Act.

[8] Finally, Staff alleges that the conduct of the Respondents compromised the integrity of Ontario's capital markets, was abusive and was contrary to the public interest.

B. History of Proceedings

1. Temporary Order

[9] On July 6, 2007, the Commission issued a temporary cease trade order against all of the Respondents (the "**Temporary Order**"). The Temporary Order was varied on July 27, 2007 and was further varied on October 26, 2007 to apply to Twerdun alone.

[10] The Temporary Order, as varied on October 26, 2007, was extended from time to time and, on May 12, 2009, the Commission ordered that the Temporary Order as varied on October 26, 2007 "be continued until the Proceeding is concluded and a decision of the Commission is rendered or until the Commission considers it appropriate".

2. Monitor, Receivership and Bankruptcy of the Companies

[11] The Temporary Order issued on July 6, 2007 and varied on July 27, 2007 required that, pursuant to subsection 127(1)1 of the Act, FactorCorp retain a monitor to review and oversee FactorCorp's business, operations and affairs as a term or condition of Twerdun and FactorCorp's registration. On August 1, 2007, KPMG Inc. ("**KPMG**") was appointed the monitor of the Companies (the "**Monitor**").

[12] By order of the Superior Court of Justice dated October 17, 2007, KPMG was appointed receiver and manager of the assets, undertakings and properties of the Companies (the "**Receiver**").

[13] By further order of the Superior Court of Justice dated March 25, 2008, the Companies were adjudged bankrupt on a consolidated basis and KPMG was appointed the trustee of the consolidated estate (the "**Trustee**").

3. Hearing on the Merits

[14] The hearing on the merits in this matter commenced on October 3, 2011. Twerdun did not appear on that day, however, Peter Carey ("**Carey**"), former counsel for Twerdun who had not been retained to act for Twerdun in connection with the hearing on the merits, appeared as a courtesy to the Commission and requested an adjournment on behalf of Twerdun. I adjourned the hearing on the merits to October 5, 2011, and on October 5, 2011, I further adjourned the hearing to October 6, 2011.

[15] Evidence on the merits in this matter was heard on October 6, 7, 12, 13, 14 and 17, 2011. Twerdun was present on all of those days. James Grout ("**Grout**"), counsel for KPMG, appeared on October 3, 5, 6 and 7, 2011. On the morning of October

6, 2011, Grout advised the Commission that KPMG was not defending the allegations against the Companies and, accordingly, he would not be attending the remainder of the hearing except when Bradley Butcher ("**Butcher**"), a vice-president of KPMG, gave evidence on October 7, 2011. I proceeded in the absence of any representatives of the Companies on the remaining days of the hearing in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**").

[16] On November 24, 2011, Staff appeared and made closing submissions, supported by written submissions dated November 4, 2011. Twerdun filed written submissions dated November 21, 2011 and made closing submissions by telephone conference on November 24, 2011 pursuant to Rule 10.2 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***"). During the closing submissions, I asked Staff to provide further written submissions on the amounts raised by FFI pursuant to the various versions of the OMs that had been placed into evidence.

[17] Staff filed such submissions on January 12, 2012, consisting of a summary of "the total amounts raised by FactorCorp Financial Inc. through the various dealers: FactorCorp Inc., Farm Mutual Financial Services ("FMFS"), and Interglobe (Blonde & Little)" and three sub-summaries of the "amounts raised through each dealer … broken down by period in which the various versions (1 through 4) of the OM were in use" (collectively, "**Staff's Summaries**"). On January 13, 2012, I invited Twerdun to respond to Staff's submissions by February 6, 2012, however, he did not do so.

C. The Respondents

[18] FFI was incorporated in Ontario on May 26, 2003. There was no record that FFI had been registered under the Act or that it had been a reporting issuer in Ontario.

[19] FCI was incorporated in Ontario on August 13, 2002. FCI had been registered under the Act as a limited market dealer during the Material Time. There was no record that FCI had been a reporting issuer in Ontario.

[20] Twerdun was the sole officer, director and shareholder of FCI and the sole officer, director and controlling shareholder of FFI. Twerdun's wife and children owned, beneficially or otherwise, the remaining shares of FFI. Twerdun had been registered under the Act in various categories since May 1991, including as a salesperson from May 1991 to January 2002, as a trading officer[2] and director of another entity from October 2002 to January 2004 and as a trading officer and director of FCI during the Material Time.

II. PRELIMINARY ISSUES

A. Twerdun's Adjournment Request

[21] At the commencement of the hearing on October 3, 2011, Twerdun, through his former counsel Carey, requested an adjournment of the hearing on the merits to October 10, 2011. Carey informed the Commission that Twerdun made an inadvertent mistake about the hearing dates and was out of the country for business reasons. According to Carey, Twerdun represented to him in a telephone conversation that he would be able to return to Toronto in the following week, and at the earliest, on October 5, 2011, although there was no guarantee that he would be able to return by the earlier date.

[22] Carey submitted that while it was Twerdun's "fault" that he was not able to attend and Twerdun had notice of the hearing dates six months prior to the hearing on the merits, it would be unfair to Twerdun, and it would not be in the public interest, if Twerdun was not given an opportunity to respond to the allegations against him (Hearing Transcript dated October 3, 2011 at p. 7). According to Carey, "there is nothing more inherently unfair than a hearing with one party who's being charged and not present" (Hearing Transcript dated October 3, 2011 at p. 16).

[23] Carey further submitted that Staff had previously been granted one adjournment. He observed that three weeks had been set aside for the hearing on the merits and submitted that, if Twerdun was not represented by counsel, the hearing would proceed quickly. It was his submission that, as such, the adjournment would not cause any delay to the proceeding or prejudice to Staff or the Commission.

[24] Carey took the position that, although the Commission has the authority to proceed in the absence of a respondent pursuant to section 7 of the SPPA, the issue was whether or not it ought to proceed. Carey submitted that the present case was unlike *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***"), to which Staff referred, where neither respondents nor counsel appeared and no reason for their absence was provided.

[25] KPMG took no position with respect to Twerdun's adjournment request.

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[2] Defined in the section 139 certificate as the "president, secretary and compliance officer".

[26] Staff opposed Twerdun's adjournment request and referred to Rule 9.2 of the *Rules of Procedure* for the factors to be considered in determining whether to grant an adjournment. In particular, Staff submitted that an adjournment would not be in the public interest and was not necessary for a fair hearing. Twerdun was in fact requesting an adjournment of seven days. He was given notice of the proceeding as evidenced by Carey's attendance. Notice of the hearing was given when Staff requested an adjournment of the hearing on May 5, 2011 and hearing dates were set on consent of the parties on that day which was six months prior to the hearing on the merits. Staff submitted that, in light of the foregoing, there should not be any confusion about the hearing dates.

[27] Staff further submitted that as notice was provided in accordance with section 6 of the SPPA, the Commission was entitled to proceed in Twerdun's absence pursuant to section 7 of the SPPA and Twerdun was not entitled to further notice. In Staff's view, this was also supported by the Commission's decision in *Sunwide*. Staff submitted that, if the Commission accepts the argument that it cannot proceed until a respondent attended because there cannot be a fair hearing in the absence of the respondent, the non-attendance of the respondent would delay the hearing indefinitely, which, according to Staff, cannot be the case.

[28] Staff submitted that there was no evidence of any reasonable efforts made to avoid the need for an adjournment. Twerdun simply decided not to attend for his own reasons. Further, the reasons provided to support the adjournment request were that Twerdun was confused about the hearing dates and left on a business trip. In Staff's view, these reasons were wholly without merit, particularly in an important matter such as the hearing on the merits. Staff pointed out that there was no information about where Twerdun went on business. Staff further submitted that Twerdun was represented by counsel and would have been advised about the hearing dates and the advisability of attending. If Twerdun wished to attend, he could have done so and should have attended the hearing on the merits on October 3, 2011. In response to Carey's argument about unfairness, Staff's submission was that "he who seeks justice should be present to request justice" (Hearing Transcript dated October 3, 2011 at p. 11). Accordingly, Staff submitted that there was no unfairness occasioned by proceeding in his absence.

[29] Staff submitted that an adjournment would cause Staff to incur additional costs, and the time set aside for the hearing would be lost. While Staff acknowledged that its case would require no more than five or six days of evidence, it was dependent on the length and extent of cross-examination of Staff witnesses. Further, it was unclear what amount of time Twerdun would require as he had provided no information in that regard. Carey's submission that there would be no delay lacked factual foundation.

[30] I made an oral ruling adjourning the hearing on the merits to October 5, 2011. In coming to this decision, I took into consideration the factors set out in Rule 9.2 of the *Rules of Procedure*, set out below:

> **9.2 Factors Considered** – In deciding whether to grant an adjournment, the Panel shall consider all relevant factors, including, but not restricted to, the following:
>
> (a) whether an adjournment would be in the public interest;
>
> (b) whether all parties consent to the request;
>
> (c) whether granting or denying the adjournment would prejudice any party;
>
> (d) the amount of notice of the hearing date that the requesting party received;
>
> (e) the number of any previous adjournment requests made and by whom;
>
> (f) the reasons provided to support the adjournment request;
>
> (g) the cost to the Commission and to the other parties for rescheduling the hearing;
>
> (h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and
>
> (i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

[31] Twerdun had notice of the hearing on the merits, which was to commence on October 3, 2011, since May 2011. Staff opposed the adjournment request and, in addition, I found Twerdun's explanation for his absence inadequate. While all of these factors supported Staff's position that an adjournment should not be granted, Staff indicated that it only required five or six days for its case. As a result, I concluded that it would be a reasonable accommodation to provide Twerdun with one final opportunity to appear without undue delay and without the other parties incurring substantial costs or suffering prejudice. I was not, however, prepared to grant an adjournment of one week as requested by Twerdun. In my view, an adjournment of two days would afford Twerdun sufficient time to return to Toronto if he elected to attend the hearing on the merits.

[32] When the hearing on the merits reconvened on October 5, 2011, I was advised by Carey that Twerdun was in Africa. Carey further advised that Twerdun had booked the first available flight to return to Toronto from Africa and was scheduled to arrive in Toronto at 3:00 p.m. on that day. Following discussions between Staff and Carey, I adjourned the hearing on the merits to the next day, October 6, 2011, on consent of the parties.

B. Amendments to the Statement of Allegations

[33] On October 6, 2011, following the parties' opening statements, Staff indicated that it intended to amend the Statement of Allegations. At that time, Staff informed me that some of the proposed amendments were merely to correct typographical errors while others were more substantive in nature, although in Staff's view the amendments would not change the nature of the allegations. Staff also advised that the proposed amendments had been provided to Carey, however, Staff did not receive any response from Carey or Twerdun and it was unclear to Staff whether Twerdun had been apprised of them. Staff indicated that it would provide the proposed amendments to Twerdun and discuss the proposed amendments with him.

[34] I expressed the concern that, should the amendments result in the expansion of the scope of the allegations, I would have to consider whether additional disclosure or time would be required to provide the Respondents with an opportunity to respond.

[35] On October 7, 2011, Staff presented its initial proposed amendments to the Statement of Allegations and made submissions in support of the proposed changes. The proposed amendments and Staff's submissions were as follows:

(a) Staff proposed to amend paragraph 5 by replacing the word "misrepresentations" with the clause "materially misleading or untrue statements" to reflect the language of section 122 of the Act. Staff submitted that there was no greater preparation required or prejudice suffered as a result of that proposed change.

(b) Staff proposed to amend paragraph 5 by adding to the text "the loans made by the Respondents to clients were" the clause "not for short terms, and were …". Staff also proposed to amend paragraph 17 and subparagraph 21(a) by adding the description that the secured lending or secured lending transactions were "short-term" in nature. Staff submitted that the Statement of Allegations already contained a reference to short-term financing in paragraph 5 and Staff simply did not carry forward this notion in subsequent paragraphs in the Statement of Allegations. Staff submitted that this change related to the report of Staff's proposed expert witness and further submitted that there was no issue with notice because the expert report was provided to Twerdun on August 8, 2011.

(c) Staff proposed to amend paragraphs 6 and 23 by removing the allegation that, in one instance, the Companies used funds for the purchase of shares, which purchase was not contemplated by the OMs. The following text in subparagraph 23(ii) of the Statement of Allegations would also be removed as a result of this proposed amendment: "on or about May 15, 2006, FFI purchased treasury shares in Activecore Technologies Inc. ("Activecore") a Toronto based technology company that trades in the U.S. over-the-counter market. This equity investment was not contemplated by the OMs".

(d) Staff proposed to amend paragraph 24 by removing the clause "Such statements would reasonably have had a significant effect on the market price or value of the security".

(e) Staff proposed to amend paragraphs 26 and 27 by replacing the reference to "paragraph 21" with a reference to "paragraph 20" and to amend paragraph 31 by replacing the reference to "paragraph 11" with a reference to "paragraph 10". Staff characterized these changes as the correction of typographical errors.

(f) Staff proposed to amend paragraph 29 by adding the following text: "FFI and Twerdun failed to exercise reasonable due diligence to ensure that the accredited investor exemption was applicable. In particular, Twerdun knew or ought to have known that many investors were not accredited because the Accredited Investor Certificates were *prima facie* incorrect". Staff proposed that the foregoing text replace the following text: "In many instances, Twerdun knew or ought to have known that the investors were not accredited and ought to have made further inquiries". Staff submitted that the notion of due diligence in the proposed amendments was already reflected in the language of "knew or ought to have known" in the existing paragraph 29.

(g) Staff proposed to amend paragraph 30 by adding the following text: "FFI and Twerdun breached s. 25 and s. 53 of the Act by distributing the Debentures without registration and for which no preliminary prospectus or prospectus was filed or receipted by the Director in circumstances where no exemption was available". Staff submitted that breaches of sections 25 and 53 of the Act were implied in the context and that it was not in dispute that no prospectus was filed and FFI was not registered under the Act.

(h) Staff proposed to amend paragraph 39, which includes a summary of Staff's allegations, to conform to the changes discussed above. The proposed additions were:

> …
>
> (b) the Respondents failed to file the OMs with the Commission pursuant to s. 4.3 of OSC Rule 45-501, subsequently amended to s. 6.4 of OSC Rule 45-501, in contravention of s. 122(1)(c) of the Act;
>
> …
>
> (d) FFI and Twerdun breached s. 25 and s. 53 of the Act by distributing the Debentures without registration and for which no preliminary prospectus or prospectus was filed or receipted by the Director in circumstances where no exemption was available.

According to Staff, the proposed amendments to subparagraph 39(b) did not create any surprise because they could already be found in the existing paragraph 19. The proposed amendments to subparagraph 39(d) would be made to conform to the proposed addition of allegations of breaches of sections 25 and 53 of the Act.

[36] Staff argued that the main concern with respect to amending the Statement of Allegations is notice to the Respondents. Staff submitted that many of the proposed amendments were first provided to the Respondents as part of the pre-hearing conference submissions in July 2011, and the proposed amendments in this form were provided to Carey by e-mail prior to the hearing on the merits on September 12, 2011. Staff received no response from Twerdun or his counsel with respect to its proposed amendments. It was Staff's submission that Twerdun was given notice of the amendments, and the fact that he did not deal with them was not the concern of the Panel.

[37] Further, Staff took the position that there were no concerns of surprise or unfairness arising from the proposed amendments and, because there was no issue of notice, prejudice or surprise, no additional disclosure or preparation was necessary.

[38] Twerdun did not object to the removal of an allegation and the proposed changes that dealt with typographical errors, set out in subparagraphs [35](c) and (e) above. He did object to the remaining proposed amendments on the grounds that he believed he would be prejudiced by the amendments.

[39] KPMG took no position with respect to the proposed amendments.

[40] I reserved my decision as to whether additional disclosure or time should be afforded to the Respondents to respond if Staff decided to amend its Statement of Allegations. On the following hearing day, namely, on October 12, 2011, I advised the parties that, while some of the proposed changes were non-substantive in nature and did not prejudice the Respondents, there were changes that I regarded as substantive. In particular, the proposed addition of the allegations of breaches of sections 25 and 53 of the Act to paragraphs 30 and 39 of the Statement of Allegations, set out in subparagraphs [35](g) and (h), as well as the proposed amendments to paragraph 29 of the Statement of Allegations which relates to the accredited investor exemption, set out in subparagraph [35](f) above, were more substantive in nature. Accordingly, if Staff intended to make these amendments, additional time would be afforded to the Respondents to respond.

[41] I invited the parties to make submissions on whether additional disclosure would be required, and the period of time necessary to allow the Respondents to respond to the allegations. The parties agreed that they would engage in discussions and advise me of the outcome of the discussions.

[42] On October 13, 2011, Staff advised me that, although Twerdun indicated to Staff that he would not require further disclosure or time to respond, Staff would not make any amendments that I regarded as being more substantive in nature. In other words, Staff proposed to amend the Statement of Allegations on the basis described in paragraph [35] above except that no changes would be made to paragraphs 29 and 30 of the Statement of Allegations.

[43] Twerdun consented to amending the Statement of Allegations as proposed in paragraph [42] above. I confirmed with Twerdun that he would not require additional time to respond and that he agreed to proceed without further delay. On October 13, 2011, Staff filed an Amended Statement of Allegations.

III. THE POSITIONS OF THE PARTIES

A. Staff

[44] In its written submissions, Staff requested that the following findings be made against the Respondents:

(a) The OMs distributed by FactorCorp contained misleading or untrue statements and/or failed to state facts which were required to be stated, contrary to subsection 122(1)(b) of the Act;

(b) FFI failed to file the OMs with the Commission pursuant to section 4.3 of Rule 45-501, subsequently amended to section 6.4 of Rule 45-501, contrary to subsection 122(1)(c) of the Act;

(c) The Promotional Materials distributed by FactorCorp to investors contained misleading or untrue statements and/or failed to state facts which were required to be stated, contrary to subsection 126.2(1) of the Act;

(d) FFI and Twerdun breached the Temporary Order by redeeming certain FFI securities on July 13, 2007, contrary to subsection 122(1)(c) of the Act;

(e) Twerdun, as the sole officer and director of FFI and FCI, authorized, permitted or acquiesced in the non-compliance with Ontario securities law described in subparagraphs (a) to (d) above and is therefore liable for FFI and FCI's breaches of the Act under section 129.2 and subsection 122(3) of the Act;

(f) Twerdun knowingly made statements and filed evidence and information with the Commission that were materially misleading or untrue and/or failed to state facts which were required to be stated, contrary to subsection 122(1)(a) of the Act; and

(g) The course of conduct engaged in by the Respondents compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

[45] Staff also alleges that the failure of Twerdun and the Companies to conduct due diligence to ensure that Debenture holders were qualified as accredited investors was contrary to the public interest.

B. Twerdun

[46] Twerdun submits that it was never his intention to mislead investors. Twerdun takes the position that he contracted with and relied on others to conduct the necessary due diligence. For example, it is Twerdun's submission that he "relied upon [FactorCorp's] Sublenders to conduct themselves as they were contracted or engaged to manage specific portions of the [FactorCorp] portfolio…Twerdun relied on Sublenders to carry out due diligence as they had outlined in their documentation and lending practice". He submits that he contracted with dealers such as Farm Mutual Financial Services ("**Farm Mutual**") to ensure the accredited investor status of the Debenture holders. He further submits that he retained counsel to ensure that security was taken, that the OMs were filed and that he and the Companies were in compliance with Ontario securities law. He submits that he "did not act alone" and should not be held solely responsible for the failure of the Companies and that some of the borrowers to which FFI had made loans (the "**Borrowers**") and their principals were still operating their businesses and were not facing any regulatory proceedings.

[47] Twerdun also made submissions about the recovery of funds. He submits that he was not responsible for the "poor results in recovery efforts" because they were caused by "the lengthy delay in KPMG's poor efforts to secure and recover assets …, a harsh recession, a cookie cutter process that historically delivers poor recovery results … and Sublenders taking advantage of the bankruptcy to their own benefit". In particular, he submits that KPMG's delay in recovery caused "deliberate harm, in recovery efforts". Twerdun submits that KPMG engaged in "witch hunts", "accumulate[d] information not related to [FactorCorp] Debenture Holder's interests" and "over charged for their services", all of which amounted to a breach of its fiduciary duty to the Debenture holders.

C. The Companies

[48] KPMG indicated that it was not "defending the charges on behalf of the two corporate respondents" (Hearing Transcript dated October 6, 2011 at p. 49).

IV. ISSUES

[49] Staff's allegations raise the following issues:

(a) Did FFI fail to file the OMs with the Commission in accordance with section 4.3 of Rule 45-501, subsequently amended on September 14, 2005 to section 6.4 of Rule 45-501, contrary to subsection 122(1)(c) of the Act?

(b) Did the Companies make materially misleading or untrue statements in the OMs which were documents required to be filed with the Commission, contrary to subsection 122(1)(b) of the Act?

(c) Did the Companies make materially misleading or untrue statements in the Promotional Materials, contrary to subsection 126.2(1) of the Act?

(d) Did FFI and Twerdun breach the Temporary Order by redeeming certain FFI securities on July 13, 2007, contrary to subsection 122(1)(c) of the Act?

(e) Did Twerdun, as the sole officer and director of the Companies, authorize, permit or acquiesce in the contraventions by the Companies of the Act and, if so, is Twerdun liable for such contraventions pursuant to subsection 122(3) or section 129.2 of the Act?

(f) Did Twerdun make materially misleading or untrue statements to the Commission, contrary to subsection 122(1)(a) of the Act?

(g) Did FFI and Twerdun fail to ensure that investors were entitled to rely on the accredited investor exemption, contrary to the public interest?

V. OVERVIEW OF THE EVIDENCE

A. Evidence Tendered at the Hearing

[50] Staff called five witnesses at the hearing on the merits, namely (i) Andre Moniz ("**Moniz**"); (ii) Butcher; (iii) Paul Zilkey ("**Zilkey**"); (iv) Frederick Paatz ("**Paatz**"); and (v) Lili Shain ("**Shain**").

[51] Twerdun testified on his own behalf and was cross-examined. He called no other witnesses.

[52] Through the witnesses, 24 exhibits were introduced into evidence.

B. Witnesses

[53] Moniz, a senior investigation counsel with the Enforcement Branch of the Commission, testified about the investigation. Through Moniz, Staff introduced into evidence, among other things, section 139 certificates, corporation profile reports and documents provided by the Companies and Twerdun in the course of the Commission's compliance field review and Staff's investigation, including filings required under the Act to sell the Debentures pursuant to the accredited investor exemption.

[54] Staff also introduced into evidence, through Moniz, documents relating to the Companies that had been obtained from various persons or entities, including KPMG, Grant Buchan-Terrell, former counsel to the Companies and Twerdun ("**Buchan-Terrell**"), Farm Mutual and Fortress Investment Group LLC ("**Fortress**"), a U.S. investment management firm from which FactorCorp sought financing in or about June 2007. The documents included client files, security documents and transactional documents.

[55] Twerdun was interviewed by Staff on a voluntary basis on June 15, 2007. David Searle ("**Searle**"), the principal of an unincorporated business called Mohawk Business Solutions Group ("**MBSG**"), one of the Borrowers, was interviewed by Staff on April 1, 2009. As Searle had passed away by the time the hearing commenced, the transcript of his interview was introduced into evidence through Moniz.

[56] Staff then called Butcher, a Vice-President of KPMG who had been involved in this matter since mid-August 2010. Butcher testified about KPMG's roles as the Monitor, Receiver and Trustee and, through Butcher, various reports of KPMG, in its various capacities, were introduced into evidence.

[57] Butcher testified about the documents that KPMG obtained in its capacity as the Monitor, Receiver and Trustee at the office of the Companies. With the consent of Twerdun's counsel, KPMG also obtained the information stored on Twerdun's laptop computer and BlackBerry hand-held device. KPMG also obtained from Buchan-Terrell certain records of the Companies that were in his possession. Butcher testified that, in some instances, documents were directly obtained from the Borrowers.

[58] In its capacity as the Receiver, KPMG examined Twerdun on May 14, 2008 pursuant to sections 159 and 161 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**"). In its capacity as the Trustee, KPMG examined Twerdun and representatives of certain of the Borrowers on July 10, 2008 pursuant to section 163 of the BIA.

[59] Staff called the principals of two of the Borrowers, namely, Zilkey, who was the principal of FCB Financial Inc. ("**FCB**"), and Paatz, who was the principal of Express Commercial Services Inc. ("**ECS**"). Zilkey and Paatz testified about the transactions between their respective companies and FFI.

[60] Finally, Staff called Shain, who was qualified at the hearing on the merits as an expert in commercial lending.

[61] As noted above, Twerdun testified on his own behalf. His evidence was similar to his submissions which are outlined in paragraphs [46] and [47] above.

C. Expert Evidence

[62] Shain was called by Staff as an expert witness. Her report, initially issued on August 8, 2011 and subsequently amended on September 26, 2011, stated that her evidence was to provide her opinion on the following issue:

> … did FactorCorp comply with the representations made in the FactorCorp Offering Memoranda (the "OMs") and in the FactorCorp "promotional" or reporting materials (the "Promotional Material") generally that:
>
> (a) Investor funds would only be used in factoring or short term secured lending transactions;
>
> (b) Loans would be backed by adequate collateral and secured; and
>
> (c) FactorCorp would conduct risk assessments and due diligence in relation to the quality of the borrower and the value of the security, and would implement risk management strategies to reduce risk and to monitor the value of the security.

[63] Shain's report does not address the adequacy or enforceability of security documents and registrations which the report states were the domain of the Receiver.

[64] Shain gave evidence that she had over 25 years of experience in commercial lending, which she described in her evidence as "lending money or adjudicating credit to commercial enterprises" (Hearing Transcript dated October 13, 2011 at p. 148). For example, she held various positions at the National Bank of Canada including Vice President, Specialized Lending and Vice President, Commercial and Specialized Lending. Shain testified that, in those roles, she was involved in the evaluation of secured loans of $50,000 to $50,000,000 made to medium-sized, privately held companies. She further testified that her responsibilities involved, among other things, assessing the due diligence conducted on prospective borrowers. According to Shain, when assessing whether FactorCorp conducted adequate due diligence, she did not base her assessment on the standards expected of a bank but relied on basic principles that applied to all lending transactions.

[65] Twerdun objected to the admissibility of Shain's evidence as expert evidence. Twerdun submits that Shain developed her expertise working for two Canadian chartered banks and that she had no experience working for or managing a small finance company. He submits that her report and testimony make reference to standards based on her experience in large banks which are not feasible or attainable in a small business. Accordingly, Twerdun submits that she was not qualified to provide expert evidence about the lending practices of "tier 2" or "tier 3" institutions such as FactorCorp.

[66] I qualified Shain as an expert in commercial lending on the basis that she had acquired specialized knowledge through her extensive experience as a senior lending officer for a major Canadian bank. Although Shain acknowledged that, while she had dealt with many "tier 2" or "tier 3" institutions, she had no experience working for one, I am satisfied that basic standards of due diligence, prudence and oversight apply to all commercial lending transactions regardless of the size of the lending institution. Shain's observations and opinions relating to lending standards are also entirely consistent with the written representations with respect to lending standards that were made by the Respondents to investors.

[67] Twerdun also argued that Shain's evidence should not be admitted because it was "biased and tainted". In Twerdun's submission, given the "derogatory remarks" outlined in the Statement of Allegations and KPMG reports which were provided to her, it would be impossible for her to provide an unbiased view.

[68] I do not accept Twerdun's assertion. Staff explained that Shain was provided with the Statement of Allegations in this matter to form the context of the analysis to be carried out. Shain testified that she "tried not to have any preconceived notions going into this process" and her expert opinion was formed based on FFI's lending procedures and documentation (Hearing

Transcript dated October 14, 2011 at p. 83). In addition, in her expert report, Shain's statement of independence includes the following:

> I have no interest in the outcome of this matter, either directly or indirectly. My fee for this assignment is based solely on hours spent, and is in no way contingent upon the result of this analysis. I have no conflict of interest in this matter.

[69] Based on the foregoing, I find that Twerdun has not shown that Shain's evidence lacked impartiality or is biased.

[70] Twerdun further challenged Shain's evidence on the grounds that she only reviewed information that was made available to her by the Commission, which excluded information in the control of the Borrowers. According to Twerdun, it is important to note that Shain did not interview the Borrowers that he and the Companies relied on, or review their due diligence, management practices or security practices.

[71] While Shain acknowledged in her testimony that she only reviewed documents that were made available to her, which were primarily comprised of the files of the Companies in the possession of KPMG, I find that the issue raised by Twerdun as described in paragraph [70] above goes to the weight which I will ascribe to Shain's evidence and not to its admissibility. I am satisfied that Shain's descriptions and analyses of the transactions she reviewed were forthright and as thorough as the documentation to which she had access permitted.

D. Admissibility of Compelled Evidence under the *Bankruptcy and Insolvency Act*

[72] On the first day of the hearing, Staff sought to admit the transcript of the examination of Twerdun conducted on July 10, 2008 by KPMG in its capacity as the Trustee pursuant to section 163 of the BIA and the written record of the examination of Twerdun conducted on May 14, 2008 by KPMG in its capacity as the Receiver pursuant to sections 159 and 161 of the BIA.

[73] As Twerdun indicated his intention to testify on his own behalf, I determined that his direct testimony would provide the best evidence and that Staff would not be permitted to submit the transcripts and written record of prior examinations with the exception that Twerdun's prior evidence given under oath could be used in cross-examination to impeach his testimony. I also decided that, in the event that Twerdun chose not to testify, it would be open to Staff to submit the transcripts and written record of the prior examinations.

VI. EVIDENCE AND SUBMISSIONS

[74] The Companies were engaged in the business of providing financing to commercial businesses using funds that they raised from the sale of the Debentures. The following are the facts and submissions relating to the sale of the Debentures and the lending transactions in which the Companies were engaged.

A. Sale of Debentures

1. Debentures Offered for Sale

[75] Staff's Summaries, which are uncontested by the Respondents and which I accept as accurate, show that FFI offered the Debentures for sale and raised a total of approximately $50.4 million from more than 600 Ontario investors during the Material Time.[3]

[76] The Debentures had terms ranging from one year to five years and entitled investors to a rate of interest on which FFI and the investor would agree at the time of the investor's subscription. According to Shain's report, the rate of interest on the Debentures ranged from 6% to 8% per annum depending on the term. The OMs provided that interest would be paid to investors on a monthly basis.

[77] The Debentures could be redeemed by the investors at maturity with notice which was usually 120 days. If an investor did not request the repayment of the principal amount, the Debenture automatically renewed for an additional term. Twerdun testified that 98% of the investors renewed their investments on maturity.

[78] All of the Debentures issued by FFI were sold pursuant to the accredited investor exemption under Rule 45-501 and, following September 14, 2005, National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**").

[79] The evidence shows that approximately $7.4 million was returned to investors by way of redemptions and approximately $17.4 million was returned to investors who purchased Debentures through Farm Mutual as a result of the settlement of a class action against certain directors and officers of entities related to Farm Mutual.[4]

[3] Staff's Summaries show that FFI raised approximately $56.1 million from 2003 to 2007 and approximately $5.7 million was raised in 2003, which was not during the Material Time.

2. Dealers Engaged by FFI for the Sale of the Debentures

[80] The Debentures were sold to investors primarily through three dealers registered as limited market dealers under the Act at the time, namely, Farm Mutual, Interglobe (Blonde & Little) and FCI. I accept as accurate, Staff's Summaries, which were not contested by the Respondents and which show that of the $50.4 million raised by FFI during the Material Time, approximately $46.1 million was raised by Farm Mutual, approximately $2.1 million was raised by Interglobe (Blonde & Little) and approximately $2.1 million was raised by FCI.

3. OMs

[81] Staff identified various versions of the OMs which were used to sell the Debentures to investors. In oral submissions, Staff noted that it was difficult to identify the period of time in which each version of the OMs was used to sell the Debentures as some of the OMs were undated.

[82] Again, as described in paragraphs [16] and [17] above, Staff subsequently filed summaries which include an approximation of the time period in which each version of the OMs was used to sell the Debentures. According to Staff, four versions of the OMs were used from 2003 to 2007 in the sale of the Debentures through Farm Mutual, one version of the OMs was used from 2005 to 2006 in the sale of Debentures through Intergloble (Blonde & Little) and another version was used from 2003 to 2007 in the sale of the Debentures through FCI. I accept these summaries, which were not contested by the Respondents, as accurate.

[83] There are minor differences between the various versions of the OMs. For example, two of the OMs identify FCI as the issuer of the Debentures while the remaining OMs identify FFI as the issuer. As Staff pointed out, despite the use of the names of both FFI and FCI as the issuer in the OMs, investors only received Debentures issued by FFI. I am satisfied that, subject to these minor differences, the OMs were substantially the same and the statements with which Staff takes issue were consistent in the various versions of the OMs and were made throughout the Material Time.

[84] The OMs describe FFI's business as follows:

> FactorCorp Financial Inc.[5] (defined above as the "Corporation") was formed for the purpose of providing funding to; factoring, leasing and similar short-term secured asset-backed financing services to commercial clients. The Corporation generates revenue by way of investing capital with factoring commercial accounts receivable on a short-term basis. The Corporation will generate an investment pool of funds through this offering for deployment in its funding, and managing, of factoring and other asset-backed operations.

[85] The OMs identify and describe two types of lending transactions in which FFI engaged, namely, factoring and secured lending. They describe factoring as follows:

> Factoring is a process whereby the customer (the "**Borrower**" or "**Merchant**") pledges its receivables, or assets, (either general or specific pledges) deemed by the "factor" (i.e., the party assuming the collection risk, the "**Factor**") to be of acceptable credit quality in exchange for either a specific one-time advance or a secured revolving credit facility.

[86] Factoring transactions are described to be "short-term in nature" and used primarily for the following purposes:

> 1) as a bridge to establishing or increasing a bank credit facility; 2) as a means to manage a corporation's balance sheet (thus satisfying certain bank covenants or capital market expectations); 3) as a lower-cost alternative to the equity dilution accompanied by the issuance of additional equity, particularly on a venture capital basis; 4) to finance temporary bulges in receivables associated with seasonal or special orders; or 5) recover government receivables, such as; tax credits, GST rebates, or Scientific Research credits.

[87] The OMs make the following representations about the advance rates in a factoring transaction:

> Funds advanced to the client are typically limited to a maximum of 80% to 85% of acceptable receivables, although higher advance rates may be considered in the case of short-term receivables of superior quality, such as government, government-insured receivables, or insured receivables.

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4 Some portion of the funds returned to investors may have been raised in 2003, prior to the Material Time.

5 Or FactorCorp. Inc. in two versions of the OMs.

[88] FactorCorp also represented in the OMs that it would consider secured lending transactions and described secured lending as follows:

> The Corporation will consider other temporary loans where there is alternative and strong tangible security such as collateral mortgages on principal residences, chattel mortgages on manufacturing equipment, etc…
>
> …
>
> … Secured lending differs from factoring transactions in that alternative (or additional security) beyond accounts receivable is usually taken to secure the advances. Such additional security (and security over immovable assets) is typically provided as a means to induce the lender to remain relatively "transparent" (or of limited involvement) in the Borrower's operations and business relationships.

[89] The OMs represent the nature of secured lending transactions that FactorCorp proposed to engage in as follows:

> These secured, temporary loans will follow more traditional commercial loan structures and will generally have a risk profile similar to that involved in factoring transactions … Examples of security typically offered to support commercial loans include: 1) residential mortgages on primary residences or recreational property; 2) chattel mortgages on machinery and equipment; 3) general and specific security interests on inventory and other tangible assets; 4) assignment of contractual rights and obligations; 5) pledges of securities including stocks, bonds, mutual funds, bank deposits, term deposits and Guaranteed Investment certificates, etc.; 7)[*sic*] Collateral mortgages on commercial property; and/or 8) other security where in the discretion of the Manager[6] there exists a readily available secondary market.
>
> …
>
> … Thus to the Corporation, such secured, temporary "bridge" loans represent additional sources of revenue with risk characteristics similar to those of factoring transactions and are consistent with the short-term commitment of the Corporation's funds.

[90] The OMs represent that "In all such cases, the temporary advances are limited to circumstances in which there are available independent valuations by conservative industry sources (e.g., real estate and equipment appraisers, tax valuations, etc.) based on either liquidation values or a conservative advance rate (e.g., 70%) of market value".

[91] The OMs include a list of 13 risks, identified as "specific to [FactorCorp]", and qualify the list as being "not exhaustive but illustrative" of the risks to which the Companies are subject. The list of risks includes the following:

> …
>
> Security Risk – Management, from time to time, be [*sic*] unable to realize sufficient proceeds of exercise of its security to satisfy the Debenture holders' full entitlement under the Debentures;
>
> Credit Risk – Credit losses among its Borrowers may result in operating losses to the Corporation, thereby impacting adversely upon the Corporation's ability to honour its obligations in respect of the Debentures;
>
> …
>
> Operating Risk – The is no assurance that the Manager will be able to find and negotiate profitable factoring/secured lending transactions at acceptable risk and there is no assurance that the Corporation's risk management practices will be effective in preventing risk in all circumstances;
>
> …
>
> Collateral Risk – Notwithstanding that the Corporation may have used what it believes to be conservative valuations of the pledged assets or security behind each factoring advance or secured loan, there can be no assurances that the Corporation or any other party can attain these values in the event of realization and liquidation of these assets. A potential failure to liquidate assets at

[6] Defined in the OMs as FFI or FCI.

> values consistent with the expectations of the Corporation or the Manager may result in losses to the Corporation's debenture holders.

[92] Under the heading "Risk Management Practices", the OMs represent that the Companies will engage in the following practices to mitigate the risks identified above:

> Recognising the risks inherent in the factoring business, the Corporation will engaged [*sic*] several factoring operators whose expertise in commercial finance generally and factoring/secured lending in particular provides the Corporation with a level of assurance that the foregoing risks will be mitigated, and diversified, to the extent practicable in the operation of the business. Because the Manager will deploy capital into several factoring operations the risk will be significantly reduced.
>
> In addition to the reliance on the Manager's proprietary credit marketing and decisioning skills, the Corporation intends to diversify its assets by industry, client and end-debtor (trade debtor) to the extent practical given the Corporation's limited resources.
>
> The Manager will ensure that credit and asset quality will comply with the requirements to support its bank line of credit that serves as an additional monitoring source on the activities of the Corporation. Overseen by the Manager, the Corporation will utilize an assortment of proprietary financial structures, security, credit decisioning and administrative procedures to ensure that the Corporation's funds are used to build a profitable portfolio at acceptable risk.

[93] The foregoing section of the OMs also lists the security requirements as follows:

- General Security Agreement registered in the first position over the receivables financed;
- Acknowledgements/priority agreements from the current PPSA[7] registrants;
- Personal guarantees of the principal shareholders;
- Factoring Agreement, promissory notes and/or financing agreements incorporating repurchase agreements in the event that payment for the receivables is not received in the agreed timeframe;
- Other security specific to the transaction (i.e., collateral mortgages on residences, chattel mortgages on specific equipment, irrevocable letters of direction over other cash receipts such as tax receivables, etc.).
- Government or Insurance Company covenants or guarantees.

4. Promotional Materials

[94] At the hearing on the merits, Staff presented Promotional Materials which were used by the Companies to promote the Debentures.

(a) The FactSheet

[95] The FactSheet, which was undated, provides a description of the business of FactorCorp which is similar to that found in the OMs. The description of the types of transactions in which the Companies engaged as found in the FactSheet appears to also have been excerpted from the OMs. More specifically, the content of the FactSheet is similar to the excerpts from the OMs set out in paragraphs [84], [86], [88] and [89] above.

(b) FactorCorp Brochure

[96] A brochure of FactorCorp, also undated, sets out a list of FactorCorp's managing advisors, namely, Twerdun; Brian Vallesi; Zilkey; Cassels Brock Blackwell LLB; Buchan-Terrell; and Farnham and Company, Charter Accountants. As in the case of the FactSheet, the brochure includes what appear to be excerpts from the OMs. The parts of the brochure relating to the business of the Companies, the types of transactions in which the Companies engaged and the Companies' risk management practices are similar to the excerpts from the OMs set out in paragraphs [84], [86], [89] and the first paragraph of the excerpt in paragraph [92] above.

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[7] PPSA means the *Personal Property Security Act* (Ontario), R.S.O. 1990, c. P.10, as amended.

(c) Question and Answer Sheets

[97] As the name of the document suggests, the Question and Answer Sheets, one dated April 2004 and the other undated, provide a list of questions and answers concerning FactorCorp's business. The following are some of the questions and answers in the April 2004 version:

> Q2 – The rate of return seems too good to be true. How is FactorCorp Financial able to offer this type of return?
>
> A2 – The Corporation is currently actively involved in funding the asset based lending, leasing and accounts receivable factoring business, emphasizing both government and insured receivables. Asset based lending involves the securing of a loan with pristine assets. For example a home worth $500,000 could be used to secure a $200,000 loan and in addition, personal guarantees would be obtained as well. … By being more efficient than the large banks and having seasoned and experienced senior bankers on staff, the Manager is able to avoid the costs, mistakes and training issues incurred by the Bank's business models.
>
> …
>
> Q8 – The business presents an opportunity to earn equity rates of return with bond or covered call type risk. This sounds too good to be true – What's the catch??
>
> A8 – There is no catch … Like a commercial bank, the Corporation obtains all appropriate security to minimize any losses and the Managers will defer associated Management fees to further minimize any downside. Essentially, the risk profile is similar to a "covered call" on a secured short-term corporate bond.
>
> …
>
> … Like a commercial bank, the Corporation obtains all appropriate security to minimize any losses and the Managers will defer associated Management fees to further minimize any downside …
>
> Q11 – What controls are in place to ensure that the funds are retained by the business and invested in quality receivables? How would this prevent management from misappropriating company monies?
>
> A11 – The Manager and the Corporation has [*sic*] many internal and external controls to ensure that the funds are invested in quality accounts receivable and divested into many different factoring style companies.
>
> …
>
> - … Bank staff will be monitoring account activity and receivable quality in the traditionally conservative way while will further ensure that funds are used in a manner consistent with the business plan.
>
> ...
>
> - External auditors will be performing a formal audit on the Corporation on an annual basis;
>
> …
>
> Q. 12 – Who is the "Advisory" group and how does it function?
>
> A. 12 – A brief profile of the Advisory Group is a seasoned team of professionals with extensive experience managing large sums of funds on behalf of individuals, banks and institutions. Each brings to the Advisory Group a different perspective on operational and financial risk which is incorporated in the decision making process. Advisory Group meetings are held on a regular basis to discuss and assess both new and existing transactions. Normally the Group holds meetings on at least a weekly (sometimes daily) basis depending upon the volume of transactions being presented. Exact details of how the Group functions and the process used to make decisions is proprietary however a majority of members must agree prior to the authorization of any transactions.
>
> [Emphasis added.]

[98] Although Twerdun testified that the Question and Answer Sheets were used until December 2005 and then "retracted", Staff introduced into evidence an internal e-mail from a branch manager of Farm Mutual dated December 9, 2005 with which he circulated what he described as:

> …the new revised Offering Memorandum and Subscription Agreements in electronic form. I have also once again included the other documents that have not changed.
>
> [Emphasis added.]

The documents attached to the e-mail and the revised Offering Memorandum included the Question and Answer Sheet dated April 2004.

[99] Although it would have been preferable to hear evidence directly from a representative of Farm Mutual regarding the use of the Question and Answer Sheets after December 2005, I accept that the e-mail above shows that the Question and Answer Sheets remained in use after December 2005 and reject Twerdun's testimony, which is not supported by any documentary evidence.

(d) Information Provided to Investors

[100] A document entitled Investor Information described FactorCorp as follows:

- "A pooled fund of funds".
- "A 'Secured' lender to 'Secured' lenders".
- "Successful and has never missed a payment or lost a penny in assets".
- "100% secured by assets such as cash, SRED Government receivables, Federal and Provincial Government receivables, EDC Government Program, mutual funds, GICs, property, machinery, general security agreements, personal guarantees, contracts, etc.".

[101] The Investor Information purported to provide a number of examples of how the business of FactorCorp worked:

> A Typical Example of how it works:
>
> A client requires a $600,000 loan to produce 2000 electrical components for a Walmart contract. One of our factoring lenders evaluates the company, the contracts, and completes a credit and background check on the client.
>
> If all is acceptable they lend against the contract ($600,000), take the clients [*sic*] personal residence as security ($700,000), and a General Security Agreement (GSA) against the entire company ($350,000) giving them control over the clients [*sic*] company and assets.
>
> Then they file with FactorCorp and request to borrow the $600,000 and provide a total of $1,650,000 in security that is registered in FactorCorp's favour. FactorCorp then goes to its capital pool of investors and issues the $600,000 to the lender and provides the $1,650,000 in security to the pool of investors.
>
> The "Secured Debenture Holders" (pool of investors) is now covered almost 3:1 (security to investment dollars).
>
> Another Example:
>
> Client is referred to our SRED lending experts for a loan to cover an approved Federal Government Tax receivable from an accredited and major accounting firm for $250,000.
>
> The SRED team discovers they have filed several times successfully for the (SRED) Scientific Research and Development Tax Credit. All their paperwork is in order and background checks and credit checks are favourable. They agree to lend only $125,000 against the receivable and notify the Government that they are to take assignment of the entire $250,000 payment. Once the Government confirms the assignment the lender contacts FactorCorp.

> The SRED lender assigns the security of the $250,000 Government payment to the "Secured Debenture Holders" (pool of investors) in FactorCorp with security 2:1 (Government security to investment dollars). FactorCorp lends the $125,000 to the SRED lender.
>
> Final Example:
>
> Client requires a mortgage for $175,000 against his $200,000 residence. Our mortgage specialists do a property search and background check on the client. The appraisal comes in at $200,000 and the real estate sales are moderate in that location. The residence itself is in a desirable location. The mortgage lender registers a lean [*sic*] against the property, which is assigned to FactorCorp, which is then assigned to the "Secured Debenture Holders". The $175,000 is issued from the pool and the security is pledged to the FactorCorp investors.
>
> [Emphasis added.]

(e) Quarterly Reports

[102] A number of FactorCorp's reports to its investors were introduced into evidence. Each report sets out the value, at the time of the report, of the security held for every investor dollar which, from 2004 to 2007, ranged from $1.44 to $2.03. In other words, the reports represent that the investments were secured by assets having a value of 144% to 203% the value of the related investment. Each report also provides a breakdown of security held by FactorCorp and the "Position of Security and Payments" at the time. All of the reports from 2004 to 2007 state that over 97% of the loans were "current", that is, were not in default.

B. Lending Transactions

[103] It is not in dispute that FactorCorp engaged in 13 transactions during the Material Time. Staff provided a summary of these transactions and Twerdun indicated in oral submissions that he did not dispute the accuracy of the information in the summary. I accept this summary, which is reproduced below, as accurate:

Client Name	Date(s) of Agreements	Loan Amount	Name of Principal(s)	Type of Borrower	Purpose of Loan
Express Commercial Services Inc. ("**ECS**")	July 2003 – September 2006	$19,718,300 (preferred shares investment)	Fred Paatz	Direct Borrower/Sub Lender	Mainly to finance Royal Reef Resort development, factoring
Breken Financial Inc. ("**Breken**")	July 2003 and February 2004	$1,800,000	Paul Zilkey	Sub Lender	To lend to a single company operating as "The Monitoring Center"
FCB Financial Inc. ("**FCB**")	September 2003 – February 2005 and October 2005	$8,759,102	Paul Zilkey	Sub Lender	SRED lending, tax credit lending, factoring
Mohawk Business Solutions Group ("**MBSG**")	February 2004	$1,744,476	David Searle, Ron Cooke	Direct Borrower	To finance construction of 2 gas stations on Indian reserve

Client Name	Date(s) of Agreements	Loan Amount	Name of Principal(s)	Type of Borrower	Purpose of Loan
Romco Capital Partners ("**Romco**")/ Capmor Financial Services Corp. ("**Capmor**")	May 2004 – April 2005 (originally with One World)	$1,774,666	Bob McAllister, Steve Vooro	Sub Lender	To finance leases to multiple clients
Integra Investment Services Ltd. ("**Integra**")	June 2004	$700,000	Roy Jennix	Sub Lender	To finance undeveloped land in BC
W3 Connex ("**W3**")	September 2004	$1,630,536	Brian Walters	Direct Borrower, also an Indirect Borrower through LC3	To finance several rural broadband communication networks
Forbes Hutton Financial Inc. ("**Forbes Hutton**")	November 2004	$9,310,000	Arnold Milan	Sub Lender through One World (Brian Vallesi)	To finance gaming machines in US jurisdictions
Lease Capital Corporation of Canada ("**LC3**")	July 2005	$2,552,500	Steve Vooro, Gerry Makahonen	Sub Lender	To finance leases to multiple clients
CanFactor Inc. ("**CanFactor**")	October 2005	$630,000	Mike Rundle	Sub Lender	To finance factored receivables for three clients
Sydcom Wireless Corp. ("**Sydcom**")	August 2006, "repapered" February 2007	$796,500	Randy Aquino, Geraldine Borromeo	Direct Borrower	To refinance second and third mortgages that could not be repaid
Ice Planet (1) Ltd. ("**Ice Planet**")	December 2006 and February 2007	$250,000, $50,000	Philip Jackson	Direct Borrower, Also an Indirect Borrower through FCB for $4,550,000	To finance preproduction costs for potential TV series

[104] Staff did not lead evidence with respect to all of the transactions listed in paragraph [103] above and indicated that it does not take issue with certain transactions, such as the transactions with Breken Financial Inc. and CanFactor Inc. I will similarly limit my review of the evidence to those transactions and, in particular, FFI's transactions with ECS, FCB and MBSG,

which amply demonstrate the basis on which FFI purported to discharge the responsibilities that it undertook pursuant to the Debentures.

1. Express Commercial Services Inc. (ECS)

(a) Paatz's Evidence

[105] Paatz testified that he founded ECS, a company based in Burlington, Ontario, in 2001. Paatz described ECS as being in the business of factoring and providing other types of financing such as asset-based lending. Paatz gave evidence regarding ECS's business relationship with Twerdun which commenced in or about April 2003.

(i) ECS's Articles of Incorporation and Preferred Shares

[106] Paatz testified that ECS's Articles of Incorporation were amended on December 9, 2002 for the purpose of creating an unlimited number of Class A, B, C and D preferred shares. The rights attaching to these classes of shares are identical except that each class carries a different rate on its fixed preferential cumulative cash dividends. Class C preferred shares have a fixed dividend of 14%.

[107] ECS's Articles of Incorporation provide that common shareholders of ECS are not entitled to dividend payments until dividends have been paid on the preferred shares. On the liquidation, dissolution or winding-up of ECS, the preferred shareholders are entitled to a fixed payment of $1.00 per share in addition to accrued and unpaid fixed dividends before any payment is made to the holders of common shares. If the assets available for distribution are insufficient, the amounts owing to preferred shareholders are reduced on a *pro rata* basis.

[108] The preferred shares are subject to ECS's right of redemption at $1.00 per share. They also carry a right of retraction, exercisable at $1.00 per share following the first anniversary of the issuance of the preferred shares.

(ii) Loans to ECS

[109] At the outset of ECS's business relationship with Twerdun, in or about April 2003, Twerdun agreed to provide $280,000 to ECS by way of a loan in the amount of $80,000 made by his spouse and another loan in the amount of $200,000 made by 1504622 Ontario Inc., a company that Paatz believed was owned by Twerdun, for the purpose of funding ECS's factoring business.

[110] According to Paatz, prior to making these advances, Twerdun visited ECS's offices, reviewed ECS's financial statements and asked a number of questions about how ECS operated. He did not think that Twerdun asked ECS to complete an application form, nor did he recall providing his consent to a personal information search. Paatz testified that ECS subsequently sent reports to FFI on a monthly basis.

[111] The evidence presented at the hearing indicated that the loans were repaid in full with interest.

(iii) Purchase of Preferred Shares

[112] Subsequently, in or about July 2003, Paatz contacted Twerdun to obtain further financing. According to Paatz, Twerdun communicated to Paatz that he had established a new company, FFI, and that he would be funding ECS through FFI in the future. Following discussions, FFI agreed to purchase Class C preferred shares from ECS that paid a 14% annual dividend. FFI and ECS subsequently entered into a number of Preferred Class "C" Share Agreements (the "**ECS Preferred Share Agreements**") pursuant to which FFI purchased Class C preferred shares from ECS. Paatz testified that share certificates evidencing FFI's ownership of ECS preferred shares were issued as a result.

[113] Paatz explained during cross-examination that ECS's normal course of business was initially factoring and the evidence suggests that the funds were initially received from FactorCorp for that purpose. The initial ECS Preferred Share Agreements, dated July 10, 2003, provided that "Whereas ECS is in the business of factoring, which is the purchase of receivables for which it is paid a fee". ECS Preferred Share Agreements made following May 4, 2004 state that ECS was in the business of factoring and "secured asset based lending".

[114] The ECS Preferred Share Agreements had the following terms:

> ECS shall pay to [FFI] a 14% per annum dividend in twelve equal payments from the date this Agreement is accepted. The dividend will be treated as 'dividend' income as outlined under the CCRA tax act. Payments will continue until the term of this Agreement expires or at such a time as ECS repurchases the 14% Class "C" Preferred Shares.

> This Agreement shall remain in effect for a period of __ year(s) and shall automatically renew for identical periods, upon the same conditions herein set forth, until [FFI] furnishes ECS with 90 days advanced written notice of it's [sic] intention not to renew the agreement at the expiration of the current term. At which time ECS agrees to return the Principal and pro-rated interest is received.[8]

[115] Initially, the ECS Preferred Share Agreement stipulated a term of one year. In or about May 2004, the term of the Agreement became two years because, according to Paatz, "FactorCorp and ECS were getting comfortable in doing business with each other" and they wanted a longer term relationship (Hearing Transcript dated October 13, 2011 at p. 28).

[116] The ECS Preferred Share Agreement also initially provided that ECS "agrees to secure the Class 'C' Preferred Shares by a corporate guarantee". The ECS Preferred Share Agreements entered into after June 9, 2004 also include the following: "assignment of all security, and via GSA."[9] In addition, ECS agreed that all receivables purchased would be over-collateralized by a minimum of 20% and that ECS would obtain a GSA from all of its clients.

[117] Paatz testified that, in 2003, he and Mark Hall ("**Hall**"), who, together with Paatz, was a founding director of ECS, came up with the idea of buying a property in the Turks and Caicos Islands following speculation by certain Canadian politicians that the Turks and Caicos could become a Canadian province. While Paatz acknowledged that neither he nor Hall had any resort construction experience, they decided to develop a resort and found a property for sale while on a trip to the Turks and Caicos Islands. Paatz acknowledged in his evidence that there was no independent third-party analysis to support his initial view about the viability of such a development, and no valuation or appraisal of the property was conducted until 2006.

[118] Paatz testified that, in or about May 2004, he proposed the project to be known as the Royal Reef Resort to Twerdun and provided him with a "breakdown of what was going on on the islands as far as the types of resorts that were being built there, the prices that they were selling for, the condo prices, and just a very good idea of what we expected to do. We didn't have a business plan as such at that point, like a completed business plan, but we had a draft of what we were proposing to do" (Hearing Transcript dated October 13, 2011 at p. 34). Paatz testified that he requested $3.0 million for the initial purchase of the property and $7.0 million for the future development of the project.

[119] According to Paatz, Twerdun was "very keen" about the project, agreed to provide funding for the initial purchase of the property and also orally committed to providing further financing of $7.0 million (Hearing Transcript dated October 13, 2011 at p. 32). Shortly after Paatz made the proposal, on May 4, 2004, Twerdun provided ECS with a cheque in the amount of $2.0 million and provided a further cheque in the amount of $2.2 million on June 1, 2004. These funds were advanced to ECS pursuant to various ECS Preferred Share Agreements.

[120] During the period from July 2003 to March 2007, FFI purchased shares of ECS having a total value of approximately $19.7 million. Paatz testified that, of the $19.7 million, approximately $15.0 million was ultimately used to fund the development of the Royal Reef Resort and the balance was used to fund ECS's factoring business. Dividends were paid by ECS to FFI on a monthly basis using funds received from the sale of condominiums at the resort, ECS's factoring business or from loan advances by third parties.

[121] Paatz testified that he and Hall established an entity called Royal Reef Resort Ltd. in the Turks and Caicos Islands in order to purchase the underlying property and develop the resort. According to Paatz, Twerdun requested that ECS establish another company in order to provide funding for the construction of the Royal Reef Resort. As a result, Paatz and Hall established a new corporation in Canada called Estates International Inc. ("**EII**"). The purpose of EII, which did not have any assets, was to receive funds from ECS and, in turn, advance the funds to Royal Reef Resort Ltd., which owned the underlying property of the proposed resort.

[122] Paatz testified that there were various loan agreements pertaining to the flow of funds from ECS to EII and from EII to Royal Reef Resort Ltd. At the hearing, Paatz described a Facility Agreement between ECS and EII dated April 30, 2004 pursuant to which ECS made available to EII a loan facility with a maximum limit of $10.0 million. EII then advanced the same amount to Royal Reef Resort Ltd. under a separate Facility Agreement dated May 10, 2004 pursuant to which EII made available to Royal Reef Resort Ltd. a loan facility with a maximum limit of $10.0 million.

[123] Paatz testified that, although the ECS Preferred Share Agreements make reference to a corporate guarantee, no such guarantee was executed. He also testified that Twerdun later insisted on an "assignment of all security, and via GSA". As a result, a GSA was entered into between ECS and FFI on May 5, 2004.

[124] In addition, Paatz testified that there were GSAs between ECS and EII and between EII and Royal Reef Resort Ltd. He testified that, while he was able to file the former GSA, he was not able to file the latter because "there wasn't any system available to do it" (Hearing Transcript dated October 13, 2011 at p. 39). Paatz testified that ECS continued to provide reports to

[8] ECS Preferred Share Agreements made following May 4, 2004 stated that "…ECS agrees to return the Principal and pro-rated interest in exchange of the Class 'C' Shares".

[9] The term GSA means a general security agreement.

FFI and Twerdun on a monthly or quarterly basis, and he believed that either he or Hall notified Twerdun that the GSA between EII and Royal Reef Resort Ltd. could not be filed, which meant that the loan was unsecured.

[125] Paatz confirmed in his testimony that no charge or other security interest was registered against the Royal Reef Resort property on behalf of ECS, EII or FactorCorp to secure FFI's loan advances. Meridian Trust, a local trust fund in the Turks and Caicos Islands that provided funding for the project, and TDMG Concordia, the construction company that was retained to develop the property, were provided with security interests in the property. More specifically, Meridian Trust was subsequently provided with a first mortgage in the amount of $7.0 million in 2006 or 2007 and TDMG Concordia with a second mortgage in the amount of $6.3 million.

[126] Paatz testified that, following the commencement of construction, he began marketing the Royal Reef Resort. Advance sales in the amount of $32.0 million were made and deposits of $15.0 million were received. Paatz testified that, in or about September 2006, construction of the Royal Reef Resort was halted due to the lack of funding by FFI. He testified that, by that time, the project was "about a third complete as far as the first phase is concerned" (Hearing Transcript dated October 13, 2011 at p. 87). By April 2007, ECS had difficulty making dividend payments to FFI.

[127] Paatz confirmed that, at the time of the hearing, no further progress had been made to develop the project and he was looking for a buyer for the property.

[128] In his cross-examination, Paatz acknowledged that the preferred shares were convertible to cash.

(b) Expert Evidence

[129] Based on the documents and information provided to her, it was Shain's opinion that FFI's investment in ECS was not a loan.

[130] Shain opined that ECS failed to take tangible security from its borrowers, including EII and Royal Reef Resort Ltd. Approximately $10.0 million of the funds received from Debenture holders was loaned through an ECS single purpose subsidiary, EII, to finance the construction of a resort condominium project in the Turks and Caicos Islands. Although a GSA was received from Royal Reef Resort Ltd., no specific mortgage security was registered against the property. As there were several mortgages and other claims totaling over $30.0 million already either registered against the resort or which otherwise had priority, the GSA was effectively unsecured.

[131] ECS's financial statements for 2005 and 2006 show negative net worth of $1.2 million and $3.7 million, respectively. According to Shain, this fact turns FactorCorp's preferred share advance into an indefinite commitment. In her review, Shain did not see any documented follow-up with respect to ECS's delinquencies or its potential insolvency.

[132] Shain reported that there were no security schedules, appraisals or external confirmation of collateral values in the client files. She observed that appraisals were only requested in response to an audit and were never received.

[133] Twerdun valued the Royal Reef Resort at $30.0 million and treated it as encumbered only by the $14.0 million that was owed to FactorCorp. Shain opined that FactorCorp's clients (ECS or EII) did not have a specific charge on the property and the property was already indebted for more than its value. Shain saw little evidence of any ongoing valuation of tangible collateral security against loan value.

(c) The Position of Staff

[134] Staff submits that FFI's investment in ECS was not a loan and not properly secured. Staff further submits that FFI failed to conduct due diligence with respect to its loan to ECS. Each of these arguments will be discussed in further detail below.

(i) FFI's investment was not a loan

[135] Staff refers to the Supreme Court's decision in *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, [1992] 3 S.C.R. 558 ("***CDIC***") at paras. 51 and 52 as authority for the proposition that the proper characterization of the ECS Preferred Share Agreements depends on the intention of the parties as expressed in the words chosen by them in the agreement. Staff submits that if the words of the agreements themselves are not determinative, the surrounding circumstances may be analyzed. According to Staff's reading of *Royal Bank of Canada v. Central Capital Corp.*, [1996] O.J. No. 359 (O.C.A.) ("***Central Capital***") at paras. 79 and 131, the surrounding circumstances include the articles of incorporation, the company's books and records and the conduct of the parties.

The language in the agreement

[136] Staff submits that, on their face, the ECS Preferred Share Agreements were evidently not loans. Staff argues that the second recital as well as clauses 1 and 2 of the ECS Preferred Share Agreements provide the substance of the transaction. The second recital of the Preferred Share Agreements states:

> Whereas "The Investor" desires to purchase a 14% Class "C" Preferred Shares in ECS for which it will receive a monthly paid dividend on said money, before the last business day of each month.

[137] Clauses 1 and 2 of the ECS Preferred Share Agreements state:

> "The Investor" shall deliver to ECS a sum of $_____CAD, upon the execution of this agreement, in exchange for _____ ECS 14% Class "C" Preferred Shares from its treasury.
>
> ECS shall pay to "The Investor" a 14% per annum dividend in twelve equal payments from the date this Agreement is accepted. The dividend will be treated as 'dividend' income as outlined under the CCRA tax act. Payments will continue until the term of this Agreement expires or at such a time as ECS repurchases the 14% Class "C" Preferred Shares.

[138] Staff submits that the express words used in these provisions, such as "Investor", "purchase", "preferred shares", "dividend" and "treasury", are all part of the language of corporate investment and not debt. Staff's view of the substance of the transaction based on the foregoing is that FactorCorp purchased preferred shares of ECS and ECS guaranteed a 14% dividend on the purchased shares.

[139] While Staff recognizes that debt language and concepts are present in the ECS Preferred Share Agreements, they are, in Staff's submission, secondary to the Class C preferred share acquisition by FactorCorp. According to Staff, when one is searching for the substance of a particular transaction, one should not be too easily distracted by aspects which are, in reality, only incidental or secondary in nature to the main thrust of the agreement (*CDIC*, *supra*, at para. 55).

Surrounding circumstances

[140] Staff submits that the ECS Preferred Share Agreements, ECS's Articles of Incorporation and the surrounding circumstances all suggest that the heart of the transaction was an investment by FactorCorp in the preferred shares of ECS.

Staff's legal submissions

[141] Staff argues that the proper characterization of the ECS Preferred Share Agreements engages corporate law and the corporation's Articles of Incorporation. This is because the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16, as amended (the "**OBCA**") and the common law relating to corporations, which apply to ECS, govern the priority of claims and place restrictions on the ability of a corporation to issue and redeem shares and to declare and redeem dividends.

[142] As a starting point, Staff submits that one of the foundations of corporate law is that a corporation's creditors should have priority over the corporation's shareholders (Kevin McGuinness, *Canadian Business Corporations Law*, 2nd Edition (Markham: LexisNexis, 2007) ("**McGuinness**") at pp. 359 and 360).

[143] Staff refers to subsection 22(4)(a) of the OBCA for the proposition that a corporation may create classes of shares and the rights, privileges, restrictions and conditions attaching to a class of shares must be stated in the corporation's articles of incorporation.

[144] Staff then refers to subsection 23(3) of the OBCA for the proposition that a share is not validly issued by a corporation until consideration for the share is fully paid. According to Staff, pursuant to subsection 28(1)(a) of the OBCA, a corporation may not hold shares in itself (subject to statutory exceptions).

[145] Staff further submits that, pursuant to section 38 of the OBCA, the directors of a corporation may declare a cash dividend if the corporation can satisfy statutory solvency tests.

[146] Citing McGuinness, *supra*, at pp. 512 and 513, Staff submits that a director's power to declare dividends is discretionary. A shareholder may only sue for undeclared dividends in limited circumstances and a court will be unlikely to interfere with a director's exercise of discretion regarding the declaration of dividends. Once a dividend is declared, it is a debt to all shareholders entitled to payment and enforceable by the courts (McGuinness, *supra*, at p. 520).

[147] In Staff's submission, subsection 127(3)(d) of the OBCA provides that a director may not delegate the discretion to declare dividends to a committee of the board of directors or an officer. Staff submits that, by extension, a director may not

delegate the authority to declare dividends by contract. A corporation cannot contract to guarantee dividends or pay interest on shares. According to Staff, such a contract is void.

[148] Staff submits that section 32 of the OBCA provides that a corporation, if authorized by its articles of incorporation, may repurchase its shares so long as it satisfies statutory solvency tests. The redemption price must be stated in the articles of incorporation either expressly or by formula.

Articles of ECS

[149] In Staff's submission, the terms of ECS's Articles of Incorporation are similar to those found in *Central Capital*, including retraction and redemption rights at a fixed price per share, fixed dividend entitlements, fixed per share entitlements on liquidation and dissolution in priority to other classes of shares, continuing shareholder rights if the corporation does not honour the retraction rights and limited voting rights. The Articles of Incorporation do not guarantee dividends but provide that dividends are payable "when, as and if" declared by the board of directors. Staff submits that the Articles of Incorporation unambiguously point to the creation of an equity relationship.

Debt features of the ECS Preferred Share Agreements inconsistent with Articles

[150] Staff submits that a review of the debt features of the ECS Preferred Share Agreements reveals an attempt to guarantee dividends within an equity relationship rather than the creation of a debtor-creditor relationship.

[151] Staff submits that clauses 3 and 4 of the ECS Preferred Share Agreements deal with the repurchase of the preferred shares at the option of FactorCorp or ECS, respectively. They provide that:

> This Agreement shall remain in effect for a period of __ year(s) and shall automatically renew for identical periods, upon the same conditions herein set forth, until The Investor furnishes ECS with 90 days advanced written notice of it's [*sic*] intention not to renew the agreement at the expiration of the current term. At which time ECS agrees to return the Principal and pro-rated interest in exchange for the Class "C" Shares.
>
> It is agreed that ECS will provide 60 days written notice if it is their intention to pay out the principal and pro-rated interest to The Investor. The Investor agrees to return the Class "C" Shares once the principal and pro-rated interest is received.

[152] Staff submits that both clauses state that, once the repurchase rights are exercised, FactorCorp will return the Class C preferred shares. According to Staff, however, instead of stating the price per share on repurchase, both clauses refer to "the Principal and pro-rated interest". "Principal" is not a defined term in the ECS Preferred Share Agreement and neither "Principal" nor "interest" appears in any other part of the ECS Preferred Share Agreements.

[153] It is Staff's submission that clauses 3 and 4 also provide that, if either ECS or FactorCorp exercises its repurchase rights, FactorCorp will return the preferred shares to ECS. Staff submits that this is significant because if clauses 3 and 4 were repayment of debt provisions, the lender would have no cause to give anything of value to the debtor in return for repayment. Staff submits that the fact that the preferred shares must be returned under the ECS Preferred Share Agreements meant that ECS was buying back the shares it sold to FactorCorp under the ECS Preferred Share Agreements.

[154] Staff argues that clauses 3 and 4 should be interpreted as contractual versions of the redemption and retraction rights in subsections 5(K) and (L) of ECS's Articles of Incorporation. Subsection 5(K) of the Articles of Incorporation includes the redemption rights attaching to the Class C preferred shares. It states that:

> The corporation may, upon giving notice as hereinafter provided, redeem the whole or any part of the Class C shares upon payment of the sum of $1.00 for each share to be redeemed, together with all accrued and unpaid fixed preferential cumulative cash dividends thereon.

[155] According to Staff, subsection 5(K) of the Articles of Incorporation addresses redemptions and dividends but is the functional equivalent of clause 4 of the ECS Preferred Share Agreements. Instead of "Principal and pro-rated interest", subsection 5(K) of the Articles of Incorporation refers to "price per share" and "unpaid fixed preferential cumulative cash dividends".

Security features of the ECS Preferred Share Agreements are void

[156] Clause 5 of the ECS Preferred Share Agreements provided that "ECS agrees to secure the Class 'C' Preferred Shares by a corporate guarantee, assignment of all security and via GSA".[10] Staff submits that this clause suggests a debtor-creditor relationship, however, the security obligations in clause 5 are contrary to the OBCA with the result that the GSA registered under the PPSA was unenforceable against ECS. Staff submits that, instead of evidencing a debt, clauses 2 and 5 of the ECS Preferred Share Agreements suggest that the parties were attempting to secure a promise to pay continuous dividends in the ECS Preferred Share Agreements in the context of an equity relationship.

[157] Staff argues that the preferred shares of a corporation cannot be used as security for a loan by the issuing corporation under the OBCA. Subsection 23(3) of the OBCA provides that shares of a corporation are not lawfully issued until consideration for the share is fully paid. Staff submits that, based on subsection 23(3) of the OBCA, a corporation cannot issue shares without first receiving funds. If the money paid for the preferred shares was in substance a loan and not a purchase of shares, the preferred shares were not validly created. Staff argues that none of the documents reviewed suggests that the preferred shares were not validly created.

[158] Staff further argues that if the intent of clause 5 was to secure the obligation to pay dividends in clause 2, this represented an attempt to guarantee the Class C preferred share dividends in contravention of both ECS's Articles of Incorporation and corporate law. Subsection 22(4)(a) of the OBCA provides that the rights attaching to different classes of shares must be set out in the articles of incorporation. ECS's Articles of Incorporation provide that Class C preferred shareholders have a right to a fixed dividend "when, as and if declared by the board of directors of the corporation…". Staff takes the position that ECS could not, therefore, have validly guaranteed the future payment of dividends. In Staff's submission, clause 2 of the ECS Preferred Share Agreements is void.

[159] Staff submits that ECS could not contract out of the obligations of directors under the OBCA. According to Staff, subsection 127(3)(d) of the OBCA prevents directors of a corporation from delegating the authority to declare dividends.

[160] Staff submits that a corporation cannot create "secured" corporate shares and refers to the following passage in *Central Capital* to support its submission:

> Holders of preferred stock of a corporation, in the absence of express provision to the contrary, are stockholders and not creditors of the corporation, except for dividends declared. They have no lien upon, and are not entitled to, any of the assets of the corporation when it becomes insolvent, until all debts are paid. Furthermore, there is authority that the status of a preferred stockholder is not changed to that of creditor, even though a dividend is guaranteed. Indeed it is beyond the power of a corporation to issue a class of stock, the holders of which are entitled to preference over general creditors.
>
> …
>
> Even where preferred stock has a fixed redemption date, arrival of that date does not change the status of a preferred stockholder to that of a creditor.
>
> [Emphasis added.]
>
> (*Central Capital*, *supra*, at para. 143 citing Bjor and Reinholtz, *Fletcher Cyclopedia of the Law of Private Corporations* (1990), revised, vol. 15A.)

[161] Staff further submits that it was impossible for Paatz and Hall to have had reasonable grounds to guarantee the solvency of ECS in the future because section 101 of the BIA provides for the liability of directors who authorize dividends paid or shares redeemed by a corporation within a year of an initial bankruptcy event in certain circumstances, including where "the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent". It follows in Staff's submission that the purported guarantee of future dividends is illegal.

[162] Staff submits that, in any event, the ECS financial statements provided to FactorCorp for 2005 and 2006 show negative net worth of $1.2 million and $3.7 million, respectively. Staff submits that all purchases of preferred shares in 2006 and 2007 (totaling $2.2 million) were made in the face of ECS's insolvency and concomitant inability to redeem the preference shares.

[10] See also paragraph [116].

ECS financial statements show Class C shares as "capital stock"

[163] Staff notes that, in ECS's financial statements, ECS lists its preferred classes of shares as liabilities, but not as debt or shareholder equity. According to Staff, the fact that ECS recorded the preferred shares as a liability in the amount of the retraction price demonstrates that it acknowledged that the preferred shares would have to be redeemed at a certain date.

[164] Staff argues that the 2004 and 2006 financial statements demonstrate that ECS was rolling-over the amounts owed on un-retracted preferred shares into future years.

[165] Staff points out that, despite the fact that ECS recorded its preferred shares of all classes as liabilities, it also listed these shares in the "capital stock" section of its financial statements along with the common shares. Staff argues that, ultimately, the fact that the preferred shares are listed as capital stock of the corporation should outweigh the fact that ECS recorded the retraction price as a liability. In Staff's submission, the preferred shares were part of the authorized capital of ECS and not some other debt instrument.

Paatz and Twerdun treated the transaction as an equity investment

[166] In Staff's submission, the evidence of Paatz is that Twerdun agreed to advance funds by way of equity instead of continuing his previous practice of using debt instruments such as term notes. Staff argues that, as the entity providing the funds, FFI had the leverage to determine the transactional structure but, ultimately, FFI agreed to the ECS Preferred Share Agreements.

[167] It is Staff's position that Twerdun confirmed, by his conduct, that he viewed FactorCorp's involvement in ECS as an investor in two letters confirming FactorCorp's ECS shareholdings. According to Staff, in two letters signed back to ECS's auditor by Twerdun, FFI was asked whether it agreed it was a preferred shareholder of ECS and was provided with the opportunity to dispute or clarify the nature of FFI's transaction with ECS as follows:

> Do you agree with the above? If you do, would you please sign this letter in the space below. However, if you do not, would you please note at the foot of this letter or on the reverse side, the details of any differences.

In Staff's submission, Twerdun acknowledged that FFI was a shareholder of ECS and did not disagree or dispute the nature of the transaction for any reason.

[168] Staff further argues that the series of attempted restructurings of the transactions into loans further indicate that Twerdun acknowledged the equity relationship between FactorCorp and ECS by his stated desire to convert FactorCorp's equity position into debt.

Staff's concluding submissions

[169] Staff submits that the purchase of preferred shares in a corporation presumptively creates an equity relationship between the purchaser and the corporation. According to Staff, any express language in the relevant documents, including the articles of incorporation and the purchase agreements, that the preferred share purchase creates a creditor-debtor relationship is inconsistent with the articles and void at law.

[170] Staff takes the position that the true legal substance of the transaction is the acquisition by FFI of the preferred shares of ECS. Staff submits that the parties' attempt to guarantee and secure dividend payments and the retraction rights associated with the preferred shares by contract is in violation of laws governing the corporation.

(ii) ECS investment was not properly secured

[171] Staff submits that FFI's investment in ECS was not properly secured. First, Staff submits that the obligation to pay dividends is unenforceable. Staff submits that clause 2 of the ECS Preferred Share Agreements, which purports to guarantee the future payment of dividends, is unenforceable due to statutory illegality. According to Staff, it follows that the GSA between FFI and ECS becomes unenforceable with respect to any contractual promise to pay uninterrupted dividends. Staff submits that, in any event, the GSA was only adopted nearly a year after the purchases began.

[172] Staff further submits that subsection 9(1) of the PPSA establishes freedom of contract between parties to a security agreement, subject to the provisions of any other legislation. It is Staff's position that, since the OBCA invalidates clause 2 of the ECS Preferred Share Agreements, that obligation cannot be recognized under subsection 9(1) of the PPSA. Staff submits that, if clause 2 is not recognized as a securable obligation under the PPSA, the GSA is unenforceable in that regard and FFI has no right to realize on the collateral under the GSA for a breach of clause 2 of the ECS Preferred Share Agreements.

[173] Staff submits that this was exactly the situation that FFI found itself in by April 2007. That is, ECS advised FFI that it could no longer pay dividends and FFI had no ability to enforce ECS's obligation to do so.

[174] Staff also takes the position that the ECS investment was not properly secured because the priority of any security validly granted was not ensured. In Staff's submission, apart from the fact that the ECS transaction's true substance is that of an equity investment, the underlying security, even if valid, was suspect. FFI had a GSA relating to ECS's assets. In turn, ECS had a GSA relating to EII's assets and EII had a GSA relating to Royal Reef Resort's assets. However, Staff submits that the latter security agreement could not be registered in Ontario and was not registered in the Turks and Caicos Islands. Accordingly, none of FFI, ECS and EII had a registered security interest in the property. According to Staff, Royal Reef Resort Ltd. could have granted, and did in fact grant, security on the lands to others with priority over any claim by EII, ECS or FFI. Staff argues that, as a result, any security interest granted indirectly in favour of FFI was subordinated to the secured creditors.

[175] Finally, Staff submits that the ECS investment was not properly secured because the value of the collateral was in doubt. Staff submits that the only asset of any value that FFI could have looked to was the property in the Turks and Caicos Islands, which was of unknown value. It was purchased for $2.7 million in 2004 and, between that time and 2007, approximately $15.0 million of FFI funds were spent to build a third of the first phase of the project. There was never any committed source of funding that would have ensured the completion of the project. In Staff's submission, absent a completed project, the value of a partially completed project is in doubt for obvious reasons. Staff submits that the inability of Royal Reef Resort Ltd. to sell the project to date further underscores the risk to which FFI exposed itself.

(iii) Failure to conduct due diligence

[176] In Staff's submission, Twerdun advanced approximately $15.0 million for the construction of the Royal Reef Resort notwithstanding the fact that ECS was not in the resort development business, neither of its two principals had any relevant experience, there was no independent market analysis to support the development's viability, the proposed development was located in a foreign jurisdiction in which none of them had any experience and for which there was no committed and reliable source of funding to complete the project. As a result, only one third of the first phase had been completed. Further, Staff submits that FFI advanced nearly $2.2 million to ECS notwithstanding financial statements that showed that ECS was insolvent. Accordingly, Staff submits that the Respondents failed to conduct due diligence and employ appropriate risk management practices to ensure acceptable risk.

(d) The Position of Twerdun

[177] Twerdun submits that he and FactorCorp relied on counsel in connection with its transaction with ECS. He submits that Buchan-Terrell, FactorCorp's counsel at the time, generated or reviewed all of the documentation, and FactorCorp relied on its counsel to structure the documentation to secure FactorCorp's position in the transaction. Twerdun emphasizes Buchan-Terrell's involvement by submitting that the funds provided to ECS were initially transferred through Buchan-Terrell's trust account.

[178] Twerdun argues that the ECS Preferred Share Agreements were a "specialized convertible debt instrument" and not a "straight share purchase". In support of his argument, Twerdun submits that the agreements had a "term" like a loan. In addition, Twerdun points to the language of the agreements that suggests a loan transaction, including that ECS agrees to "secure the Class 'C' Preferred Shares", that ECS agrees to "*secure* the Class 'C' Preferred Shares by…GSA" and that "all receivables purchased shall be *over collateralized*" [emphasis added]. Twerdun also refers to Paatz's testimony as support for the proposition that the preferred shares were callable and convertible into cash or into a loan.

[179] Twerdun submits that he relied on ECS to govern itself in accordance with the terms agreed to by both parties. In addition, Twerdun submits that he relied on ECS's reports to FactorCorp about FactorCorp's assets within ECS's control. In Twerdun's submission, it was ECS, and not Twerdun or FactorCorp, that misrepresented its security and position, including a misrepresentation to FactorCorp that it was holding real estate as security with a loan to value ratio of 68%. Twerdun submits that ECS "mismanaged, deceived, manipulated and misrepresented the portfolio status".

[180] Twerdun submits that, while ECS provided its "credit policies and procedures" which outlined its "security", "risk management policy", "evaluation process" and "security" process, ECS did not adhere to its own policies. Twerdun submits that, despite this failure to adhere to its own policies, KPMG took no action against ECS to recover FactorCorp's assets from ECS which, in his submission, had a value of $44.0 million, and those assets to date remain in the control of ECS.

(e) Findings

[181] I find that FFI's purported investment in ECS was not a loan and that the amounts advanced were not secured. The Respondents were also negligent in permitting prior ranking security to be taken by third parties on the property in the Turks and Caicos Islands thereby negating any prospect of recovery. In addition, the amounts advanced to ECS represented, according to Shain, 38% of FactorCorp's portfolio, contrary to representations to investors that FactorCorp would ensure that the use of their

funds would be diversified to reduce the risk of loss. The Respondents clearly failed to (i) undertake even a minimal standard of enquiry; (ii) impose minimal lending standards; or (iii) ensure adequate oversight with respect to the use of investor funds.

[182] Twerdun's attempts to ascribe the blame to his counsel and ECS ignores a number of undertaking provided by FactorCorp including the undertakings described at (i) paragraph [92] above to ensure that "[FFI] will utilize an assortment of proprietary financial structures, security, credit decisioning and administrative procedures to ensure that [FFI's] funds are used to build a profitable portfolio at acceptable risk"; and (ii) at paragraph [97] above that "Like a commercial bank, [FFI] obtains all appropriate security to minimize any losses" and that "Bank staff will be monitoring account activity and receivable quality in the traditionally conservative way".

2. FCB Financial Inc. (FCB)

(a) Zilkey's Evidence

[183] Zilkey testified that he was the principal of FCB, a corporation incorporated in or about September 2003. In his evidence, Zilkey described the business of FCB as funding "private loan transactions to commercial businesses in Ontario and in asset-backed lending receivables or research and development type tax credits" (Hearing Transcript dated October 12, 2011 at p. 37). Zilkey testified that the loans made by FCB were higher risk and were subject to a rate of interest exceeding 18% per annum.

[184] In his testimony, Zilkey explained that the arrangement between FCB and FFI was one in which FFI advanced money to FCB which would, in turn, advance those funds to commercial businesses. He testified that, from September 15, 2003 to February 1, 2005, FCB entered into a number of agreements with FFI pursuant to which FFI advanced funds to FCB. On October 3, 2005, FCB and FFI entered into an Amending Agreement which replaced the numerous agreements made during the initial period from September 15, 2003 to February 1, 2005. Pursuant to the Amending Agreement, FFI made a revolving term loan to FCB in the principal amount of $8.0 million.

[185] According to Zilkey, FFI and FCB entered into GSAs pursuant to which FFI held security over the assets of FCB. At the hearing, Zilkey identified three such GSAs which were dated December 1, 2003, February 16, 2004 and October 3, 2005, respectively.

[186] Zilkey testified that, when FFI initially advanced funds to FCB, FCB was a start-up company which had no assets or operating history. As a result, no financial statements were provided to FFI at that time. It was agreed, however, that FCB would provide monthly reports to FFI. Zilkey did not recall completing a credit application or consenting to a background check until June 20, 2007. He testified that he did not remember having credit policies and procedures prior to 2005, and only provided copies to FFI in September 2005 in connection with some further amendments in October 2005 to the GSA dated February 16, 2004.

[187] Zilkey testified that, other than a line of credit provided to FCB by The Toronto- Dominion Bank in the principal amount of $200,000, FCB only received funding from FFI. FCB's use of the funds will be discussed in more detail below.

(i) Spaceworks and Ice Planet

[188] Zilkey testified that Spaceworks Entertainment Inc. ("**Spaceworks**") was in the business of film production and was engaged with Ice Planet Canada Ltd. ("**Ice Planet**") in the development of a science fiction television program called "Ice Planet". Zilkey identified the "primary principal, operating principal" of Spaceworks to be Phillip Jackson ("**Jackson**") (Hearing Transcript dated October 12, 2011 at p. 46).

[189] Zilkey testified that FCB used the funding provided to it by FFI to provide financing to Spaceworks and Ice Planet in the amount of approximately $4.0 million or $5.0 million.

[190] Zilkey testified that, at the time of FCB's loans to Spaceworks and Ice Planet, the TV program was at the "preproduction" stage. According to Zilkey, preproduction involved "items such as … putting together a cast, a crew, having a stage or a set built … the legal side of the funding, …l ooking for end buyers, negotiating rights, agreements and sales with buyers … typically would lead up to what's called the first day of principal photography, which is, as it states, the first day of shooting" (Hearing Transcript dated October 12, 2011 at p. 46).

[191] The collateral and security provided by Spaceworks and Ice Planet to FCB in connection with FCB's financing included:

(a) A GSA;

(b) A guarantee by an entity described in evidence as "Aurora" and as holding "a library of productions, completed productions/rights to complete a production" (Hearing Transcript dated October 12, 2011 at p. 57). The guarantee was secured by a GSA;

(c) A personal guarantee of Jackson not supported by any collateral;

(d) Personal guarantees of the other principals of Spaceworks supported by a pledge of their shares of Spaceworks; and

(e) A pledge of Ice Planet shares owned by Spaceworks.

[192] According to Zilkey, although no independent valuation had been undertaken in connection with Aurora's delivery of a guarantee and GSA, Jackson valued the film library owned by Aurora at $2.0 million. However, a lender in the United Kingdom referred to in evidence as "Freewheel" had prior ranking security over $600,000 to $700,000 of Aurora's assets.

[193] Zilkey testified that the assets of Spaceworks would have included, for example, a film library, tax credits in the amount of $100,000 (unrelated to Ice Planet) and GST rebates related to Spaceworks or Ice Planet. Based on the information provided by Spaceworks, Zilkey estimated that the value of the three items to be $650,000 in the aggregate.

[194] He also testified that the set for the production of Ice Planet would have been one of Spaceworks's assets. To Zilkey's knowledge, "there was significant money spent on the set and certainly seven figures" and could have been approximately $3.0 million (Hearing Transcript dated October 12, 2011 at p. 84). He testified that he was not aware that an appraisal had been undertaken with respect to the set.

[195] In Zilkey's evidence, Spaceworks's assets would also have included a potential tax credit for 25% to 35% of eligible production costs. According to Zilkey, the tax credits would have been "in and around sort of mid to high six figures to low seven figures" (Hearing Transcript dated October 12, 2011 at p. 66). Zilkey testified that no application for these potential tax credits was filed, nor were the credits supported by the typical tax specialist's estimate or accounting work required to make an application to obtain the tax credits.

[196] Zilkey testified that, although significant amounts of money were expended on pre-production costs, including approximately $3.0 million on the construction of the set, Spaceworks never commenced "the first day of principal photography" which, according to Zilkey, was required in order to apply for the tax credits. In the FCB monthly report to FFI dated February 28, 2006, Spaceworks is identified as being "delinquent" and having an outstanding balance due of approximately $500,000. Zilkey testified that FCB made further advances to Spaceworks following that report. In the report dated October 31, 2006, Spaceworks is again identified as being "delinquent" and having an outstanding balance due of approximately $2.4 million.

[197] In his evidence, Zilkey recounted that there was no activity with respect to the Ice Planet production in late 2006 and early 2007. In early 2007, Spaceworks and Ice Planet were unable to pay rent on the property in which the set had been constructed and there had been discussions about the landlord possibly exercising its right to "foreclose … on the assets, being the set" (Hearing Transcript dated October 12, 2011 at p. 90). Zilkey confirmed that no further funding was provided to continue production and that the production of Ice Planet had never been completed.

(ii) Other sub-loans

[198] At the hearing, Zilkey also provided evidence about the status of other loans made by FCB to its borrowers including the following:

(a) FCB advanced $116,991 to 1131003 Ontario Ltd. carrying on business as MD Products. MD Products closed its plastics plant in Belleville in 2006 and FCB sued its principals under their guarantees to recover the shortfall.

(b) FCB advanced $293,501 to Yo Inc. FCB also sued the principals and guarantors of Yo Inc. under their guarantees in an attempt to recover the amount of the loan.

(c) FCB advanced $399,493 to Marathon Graphics Supply. The company was petitioned into bankruptcy by FCB in early 2007 after it was found to have engaged in what appeared to be fraudulent activity.

(d) FCB advanced $470,800 to Quality Flooring. The company was petitioned into bankruptcy by FCB in 2005.

[199] Zilkey testified the foregoing details would have been communicated to FFI as part of its monthly reporting.

(b) Expert Evidence

[200] Shain reported that FCB financed $4,550,000 of pre-production costs for a proposed science fiction television series that never went into production and failed to obtain tangible security from Spaceworks and Ice Planet. While FCB listed a government tax credit as security, film tax credits can only be obtained when a production has been completed. Accordingly, it is her opinion that it was inaccurate to consider the tax credits as security for a series that had not commenced production and had no committed means of doing so.

[201] In Shain's opinion, although Zilkey testified that several of the principals of Spaceworks and Ice Planet had given personal guarantees, some supported by a pledge of shares and others not supported by any security, none of them were tangibly secured. Shain explained that, even if a guarantor has significant net worth outside his business, a personal guarantee is not considered to be tangible security unless it is supported by a specific assignment of security such as a collateral mortgage on a residence with an appraised value well in excess of the proposed loan, or a pledge of other assets such as marketable securities. According to Shain, personal guarantees that are supported by a pledge of shares of the guarantor's company (the borrower) are not considered as tangibly secured because (i) equity in private companies cannot be readily valued; and (ii) more importantly, personal guarantees are only called upon if the borrowing company cannot honour its debts, at which point, by definition, the equity is worthless. Accordingly, Shain opined that none of the guarantees given by the principals had any value from a security perspective.

[202] While FCB promised to and did provide status reports, Shain's evidence was that there was no documented follow-up with respect to delinquencies or the potential insolvency of FCB. A report from FCB dated February 28, 2006 clearly indicates that out of its 18 loans, nine were delinquent. One firm had voluntarily filed for bankruptcy and another was about to be petitioned into bankruptcy by FCB. Shain expected this to cause some alarm on the part of FFI given that it was FCB's primary funder, however, Shain saw no evidence of such concerns.

[203] It is not clear to Shain that FCB's reports were reviewed properly. The FCB report dated February 28, 2006 showed that half of FCB's loans were delinquent which fact would, according to Shain, cause most lenders to remove such loans from any value calculation.

[204] Shain noted that FCB's loans were all shown as current and their receivables were given full value despite the fact that many of them were delinquent and that the largest loan, namely, the loan to Ice Planet and Spaceworks, was effectively unsecured and repayment was doubtful. In Shain's opinion, it was not correct to give value to receivables the payment of which was in doubt.

(c) The Position of Staff

[205] Staff submits that Twerdun failed to obtain "independent valuations by conservative industry sources (e.g., real estate and equipment appraisers, tax valuations, etc.) based on either liquidation values or a conservative advance rate (e.g., 70%) of market value" as represented in the OMs and that there were serious problems with the value of the collateral for FCB. It is Staff's position that the value of the collateral in respect of the FCB advances to Spaceworks of $4.55 million was never ascertained.

[206] Staff further submits that FactorCorp failed to conduct due diligence with respect to FCB and that there was no committed, reliable source of funding to complete the Ice Planet series. According to Staff, the whole venture was speculative because it depended on the ability of Spaceworks and Ice Planet to complete and sell the television program, neither of which was reasonably probable when FFI advanced its loan. In addition, FFI advanced nearly $1.5 million to FCB from February 2008 to October 2008 in the face of a "stunning portion of delinquencies in the FCB portfolio".

(d) The Position of Twerdun

[207] Twerdun submits that Zilkey was an experienced lender with over 12 years of experience working at The Toronto-Dominion Bank in commercial and corporate lending.

[208] Twerdun takes the position that he trusted Zilkey and relied on him to adhere to the lending practices outlined in the materials provided by FCB to FactorCorp. However, Zilkey failed to secure his portfolio as agreed to in his materials and documentation. Twerdun emphasizes that FCB provided FactorCorp with a Credit Policies and Procedures document, and, in Twerdun's submission, he should not be held completely responsible for FCB's violation of its own process.

[209] Twerdun further submits that he relied on the reports provided to him by FCB. According to Twerdun, Zilkey acknowledged in cross-examination that, when he provided the reports about the state of FCB's portfolio to FactorCorp, he believed that FCB's assets were not at risk. Twerdun submits that this was the same sentiment that was relayed to him in

several reviews in 2006 and 2007. Twerdun submits that he discussed FCB's delinquency with Zilkey and Zilkey dismissed it as typical small business delays and of no consequence.

[210] Twerdun submits that the loan documents were reviewed by counsel, and that he was entitled to rely on his counsel's advice.

(e) Findings

[211] I find that the Respondents failed to (i) properly assess the risks entailed in FCB's loans to Spaceworks and Ice Planet which were reliant, in part, on tax credits which could only be obtained when film production had been completed; (ii) ensure that an independent valuation was obtained; (iii) ensure that appropriate security was obtained with respect to the approximately $3.0 million expended on the construction of the set in a building that was not owned by Spaceworks or Ice Planet; (iv) exercise appropriate oversight with respect to FCB's activities; and (v) take prompt remedial action in the light of the significant number of delinquencies in FCB's loan portfolio.

3. Mohawk Business Solutions Group (MBSG)

(a) Searle's Evidence

[212] The evidence obtained during the voluntary interview of Searle on April 1, 2009, disclosed that MBSG was an unincorporated business owned by Searle and was registered with the Mohawk Council of Akwesasne on September 24, 2001. MBSG's business registration describes its business as "operating in the area of business consulting and financial management". It appears that Twerdun engaged MBSG as an intermediary to facilitate the enforcement of security for the loans.

[213] The evidence also disclosed that FFI made loans to MBSG in the aggregate amount of approximately $1.7 million.

[214] The transcript of the voluntary interview of Searle shows that FFI made loans to MBSG to fund the construction of two gas stations and to assist Four Directions Petroleum (First Nation) Inc. ("**Four Directions**"), a company owned by Ronald Cook ("**Cook**"), in its business of distributing fuel to gas stations located on reserves in Canada and the State of New York.

(i) Loans for the construction of two gas stations

[215] The evidence of Searle indicated that FFI funds were loaned by MBSG to Cook doing business under the name "Trade Zone" to finance the construction of a gas station located on the New York side of the Akwesasne Mohawk reserve. Additional funds were provided to an unknown entity controlled by Cook's family for the construction of the second gas station in Salamanca, New York.

[216] The loans were secured by a GSA provided by MBSG to FFI dated January 16, 2004. Searle testified in his voluntary interview that MBSG, in turn, obtained GSAs from Trade Zone and the owner of the Salamanca gas station, however, these documents were never found. According to Searle, Twerdun engaged Searle in connection with the transaction on the basis of his understanding that, as an Indian, Searle could enforce security on assets located on an Indian reserve.

[217] Searle indicated that, while he attempted to register the GSA provided by Trade Zone in the State of New York about a year after the loan advances were made, he was not successful because the gas station was located on the reserve and the reserve did not have a registry system in place. He also learned that any security agreement with respect to the Trade Zone gas station could not be enforced without the permission of the New York Akwesasne Mohawk tribe.

(ii) Loan to assist Four Directions in continuing operations

[218] In his voluntary interview, Searle identified a demand note dated March 13, 2004 evidencing a 180-day term loan in the principal amount of $250,000 made by FFI to MBSG and Four Directions.

[219] The demand note described that the purpose of the loan was "[t]o provide investment for distribution of petroleum products to First Nations fuel stations on reserves in Canada and United States of America". In his voluntary interview, Searle clarified that this loan was not related to the construction of the two gas stations. He gave evidence that Four Directions was involved in litigation and a monitor was appointed. As a result, "there was no further money coming in" and Cook approached Twerdun for assistance (Transcript of the Voluntary Interview of Searle dated April 1, 2009 at p. 62). Searle believed that the funds advanced by FFI were being used for the "purchase of fuel and company bills during the fight that they were having" or for legal fees incurred in connection with the litigation (Transcript of the Voluntary Interview of Searle dated April 1, 2009 at p. 58).

[220] Searle provided evidence in the voluntary interview that the funds advanced were provided directly to Cook. Searle was only involved in the transaction for "reputational purpose" or as a "safeguard" (Transcript of the Voluntary Interview of Searle dated April 1, 2009 at p. 65).

[221] On March 14, 2004, Searle and Cook provided written personal guarantees, each limited to the sum of $250,000, as security for the loan.

[222] Searle gave evidence that, while some interest payments were made, the principal of the loan was not repaid.

(b) Expert Evidence

[223] In Shain's report, she characterized the loan as being made through an Indian business entity to fund the construction of two gas stations on a cross-border reserve. MBSG was the borrower and executed a GSA, however, it does not appear that MBSG owned the gas stations. One of the stations was owned by Cook and the other by someone else. Although it appears that the use of MBSG as an intermediary was meant to provide assurance that collateral security could be enforced, FactorCorp did not appear to have investigated the practical and legal uncertainty relating to the seizure of collateral on a reserve, nor was it clear that MBSG had the ability to pledge its assets. According to Shain, personal guarantees limited to $250,000 were obtained from Searle and Cook, the principals of MBSG and Four Directions, respectively, however, the guarantees were not secured and had no value from a security perspective for the reasons discussed in paragraph [201] above.

[224] Shain reported that there was no evidence of pre-funding due diligence relating to MBSG. While there were some sketches of the proposed gas stations and some invoices or estimates for the cost of the work, there were no forecasts, business plan, references or analysis of the risks associated with lending to a business on a First Nation reserve.

[225] Shain reported that FFI's advances to MBSG were for 100% of the costs of MBSG's projects.

(c) The Position of Staff

[226] Staff submits that the MBSG loan was unenforceable and was not secured. Staff's arguments will be discussed in further detail below.

(i) MBSG loan was unenforceable

[227] Staff submits that FFI's loan to MBSG was unenforceable because the personal property of an Indian located on a reservation cannot be used as collateral in a transaction with a non-Indian, nor can a judgment creditor garnish or execute against the assets of a judgment debtor who is a status Indian holding the property in question on reservation lands.

[228] In support of its position, Staff refers to section 88 of the *Indian Act*, R.S.C. 1985, c. I-5, as amended (the "**Indian Act**"), for the proposition that provincial laws of general application apply to Indians in the province to the extent that these laws do not conflict with the Indian Act, in which case the Indian Act prevails.

[229] Staff also refers to subsection 89(1) of the Indian Act which, according to Staff, operates as an exception to the application of provincial personal property security laws by shielding the personal property of status Indians situated on reserve lands from seizure, attachment, distress or garnishment in favour or at the instance of a non-Indian (*McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] 2 S.C.R 846, at paras. 5 and 38). In Staff's submission, the elements of subsection 89(1) of the Indian Act must be fully satisfied to protect a status Indian's reserve-based property from civil process. They are (i) the Indian or band must have status under the Indian Act; (ii) the property must be situated on a reserve; and (iii) the security interest, attachment, levy, seizure and distress or execution must not be in favour of or at the instance of a non-Indian (*Alberta (Workers' Compensation Board) v. Enoch Band*, [1993] A.J. No. 576 (Alta. C.A.) at paras. 14 to 18). Staff also submits that transactions structured to avoid the provisions of subsection 89(1) of the Indian Act are unenforceable (*Benedict v. Ohwistha Capital Corp.*, [2011] O.J. No. 31 at para. 22).

[230] Staff submits that FFI's GSA with Searle, carrying on business as MBSG, is unenforceable under subsection 89(1) of the Indian Act, as Searle was a status Indian, all of his property or property in the name of MBSG secured by the GSA was on the reservation, and the GSA was in favour of FactorCorp which is not a status Indian.

[231] As to tangible property, it is Staff's submission that Searle acknowledged that neither he nor MBSG had any property that would be subject to seizure under the GSA. Furthermore, Staff submits that there is no suggestion that any tangible property Searle held was held or stored off reserve lands.

[232] Staff submits that the only assets held by MBSG were forms of intangible property, debts secured by the pledges and GSAs relating to the gas station entities as well as MBSG's bank account. Staff submits that any debts due to MBSG would have been payable to MBSG's bank account on the reservation.

[233] Staff takes the position that, regardless of any other shortcomings under provincial personal property security regimes, the GSA between FFI and MBSG was evidently rendered unenforceable by subsection 89(1) of the Indian Act.

[234] Staff submits that, as a practical matter, the transaction structure agreed to by FFI to "secure" repayment could have easily and legally been defeated. By way of example, Staff submits that Searle could have refused to repay FFI while enforcing his security against the entities owning the gas stations. FFI could have successfully sued MBSG, but it would not have been able to execute the judgment because of subsection 89(1) of the Indian Act. It is Staff's submission that FFI was completely reliant on Searle's goodwill and had no legal security.

(ii) MBSG loan was not properly registered

[235] Staff further submits that the MBSG loan was not properly secured or registered. Assuming that FFI's security interest "attached" to MBSG's collateral, which assumes that the mere listing of the project numbers without actual addresses was sufficient to describe the gas station collateral, it is Staff's position that FFI did not perfect its interest by registering it under the PPSA in Ontario or the relevant statute in the State of New York. In addition, MBSG's GSAs with the gas station entities were never registered.

[236] Staff submits that the effect of perfection under the PPSA is that the secured party's interest in the debtor's collateral takes priority over other creditors, including unperfected secured creditors and the debtor's trustee in bankruptcy.

[237] Staff submits that had either of the gas station owners declared bankruptcy, MBSG would have ranked behind perfected secured creditors. Staff also submits that, had MBSG declared bankruptcy, FFI would have ranked behind perfected secured creditors and, furthermore, it would have been unable to directly enforce MBSG's security interest as a result of the provisions in the Indian Act.

(d) The Position of Twerdun

[238] According to Twerdun, Searle explained in his voluntary interview that his role for the last two decades was to act a "go between", to enforce security in Indian-related transactions and to collect debt and even assume control of debtors if necessary.

[239] Twerdun submits that Staff made reference to unrelated, out of context, case law that did not apply because Searle was able to collect from Indians. Twerdun submits that Searle acted for other parties in the same capacity as that for which FactorCorp had engaged him from 2007 to 2010.

[240] Twerdun submits that the funds FFI loaned to MBSG were guaranteed by Searle and Cook. Twerdun argues that both gas stations were built and are currently in operation. In Twerdun's submission, the gas stations, not including the land, were valued at approximately $1.7 to $2.1 million. Twerdun submits that, when Searle realized that KPMG was on a "witch hunt" and FactorCorp was bankrupt as a result of the actions of Farm Mutual, Searle looked for a means to take advantage of the situation. It is Twerdun's position that, if the Companies had been left in his control without the influence of KPMG or the Commission, the recovery outcome would have been optimized instead of minimized.

[241] Twerdun acknowledges that a GSA was signed but not registered as a result of the provisions of the Indian Act. According to Twerdun, FactorCorp would be able to enforce its security through MBSG and the guarantee provided by Searle. Twerdun points out that Searle also co-signed the promissory and demand notes which Twerdun submits were utilized to ensure that, if Searle did not act when required to enforce the security, FactorCorp could affect his credit rating as well as his ability to obtain corporate and personal financing.

(e) Findings

[242] I find that the loan transactions involving MBSG reflected what can only be described as a shocking dereliction by the Respondents of their duties to the investors. FFI made loans to MBSG aggregating approximately $1.7 million, the proceeds of which were used to finance the construction of two gas stations, at least one of which was to be located on the U.S. side of the Akwesasne Mohawk reserve, and to fund a fuel distribution service to gas stations located on reserves in Canada and the U.S. MBSG used the services of an intermediary, purportedly to assist in obtaining security on an Indian reserve. In fact, the loans were (i) entirely inappropriate, given the loan criteria represented to investors; (ii) totally unsecured and largely undocumented; and (iii) for the full amount of the expenses to be incurred, contrary to the representations of the Respondents to investors.

4. FFI's Loan Transactions

(a) Staff's Submissions

[243] Staff made submissions with respect to the following three additional loan transactions:

(a) The loan of $700,000 by FFI to Integra Investment Services Ltd. ("**Integra**") in June 2004 in connection with a larger loan in the amount of $2,500,000, the proceeds of which were used to discharge certain mortgages and the development of a property in British Columbia;

(b) The establishment by FFI of a revolving loan in favour of Sydcom Wireless Corp. ("**Sydcom**") in the principal amount of approximately $675,000 on February 14, 2007 which was intended to refinance a previous loan in the principal amount of $600,000 to Randy Aquino and Geraldine Borromeo, the principals of Sydcom; and

(c) The loan of approximately $9.3 million by FFI to Forbes Hutton Financial Inc. ("**Forbes Hutton**") in November 2004.

[244] Staff submits that the evidence demonstrates that none of the loan transactions described in paragraph [243] above was secured and that both Integra and Sydcom ceased operations when they became insolvent.

(b) Twerdun's Submissions

[245] Twerdun's submissions regarding the three loans transactions can be summarized as follows:

(a) With respect to the loan by FFI to Integra, Twerdun submits that FactorCorp received a "fully secured first mortgage" of the property, however, this mortgage "failed due to bankruptcy". He also submits that the low recovery of only $300,000 in this case was due to the fees of over $300,000 incurred by the Trustee and the "typical bankruptcy discounting by so called professional Trustees";

(b) With respect to the loan by FFI to Sydcom, Twerdun submits that it was always FactorCorp's intention to secure itself. He submits that this is evidenced by, for example, the GSAs between FFI and Sydcom dated December 5, 2005 and February 14, 2007 and the assignment of security dated February 14, 2007 in evidence; and

(c) With respect to the loan by FFI to Forbes Hutton, Twerdun submits that it was not his intention to enforce securities on sweepstake machines in the U.S. but to focus on the guarantee provided by Arnold Milan who is in Twerdun's submission a "multi millionaire who still resides in a multimillion dollar home, drives several exotic automobiles, and controls several business domestically and internationally".

(c) Expert Evidence

[246] Shain provided the opinion that, in general, FactorCorp operated without basic prudent lending practices, and without due regard to the statements that it made in the OMs and Promotional Materials as to the nature of the loans, the adequacy of the collateral and security and risk management practices.

[247] Shain reported that, notwithstanding the fact that the OMs and Promotional Materials represented that the investors' funds would be invested in short-term loans, i.e. loans having a term of one year or less, three of FactorCorp's 12 loans were for three years and represented 21.9% of the dollar volume of the loan portfolio. FactorCorp also made two loans representing 11.7% of the loan portfolio to two leasing companies whose underlying assets were leases with terms from three to seven years. Although the loans were technically payable on 90 days' notice, in reality this could not have been achieved given the length of the terms of the leases.

[248] Shain also reported that there was no tangible security for several direct loans made by FFI including the loans to Sydcom, MBSG/Four Directions and Ice Planet. Further, she opined that FactorCorp failed to ensure that certain Borrowers who were sub-lenders tangibly secured their loans in the manner described in the OMs and Promotional Materials. According to Shain, there was no evidence of any loan granted by FactorCorp or its Borrowers that was over-collateralized with a collateral mortgage on residential real estate. Shain also observed that FactorCorp did not require the Borrowers to place their own capital (or any capital) behind its advances, funding in effect 100% of the underlying loans that would be available to repay advances. It was therefore vulnerable to sub-lender credit error.

[249] In her report, Shain stated that the due diligence undertaken with respect to prospective borrowers "ranged from incomplete in some cases to virtually nil in others". There was "no evidence of a Credit Application, standard due diligence, stress testing, analysis or Credit Committee/Advisory board meetings or minutes in any of the files". She further stated that FFI did not obtain or review regular reports to ensure that collateral coverage remained adequate and that underlying loans were current, nor did FFI monitor the reports received or follow-up on end-client delinquencies. FactorCorp did not maintain basic credit files and failed to have real estate collateral independently valued before advancing funds.

[250] Shain observed that, with the exception of ECS, there were no financial statements that pre-dated the initial loans to any clients. She recognized that FCB, MBSG, Ice Planet and four other companies were start-ups and had no history. These companies contributed to the heavy weighting in favour of unproven businesses which was in itself a significant risk factor.

[251] Shain also reported that, of the sub-lenders reviewed, only Lease Capital Corporation of Canada, Romco Capital Partners ("**Romco**")/Capmor Financial Services Group ("**Capmor**") and CanFactor Inc. appeared to have used advance rates for

their respective borrowers that were consistent with industry standards, however, they were outside the 70% loan to value ratio described in the OMs. It was impossible for her to determine what advance rates, if any, were used by ECS, Forbes Hutton and FCB for their respective borrowers.

(d) Findings

[252] I find that the loans to Integra, Sydcom and Forbes Hutton were unsecured and both Integra and Sydcom became insolvent thereby precluding any recovery given the absence of security.

VII. ANALYSIS

A. Did FFI fail to file the OMs with the Commission in accordance with section 4.3 of Rule 45-501, subsequently amended on September 14, 2005 to section 6.4 of Rule 45-501, contrary to subsection 122(1)(c) of the Act?

1. The Law

[253] In Ontario, there is no obligation to prepare an offering memorandum for use in connection with a trade or distribution made in reliance on the accredited investor exemption. However, if an offering memorandum is delivered to a prospective investor in connection with a trade or distribution made in reliance on the accredited investor exemption, a copy must be filed with the Commission. During the Material Time, this requirement was set out in section 4.3 of Rule 45-501 and, following the amendment to Rule 45-501 on September 14, 2005, in section 6.4 of Rule 45-501 (see also Part 4 of the Companion Policy 45-501CP – To OSC Rule 45-501 ("**45-501CP**") prior to September 14, 2005 and Part 5 of 45-501CP following September 14, 2005).

[254] From January 1, 2004 to September 13, 2005, section 4.3 of Rule 45-501 provided as follows:

> **4.3 Delivery of Offering Memorandum to Commission** – If an offering memorandum is provided to a purchaser of securities in respect of a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3 [the accredited investor exemption], 2.12 or 2.13, the seller shall deliver to the Commission a copy of the offering memorandum or any amendment to a previously filed offering memorandum on or before 10 days of the date of the trade.

[255] Following the amendment on September 14, 2005, Part 6 of Rule 45-501 governs the use of offering memoranda in distributions made in reliance on the accredited investor exemption from the prospectus requirement set out in section 2.3 of NI 45-106. Section 6.4 of Rule 45-501 requires that an offering memorandum be filed with the Commission as follows:

> **6.4 Delivery of offering memorandum** – If an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Commission a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.

[256] Staff alleges that FFI's failure to file the OMs was a contravention of Ontario securities law under subsection 122(1)(c) of the Act. Subsection 122(1)(c) of the Act states that "Every person or company that,…contravenes Ontario securities law, is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both".

2. Analysis

[257] No issue was raised with respect to the provision of the OMs to investors by FFI in connection with its sale and distribution of the Debentures in reliance on the accredited investor exemption from the prospectus requirement. Accordingly, pursuant to section 4.3 of Rule 45-501, and subsequently section 6.4 of Rule 45-501 following the amendment on September 14, 2005, FFI was required to file copies of the OMs with the Commission.

[258] Based on the section 139 certificates introduced into evidence by Staff, I find that FFI failed to file any offering memorandum with the Commission during the Material Time in accordance with section 4.3 of Rule 45-501, subsequently amended to section 6.4 of Rule 45-501 on September 14, 2005, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

B. Did the Companies make materially misleading or untrue statements in the OMs which are documents required to be filed or furnished under Ontario securities law, contrary to subsection 122(1)(b) of the Act?

1. The Law

[259] Subsection 122(1)(b) of the Act relates to the making of materially misleading or untrue statements in documents required to be filed with the Commission under the Act. It provides that:

> 122. (1) Offences, general – Every person or company that,
>
> …
>
> (b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;…
>
> …
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[260] The Act does not define the words "in a material respect". Commission case law has established that the words "in a material respect" impose a standard of materiality against which an impugned statement is to be judged (*Re Biovail Corp.* (2010), 33 O.S.C.B. 8914 ("***Biovail***") at para. 63). According to the Commission in Biovail:

> … the assessment of the materiality of a statement is a question of mixed fact and law that requires a contextual determination that takes into account all of the circumstances including the size and nature of the issuer and its business, the nature of the statement and the specific circumstances in which the statement was made.
>
> (*Biovail*, *supra*, at para. 69)

[261] In *Biovail*, the Commission held that it is appropriate to apply the reasonable investor standard to assess whether statements made in a news release, which was a disclosure document relied on by investors in making investment decisions, were misleading or untrue in a material respect. The Commission noted that the reasonable investor standard is "an objective test and applying it is ultimately a matter of judgment to be exercised in light of all of the relevant circumstances" (*Biovail*, *supra*, at para. 80). The reasonable investor standard has been articulated by the Commission as follows:

> … we will treat a statement as material if there is a substantial likelihood that a reasonable investor would consider the statement to be important in making an investment decision. By an investment decision, we mean a decision to buy, sell or hold shares. That will require us to determine whether the statement or omission would have assumed actual significance to a reasonable investor.
>
> (*Biovail*, *supra*, at para. 74)

[262] Staff submits that a due diligence defence under subsection 122(2) is not available to the Respondents. The subsection states that:

> **122(2) Defence** – Without limiting the availability of other defences, no person or company is guilty of an offence under clause (1)(a) or (b) if the person or company did not know and in the exercise of reasonable diligence could not have known that the statement was misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the statement not misleading in light of the circumstances in which it was made.

2. Analysis

[263] In paragraphs [257] and [258] above, I found that the OMs were documents that were required to be filed under Ontario securities law. Accordingly, the making of materially misleading or untrue statements in the OMs would contravene subsection 122(1)(b) of the Act.

[264] As described in paragraph [82] above, some of the OMs were used in 2003, which was prior to the Material Time. However, as found in paragraph [83], I am satisfied that there were only minor differences between the various versions of the OMs and there is no evidence of any substantive amendments having been made to the form or forms in use during the Material Time. The statements with which Staff takes issue were consistent throughout the OMs and were made throughout the Material Time.

[265] The Respondents represented in the OMs throughout the Material Time that the proceeds derived from the sale of the Debentures would be used in factoring, asset-backed lending and leasing or similarly secured short-term loan transactions with tangible securities. The following are paraphrased summaries of other key representations by FFI in the OMs:

(a) Temporary loan transactions would be limited to circumstances in which there are independent valuations by conservative industry sources (e.g., real estate and equipment appraisers, tax valuations, etc.) based on either liquidation value or a conservative advance rate (e.g. 70%) of market value.

(b) FFI would utilize an assortment of proprietary financial structures, security, credit determinations and administrative procedures to ensure that its funds are used to build a profitable portfolio at acceptable risk.

(c) Specific security requirements will generally consist of elements of (i) GSAs registered in the first position over the receivables financed; (ii) acknowledgement/priority agreements from the current PPSA registrants; (iii) personal guarantees of the principal shareholders; (iv) collateral mortgages on residences, chattel mortgages on specific equipment, irrevocable letters of direction over cash receipts such as tax receivables; and (v) government or insurance company covenants or guarantees.

[266] As stated in the OMs, FFI's business was established to provide an investment opportunity primarily for "high net worth clients looking for a means of substantially increasing return on investment that has negligible stock market correlation". When addressing risk management practices, the OMs also stated the following:

> Recognising the risks inherent in the factoring business, the Corporation will engaged [sic] several factoring operators whose expertise in commercial finance generally and factoring/secured lending in particular provides the Corporation with a level of assurance that the foregoing risks will be mitigated, and diversified, to the extent practicable in the operation of the business. Because the Manager will deploy capital into several factoring operations the risk will be significantly reduced.
>
> …
>
> Overseen by the Manager [FFI], the Corporation will utilize an assortment of proprietary financial structures, security, credit decisioning and administrative procedures to ensure that the Corporation's funds are used to build a profitable portfolio at acceptable risk.
>
> [Emphasis added.]

[267] As exemplified by my findings in paragraphs [181], [182], [211], [242] and [252] above relating to the transactions between FactorCorp and its Borrowers, including ECS, FCB and MBSG, the evidence in fact disclosed that most of the loans made by FFI (i) were not short-term; (ii) substantially exceeded any advance rate that would be considered prudential for the level of risk represented to the investors, including the 70% advance rate that FFI represented in the OMs that it would use; (iii) were routinely unsecured or inadequately secured by unenforceable or unperfected security instruments; and (iv) failed to meet the majority of the lending standards which FFI represented to investors would be employed and maintained. It is also clear that neither Twerdun nor FactorCorp took any meaningful steps to preserve or protect the assets that had been purportedly secured when it became evident that the Borrowers or the sub-lenders were in financial difficulty.

[268] Twerdun argues that he relied on counsel to ensure that security was taken, that the OMs were filed and that generally he and the Companies were compliant with Ontario securities law. Other than Twerdun's testimony, the documents that were placed into evidence show that Buchan-Terrell expressly disclaimed any advice in respect of the GSA taken by FFI from ECS and its legal effect. I was not presented with any further evidence about the precise nature of the advice that Twerdun might have received.

[269] Twerdun also argues that he relied on the Borrowers to (i) conduct the necessary due diligence in respect of the loans which they would make to their respective borrowers; (ii) obtain proper security; and (iii) engage in risk management. Twerdun's justification for his inadequate stewardship clearly does not apply to the direct loans made by FFI and clearly would not warrant the failure of oversight when he engaged sub-lenders to disburse the funds that were received from investors.

[270] There is no evidence before me that (i) the Companies generally undertook any meaningful due diligence to ensure the creditworthiness and reliability of the Borrowers; (ii) the Companies followed even minimal industry standards in documenting

and securing FFI's loans; or (iii) the Companies exercised appropriate oversight to ensure that the Borrowers complied with the undertakings relating to loans and security that they provided to Twerdun and the Companies. Most of the loans, including the loans to FCB, MBSG, Integra, Sydcom and Forbes Hutton, were effectively unsecured as illustrated by the evidence notwithstanding FFI's representations to investors about the quality of the assets against which it would lend and the nature of the security and advance rates that it would employ.

[271] The Companies also failed, as represented in the OMs, to oversee the loans and the financial condition of the Borrowers and ensure the maintenance of the value and enforceability of its security. The financing by ECS of approximately $15.0 million to finance the development of the Royal Reef Resort is an example of the failures by the Companies to oversee the use of funds advanced to its Borrowers and ensure that its Borrowers fulfilled their obligations to ensure the maintenance of the value and enforceability of their security.

[272] Given the nature of FactorCorp's business and the fact that sales of the Debentures appear to have been largely made on the basis of the contents of the OMs, reasonable investors would almost certainly have based their decisions to purchase Debentures, at least in substantial part, on the representations concerning security, oversight and risk set out in the OMs and, as a result, such statements were material at the time and in light of the circumstances under which they were made.

[273] Having concluded above that FFI failed to file the OMs as required under the Act and that the OMs were replete with statements that were misleading or untrue, I find that FFI made statements in documents required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, contrary to subsection 122(1)(b) of the Act and contrary to the public interest.

[274] With respect to the due diligence defence, I find that the defence is not available to the Companies. Twerdun's attempts to rebut Staff's allegations relating to the conduct by the Companies of their business including, in particular, the loan transactions between FFI and the Borrowers and the loan transactions between certain of the Borrowers and the sub-lenders, are totally without merit. In reality, Twerdun and FFI knew and in the exercise of reasonable diligence would have known that the statements repeatedly made to investors were untrue in a material respect at the time and in the circumstances made. As a result, I find that FFI is not entitled to the benefit of a due diligence defence.

C. Did the Companies make materially misleading or untrue statements in the Promotional Materials, contrary to subsection 126.2(1) of the Act?

1. The Law

[275] Subsection 126.2(1) of the Act provides that:

> **126.2 (1) Misleading or untrue statements** – A person or company shall not make a statement that the person or company knows or reasonably ought to know,
>
> (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
>
> (b) would reasonably be expected to have a significant effect on the market price or value of a security.

2. Analysis

[276] Subsection 126.2(1) of the Act did not come into force until December 31, 2005 and, accordingly, does not apply to any statements made by the Companies in the Promotional Materials prior to that date. Notwithstanding the foregoing, the evidence indicates that the Promotional Materials were used during, and prior to, the Material Time.

[277] The Promotional Materials include statements that were clearly intended to induce prospective investors to purchase Debentures by representing that FactorCorp would employ what can only be described as exemplary standards of diligence, documentation and security. The following extracts from the Promotional Materials cited by Staff in their written submissions and by Shain in her report are examples:

> "Asset based lending involves the securing of a loan with pristine assets. For example a home worth $500,000 could be used to secure a $200,000 loan and in addition, personal guarantees would be obtained as well."
>
> "For every investor dollar we manage we hold $1.63 in security."

> "The Corporation will consider other temporary loans where there is alternative and strong tangible security such as collateral mortgages on principal residences, chattel mortgages on manufacturing equipment, etc. In all such cases, the temporary advances are limited to circumstances in which there are available independent valuations by conservative industry sources (e.g., real estate and equipment appraisers, tax valuations, etc.) based on either liquidation values or a conservative advance rate (e.g., 70%) of market value."
>
> "FactorCorp is 100% secured by assets such as cash, SRED Government receivables, Federal and Provincial Government receivables, EDC Government Program, mutual funds, GICs, property, machinery, general security agreements, personal guarantees, contracts, etc."

[278] It is quite clear from the evidence summarized above that the Companies were not diligent and did not follow even minimal industry standards in documenting and securing the loans made to the Borrowers and ensuring that the same standards were followed in connection with the loans made by the Borrowers to the sub-lenders. For essentially the same reasons as are described in paragraphs [267] to [273] above, I find that the statements made by the Companies in the Promotional Materials were material to investors and that, from the outset, the Companies knew or reasonably ought to have known that many of their statements were, in a material respect and at the time and in the light of the circumstances under which they were made, misleading or untrue.

[279] As the statements made by the Companies in the Promotional Materials were designed to induce the investors to purchase Debentures and given my finding above that many of the statements were, in a material respect and at the time and in the light of the circumstances under which they were made, misleading or untrue, it follows that, had the investors known that such statements were untrue in a number of material respects, the Debentures would have had no value. As a result, the statements described in paragraph [277] above and many others of a similar nature in the Promotional Materials breached subsection 126.2(1) of the Act, contrary to the public interest.

D. Did FFI or Twerdun breach the Temporary Order, contrary to subsection 122(1)(c) of the Act?

1. The Law

[280] As set out in paragraph [256] above, subsection 122(1)(c) of the Act provides that:

> 122. (1) Offences, general – Every person or company that,
>
> …
>
> (c) contravenes Ontario securities law,
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[281] In *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***"), the Commission held that a breach of a temporary cease trade order is contrary to subsection 122(1)(c) of the Act. In that case, the Commission stated that:

> "Ontario securities law" is defined in subsection 1(1) of the Act to include "… in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject." The First Temporary Order and the Amended Temporary Order constitute decisions of the Commission under section 127 of the Act. Accordingly, any breach by the Respondents of the First Temporary Order or the Amended Temporary Order contravenes Ontario securities law.
>
> (*Limelight*, *supra*, at para. 200)

2. Analysis

[282] Staff alleges that, on July 13, 2007, FFI and Twerdun breached the Temporary Order by redeeming certain FFI securities. The relevant terms of the Temporary Order that was in force on that day, which was the initial Temporary Order issued by the Commission on July 6, 2007 pursuant to section 127 of the Act and would remain in force, unless extended, for 15 days after its making, were as follows:

> **IT IS HEREBY ORDERED** that, pursuant to subsection 127(5) of the Act that:
>
> …
>
> (c) pursuant to paragraph 127(1)1 of the Act, the following terms and conditions are imposed on the registration of FactorCorp and Twerdun, effective immediately:
>
> (i) Twerdun, FactorCorp and any company controlled, directly or indirectly, by Twerdun, and FactorCorp including but not limited to FactorCorp Financial, are prohibited from making redemptions and participating in or acquiescing to any act, directly or indirectly, in furtherance of a redemption of securities of FactorCorp and FactorCorp Financial;
>
> …

[283] At the hearing on the merits, Twerdun admitted in his evidence to causing FFI to make an electronic funds transfer on or about July 12, 2007 to repay certain investors the aggregate amount of $724,287.53. Twerdun's admission is consistent with banking statements and records introduced into evidence by Staff which show that 10 investors were paid an aggregate amount of $724,287.53 on July 13, 2007.

[284] Twerdun explained in his evidence that the foregoing repayment related to the redemption of "cash-backed securities" issued by FactorCorp. He takes the position, however, that the "cash-backed securities" were distinct from the Debentures and their redemption did not constitute a breach of the Temporary Order. More specifically, he testified that:

> The repayment of the cash-backed securities, or CBSes, on July 12th, 2007 I do not feel is a breach of the order. The monies were distributed to the rightful investors. CBSes were an investment distinct from the other assets of FFI. It had its own OM, had its own subscription, had its own security and was distinct and had quarterly interest payment frequency as opposed to the monthly that the main fund had. This issue was discussed with counsel before processing. It had no impact or relevance to the general FFI debenture holders.
>
> (Hearing Transcript dated October 17, 2011 at pp. 22 and 23)

[285] The terms of the Temporary Order made on July 6, 2007, which was in force on July 12 and 13, 2007 when Twerdun caused FFI to redeem the "cash-backed securities", prohibited Twerdun and FFI from "making redemptions and participating in or acquiescing to any act, directly or indirectly, in furtherance of a redemption of securities of FactorCorp and FactorCorp Financial" [emphasis added]. In other words, the Temporary Order prohibited Twerdun and FFI from redeeming any of the securities that had been issued by FFI, including the "cash-backed securities".

[286] One of the purposes of the Temporary Order issued in this case, as Twerdun acknowledged in an affidavit that he swore on July 16, 2007 in support of his application to vary or set aside the Temporary Order pursuant to sections 144 and 127 of the Act, was to "create a better opportunity to achieve a fair and orderly repayment to the holders of all Repayment Debentures and to protect the interests of all other Debentureholders" (Affidavit of Twerdun sworn July 16, 2007 at para. 26). I accept Staff's submission that FFI's redemption of the "cash-backed securities", which was caused by Twerdun, violated the Temporary Order.

[287] Twerdun also asserted in his evidence that he discussed the issue of redeeming the "cash-backed securities" with his counsel, however, I was not provided with further evidence in support of this assertion, including the nature of such discussions. Accordingly, I am not satisfied that Twerdun can avail himself of this defence.

[288] For the foregoing reasons, I find that Twerdun breached the Temporary Order, which breach was contrary to subsection 122(1)(c) of the Act and was contrary to the public interest.

E. Did Twerdun, as the sole officer and director of the Companies, authorize, permit or acquiesce in the Companies' contraventions of Ontario securities law and is he therefore responsible for such contraventions pursuant to subsection 122(3) or section 129.2 of the Act?

1. The Law

[289] Pursuant to subsection 122(3) and section 129.2 of the Act, a director or officer is deemed to be liable for a breach of Ontario securities law by an issuer when the director or officer authorizes, permits or acquiesces in the issuer's non-compliance with the Act.

[290] A "director" is defined in subsection 1(1) of the Act to include "a person acting in a capacity similar to that of a director of a company".

[291] An "officer" is defined in the same section of the Act to mean "the chair, any vice-chair of the board of directors, the president, any vice president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant".

[292] Subsection 122(3) of the Act, which applies to directors or officers of a company that contravened subsection 122(1) of the Act, provides that:

> **122(3) Directors and officers** – Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[293] Section 129.2 of the Act, which applies to directors or officers of a company that fail to comply with Ontario securities law, states that:

> **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.

[294] In *Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***"), the Commission discussed the meaning of the terms "authorize", "permit" and "acquiesce" and the threshold for liability as follows:

> 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 [in] 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*, *supra*, at para. 118)

2. Analysis

[295] Twerdun was the sole director and officer of the Companies. He was responsible for ensuring that the OMs were filed with the Commission in accordance with Rule 45-501 and failed to do so. He further failed to ensure that the statements made in the OMs and Promotional Materials were not materially untrue or misleading despite the fact that, as Shain indicated in her report, Twerdun, as the sole director and officer, both sourced and adjudicated his own lending opportunities and knew or should have known that the statements made in the OMs and the Promotional Materials did not reflect the true state of his loan portfolio. In addition, Twerdun authorized FFI's breach of the Temporary Order by directing the redemption of securities issued by FFI.

[296] For the foregoing reasons, I find that Twerdun authorized, permitted or acquiesced in the Companies' contraventions of subsections 122(1)(b), 122(1)(c) and 126.2(1) of the Act and therefore contravened subsection 122(3) of the Act and is deemed to have failed to comply with Ontario securities law under section 129.2 of the Act.

F. Did Twerdun make materially misleading or untrue statements to the Commission, contrary to subsection 122(1)(a) of the Act?

[297] Subsection 122(1)(a) provides that:

> **122. (1) Offences, general** – Every person or company that,
>
> (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[298] I did not receive submissions from the parties regarding the application of subsection 122(1)(a) of the Act to misleading or untrue statements made during a hearing before the Commission. In the absence of such submissions and given my findings on the other issues, I do not find it necessary to make findings under subsection 122(1)(a) of the Act.

G. Did FFI and Twerdun fail to ensure that investors were entitled to rely on the accredited investor exemption, contrary to the public interest?

1. The Law

[299] Prior to September 14, 2005, the accredited investor exemption, which was set out in section 2.3 of Rule 45-501, stated that:

> **2.3 Exemption for a Trade to an Accredited Investor** – Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal.

[300] The term "accredited investor" was defined in section 1.1 of Rule 45-501 to include:

> (p) a promoter of the issuer or an affiliated entity of a promoter of the issuer;
>
> (q) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer;
>
> (r) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;
>
> (s) an issuer that is acquiring securities of its own issue;
>
> …
>
> (aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

[301] S everal categories of accredited investors set out in section 2.3 of Rule 45-501 made reference to the term "promoter" and "distribution". These terms were defined in subsection 1(1) of the Act as follows:

> "distribution", where used in relation to trading in securities, means,
>
> …
>
> (c) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20 per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer.

"promoter" means,

(a) a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

(b) a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

[302] The term "affiliated entity" was defined in section 1.2 of Rule 45-501 as follows:

1.2 Interpretation — (1) In this Rule a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other, or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.

(2) In this Rule a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

…

(3) In this Rule a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more persons or companies each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

[303] Section 3.1 of 45-501 CP provided guidance regarding the due diligence that must be exercised by the seller to satisfy its obligations when relying on the accredited investor exemption:

3.1 Seller's Due Diligence — It is the seller's responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller's reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect. In circumstances

> where a seller has recently obtained a statutory declaration or a written certification from a purchaser with whom a further trade is being made on an exempt basis, the seller may continue to rely upon the recently obtained statutory declaration or certification unless the seller has reason to believe that the statutory declaration or certification is no longer valid in the circumstances.
>
> [Emphasis added.]

[304] After September 14, 2005, the accredited investor exemption was set out in section 2.3 of NI 45-106 which provides that:

> **2.3 Accredited investor** – (1) The dealer registration requirement does not apply in respect of a trade in a security if the purchaser purchases the security as principal and is an accredited investor.
>
> (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

[305] The definition of "accredited investor" set out in section 1.1 of NI 45-106 following September 14, 2005 no longer makes reference to "promoter" or "affiliated entity" of an issuer. However, it does include:

> (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors

2. Analysis

[306] The evidence shows that the Debentures were sold to investors pursuant to the accredited investor exemption.

[307] Staff introduced into evidence Accredited Investor Certificates which included a certification by the Debenture holders that they qualified as accredited investors based on certain criteria. Staff also provided a "Summary Sheet of Accredited Investor Due Diligence", supported by the Accredited Investor Certificates, which shows the number of Debentures holders who selected one or more of the criteria. In particular, the summary shows that:

(a) Thirty five investors whose investments totaled $1,974,286 represented that they were accredited investors within the meaning of criterion (p) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates as "a promoter of [FFI] or an affiliated entity of a promoter of [FFI]";

(b) Two investors whose investments totaled $100,000 represented that they were accredited investors within the meaning of criterion (q) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates as "a spouse, parent, grandparent or child of an officer, director or promoter of [FFI]";

(c) Two investors whose investments totaled $125,000 represented that they were accredited investors within the meaning of criteria (p) and (q) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates in the manner set out in subparagraphs (a) and (b) above;

(d) Twelve investors whose investments totaled $685,000 represented that they were accredited investors within the meaning of criterion (r) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates as "a person or company that, in relation to [FFI], is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the [Act]";

(e) Two investors whose investments totaled $100,000 represented that they were accredited investors within the meaning of criterion (s) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates as "[FFI], where it is acquiring securities of its own issue";

(f) One investor whose investment totaled $50,000 represented that he or she was an accredited investor within the meaning of criteria (r) and (s) of the accredited investor definition in the pre-amended Rule 45-501, described in the Accredited Investor Certificates in the manner set out in subparagraphs (d) and (e) above; and

(g) Five investors whose investments totaled $250,000 represented that they were accredited investors within the meaning of criterion (aa) of the accredited investor definition in the pre-amended Rule 45-501, and one investor whose investment totaled $35,000 represented that he or she was an accredited investor within the

> meaning of criterion (t) of the accredited investor definition in NI 45-106 following the amendment, described in the Accredited Investor Certificates as "a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors".

[308] Although Twerdun testified that he reviewed the Accredited Investor Certificates, he admitted that he only reviewed them for "completion, not for content" (Hearing Transcript dated October 17, 2011 at p. 49). More specifically, he testified that:

> Only reviewed for completeness in terms of, you know, name, address, signatures, phone numbers, accredited investor certificate, the category had been selected, and that page A4 had a signature and a witness signature of the dealer who had recommended this and accepted it.
>
> (Hearing Transcript dated October 17, 2011 at p. 52)

[309] Twerdun also submits that he relied on Farm Mutual to ensure that the Debenture holders qualified as accredited investors and points to the following sections of the Distribution Agreement between FFI and Farm Mutual as support for his submission:

> 2.0 **Solicitations** During the term of this agreement, the Dealer[11] shall permit appointed Associates, who have met the Dealers criteria, to solicit or otherwise cause sales of the Suppliers'12[12] product to the Dealers' clients, who meet the accredited investor criteria, as defined by the Commission, the commissions laws of regulations.
>
> …
>
> 2.2 **Compliance**. The Dealer agrees to take all steps necessary to ensure that products of the Supplier are sold by the Dealers' Associates in accordance with the terms of this agreement and further agree that each will cooperate in all actions and measures, including any disciplinary procedures, undertaken by the Dealer to ensure compliance with the same.

[310] In my view, it should have been obvious to Twerdun, a registrant for more than 12 years, that the criteria selected by certain investors were clearly inappropriate. Twerdun was the sole founder and the majority shareholder of FFI. As Staff submits, Twerdun was the "only person that could have possibly qualified as a 'promoter'". As Twerdun was also the sole director and officer of FFI, it should have been readily apparent to him that:

(a) Where an investor relied on criterion (p), the investor was not Twerdun or an affiliated entity of Twerdun;

(b) Where an investor relied on criterion (q), the investor was not Twerdun's spouse, parent, brother, sister, grandparent or child;

(c) Where an investor relied on criterion (r), the investor was not an affiliated entity of FFI, nor did he or she hold a sufficient number of securities of FFI to affect materially the control of FFI;

(d) Where an investor relied on criterion (s), the investor was not FFI acquiring securities of its own issue; and

(e) Where an investor who was a natural person relied on criterion (aa) (or criterion (t) after September 14, 2005), this criterion only applied to non-natural person as it contemplated ownership of the person.

[311] Pursuant to section 3.1 of 45-501CP, where the basis of an investor's qualification as an accredited investor was on its face incorrect and warranted further investigation, Twerdun was not entitled to continue to rely on the certification by the investor.

[312] During cross-examination, Staff put to Twerdun the summary and subscription documents of a number of investors and asked Twerdun whether those investors qualified as accredited investors based on the criterion or criteria that they selected. In all instances, Twerdun acknowledged that the investors did not fall within the category or categories of accredited investors that they selected.

[313] I accept Staff's submission that FFI and Twerdun could not contract out of their responsibilities to ensure the applicability of the exemption. In *Re White* (2010), 33 O.S.C.B. 1569 ("***White***"), WNBC The World Network Business Club Ltd. ("**WNBC**"), one of the corporate respondents, was the issuer of the securities at issue. Capital Investments of America ("**Capital Investments**"), another corporate respondent, contracted with WNBC to invest money in foreign exchange markets and other markets using money raised by WNBC. In an agreement between WNBC and Capital Investments, WBNC represented to Capital Investments and its sole owner Naveed Qureshi ("**Qureshi**") that investors were "qualified, sophisticated and

[11] The Dealer is defined in the Distribution Agreement as Farm Mutual.
[12] The Supplier is defined in the Distribution Agreement as FFI.

knowledgeable investors". The Commission held that Qureshi was not entitled to rely on the accredited investor exemption because:

> The responsibility for ensuring that the requirements of an exemption are met is the responsibility of the person seeking to rely on the exemption. Therefore, Qureshi cannot rely on his assumption about investors nor the agreement between Capital Investments and WNBC that he thought the investors were accredited investors.
>
> (*White*, *supra*, at para. 161)

[314] I find that the principle articulated in *White* is applicable to the present case and that Twerdun's reliance on the Distribution Agreement with Farm Mutual was not sufficient to satisfy the responsibility to ensure that the accredited investor exemption was available to the Debenture holders.

[315] For the reasons above, I find that FFI and Twerdun's failure to ensure that the investors were entitled to rely on the accredited investor exemption was contrary to the public interest.

VIII. CONCLUSION

[316] For the reasons stated above, I find as follows:

(a) FFI used the OMs in connection with the sale and distribution of FFI securities and accordingly was required to file them with the Commission in accordance with section 4.3 of Rule 45-501, subsequently amended on September 14, 2005 to section 6.4 of Rule 45-501. FFI failed to file the OMs with the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

(b) The Companies made materially misleading or untrue statements in the OMs which were used in connection with the sale and distribution of FFI's securities and were therefore documents required to be filed with the Commission, contrary to subsection 122(1)(b) of the Act and contrary to the public interest.

(c) The Companies made materially misleading or untrue statements in the Promotional Materials, contrary to subsection 126.2(1) of the Act and contrary to the public interest.

(d) FFI and Twerdun breached the Temporary Order by redeeming certain FFI securities on July 13, 2007, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

(e) Twerdun, as the sole director and officer of the Companies, authorized, permitted or acquiesced in their contraventions of subsections 122(1)(c), 122(1)(b) and 126.2(1) of the Act, and is therefore liable for these contraventions pursuant to subsection 122(3) and section 129.2 of the Act.

(f) Twerdun failed to ensure that investors were entitled to rely on the accredited investor exemption, contrary to the public interest.

[317] I will also issue an order dated February 22, 2013 which sets down the dates for the hearing with respect to sanctions and costs in this matter.

Dated at Toronto this 22nd day of February, 2013.

"Christopher Portner"

3.1.2 Majestic Supply Co. Inc. et al. – s. 127

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC., SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP, MARY KRICFALUSI,
KEVIN LOMAN and CBK ENTERPRISES INC.

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing: November 7, 9-11, 14-17, 28-29, 2011 and May 18, 2012

Decision: February 21, 2013

Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Appearances:	Derek Ferris	–	For Staff of the Ontario Securities Commission
	Kevin Richard	–	For Kevin Loman
	Andrew Furguiele	–	For Herbert Adams
	Unrepresented	–	Steve Bishop, Mary Kricfalusi, Majestic Supply Co. Inc., Suncastle Developments Corporation and CBK Enterprises Inc.

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REASONS AND DECISION

I. BACKGROUND

A. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**"), pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether Majestic Supply Co. Inc. ("**Majestic**"), Suncastle Developments Corporation ("**Suncastle**"), Herbert Adams ("**Adams**"), Steve Bishop ("Bishop**"),** Mary Kricfalusi ("**Kricfalusi**"), Kevin Loman ("**Loman**") and CBK Enterprises Inc. ("**CBK**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] The merits proceeding was commenced by a Statement of Allegations and Notice of Hearing dated October 20, 2010. Enforcement Staff of the Commission ("**Staff**") alleges that between November 30, 2005 and January 31, 2008 (the "**Material Time**"), Majestic Adams, Bishop and Loman sold Majestic shares from treasury contrary to the registration and prospectus requirements found in sections 25 and 53 of the Act and the Respondents sold previously issued Majestic shares contrary to subsections 25(1)(a) and 53(1) of the Act and contrary to the public interest.

[3] In addition, Staff alleges that Majestic, Adams, Bishop and Loman gave undertakings relating to the future value or price of Majestic shares with the intention of effecting sales of Majestic shares contrary to subsection 38(2) of the Act and made representations regarding the future listing of Majestic shares on an exchange with the intention of effecting sales of Majestic shares contrary to subsection 38(3) of the Act, both of which are contrary to the public interest.

[4] Staff also alleges that Adams, Kricfalusi and Bishop, as officers and directors of Majestic, authorized, permitted or acquiesced in violations of the Act by Majestic in contrary to section 129.2 of the Act and contrary to the public interest. Similarly, it is alleged that Adams and Kricfalusi, as officers and directors of Suncastle, authorized, permitted or acquiesced in violations of the Act by Suncastle contrary to section 129.2 of the Act and contrary to the public interest. Furthermore, Staff alleges that Majestic failed to file a report of exempt distribution of Majestic shares with the Commission, contrary to section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

[5] The hearing on the merits began on November 7, 2011 (the "**Merits Hearing**"). On that day Staff, Bishop and counsel for Loman made submissions. Over the course of ten hearing days, we heard evidence from 15 investor witnesses, Staff's investigator, Staff's forensic accountant, Loman and three witnesses called by Bishop. Closing submissions were heard on May 18, 2012. We also considered written submissions of Staff, dated December 22, 2011, of CBK Enterprises Inc. dated January 9, 2012, of counsel for Loman dated January 13, 2012 and of Bishop filed May 18, 2012.

[6] On January 19, 2012, Staff filed and served a Notice of Motion and other materials seeking, among other things, orders permitting the filing of fresh evidence. We heard submissions of the parties on this motion on January 24, 2012 and February 22, 2012. This Panel dismissed the motion by order dated March 20, 2012 (*Re Majestic Supply Co. Inc.* (2012), 35 O.S.C.B. 2806).

[7] For the reasons set out below, we conclude that the Respondents breached subsections 25(1)(a) and 53(1) of the Act, and that such conduct is contrary to the public interest. We also conclude that Adams, Bishop and Majestic breached subsection 38(3) of the Act, and that such conduct is contrary to the public interest. We do not find that Loamn breached subsection 38(3) of the Act or that he made representations contrary to the public interest. Lastly, we find that Adams, prior to November 16, 2006, and Bishop, as officers and directors of Majestic, and Adams and Kricfalusi, as officers and directors of Suncastle, authorized, permitted or acquiesced in non-compliance with the Act by Majestic and Suncastle, respectively, and are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act and that such conduct is contrary to the public interest. We do not find that Adams, Bishop or Majestic breached subsection 38(2) of the Act. However, we do find that Adams' deceptive representations amount to conduct contrary to the public interest. Finally, we do not find Majestic in breach of section 6.1 of NI 45-106.

B. The Respondents

1. Corporate Respondents

[8] Majestic is an Ontario company created by the amalgamation of two other Ontario corporations, 1562497 Ontario Inc., operating as Majestic Supply Co., and Decorative Impressions Inc., on April 1, 2006. Majestic's registered office is in Burlington, Ontario. Majestic purported to be a provider of environmentally friendly printing products and systems, including Souken water-based ink.

[9] Suncastle was incorporated in Ontario on February 22, 1983 and changed its corporate name to Suncastle Developments Corporation on December 6, 1988. During the Material Time, as defined below, Suncastle's registered office address was the same as Majestic's, located in Burlington, Ontario.

[10] CBK Enterprises Inc. is a company incorporated in the British Virgin Islands on July 20, 2007 by Kenneth Bryan Asselstine ("**Asselstine**"), the sole director, president and secretary. Asselstine is Adams' brother. CBK's registered office is in Tortola, British Virgin Islands.

[11] There is no record of Majestic, Suncastle or CBK (the "**Corporate Respondents**") having been registered under the Act.

2. Individual Respondents

[12] Adams was an original officer of 1562497 Ontario Inc., Majestic's predecessor company, and subsequently a director and officer of Majestic after the amalgamation. Adams purportedly resigned as secretary and director of Majestic on November 16, 2006. Adams also held the position of secretary of Suncastle since June 28, 1995.

[13] Bishop was appointed as Majestic's secretary and vice-president of corporate finance on November 16, 2006. During the Merits Hearing, Bishop was a director and officer of Majestic. Bishop was formerly registered with the Commission as a

salesperson under the categories of mutual fund dealer and limited market dealer at various times between March 26, 1982 and March 15, 1999. Bishop is currently a director and officer of Majestic.

[14] Kricfalusi became president and director of Suncastle as of April 1, 2006. She also worked as an administrator for Majestic and was described as Majestic's VP of Operations in Majestic's Business Plan.

[15] Loman was a resident of Alberta and president of Essen Capital Inc. ("**Essen**"), which had an office in Lethbridge, Alberta. Loman was also president of Essen Inc., a company with its office in Christ Church, Barbados. Loman was registered with the Alberta Securities Commission as a mutual fund salesperson from 2003 to 2005.

[16] There is no record of Adams, Kricfalusi or Loman (together with Bishop, the "**Individual Respondents**") having been registered under the Act.

C. The Allegations

[17] Staff alleges that the Respondents distributed Majestic securities to investors raising approximately $5.3 million from approximately 134 investors through: (i) loan agreements, loan conversion agreements and promissory notes; (ii) issuance of Majestic shares from treasury; and (iii) secondary sales of Majestic shares. It is alleged that Bishop and Loman acted as salespersons and received commission on sales of Majestic shares. As a result of the conduct describe above, Staff alleges that during the Material Time, the Respondents traded in securities of Majestic without registration contrary to subsection 25(1) of the Act and engaged in a distribution of Majestic shares without Majestic having filed any prospectus with the Commission, contrary to subsection 53(1) of the Act.

[18] It is also alleged that Majestic, through its agents, Adams, Bishop and Loman, gave undertakings relating to the future value of Majestic shares contrary to subsection 38(2) of the Act and made representations regarding the future listing of Majestic shares with the intention of effecting sales of Majestic shares contrary to subsection 38(3) of the Act.

[19] Staff further alleges that Adams, Kricfalusi and Bishop, as officers and directors of Majestic, and Adams and Kricfalusi, as officers and directors of Suncastle, authorized, permitted or acquiesced in violations of the Act by Majestic and Suncastle, respectively, and pursuant to section 129.2 of the Act, are deemed to have not complied with Ontario securities law.

[20] By virtue of the conduct referred to in paragraphs 17 to 19, it is also alleged that the Respondents engaged in conduct contrary to the public interest.

[21] We note that Staff concede in their closing submissions that the evidence does not establish on a balance of probabilities that Loman provided undertakings as to the future value of Majestic shares, contrary to subsection 38(2) of the Act, nor that Kricfalusi, as an officer and director of Majestic, authorized, permitted or acquiesced in breaches of the Act by Majestic, such that Kricfalusi may be deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act. We accept Staff's concession and withdrawal of those specific allegations against Loman and Kricfalusi, and accordingly do not make any further analysis or finding with respect to those allegations.

II. PRELIMINARY ISSUES

A. Failure of Some Respondents to Attend

1. Respondent Participation

[22] Counsel for Kricfalusi and CBK and counsel for Adams and Suncastle were permitted to be removed as counsel of record for this matter on the first day of the Merits Hearing, on the basis of consent provided by these respondents to their counsel. As a result, Kricfalusi, Suncastle and CBK did not attend and were not represented throughout the hearing, other than as indicated in the next two sentences. Kricfalusi appeared in person on the first day of the Merits Hearing and was present on the first day of the motion, but did not otherwise participate in the hearing process. Asselstine did provide brief written closing submissions on behalf of CBK.

[23] Adams attended the hearing in person and was represented in a limited capacity by counsel from time to time during the Merits Hearing. Bishop attended the hearing in person and represented himself and Majestic. Loman was represented by counsel.

2. The Law

[24] Subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"), which is set out below, requires that "reasonable notice" be given to the parties to a proceeding:

> **Notice of hearing**
>
> **6.**(1)The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal.

[25] Subsection 7(1) of the SPPA, authorizes a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. The provision states:

> **Effect of non-attendance at hearing after due notice**
>
> **7.**(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[26] Further, Rule 7.1 of the OSC Rules provides:

> **7.1 Failure to Participate** – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

3. Authority to Proceed in Absence of Respondents

[27] Given that all the Respondents were represented or participated at the beginning of the Merits Hearing, we are satisfied that Staff served the Respondents with notice of the hearing. We also note that the Notice of Hearing and the Statement of Allegations were posted on the Commission's website, as was the Commission order which set out the dates on which the Merits Hearing was scheduled to take place. We are therefore authorized to proceed in the absence of some of the Respondents in accordance with subsection 7(1) of the SPPA.

B. The Standard of Proof

[28] The standard of proof in this hearing is the civil standard of proof on a balance of probabilities. Evidence must be sufficiently clear, convincing and cogent to satisfy this standard (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 40 and 46).

C. Hearsay Evidence

[29] This Panel has the discretion to admit relevant evidence that might not otherwise be admissible as evidence in a court, including hearsay evidence, under subsection 15(1) of the SPPA, subject to the weight given to such evidence (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at para. 22).

III. ISSUES

[30] The following issues were raised in the hearing:

(a) Did the Respondents engage in unregistered trading, contrary to subsection 25(1)(a) of the Act and contrary to the public interest?

(b) Did the Respondents distribute securities of Majestic without having filed a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest?

(c) Did Majestic, Adams and/or Bishop give an undertaking relating to the future value or price of Majestic shares with the intention of effecting a trade in Majestic shares, contrary to subsection 38(2) of the Act and contrary to the public interest?

(d) Did Majestic, Adams, Bishop and/or Loman make prohibited representations that Majestic shares would be listed on an exchange with the intention of effecting a trade in Majestic shares, contrary to subsection 38(3) of the Act and contrary to the public interest?

(e) Did Adams, Bishop and/or Kricfalusi authorize, permit or acquiesce in non-compliance with Ontario securities law by one or both of the Corporate Respondents, such that they are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest?

(f) Did Majestic fail to file a report of exempt distribution of Majestic shares with the Commission contrary to section 6.1 of NI 45-106?

IV. EVIDENCE

A. Overview

[31] Staff called 17 witnesses at the hearing. Fifteen of Staff's witnesses were investors, six of whom were residents of Alberta and nine of whom were from Ontario. The other two witnesses were senior investigator, Jeff Thomson ("**Thomson**") and senior forensic accountant, Paul DeSouza ("**DeSouza**"), both with the Enforcement Branch of the Commission.

[32] To protect the privacy of all investor witnesses, we have referred to them anonymously by initials rather than using their respective names. In addition, we have required that Staff provide a redacted version of the record to serve the same purpose.

[33] Staff adduced 168 exhibits at the hearing through their witnesses. Staff also introduced a number of documents through cross-examination.

[34] Loman testified on his own behalf and his counsel entered five exhibits through him. Bishop called three witnesses, two of whom were former members of Majestic's board of directors and shareholders in the company ("**Director One**" and "**Director Two**", respectively). Bishop's third witness was Majestic's lawyer, Tom Brown ("**Brown**").

[35] None of the other Respondents tendered any evidence at the hearing.

[36] To facilitate comprehension of the issues, we have prepared the following summary of the facts and events in evidence before us.

B. Respondents Were Not Registered Under the Act and Did not File a Prospectus

[37] Thomson obtained certificates of registration under section 139 of the Act, which confirm that none of the Respondents was registered under the Act during the Material Time and that Majestic never filed a prospectus or a preliminary prospectus with the Commission.

C. Identification of the Corporate Respondents

[38] Thomson conducted corporate searches of Suncastle and 1562497 Ontario Inc., Majestic's predecessor, and obtained Articles of Amalgamation for Majestic from an investor, which confirm the positions of various individual respondents within Majestic and Suncastle's corporate structures. He also obtained a resolution of CBK from Asselstine which verifies that Asselstine is CBK's sole director, president and secretary.

D. Trading by the Corporate Respondents

[39] DeSouza compiled and analyzed information pertaining to the distribution of Majestic shares, both from treasury and as secondary market sales. He relied primarily on Majestic's General Ledger and financial statements, but also reviewed supporting documentation such as share registers and transfer records. DeSouza used the information to create a reconciliation document which depicts Majestic treasury stock movement from inception until Majestic ceased to operate and identifies certain secondary market sales. The document indicates that there are a total of 88 shareholders who acquired shares of Majestic from treasury and 53 transactions that resulted in a transfer of Majestic shares from Suncastle as well as a number of other secondary market trades which, as determined below, were illegal trades as there was never a legitimate distribution of Majestic shares with a prospectus. It is, however, noted that the total number of investors cannot be determined by adding the listed number of shareholders because of a number of share consolidations.

[40] DeSouza also created another document from his analysis of Majestic's General Ledger which details share transactions by date. Each transaction notes the name of the investor, the number of shares of Majestic they acquired and the value attributed to the shares. DeSouza testified that his findings were supported by Majestic share registry records and provided Majestic shareholders lists for the periods before and after Majestic's amalgamation, which DeSouza received from former counsel for Adams. DeSouza had also obtained the Shareholder Register from Majestic's counsel, which corroborated his findings.

1. Majestic Treasury Share Sales

[41] DeSouza's financial analysis indicated that Majestic issued 13,420,619 shares from treasury to 88 shareholders for consideration of approximately $2.1 million.

[42] Investor B.R. testified to having signed a share subscription agreement with Majestic on March 6, 2006 for 30,000 shares at a price of $1.00 per share. Other investors, D.P. and his wife, testified to having invested $100,000 in Majestic under a similar share subscription agreement with Majestic on October 27, 2006 also at a price of $1.00 per share.

[43] In May 2006, Director One was given 200,000 shares of Majestic as compensation for labour provided to 1562497 Ontario Inc., Majestic's predecessor. His services included providing plant maintenance, delivering orders and assisting day-to-day operations.

[44] Investor J.L.1 is a retired police officer who also worked as a fraud investigator for the Workplace Safety and Insurance Board. J.L.1 testified that he was introduced to Majestic by Bishop and that he and his wife were given a tour of the Majestic plant conducted by Adams in the fall of 2006. J.L.1 and his wife decided to invest their life savings of approximately $250,000 in Suncastle and Majestic by way of several separate investments. The first was a loan and conversion agreement with Adams for $100,000, described at paragraph 59 below. On November 12, 2006, J.L.1 and his wife invested for a second time by providing Majestic with a bank draft for $50,000 and later received a share certificate for 50,000 Majestic shares, dated November 17, 2006. The third investment by J.L.1 and his wife was made in February 2007 with a purchase of 80,000 Majestic shares from Suncastle for $1.00 per share. J.L.1 and his wife subsequently sent one last draft payable to Suncastle for $20,000, dated May 14, 2007, as their last investment in an additional 20,000 Majestic shares.

[45] C.F., an engineer hired by Suncastle to develop an ink cartridge filling station and printer heating device, testified that he signed a share subscription agreement with Majestic in trust for one of his suppliers and the supplier's associates on January 11, 2008. C.F. purchased 100,000 Majestic shares in trust at $1.00 per share.

2. Secondary Sales of Majestic Shares

[46] We were provided with a chart created by DeSouza outlining secondary sales of Majestic shares. According to the chart, shares, which were first issued from treasury by Majestic without a prospectus to Suncastle, were then illegally distributed by Suncastle, which resold 2,558,986 Majestic shares to 53 investors including 16 transactions for services. Adams directly and indirectly resold to 33 investors 1,040,900 Majestic shares which had been issued from treasury by Majestic without a prospectus. Kricfalusi resold to one investor 33,154 Majestic shares which had been issued from treasury by Majestic without a prospectus and CBK resold to 11 investors 300,000 Majestic shares which had been issued from treasury by Majestic without a prospectus. DeSouza noted that the actual cash received for the secondary market sales does not form part of Majestic's outstanding dollar share capital.

[47] DeSouza's financial analysis indicated that secondary sales included transfers and gifts made for nil consideration, and sometimes resulted in no change of beneficial ownership. At times, shares were also provided as compensation. For example, on March 30, 2007, C.F. entered into a service agreement with Suncastle that would compensate his services partly in Majestic shares and partly in cash. It is important to note that a prospectus was never filed in respect of any secondary sale of Majestic shares.

[48] Brown identified two documents which explain the origin of part of Suncastle's holding of Majestic shares. The first is dated May 15, 2006 and refers to a revolving loan agreement dated January 10, 2005, whereby Suncastle agreed to lend up to $250,000 to Majestic and Majestic granted Suncastle an option to convert all or any portion of amounts owing by Majestic to Suncastle into shares of Majestic at any time prior to March 30, 2007. The second document is a letter dated March 1, 2007 from Suncastle to Majestic which purports to convert Majestic's debt of $403,983.19 into 577,119 shares of Majestic at a rate of $0.70 per share. A resolution of Majestic's directors, dated March 1, 2007, approved the issue of 577,119 Majestic shares in consideration for the conversion of the debt of $403,983.19.

[49] Shares of Majestic acquired by Suncastle at $0.70 per share, as described in paragraph 48 above, were later resold at $1.00 per share. For instance, investor R.R., a farmer residing in Alberta, and his wife purchased 100,000 Majestic shares from Suncastle for $100,000 pursuant to an agreement dated April 12, 2007. R.R. provided the Panel a copy of the money order for $100,000 payable to Suncastle dated April 16, 2007 for 100,000 shares of Majestic and a copy of his Majestic share certificate dated April 21, 2007. Similarly, investor L.N., another resident of Alberta, signed a share purchase agreement with Suncastle on August 15, 2007 for 20,000 Majestic shares at a cost of $1.00 per share. L.N. testified that he sent a bank draft payable to Suncastle for $20,000. Another Alberta-resident investor, R.F, signed a share purchase agreement with Suncastle on August 13, 2007 for 25,000 Majestic shares at a cost of $1.00 per share.

[50] With respect to shares held by CBK, Brown confirmed that he transferred 850,000 Majestic shares which he held in an implied trust, to CBK on September 1, 2007. In a response to the Commission's request for documentation, then counsel for Adams confirmed CBK held 850,000 Majestic shares in trust for Adams and another 850,000 Majestic shares in trust for Kricfalusi. Of the 11 investors that acquired Majestic shares from CBK, six were named in Adams' letter to CBK dated January 16, 2008, authorizing CBK to transfer Adams' shares in Majestic as collateral for loans. In his testimony, Brown identified CBK and confirmed its related activity as follows: "I'm quite certain CBK did transfer shares to individuals and that I prepared the necessary documentation for that" (Tom Brown – Transcript of November 29, 2011 at p. 91). DeSouza's analysis reveals that the 11 investors acquired 300,000 Majestic shares from CBK.

[51] A number of additional secondary sales were made as a result of Majestic shares transferred pursuant to loan and conversion agreements ("**L&C Agreement(s)**"). DeSouza created a chart summarizing 49 L&C Agreements supported by

copies of the agreements themselves and/or transfer letters, share certificates and copies of cheques from investors payable to the borrower. Majestic was the borrower in eight of these agreements and its predecessor, 1562497 Ontario Inc., was the borrowing party in three other instances. The borrowers in the other 38 L&C Agreements are discussed in paragraph 63 below.

E. Trading by Adams and Kricfalusi

[52] Thomson was assigned to investigate this matter on September 8, 2008 after the Commission received an email complaint regarding a possible illicit distribution. The email was from Bishop and copied to Lauren Sclisizzi ("**Sclisizzi**") of the Halton Police Service Fraud Squad.

[53] On December 2, 2008, Thomson and Sclisizzi conducted a joint voluntary interview of Adams. In that interview, Adams was asked whether he recruited anyone to invest in Majestic and Adams responded that he had friends, "[s]even or eight of them I brought directly into Majestic, other ones bought shares from myself, but … I directed cash right into Majestic" (Exhibit U13 – Transcript Excerpt of Interview of Herb Adams at p. 31).

[54] Investor L.R. was a mortgage advisor for a Canadian chartered bank who testified as a witness for Staff. She stated that Adams gave her tours of Majestic's facilities in late 2005 and early 2006, explained the business to her and discussed a biodegradable ink, which he called Souken Ink. L.R. testified that she saw the printing machines, very large prints with extraordinary clarity, and ink inside of unique bags that resembled IV bags. It was L.R.'s evidence that in early 2006, at a subsequent meeting in Majestic's office, Adams told her there weren't any Majestic shares left, but since Adams appreciated the mortgage work she had done for his son, Adams could sell her some of his own shares for $1.00 per share. L.R. stated she wanted to invest $5,000, but was told by Adams that the minimum investment was $10,000. L.R. testified that Adams told her it was a once-in-a- lifetime opportunity, the company was on the cutting edge of biodegradable ink, they were getting contracts with a big German company and the government was reviewing it to give him and his company a million dollar grant for research and development.

[55] On February 10, 2006, at the time of her third meeting with Adams at Majestic's plant and office, L.R. signed a subscription agreement with 1562497 Ontario Inc., operating as Majestic Supply Co., for 10,000 Majestic shares at a price of $1.00 per share and wrote a cheque to Majestic Supply Co. for $10,000 from a line of credit which she arranged in order to provide funds for the purchase of Majestic shares and which remains outstanding. L.R. testified that Adams told her how to fill out the subscription agreement, including a form certifying she was an accredited investor. L.R.'s income tax statement reveals she was not an accredited investor. However, L.R. stated she was told by Adams that the form was just a formality.

[56] In October 2007, Adams asked L.R. to attend his home to hear some interesting news about Majestic including that Majestic going on the stock market soon, within a week or so, to offer her more shares and for L.R. to prepare mortgage documents for Kricfalusi. After hearing the news from Adams, on October 25, 2007, L.R. signed a L&C Agreement with Kricfalusi for $25,000, which granted L.R. a conversion right to obtain 25,000 shares of Majestic that was exercised on the same day. L.R. testified that she acquired the shares from Kricfalusi because Adams told her there were no shares of Majestic left, but that Kricfalusi had many and would be able to sell them through a L&C Agreement.

[57] On May 1, 2006, investor D.B. entered into a L&C Agreement with Adams whereby D.B. lent Adams $5,000 and was granted a conversion right to obtain 100,000 shares of Majestic. D.B. testified that he signed the agreement in the presence of Adams and Kricfalusi. D.B. also testified that he introduced approximately 14 investors to Majestic, four of whom were identified as having signed L&C agreements with Adams from May 2006 to January 2008 and at least one investor who entered into a L&C Agreement with Kricfalusi on May 22, 2007. One of these investors, W.C., gave evidence that he entered into a L&C Agreement with Adams on October 10, 2006 for $10,000, which granted W.C. a conversion right to obtain 10,000 shares of Majestic. D.B. testified that he was not aware of any potential investor that he introduced who was turned down by Adams or Kricfalusi and stated that Adams never gave him criteria of who he could bring forward.

[58] Investor B.R. testified he entered into a L&C Agreement with Adams on June 10, 2006 for $5,000, which granted B.R. a conversion right to obtain 5,000 shares of Majestic. On September 29, 2006, investor T.M. entered into a L&C Agreement with Adams for $5,000 which granted T.M. a conversion right to obtain 5,000 shares of Majestic. T.M. testified that Adams filled out the agreement, and T.M. signed it and gave Adams a bank draft from funds he had borrowed in order to invest.

[59] As stated at paragraph 44 above, investor J.L.1, a retired police officer, testified that he and his wife toured the Majestic plant with Adams and Bishop. J.L.1 stated that during the tour Adams told him shares were selling at $1.00 per share for Majestic and $100 per share for Suncastle, but that J.L.1 would have to invest $100,000 in Suncastle first, which would then be converted into Majestic shares before the company went public. J.L.1 and his wife entered into a L&C Agreement with Adams on November 10, 2006, whereby J.L.1 and his wife lent Adams $100,000 and in turn were granted a conversion right to 1,000 shares of Suncastle. On November 12, 2006, they gave Adams a bank draft for $100,000. The conversion right under the L&C Agreement was amended on January 28, 2007 to provide J.L.1 and his wife with the option to convert the loan into 100,000 shares of Majestic rather than 1,000 shares of Suncastle.

[60] In spring 2007, investor R.R., a resident of Alberta, and others visited the Majestic facilities in Burlington, Ontario. R.R. testified that Adams and Bishop gave the group a tour and made a presentation on the operations and income of Majestic. R.R. also stated that Adams confirmed the minimum investment was $50,000 and maximum would be $100,000.

[61] C.F., the engineer referred to in paragraph 45 above, testified that he was approached by Adams and Bishop in late 2007 or early 2008 to invest in Majestic and Suncastle, but declined because he already held shares of Majestic received as partial compensation for his services and did not want to put further money into the companies until he saw more developments towards going public.

[62] In response to Staff's request for documents, Thomson received a letter dated January 16, 2008 from Adams to CBK requesting Asselstine to transfer Adams' shares of Majestic to certain individuals as collateral for loans.

[63] DeSouza's share distribution and financial analysis revealed that 17 shareholders acquired Majestic shares as a result of Adams' secondary distribution and one shareholder acquired Majestic shares through Kricfalusi. Of the 49 L&C Agreements which resulted in Majestic share transfers, Adams was the borrower in 33 instances and Kricfalusi was the borrower in five.

[64] The Suncastle Financial Statements, for the year ended March 31, 2008, record that Adams owed Suncastle $522,000.00 in relation to: (i) sales of Majestic shares deposited into Adams' personal account; (ii) the conversion of loans; and (iii) reclassification of payment from Essen Inc.

F. Trading by Bishop

[65] Thomson and Sclisizzi jointly conducted a joint interview of Bishop on October 1, 2008. Thomson read excerpts of the interview into the record. In the interview, Bishop admitted to having a commission-based relationship with Herb Adams, Suncastle and Majestic, through which he was offered shares of Majestic and a vice president position at Majestic. Bishop further admitted to personally bringing in "probably" 60 investors who invested approximately $2.5 million.

[66] Bishop agreed that he promoted Majestic's shares indirectly through his presentation at Essen's annual general meeting in Lethbridge. Bishop also indicated that he continued to sell Majestic shares even after Majestic had reached 50 shareholders because there was a "relatively limited number of shares that were being sold … by Majestic, everything else was a resale" (Exhibit U13 – Transcript Excerpt of Interview of Steven Bishop at pp.134-135).

[67] Thomson obtained two commission agreements between Bishop and Majestic. The first was dated September 12, 2006 and allowed Bishop to sell up to a maximum of 5 million Majestic shares at $1.00 CDN per share in exchange for commissions composed of shares of Majestic and 5% compensation on any amount for the first $2 million raised. The second was dated December 29, 2006 and it extended the first commission agreement for six months on the same terms. A copy of each agreement was admitted into evidence.

[68] Investor J.S. testified that he was introduced to Majestic by Bishop and decided to invest through his holding company. On September 15, 2006, J.S.'s holding company entered into a loan agreement with Majestic whereby Majestic borrowed $25,000 and J.S.'s holding company was granted the option to convert the debt into 25,000 Majestic shares. J.S. gave Bishop a cheque for that amount on the same day. After a visit by Bishop two to three months later, J.S.' s holding company entered into a second loan agreement with Majestic on December 21, 2006, whereby Majestic borrowed another $25,000 and J.S.'s holding company was again granted the option to convert the debt into 25,000 Majestic shares.

[69] Investor D.P. is an engineer who testified for Staff. D.P. stated he and his wife were introduced to Majestic in October 2006 through Bishop, who had previously acted as the financial and insurance advisor for D.P.'s consulting company. D.P. testified that Bishop attended his home and brought D.P. a Majestic business plan and power point presentation. D.P. understood that Majestic was in the large-format printing supply business which was introducing a revolutionary water-based ink, Souken Ink, that had the same properties as a solvent ink without the hazardous components. D.P. testified that Bishop told him Suncastle would have a better return, but to invest in Suncastle there was a minimum requirement of investing $100,000 in Majestic. D.P. stated the share price was $1.00 per share for Majestic and $100 per share for Suncastle. After visiting Majestic, D.P. and his wife invested $100,000 in Majestic under a share subscription agreement and another $100,000 in Suncastle through a L&C Agreement with Adams on October 27, 2006.

[70] As stated above at paragraph 44, investor J.L.1, a retired police officer, was introduced to Majestic by Bishop, toured the Majestic plant with his wife and Adams and decided to invest their life savings. J.L.1 testified that they did all the paperwork through Bishop, giving Bishop cheques and signed documents to be delivered to or executed by Adams. J.L.1 also stated that Bishop delivered share certificates to him.

[71] Investor H.E., a resident of Alberta, testified that in the fall of 2006 Bishop went out west to speak at meetings arranged by Essen in Lethbridge, Alberta. It is H.E.'s evidence that Bishop told him Majestic shares were valued at $1.00 per share, but

Bishop could manage to get some Majestic shares for H.E. at $0.66 since another investor, an older individual, was looking to get rid of his shares for health reasons.

[72] As stated above at paragraph 60, R.R., a resident of Alberta, testified that Bishop and Adams gave him and others a tour of Majestic's facilities in Ontario and made a presentation on the operations and income of the company in the spring of 2007. R.R. also stated that Bishop bought the group a nice dinner and paid for their hotel room in Ontario that evening before they returned to Alberta the next day. Shortly after, R.R. and his wife purchased 100,000 Majestic shares from Suncastle for $100,000 pursuant to an agreement dated April 12, 2007. R.R. provided the panel a copy of the money order payable to Suncastle dated April 16, 2007 and confirmed that Bishop gave him the details of where to deposit the funds.

[73] Investor R.F., a resident of Alberta, testified that Bishop gave him investment details for Majestic in the spring or summer of 2007, advised him that the minimum investment was $25,000 and subsequently sent him a share purchase agreement by mail. R.F. also stated that Bishop arranged for him to visit the Majestic facilities on August 8, 2007. R.F. subsequently signed a share purchase agreement with Suncastle on August 13, 2007 for 25,000 Majestic shares at a cost of $1.00 per share. R.F. testified that he signed the agreement in Loman's office and sent a bank draft payable to Suncastle for $25,000 on August 14, 2007.

[74] As stated above at paragraph 61, C.F., an engineer hired by Suncastle, testified that he was approached by Adams and Bishop in late 2007 or early 2008 to invest in Majestic and Suncastle, but declined. C.F. stated that after telling one of his supplier's about Majestic and Suncastle, C.F. was asked to invest on behalf of the supplier and the supplier's friends. The supplier subsequently made a cheque out to C.F. and C.F. in turn made a cheque for the same amount to Majestic. On January 11, 2008, C.F. signed a subscription agreement with Majestic, in trust for the supplier and his associates, for 100,000 Majestic shares at $1.00 per share and gave the cheque to Bishop.

[75] Thomson testified that on January 10, 2010, in a meeting held at the Halton Regional Police Service, Bishop stated "I am the one that sold that stuff" referring to western investors. Thomson later conducted a voluntary interview of Bishop on April 27, 2010 to clarify and review information obtained. At the later interview, Bishop indicated that he had another contract with Suncastle which allowed him to sell Suncastle shares and Majestic shares which were owned by Suncastle. A copy of a commission agreement dated September 12, 2006 between Adams and Bishop was tendered into evidence through Thomson (the "**Suncastle Commission Agreement**"). In the Suncastle Commission Agreement, Adams authorized Bishop to sell up to a maximum of 15,000 Suncastle shares at $100.00 CDN per share. The Suncastle Commission Agreement identified that sales of shares would be structured as loan and conversion agreements and that buyers would concurrently provide a conversion letter addressed to Adams, dated in January 2007. The Suncastle Commission Agreement provided that Bishop would receive 10 percent commission as compensation for sales of Suncastle shares, half payable by cheque and the other half in Suncastle shares.

[76] Bishop further admitted in the voluntary interview on April 27, 2010 that he sold Alberta investors shares in Majestic and that accredited investors bought only from Majestic while non-accredited investors would buy from Suncastle. In response to the Commission's enforcement notice, Bishop stated: "I sold shares and raised capital for these firms [Majestic and Suncastle] through the subscription agreements and loan/conversion agreements …" (Letter of Bishop to the Commission dated June 24, 2010; Exhibit U17).

G. Trading by Loman

[77] Staff takes the position that Loman acted as a salesperson for Majestic by promoting Majestic shares to investors in Alberta. Loman testified on his own behalf and denied having sold Majestic shares. Loman stated he was introduced to Majestic through Bishop and personally visited the Majestic plant in Ontario in early 2007.

[78] Loman acknowledged that he and Essen settled with the Alberta Securities Commission in an unrelated matter. Under that settlement, Loman undertook to cease trading in securities for a period of 3 years commencing as of October 22, 2009, subject to certain exceptions for his registered retirement savings plans (*Re Essen Capital Inc.*, 2009 ABASC 530).

1. Evidence of Payments Received by Loman

[79] Staff argued that Loman was paid commissions on sales of Majestic shares. During Thomson's testimony, Staff tendered into evidence a document entitled "Kevin Loman Transactions" which, Staff alleged, purported to record amounts of commissions received by Loman for sales of Majestic shares to Alberta investors (the "**Alberta Investors**"). The document lists transactions by date and includes names of the Alberta Investors, and beside each name the number of shares and the amount of commission payable to Loman for each transaction. The document further indicates that Loman was paid a 25% commission rate by Suncastle and a 10% commission rate by Majestic on each sale of shares. Thomson testified to having received multiple copies of the document from investors as part of their disclosure to Staff and stated that investors told him that it had been handed out at a Majestic shareholders meeting.

[80] Counsel for Loman objected to admission of the document as evidence on the basis that the source of the document was unknown. In response, Staff referred the Panel to Bishop's voluntary interview of April 27, 2010, at which Bishop stated that the "Kevin Loman Transactions" document was created by Mary Kricfalusi as a method of quantifying Loman's consulting fees. We admitted the document and the excerpt of Bishop's voluntary interview, subject to a high degree of caution, on the basis that the evidence was relevant with respect to the Alberta Investors and possible commissions, while being mindful that a lack of verifiable source goes to the weight that may be attributed to the document as evidence.

[81] The "Kevin Loman Transactions" document divides transactions by three payment totals. The first two groups detail payments apparently owing from Suncastle to Loman for $145,250 and $58,750 respectively. The third group identifies an amount of $24,000 apparently owing from Majestic to Loman. The document also appears to confirm payment of $145,250 and $60,000 by Suncastle and notes the overpayment in the latter instance should be deducted from the amount owing by Majestic.

[82] DeSouza provided the Panel with an invoice dated May 10, 2007, from Essen Inc. to Suncastle, c/o Herb Adams, for the amount of $145,250 (the "**Essen Invoice**"). The Essen Invoice described the services rendered as follows:

> In regard to all consulting services in support of your companies financing and in regard to corporate developments fostered and provided by us. As well as for the professional guidance rendered thus far in regard to structuring and facilitating the necessary framework that allowed for your company to access public markets and for those ancillary and related services provided.

[83] DeSouza drew the Panel's attention to the Suncastle financial records for the year ending March 31, 2008 which recorded a payment of $145,250 for fees to Essen Inc. dated May 10, 2007. The same financial records reflected a $60,000 payment to Loman as an expense of $55,000 for fees and dues and a balance of $5,000 being a receivable from Majestic. Loman did not dispute receipt of these funds by Essen Inc., or himself, but his counsel did demonstrate there were inconsistencies in Suncastle's financial records with respect to recording of dates and flow of funds amongst the parties.

[84] Investor R.R. from Alberta testified that he questioned Bishop about commissions several times when he visited the Majestic facilities in the spring of 2007. R.R. states that when he initially asked, Bishop denied the payment or existence of commissions; however, R.R. stated that later in the evening Bishop admitted both Bishop and Loman were being paid commissions on investments. It is noted that R.R. is currently involved in separate litigation in which R.R. is suing Loman with respect to certain investments.

2. Loman's Evidence on Payments Received

[85] Loman testified that on January 18, 2007 he purchased 300 Suncastle shares from Adams for $30,000. Loman stated that he later invested in Majestic together with investor H.E. On March 14, 2007, Loman wired $100,000 to Adams and on April 4, 2007 H.E. obtained a bank draft payable to Adams in the amount of $96,000 for the purchase of Majestic shares. Loman testified that he and H.E. obtained 300,000 Majestic shares for their $196,000 investment. He stated that they were acquiring the shares at a discount and were in a rush to pay for them because of the sick health status of the person they were buying from who required the money for medical attention according to information he received from Adams and Bishop.

[86] Loman's evidence was that his contribution of $100,000 towards the investment in Majestic was made on the understanding that $60,000 of that amount would be repaid to him by Essen Inc. as its portion of the share purchase. Therefore, Loman was to personally invest $40,000, Essen Inc. was to contribute $60,000 and H.E. the remaining $96,000. Loman testified that he received a payment from Suncastle for $60,000 for work being done by Essen Inc. Loman stated that he requested the amount be paid to him personally rather than having it sent to Essen Inc. in Barbados only to have it sent back to him as repayment of the $60,000 owed for the Majestic shares.

[87] Loman's evidence was that he and J.L.2, another employee of Essen Inc., discussed Asset Protection Insurance ("**API**") for Majestic and Suncastle. He described the service as follows:

> Asset protection insurance is a product that protects against litigious or predatory attacks on personal or corporate assets. And then in the event that those assets are successfully attacked, there is actually insurance insuring the value of the assets inside the policy.
>
> In the case of Majestic and Suncastle, there was a need for asset protection insurance to protect the intellectual property against the likes of HP and other competitors and really to thwart lawsuits that those competitors would put in place that were meant to reduce the company's ability to gain market share because of the launch of that technology.
>
> (Kevin Loman – Transcript of November 17, 2011 at pp. 155-156)

[88] Loman stated he had conversations with a number of individuals at Majestic and Suncastle, including Adams, Bishop and Brown with respect to API. Loman described his work as predominantly consisting of dialogue with the parties about "the feasibility process…[and] determining how you would utilize asset protection insurance in a corporate…field" and how to utilize API in specific circumstances (Kevin Loman – Transcript of Nov. 17, 2011 at p. 157). Loman also testified that the primary threat was HP, which he testified had apparently put in two offers to buy the company. Loman stated that they did not know at the time that HP was putting in the offers, but through some investigative work they believed it was an HP representative. His testimony was that he flew to Toronto eight or nine times and that his work continued on an ongoing basis, each time for different work such as going through technologies or information on patents.

[89] Loman testified that he was responsible for all the work during the establishment period, but admitted he did not have a contract with Suncastle or anyone else personally for API. Loman stated that J.L.2 was "also involved in assisting with the process", but didn't know exactly what other work would have been done, other than "consultant type work" in relation to the company's international exposure and utilizing tax treaties.

[90] With respect to the Essen Invoice, Loman testified he could not comment on the content because he did not create it, but stated that J.L.2 prepared it. When asked if he had any knowledge of the services rendered that are referred to in the invoice, Loman responded that "the invoice refers to a number of different areas which would have included asset protection work that I was doing, and then the additional work that … [J.L.2] was doing" (Kevin Loman – Transcript of November 17, 2011 at pp. 163).

[91] In cross-examination, Loman was asked to identify the portion of the invoice that made reference to API. He identified "professional guidance rendered thus far in regard to structuring and facilitating the necessary framework that allowed for your company to access public markets" as the appropriate section because API was important to protect assets against litigation and to permit the company to move forward. Staff suggested this section related to bringing in members of the public as investors in Majestic. Loman repeated that he had not created the document and could not comment on it, but would say that API would certainly fall within "ancillary and related services provided". Loman agreed with Staff that "there is no written contract for services pursuant to which this invoice is rendered" (Kevin Loman – Transcript of November 17, 2011 at p. 210).

[92] Loman testified that the relationship between Suncastle and Majestic was not clear with regard to the assets they held; particularly in terms of ownership of technology, who held the license and what rights were granted. Staff suggested to Loman that neither Majestic nor Suncastle owned any patent that would require protection. Loman refrained from commenting on what the companies ended up owning, but noted that at the time they believed there was significant value to Souken Ink, the cartridge and the filling station. Later, under cross-examination by Bishop, Loman testified that as far as he recalled Souken Ink had a valuation of around 160 million, the filling and cartridge technologies around 25 to 30 million and that there were additional technologies coming from Suncastle.

[93] Loman's evidence was that the API policy would be placed with Allied Sovereign and Equitable Assurance and then reinsured to "some majors overseas". He stated that they were not paid a commission from the insurance company. Rather, they would charge the insured a fee for the establishment based on the overall insurance value. Loman confirmed that his company did not do the valuation. Rather, it relied on the valuations provided to it by the parties involved in the companies. Loman testified that in this case they never got to a due diligence stage because the companies fell apart before then. He confirmed that the $145,250 charge and then some was just for the initial review and discussions for API.

[94] In cross-examination, Adams suggested that only investor J.D. and J.L.2 worked on API. Loman responded that Adams was incorrect. After a series of questions, Adams and Loman had the following exchange:

> [Adams] Q: I would suggest to you that no work was put in it … The project was abandoned when we had no product that we could put within the asset protection simply because the people who were being paid to develop the products refused to deliver the products. So, we had nothing to put into asset protection and to say $145,000 you're billing for a service that was never performed, I think is a little outlandish; am I right in assuming that?
>
> [Loman] A: I couldn't comment on whether you're right or wrong with the service, but what I can say is the services were performed.
>
> (Transcript of November 17, 2011 at p. 220)

[95] Loman testified that he did not receive commissions of $228,000 as alleged by Staff in the Statement of Allegations.

[96] Brown later testified that Souken Ink was a trademark, but no patents were associated with the ink and that he, as counsel for Suncastle and Majestic, worked with Ridout & Maybee, the outside intellectual property counsel, in respect of some trademark registration but never dealt with any patents that were owned by either of the companies.

3. Loman's Acts in Furtherance of Trades

[97] Loman admitted to having casual conversations with friends and acquaintances about Majestic and Suncastle, including his uncles, and L.N., H.E., and R.F., but denied being retained as a salesperson for Majestic. He elaborated on his relationships with several investor witnesses and stated he did not believe he sold Majestic shares.

[98] During cross-examination, Staff presented Loman with the document entitled "Kevin Loman Transactions" and several share purchase agreements for investors that were listed. Loman admitted to having signed and witnessed six share purchase agreements. He further acknowledged that he had email correspondence with investor J.B., an Alberta resident, had provided her with a subscription agreement and also bank account details to which her money could be wired.

[99] Investor H.E., a dentist residing in Alberta and friend of Loman's, testified that he was introduced to Majestic through Loman in the fall of 2006 when Loman brought Bishop to Alberta to speak about investments at Essen and where Bishop had discussed Majestic. H.E. testified that he and Loman discussed investing in Majestic together, Loman gave H.E. Majestic's business plan and instructions to make the investment payable to Adams. H.E. stated that Loman told him the two of them would put their shares into a holding company in Barbados that Loman operated. H.E. subsequently signed transfer of capital documentation transferring his Majestic shares to Loman. H.E. testified that he spoke about Majestic to some friends who also subsequently invested, including investors R.D., R.R.2, B.M., G.B. and J.B. The Panel heard that H.E. sent Tom Brown a cheque for $309.70 as payment for an Essen Invoice so that Majestic's counsel would send him copies of his share certificates when the companies started to fall apart.

[100] Brown testified that he recalled individuals from Alberta coming to visit the Majestic facilities in February or March 2007 and that they were Loman's contacts "that he [Loman] brought to the table" (Tom Brown – Transcript of November 29, 2011 at p. 140). With respect to Loman's role in Majestic or dealings with the Alberta investors, Brown stated:

> It was my understanding that these were individuals that were known to him [Loman], may have already participated in investments that he had been involved in in raising capital for in Alberta, and he presented this opportunity to them, which was Majestic, and that they agreed to --well, a certain number of them agreed to acquire shares in Majestic.
>
> (Tom Brown – Transcript of November 29, 2011 at p. 147)

[101] Investor R.R., referred to at paragraph 84 above, is a farmer and steam engineer residing in Alberta, who testified that he received a call from Loman in the spring of 2007 with respect to Majestic. R.R. stated that Loman told him about Majestic's business, and informed him that if R.R. was interested in investing a presentation was coming up shortly and R.R. should fly to Ontario and have a look for himself. R.R. testified that Loman called him a second time to confirm whether R.R. would be flying out to visit Majestic and that on that second call Loman informed him the minimum investment was $50,000 and maximum was $100,000 to acquire shares in Majestic at a price of $1.00 per share. R.R. subsequently invested $100,000 in Majestic.

[102] Investor J.B., an Alberta resident, provided us with emails from Loman to J.B. and G.B., J.B.'s fiancé at the time and H.E.'s friend. The first email was dated April 16, 2007. In it Loman provided J.B. and G.B. with Majestic's address to forward the signed subscription agreement once it was executed and stated "I will make sure that Mr. Bishop registers the shares in both of your names" (Exhibit L2). Loman also copied Bishop on the email and noted the agreement would be signed in two parts, stating to Bishop "If this is not sufficient please let me know and I will assist in getting one copy duly signed" (Exhibit L2). The second email from Loman to J.B. and G.B. was dated April 17, 2007 and attached a document entitled "Suncastle Generic Sale. Apr.2007", identified by J.B. as the subscription agreement received by Loman from Bishop and then forwarded to J.B. via email. On April 16, 2007, J.B. signed a share purchase agreement and subscription with Suncastle for 40,000 Majestic shares at a price of $1.00 per share and forwarded $40,000 for that purpose. J.B. admitted in cross-examination that she never had discussions with Loman before investing and that at the time of the Merits Hearing she had still never spoken to Loman.

[103] It is L.N.'s evidence that he was introduced to Majestic through Loman in late July or early August 2007. L.N., also an Alberta resident, testified that Loman stopped him in the hallway of the building in which Essen had its office, told L.N. about Majestic's business, gave L.N. information on Majestic and directed L.N. to call Bishop. L.N. stated that Loman told him L.N. could tell others about Majestic and that the minimum investment was $10,000. L.N. subsequently signed a share purchase agreement with Suncastle on August 15, 2007 for 20,000 Majestic shares at a cost of $1.00 per share. L.N. testified that he received the agreement from Loman and sent a bank draft payable to Suncastle for $20,000.

[104] R.F., Essen's landlord, testified that he first heard of Majestic in late 2006, but was re-introduced by Loman in early 2007. Investor R.F. stated that he and Loman had numerous discussions about Majestic and that Loman gave R.F. Bishop's contact information where he later obtained investment details. R.F. subsequently signed a share purchase agreement with Suncastle on August 13, 2007 for 25,000 Majestic shares at a cost of $1.00 per share. R.F. testified that he signed the agreement in Loman's office.

H. Representations of Future Value and Listing of Majestic Shares

[105] L.R. testified that when she made her first purchase of Majestic shares in February 2006, Adams told her that Majestic shares were going to go on the stock market and "when they [shares] go on the stock market, that they would open at $5 and could go upwards to $10, $20, $30" (L.R. – Transcript of November 7, 2011 at p. 89). In late October 2007, before L.R. made her second purchase of Majestic shares, she testified Adams offered to sell her more shares and told her "it was going on the stock market like really soon, within a week or so" (L.R. – Transcript of November 7, 2011 at p. 93). L.R. stated that Adams told her the company would be "going on the NASDAQ within a week or so" and "would open at $5" (L.R. – Transcript of November 7, 2011 at p. 94).

[106] It was L.R.'s evidence that she was told her decision to invest for the second time had to be made quickly because of the indicated timing of the shares being traded on the NASDAQ and was assured by Adams that he would personally guarantee the investment. In cross-examination, L.R. could not recall whether Adam specifically stated that he would reimburse her if the loan failed, but did recollect that Adams said he would "make sure" L.R. got her money back and she trusted him in that respect. L.R. testified to having asked Adams about the listing several weeks after signing the L&C Agreement and was told they had run into a snag with paperwork.

[107] J.S. testified that in 2006 Bishop came to J.S.'s office to discuss investing in Majestic. In his examination in chief, J.S. was asked if any statements were made about whether or not Majestic would go public and J.S. stated that Bishop indicated it would go public. J.S. testified that he would have a loan to start with and convert that into shares once the company went public.

[108] T.M. testified that when he took a tour of Majestic's plant in September 2006, Adams told T.M. that he hoped Majestic would go public in 2007.

[109] It is H.E.'s evidence that in the fall of 2006 Bishop told him shares of Majestic were available and it was a good time to buy because "in 2007 they would probably go public" (H.E. - Transcript of November 14, 2011 at p. 23).

[110] C.F. testified that Adams and another individual told him "Majestic was going to go public" (C.F. – Transcript of November 10, 2011 at p. 32), which led him to accept a service agreement to build a filling line for Majestic that would compensate his services partly in shares and partly in cash. C.F. stated that Adams told him once the company went public the share value "could easily reached[sic] $30 a share, but most likely would hover around $5 to $15 a share" (C.F. – Transcript of November 10, 2011 at pp. 52-53).

[111] R.R. testified that Loman told him Majestic "would go public at some point in the near future" (R.R. – Transcript of November 10, 2011 at p. 136). R.R. also testified that when he visited the Majestic facilities in the spring of 2007 Bishop and Adams told him "it was going to go public" and "the share price would probably be around $5" (R.R. – Transcript of November 10, 2011 at p. 146). It was R.R.'s evidence that Loman called him sometime after the visit and told R.R. that there was a lot of interest in Majestic and the shares would be going public at $5, which confirmed the number given by Adams and Bishop (R.R. – Transcript of November 10, 2011 at p. 148).

[112] D.P.'s evidence is that both Bishop and Adams stated Majestic "would go public" D.P. – Transcript of November 7, 2011 at pp. 191 and 193).

[113] R.F. testified that both Bishop and Loman mentioned that Majestic had plans to "go public in the short future" (R.F. – Transcript of November 16, 2011 at p. 28).

V. FRESH EVIDENCE MOTION

[114] Staff and the Respondents completed the evidence phase of the Merits Hearing on November 29, 2011 and closing oral submissions were scheduled for January 24, 2012. Final written submissions on the merits were scheduled to be filed by December 22, 2011 for Staff and January 13, 2012 for the Respondents. With respect to the Merits Hearing, Staff, counsel for Loman, Adams, Bishop and CBK filed written submissions.

[115] During the Merits Hearing, Kricfalusi was notified by Staff that on November 17, 2011 Staff expected to call its last witness and the respondents would be called upon to present their cases. Following receipt of that notification, Kricfalusi advised Staff by email dated November 21, 2011 that she had email communications with respect to "Kevin Loman commissions". Thomson responded to her by email on the same day, requesting that she forward any e-mails or other documents which relate to the issue of Loman receiving commissions or engaging in acts in furtherance of sales of Majestic shares to Alberta investors. Thomson had not previously interviewed Kricfalusi during his investigation of the matter. Subsequently, Kricfalusi communicated to Staff by fax on January 13, 2012 that she had documents pertaining to Loman's involvement and commissions paid to him in this matter and attached four emails that were potentially prejudicial to Loman ("**Kricfalusi's Communication**").

[116] On January 19, 2012, Staff filed and served its Notice of Motion and other materials seeking, among other things, orders permitting the filing of a copy of Kricfalusi's Communication and fresh evidence, being the affidavit of Kricfalusi with e-mails and attachments, and if necessary, an order permitting the matter be reopened for the purpose of introducing the aforementioned fresh evidence (the "**Motion**").

[117] Staff submitted that the Kricfalusi Communication should be admitted because it is credible evidence, not previously in Staff's possession, which ensures a complete evidentiary record and is potentially determinative of the question of whether Loman received commissions. Counsel for Loman submitted that Staff should not be permitted to adduce further evidence after the close of presentation of evidence by the parties and after the filing of written closing submissions on the basis that disruption of the adversarial process amounts to "case-splitting". Case-splitting is a term used to describe situations in which the party presenting the matter seeks to adduce evidence after the respondent has presented a reply. Counsel for Loman argues that case-splitting creates unfair surprise, prejudice and confusion. Further, he submitted that the evidence was available or discoverable upon exercise of reasonable diligence.

[118] The Panel heard submissions on the Motion on January 24 and February 22, 2012 and dismissed the Motion on March 20, 2012 with reasons to follow (*Re Majestic Supply Co., Inc. et al.* (2012) 35 O.S.C.B. 2806). These are those reasons.

[119] The Panel's discretion to admit fresh evidence after written closing submissions was not in dispute. The SPPA grants discretion to a tribunal to control its own process under section 25.0.1. The Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "*Commission Rules*"), are similarly flexible and accommodating. Subrule 1.4(2) of the *Commission Rules* permits a Panel to issue procedural directions or orders in any proceeding and subrule 1.6(2) allows the Panel to "extend or abridge any time period prescribed under the Rules, before or after the time period expires and on any conditions that the Panel considers advisable." The *Commission Rules* also provide the tribunal with the ability to waive or vary any of its own rules in respect of any proceeding. Rule 1.4 (3) states:

> A Panel may waive or vary any of the Rules in respect of any proceeding before it, if it is of the opinion that to do so would be in the public interest or that it would otherwise be advisable to secure the just and expeditious determination of the matters in issue.

[120] With respect to evidence, the Panel also has a broad discretion to admit evidence under the SPPA pursuant to subsection 15(1) which states:

> 15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[121] Therefore, it is within the powers of the Commission to grant the relief sought or dismiss the motion to adduce new evidence, despite the fact that the parties had already concluded adducing evidence and filed closing submissions on the merits.

[122] While none of the precedent provided was directly on point, we found it helpful to consider both court and administrative tribunal cases in which a party sought to present fresh evidence. We agree with the observation of a labour arbitrator who, upon reviewing the authorities cited by counsel, noted the rules guiding arbitrators are not significantly different than those guiding courts in an application to reopen a hearing (*Re Stelco Inc. and U.S.W.A., Local 1005*, [1994] O.L.A.A. No. 1110 at para. 31). We also note that the right of a trial judge to reopen a case to consider fresh evidence is less stringent than the principles governing an application to adduce new evidence before an appellate court (*Scott v. Cook*, [1970] 2 O.R. 769 (H.C.) ("***Scott v. Cook***") at p. 775). Staff submits that there are three possible tests for adducing fresh evidence. The following three cases discuss those options.

[123] The Supreme Court of Canada (the "**SCC**") in *Sagaz* confirmed the applicability of a two-part test from *Scott v. Cook*, on the determination of whether to exercise the court's discretion to re-open a trial after reasons were delivered, but before formal judgment was entered (*671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983 ("***Sagaz***") at paras. 20-21 and 59-65; *Scott v. Cook*, *supra* at p.774). With respect to new evidence, the test states:

> (a) Would the evidence, if presented at trial, probably have changed the result?; and
>
> (b) Could the evidence have been obtained before trial by the exercise of reasonable diligence? [emphasis added]

[124] In *Sagaz*, the SCC considered a civil case in which the appellants sought to admit the affidavit of a witness who had previously had the opportunity to give evidence on discovery and at trial. The trial judge had found that he could not say that the new evidence would probably have changed the result, only that it may have changed the result. This was due to concerns of credibility. Second, the trial judge had found that the evidence could have been obtained before trial, since the witness could have been compelled to testify. The SCC upheld the decision of the trial judge and noted that the applicant had to meet both branches of the *Scott v. Cook* test to reopen a trial to admit fresh evidence (*Sagaz*, *supra* at para. 65). The SCC also acknowledged that deference should be granted to the trial judge who is in the best position to determine whether "at the expense of finality, fairness dictates that the trial be reopened." (*Sagaz*, *supra* at para. 60, citing *Clayton v. British American Securities Ltd.*, [1934] 3 WWR 257 (BCCA) ("***Clayton***") at p. 295). The court cited *Clayton* and *Scott v. Cook* for the proposition that the trial judge must exercise discretion to reopen a trial "sparingly and with the greatest care" so that "fraud and abuse of the Court's processes" do not result (*Sagaz*, *supra* at para. 60, citing *Clayton*, *supra* at p. 295 and *Scott v. Cook*, *supra* at p. 774).

[125] The second test proposed by Staff was elaborated by the SCC in *Palmer*. In that case, the SCC noted the following principles derived from legal authorities with respect to admission of new evidence on appeal:

> (a) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases;
>
> (b) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
>
> (c) The evidence must be credible in the sense that it is reasonably capable of belief; and
>
> (d) The evidence must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result. [emphasis added]
>
> (*R. v. Palmer*, [1980] 1 S.C.R. 759 ("***Palmer***"))

[126] In *Palmer*, the SCC was considering the ability of the Court of Appeal to apply its discretion in admitting new evidence from a witness, which contradicted that witness' testimony given at trial. In that case, the evidence was not in existence at trial, but was relevant. The Court subsequently considered the credibility branch of the test. Since the evidence was unworthy of belief, the court refused the motion to adduce new evidence. In applying the test, the SCC found that the appellate court had made no error in law which would warrant interference.

[127] The third test presented by Staff was Ontario Court of Appeal's decision in *Sengmueller* which concluded that the court will exercise its discretion in favour of admitting new evidence when:

> (a) the tendered evidence is credible;
>
> (b) the evidence could not have been obtained, by exercise of reasonable diligence, prior to trial; and
>
> (e) the evidence, if admitted, will likely be conclusive of an issue in the appeal. [emphasis added]
>
> (*Sengmueller v. Sengmueller* (1994), 17 O.R. (3d) 208 (C.A.) at para 9, citing *Cook v. Mounce* (1979), 26 O.R. (2d) 129 ("***Sengmueller***") at para. 5)

[128] In *Sengmueller*, the Court of Appeal admitted evidence that did not exist at the time of the trial because to deny admission of the evidence would lead to a substantial injustice. The Court of Appeal in *Chiang (Trustee of) v. Chiang* reviewed both tests for admitting fresh evidence on appeal and stated that, while they are similar, the last branch of the *Sengmueller* test may be more stringent that the last branch of the *Palmer* test ([2009] 93 O.R. (3d) 483 at para. 77).

[129] Considerable thought must also be given to fairness and ability of the parties to respond if the case is reopened. Administrative tribunals "owe a duty of fairness to the regulated parties whose interest they must determine" (*Newfoundland Telephone v. Board of Commissioners of Public Utilities*, [1992] 1 S.C.R. 623, at para. 21). The Court of Appeal in *Griffin v. Corcoran* noted the importance of balancing procedural and substantial justice when exercising discretion to reopen a case ([2001] N.S.J. No. 158 (N.S.C.A.) ("***Griffin v. Corcoran***") at para. 65). In that case, the court noted that reopening a case may be offensive to important principles of orderly conduct of litigation in which parties advance the issues, disclose relevant documentation to each other and then proceed by each side having the opportunity to present its case (*Griffin v. Corcoran*,

supra at para. 66). A decision to reopen could be procedurally unfair to the opposite party and, if allowed routinely or too readily, will provide an incentive to ignore these principles to gain a tactical advantage (*Griffin v. Corcoran*, *supra* at para. 67).

[130] In *Re Foresight Capital Corporation*, 2006 BCSECCOM 529, the British Columbia Securities Commission noted that an application to reopen would have to specify full particulars of the new evidence and explain why the fresh evidence is relevant and why it was not reasonably possible to provide it during the hearing. In that matter, upon receiving the application, the Commissioner decided that the proposed evidence was not relevant.

[131] We have taken into consideration the need to balance procedural fairness, including the requirement to provide notice to a respondent of the case to respond to and the right to be heard, with the risk of substantial injustice in this matter. While the evidence sought to be adduced was relevant and reasonably capable of belief, there was only a possibility that it could have changed the result in this case and it appears on the facts that it could have been obtained by exercise of reasonable diligence. Furthermore, admitting the fresh evidence after the close of presentation of evidence by the parties and after the filing of written closing submissions would cause prejudice to Loman in particular, given the nature of the evidence. In the circumstances of this case, and considering that Loman responded to allegations by testifying on his own behalf, we do not agree with Staff that allowing him to respond to the fresh evidence would be a sufficient remedy. For these reasons, we dismiss the Motion to adduce fresh evidence.

VI. MERITS ANALYSIS

A. Did the Respondents engage in unregistered trading, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest?

1. The Law

[132] During the Material Time, and prior to September 28, 2009, subsection 25(1)(a) of the Act set out the registration requirement as follows:

> **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.

[133] The applicable provision refers to a trade or trading in a security. The terms "trade" or "trading" are defined in subsection 1(1) of the Act as:

> **"trade"** or **"trading"** includes,
>
> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> […]
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

[134] The inclusion of the word "indirectly" in the definition of "acts in furtherance", cited above in paragraph (e) of subsection 1(1) of the Act, reflects an express legislative intention to capture conduct which seeks to avoid the registration requirement by doing indirectly that which is prohibited directly.

[135] The definition of "security " is also found at subsection 1(1) of the Act and states:

> **"security"** includes,
>
> (a) any document, instrument or writing commonly known as a security,
>
> (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,[…]
>
> (d) any document constituting evidence of an option, subscription or other interest in or to a security,
>
> (e) a bond, debenture, note or other evidence of indebtedness or a share, […]
>
> (g) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company […]

[136] The Commission has established that trading is a broad concept which includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition. This interpretation has been confirmed by the Ontario courts in their acknowledgement that "[r]egarding "trade", the legislature has chosen to define the term and they have chosen to define it broadly in order to encompass almost every conceivable transaction in securities" (*R. v. Allan Sussman*, [1993] O.J. No. 4359 (Ont. Ct. J.) at para. 46).

[137] The Commission has found that a variety of activities constitute acts in furtherance of trades. For example, the Commission has found that accepting and depositing investor cheques in a bank account for the purchase of shares constitute acts in furtherance of trades (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***") at para. 133). Other examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:

a. providing potential investors with subscription agreements to execute;

b. distributing promotional materials concerning potential investments;

c. issuing and signing share certificates;

d. preparing and disseminating materials describing investment programs;

e. preparing and disseminating forms of agreements for signature by investors;

f. conducting information sessions with groups of investors; and

g. meeting with individual investors.

(*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 80)

[138] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of trade (*Re Lett* (2004), 27 O.S.C.B. 3215 at paras. 51 and 64).

[139] In this case, there is some indication that the respondents may have sought to rely on the "accredited investor" exemption at subsection 2.3(1) of NI 45-106 from registration requirements found in section 25 of the Act. The definition of "accredited investor" is found at section 1.1 of NI 45-106 and includes:

> **"accredited investor"** means
>
> […]
>
> (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1 000 000,
>
> (k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse

> exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
>
> (l) an individual who, either alone or with a spouse, has net assets of at least $5 000 000,
>
> […]

[140] Evidence must be sufficiently clear, convincing and cogent proof, on a balance of probabilities, that the "accredited investor" exemption applies.

[141] In 2006, section 1.10 of the Companion Policy to NI 45-106CP stated:

> **1.10 Responsibility for compliance**
>
> A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.
>
> […] **The issuer should not rely merely on a representation**: "I am a close personal friend of a director". Likewise, under the accredited investor exemption, **the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor"**. Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.
>
> It is not appropriate for a person to assume an exemption is available. For instance an seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. **Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.** [emphasis added]

[142] The Saskatchewan Court of Appeal reviewed similar companion policy to Multi-lateral Instrument 45-103 and decided that issuers are required to take reasonable steps in advance of a sale of shares to ensure purchasers are accredited investors and must have a reasonable basis for believing purchasers are in fact accredited (*Euston Capital Corp. v. Saskatchewan Financial Services Commission* (2008) Sask. R. 100 (Sask. C.A.) at para. 33).

2. Analysis

[143] We find that Majestic, Suncastle, Adams, Bishop, Kricfalusi, CBK and Loman traded in securities and/or engaged in acts in furtherance of trading securities without being registered to do so under the Act and without an exemption from registration being available to them, contrary to subsection 25(1)(a) of the Act, for the reasons that follow.

(a) Majestic, Suncastle, Adams, Bishop and Kricfalusi

[144] We find that the shares of Majestic, the L&C Agreements and the rights of conversion of debt to shares arising from the L&C Agreements constitute securities as defined under subsection 1(1) of the Act.

[145] We received consistent and credible evidence from investors, supported by documentary evidence, including subscription agreements, L&C Agreements and share certificates, that Majestic, Suncastle, Adams, Bishop and Kricfalusi solicited investors to buy Majestic shares and/or sold Majestic shares to investors. The acts of trade or acts in furtherance of trades by these Respondents included the following:

(a) Majestic sold shares from treasury to 88 shareholders for consideration of approximately $2.1 million;

(b) Suncastle resold Majestic shares through at least 53 transactions with shareholders in the secondary market;

(c) Majestic and Suncastle, through Adams, hired Bishop as a salesperson to act as their representative and solicit potential investors to buy Majestic shares;

(d) Bishop admitted to having a commission-based relationship with Adams, Suncastle and Majestic and to having personally brought in "probably" 60 investors who invested approximately $2.5 million;

(e) Bishop introduced to Majestic and/or Suncastle: J.S., whose company invested $50,000 in Majestic; D.P., who invested $100,000 in Majestic and another $100,000 in Suncastle; and J.L.1 who invested $250,000 in Majestic;

(f) Bishop discussed Majestic's operations, gave presentations on its financials and arranged for tours of Majestic's facilities in furtherance of selling Majestic shares;

(g) R.R. testified that Bishop and Adams gave potential investors a tour of Majestic's facilities and made a presentation on the company's operations and finances;

(h) Bishop gave prospective investors a copy of the Majestic business summary and forwarded to prospective investors the subscription agreement which included the $1.00 price per share;

(i) Investors L.R., B.R., D.P. and C.F. in trust signed subscription agreements for Majestic shares and Director One received 200,000 shares as compensation from Majestic;

(j) Investor J.L.1 acquired Majestic shares at $1.00 per share on four occasions through: (i) a L&C Agreement with Adams for $100,000; (ii) a direct purchase from Majestic for $50,000; (iii) purchasing Majestic shares from Suncastle for $80,000; and (iv) another purchase of Majestic shares from Suncastle for $20,000;

(k) Investors R.R., L.N. and R.F. purchased Majestic shares from Suncastle for $100,000, $25,000 and $20,000, respectively;

(l) Forty-nine L&C Agreements with investors were executed in furtherance of selling holdings of Majestic shares, which included the following borrowers: Majestic on eight occasions, 1562497 Ontario Inc. on three occasions, Adams in 33 instances and Kricfalusi in the remaining five cases;

(m) Adams admitted to having recruited seven or eight Majestic investors and having sold his personal Majestic shares to others;

(n) L.R. acquired Majestic shares on two occasions for $10,000 and $25,000 respectively after solicitations by Adams; and

(o) D.B. signed a L&C Agreement with Adams for $5,000 and testified to having introduced at least 14 investors to Majestic, including four who subsequently signed L&C Agreements with Adams;

[146] It is clear from the evidence that Majestic and Suncastle and their representatives actively solicited and induced the sales of Majestic shares. They made representations to induce those sales and sent documents and materials relating to those sales. We find that the actions of Majestic, Suncastle, Adams, Bishop and Kricfalusi constituted trades.

[147] During the Material Time, none of the aforementioned respondents was registered under the Act in any capacity. As stated below at paragraphs 163 to 167, the "accredited investor" exemption is not available to any of these respondents in the circumstances of this case.

[148] We find that Majestic, Suncastle, Adams, Bishop and Kricfalusi traded securities without being registered to do so under the Act and without a registration exemption being available to them, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest.

(b) CBK

[149] CBK transferred 300,000 Majestic shares to 11 investors. CBK submits that it never owned or participated in sales of Majestic shares, nor did it benefit from those sales. CBK also submits that it merely acted as a trustee, holding shares in trust for Adams and Kricfalusi, and transferring the 300,000 shares as requested by beneficiaries.

[150] As stated at paragraph 138, solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of trade (Re Lett, supra at para 51). Furthermore, the definition of "acts in furtherance" at subsection 1(1) of the Act includes "any act […] directly or indirectly in furtherance of any [disposition of a security for valuable consideration]". The L&C Agreements and the rights of conversion of the debt to shares pursuant to the L&C Agreements constitute securities, as decided in paragraph 144 above, and were sold by Adams for valuable consideration. As a result, the transfer of securities by CBK to the

investor-lenders, pursuant to the exercise of the rights of conversion of debt to shares, amounts to conduct in furtherance of trades and therefore constitutes a trade under the Act.

[151] While CBK may not have directed the trading, CBK exercised control over the Majestic securities themselves and facilitated the transfer of Majestic shares to the investor-lenders. Brown described CBK's involvement as follows: "I'm quite certain CBK did transfer shares to individuals and that I prepared the necessary documentation for that" (Tom Brown – Transcript of November 29, 2011 at p. 91). CBK's responsibility to abide by Ontario securities law cannot be obviated by the existence of a trust. There is no prerequisite of ownership of the securities for a respondent to be found in breach. Therefore, regardless of whether CBK was acting as a trustee, and regardless of whether Adams gave the directions to effect the transfer, the fact is that CBK transferred the shares and, thereby, traded securities without registration. The spirit of the Act would be defeated if a respondent were entitled to do indirectly, that which cannot be done directly.

[152] If a respondent engages in trading, such as transferring shares, while not being registered to do so that would constitute a breach of former subsection 25(1) of the Act. During the Material Time, CBK was not registered under the Act in any capacity. We find that CBK traded in Majestic shares without being registered to do so under the Act, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest.

[153] We find that CBK traded in securities without being registered to do so under the Act and without a registration exemption being available, as determined at paragraphs 163 to 167 below, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest.

(c) Loman

[154] As noted in paragraph 137 above, there are a number of activities which constitute acts in furtherance of a trade. Providing subscription agreements for investors to execute, distributing promotional materials, and meeting with individual investors for the purpose of soliciting or enabling investment can constitute "trading" within the meaning of the Act.

[155] Investors H.E., R.R., L.N. and R.F. testified that they were introduced to Majestic through Loman. Loman gave Majestic's business plan to H.E. and provided him with instructions to make his investment payable to Adams. R.R. received a call from Loman and L.N. was stopped by Loman in the hallway of Essen's office building; each was told about Majestic's business. R.F. testified to having numerous discussions with Loman about Majestic and stated that Loman gave him Bishop's contact information where he later obtained more investment information. Subsequently, H.E. invested $96,000, R.R. invested $100,000, L.N. invested $20,000 and R.F. invested $25,000 in Majestic.

[156] Loman admitted, and documentary evidence supported, the fact that Loman emailed investor J.B. a subscription agreement to execute, an address to which the signed subscription agreement could be sent and an account to which her money for a subscription for securities could be wired. Bishop was copied on the correspondence and advised by Loman that the agreement would be signed in two parts, but if that was not sufficient Loman would "assist in getting one copy duly signed". J.B. subsequently invested $40,000 in Majestic shares.

[157] Brown testified that the Alberta Investors were Loman's contacts, whom Brown understood had participated in investments for which Loman had raised capital in Alberta and to whom Loman presented the opportunity of investing in Majestic.

[158] Documentary evidence provided by Staff support Loman's admission that he signed and witnessed six share subscription agreements. This was corroborated by testimony of R.F. and J.B., with respect to execution of the agreement by her fiancé.

[159] Despite being an investor himself, Loman had direct contact with the Alberta Investors. Many of the Alberta Investors who testified acknowledged a friendly or "acquaintance" relationship with Loman and agreed that he was "sharing information". This does not excuse or explain his actions in breach of the Act.

[160] With respect to whether or not Loman received commissions from the sales of securities to the Alberta Investors, we do not find his explanation for receipt of $145,250 credible. There is no evidence that Majestic or Suncastle held any patents that required asset protection insurance. Further, Loman's claim that the payment was for API services was unsupported by any service agreement. While it is not necessary to find that Loman was paid commission to find him in breach of the Act in this case, on a balance of probabilities the evidence weighs in favour of a finding that Loman was paid commissions in respect of sales of Majestic shares to the Alberta Investors. Also, we do not accept his professed ignorance of an invoice in respect of his own work for a relatively large fee. The finding that commissions were paid supports the allegation that Loman acted as a salesperson selling Majestic securities. He was required to be registered to be engaged in this activity.

[161] We find that Loman's actions constitute acts in furtherance of trading Majestic shares. Loman was not registered with the Commission during the Material Time in any capacity and the "accredited investor" exemption is not available to him, as determined at paragraphs 163 to 167 below.

[162] We find that Loman traded securities without being registered to do so under the Act and without a registration exemption being available to him as determined at paragraphs 163 to 167 below, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest.

(d) Accredited Investor Exemption

[163] Once Staff has proven that the Respondents traded without registration and/or distributed shares without qualifying the shares under a prospectus, the onus shifts to the respondents to prove an exemption from registration and prospectus requirements is available in the circumstances (*Limelight*, *supra* at para. 142, citing *Re Euston Capital Corp*. 2007 ABASC 75, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, and *Re Ochnik* (2006), 29 O.S.C.B. 3929).

[164] NI 45-106CP states that the Respondents are responsible for compliance and are required to have a reasonable basis for believing purchasers are accredited. Without such a basis, sales constitute illegal trades and the spirit and intent of the exempt market regime are violated. This Companion Policy provides guidance as to how to apply and interpret the proper use of the exemptions set out in NI 45-106.

[165] Despite the fact that many investors signed certificates reporting they were accredited investors, we note that no evidence was provided that any of the investors who testified actually qualified as accredited investors and no evidence was provided to indicate that the Respondents took the requisite effort to ensure investors were in fact accredited.

[166] L.R. testified that Adams told her that signing a form stating that you are an accredited investor is just a formality. Investor D.B. admitted to introducing at least 14 investors and testified that he was not aware of anyone he introduced being turned down by Adams or Kricfalusi, nor was he given criteria as to whom he could bring forward.

[167] We did not receive evidence on the investors' financial positions which would prove that they qualify as accredited investors and we did not receive sufficient evidence on the availability of an exemption which would allow the Respondents to rely upon the "accredited investor" exemption at subsection 2.3(1) of NI 45-106 in order to trade in securities in Ontario during the Material Time.

B. Did the Respondents distribute securities of Majestic without a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest?

1. The Law

[168] Subsection 53(1) sets out the prospectus requirement under the Act:

> **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 have been filed and receipts have been issued for them by the Director.

[169] The prospectus is the primary disclosure document of an issuer for the benefit and protection of investors. In accordance with section 56 of the Act, a prospectus must provide "full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed".

[170] The Commission has acknowledged that the prospectus requirement is fundamental to the protection of the investing public because it ensures investors have full, true and plain disclosure to properly assess investment risk and make an informed decision. The panel in *Limelight* articulated:

> The requirement to comply with section 53 of the Act is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at p. 5590), "there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares."
>
> (*Limelight*, *supra* at para. 80)

[171] A "distribution" is defined in subsection 1(1) of the Act and includes "a trade in securities of an issuer that have not been previously issued."

[172] Exemptions from the prospectus requirement are provided in NI 45-106 and include, among others, exemptions for a trade in a security of a private issuer to certain persons and a trade in a security if the purchaser is an accredited investor.

[173] Under National Instrument 45-102 *Resale of Securities* ("**NI 45-102**"), if a security was distributed under an exemption from the prospectus requirements in NI 45-106, unless the applicable conditions in Part 2 of NI 45-102 are satisfied, then the first trade of that security is a distribution, which is subject to the prospectus requirement found in subsection 53(1) of the Act.

[174] There is some indication that the Respondents may have sought to rely upon the "accredited investor" exemption from prospectus requirements that existed during the Material Time, as provided in subsection 2.3(2) of NI 45-106. The definition of "accredited investor" is found at section 1.1 of NI 45-106 and is substantially the same as the language articulated at paragraph 139 above.

2. Analysis

[175] Documentary evidence confirms that Majestic has never been a reporting issuer and a prospectus in respect of Majestic securities has never been filed with the Commission. Shares of Majestic were distributed from treasury to investors. For the same reasons set forth in paragraphs 163 to 167, the accredited investor exemption from the prospectus requirement of subsection 53(1) of the Act is not available to the Respondents in respect of the distribution of previously unissued shares of Majestic.

[176] Brown, counsel for Majestic and Suncastle, testified that in addition to the accredited investor exemption, Majestic was also relying on the "seed capital" exemption which would allow solicitation of fifty individuals and sale to twenty-five, pursuant to subsection 72(1)(p) of the Act. However, this exemption was not available during the Material Time for distributions. During the Material Time, pursuant to subsection 5.1(3) of OSC Rule 45-501, the exemptions from the prospectus requirement set forth in subsection 72(1) of the Act were not available for a distribution of a security. In the absence of sufficient evidence and any submissions, we are not able to find that there was any exemption from the prospectus requirement available to the Respondents for the distribution and sale of Majestic shares to the public.

[177] Therefore, Majestic securities were illegally distributed from treasury to 88 shareholders contrary to subsection 53(1) of the Act and contrary to the public interest. Majestic, Adams, Bishop and Loman engaged in the trading of, or engaged in acts in furtherance of the trading of, these Majestic shares without a prospectus having been filed as required by subsection 53(1) of the Act and such conduct was contrary to the public interest.

[178] Adams, Bishop, CBK and Kricfalusi also traded in, or engaged in acts in furtherance of the trading of, the L&C Agreements and indirectly shares of Majestic that were issuable pursuant to the terms of the L&C Agreements. We found at paragraph 144 above that L&C Agreements constitute securities as defined under subsection 1(1) of the Act. These were securities for which no prospectus was issued and for which there was no exemption from the prospectus requirement. Accordingly, they were securities that were illegally distributed contrary to subsection 53(1) of the Act and contrary to the public interest.

[179] Suncastle and Loman also engaged in the trading of, or engaged in acts in furtherance of the trading of, Majestic securities that were not sold from treasury, but were resales of illegally distributed securities.

[180] The Respondents cannot rely on a resale exemption under NI 45-102 to validate the trading of illegally distributed securities for which there was never a prospectus nor an exemption from the prospectus requirement. NI 45-102 was not drafted to confer legitimacy on secondary trades of illegally distributed securities and it should not be interpreted and used as such. The resale of Majestic shares by Suncastle and Loman and the resale, in effect, of Majestic shares by Adams, Bishop, CBK and Kricfalusi pursuant to the L&C Agreements formed part of the overall trading scheme by the Respondents in this matter and therefore contributed to and continued the illegal distribution of Majestic securities.

[181] Securities, which have been illegally distributed, are not legally freely tradable securities because they were never first acquired under a prospectus or an available prospectus exemption. As a result, Suncastle, CBK, Adams, Bishop, Kricfalusi and Loman, who engaged in secondary trading of Majestic securities, were doing so illegally, because the securities they traded had not been previously issued under a prospectus or an available prospectus exemption. As a result, they too are participating in a distribution illegally.

[182] We find that the trades in Majestic securities by the Respondents were distributions made without a prospectus as required by the Act and without an exemption from the prospectus requirement, and that the Respondents therefore breached subsection 53(1) of the Act and acted contrary to the public interest.

C. Did Majestic, Adams and/or Bishop give an undertaking relating to future value of Majestic shares with the intention of effecting a trade, contrary to subsection 38(2) of the Act and contrary to the public interest?

1. The Law

[183] During the Material Time, subsection 38(2) of the Act provided as follows:

> **Future value**
>
> [38](2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[184] In *Limelight*, the Commission considered the threshold required for a representation to amount to an "undertaking". The panel was guided by the Alberta Securities Commission decision in *National Gaming Corp.* (2000), 9 A.S.C.S. 3570, at p. 16, which stated that "an undertaking is a promise, assurance or guarantee of future value of securities that can be reasonably interpreted as providing the purchaser with a contractual right". Nevertheless, the *Limelight* Panel found that "something less than a legally enforceable obligation can be an "undertaking" within the meaning of subsection 38(2), depending on the circumstances" (*Limelight*, *supra* at para. 164).

[185] In *Aatra*, a salesperson told an investor that the investor would "probably" be well over the $4.00 mark over the next 90 days and stated "I would assure you, I will practically guarantee you that within the week you will see the stock … twenty cents ($0.20) to fifty cents ($0.50) higher." (*Re Aatra Resources Ltd. et al.* (1990), 13 O.S.C.B. 5109 ("***Aatra***") at para. 34). The panel in *Aatra Resources Ltd.* found these representations to be in breach of section 38(2) of the Act.

[186] Counsel for Adams placed emphasis on the Commission's decision in *Al-tar*, where the panel stated that "[a] simple representation is not enough to trigger [subsection 38(2) of the Act]" (*Re Al-tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-tar***") at para. 160). In *Al-Tar* the salesperson told an investor that the company was going on the market" and "hoped" it would be trading at $6 per share, which the panel understood to be an approximate target and not a firm undertaking (*Al-Tar*, *supra* at para. 184).

[187] Counsel for Adams also relied on the Goldpoint decision, in which it was decided that certain representations lacked the firmness and specificity the panel would expect of a promise or assurance (*Re Goldpoint Resources Corp.* (2011), 34 O.S.C.B. 5478 ("***Goldpoint***") at para. 121). In that matter, the representative had told one investor that Goldpoint would be bought by another company and shares "would" reach a value of $20. While not finding a breach of subsection 38(2) of the Act, the panel in *Goldpoint* did consider the representations together with high pressure sales tactics to be improper and contrary to the public interest (*Goldpoint*, *supra* at para. 123).

[188] We were also directed to the decision in *Merax*, in which the panel was not satisfied that representations that a public offering would occur at $3 or that a takeover offer of $3.25 had been made constituted undertakings as to the future value of securities (*Re Merax Resource Management* (2011), 34 O.S.C.B. 12476 at para. 140).

2. Analysis

[189] While we find that Adams deceived investor L.R., we are not persuaded that Adams provided an undertaking relating to future value of Majestic shares with the intention of effecting a trade. We do, however, find that Adams' deceptive representations amount to conduct contrary to the public interest. We also find that neither Majestic nor Bishop breached subsection 38(2) of the Act.

(a) Adams

[190] Staff provided several examples of representations made by Adams to investors. These statements included language such as, the share price "would probably be around $5" (R. R. – Transcript of November 10, 2011 at p. 146), the price "could easily reach $30" (C. F. – Transcript of November 10, 2011 at pp. 52-53), the shares "in all likelihood would be worth 10 to 15 times" more than the purchase price (J.L.1 – Transcript of November 15, 2011 at p. 20). We do not consider these representations to have met the necessary threshold to amount to an undertaking under subsection 38(2) of the Act.

[191] We find that Adams made deceptive representations to induce L.R. into purchasing shares for the second time. We accept L.R.'s evidence that she was told by Adams that shares would be on the NASDAQ within a week or so and would open at $5.00. L.R. testified that Adams stated he would personally guarantee the investment, which led her to sign a L&C Agreement with Kricfalusi for $25,000. We note that under cross-examination L.R. could not recall whether Adam specifically stated that he would reimburse her if the loan failed, but she did recollect that Adams said he would "make sure" L.R. got her money and she trusted him in that respect.

[192] We agree with the panel in *Limelight* that "something less than a legally enforceable obligation can be an "undertaking" within the meaning of subsection 38(2), depending on the circumstances" (*Limelight*, *supra* at para. 164). In this case, Adams gave the investor a price for which the shares would trade on an exchange within a week. Adams then went further by assuring the investor she would get her money back to induce her into purchasing Majestic shares. Subsection 38(2) of the Act requires an undertaking, written or oral, relating to the future value or price of the security. While Adams' statement guaranteed the principal invested, it did not make a promise with respect to future value or price of the securities.

[193] We find Adams did not provide an undertaking in breach of subsection 38(2) of the Act. Nevertheless, we do find that Adams' deceptive representations amount to conduct contrary to the public interest.

(b) Majestic and Bishop

[194] We are not satisfied that the evidence supports a breach of subsection 38(2) of the Act by Majestic or Bishop.

[195] Staff submitted that Adams and Bishop advised investor D.P. that the Majestic share value could increase by 10 or 20 times once Majestic went public. They made no further submissions with respect to this allegation against Majestic.

[196] D.P. testified that he was told a "10 to 1, 20 to 1 return on investment was not at all unlikely and kind of the minimum to be expected" (D.P. – Transcript of November 7, 2011 at p. 184). There is no evidence of any promise or assurance given to repurchase shares or refund the principal if a certain value was not achieved. We do not consider this statement to be sufficiently clear or certain to amount to an undertaking within the meaning of the subsection 38(2) of the Act.

[197] We find that neither Majestic nor Bishop gave an undertaking relating to future value of Majestic shares with the intention of effecting a trade, contrary to subsection 38(2) of the Act and contrary to the public interest.

D. Did Majestic, Adams, Bishop and/or Loman make prohibited representations regarding future listing of Majestic shares on an exchange, contrary to subsection 38(3) of the Act and contrary to the public interest?

1. The Law

[198] Subsection 38(3) of the Act states:

> **38(3) Listing** – Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
>
> (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[199] Unlike subsection 38(2) of the Act, subsection 38(3) does not require an undertaking with respect to the future listing, only a representation. A representation about listing shares on a stock exchange is sufficient to constitute a violation of subsection 38(3) of the Act. For example, in the *Limelight* case, the Commission found that evidence of salespersons stating that Limelight shares would be listed on an exchange, with the timeframe given ranging from 10 to 12 days to a year, constituted a breach of subsection 38(3) of the Act (*Limelight*, *supra* at para. 181).

2. Analysis

[200] Based on the evidence, we find that Majestic, through Bishop, and Adams and Bishop, in their individual capacity, made prohibited representations with respect to future listing of Majestic securities on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest. We find Loman did not breach this provision.

(a) Majestic, Adams and Bishop

[201] It is clear from the evidence that Majestic, through Bishop, and Adams and Bishop, in their individual capacity, made material misrepresentations to induce Majestic investors into purchasing shares including that Majestic would go public.

[202] Investor R.R. testified that Adams and Bishop told him "it[Majestic] was going to go public" and "the share price would probably be around $5" (R.R. – Transcript of November 10, 2011 at p. 146). D.P. similarly testified that both Bishop and Adams stated Majestic "would go public".

[203] Investor L.R. stated that Adams told her the company would be "going on the NASDAQ within a week or so" and "would open at $5" (L.R. – Transcript of November 7, 2011 at p. 94). J.S., who invested through his holding company, testified that Bishop indicated Majestic would public. J.S. gave evidence that the idea was for him to have a loan to start with and convert that into shares once the company went public. When asked what he meant by "going public", J.S. replied that he meant "[g]oing on the market, so outside investors could buy shares in the company." (J.S. – Transcript of November 11, 2011 at p. 142).

[204] We find that these statements qualify as prohibited representations regarding the future listing of Majestic shares. On at least one occasion a specific stock exchange was noted with listing within a short timeframe to induce the investor to purchase more shares in Majestic. In another, the investor understood that the shares would be sold to others on the public market and structured his investment with the intent of triggering acquisition of equity upon the occurrence of the listing.

[205] Despite assertions that Majestic intended to go public, the evidence does not support a claim that there was any effort made to go public until it became apparent that investors and agents began questioning the legitimacy of Majestic's operations.

[206] We are satisfied on the evidence that Majestic through Bishop, and Adams and Bishop, in their individual capacity, made representations as to the future listing of Majestic shares on a stock exchange for the purpose of effecting trades in Majestic shares, contrary to subsection 38(3) of the Act and contrary to the public interest.

(b) Loman

[207] The evidence does not support a finding that Loman made prohibited representations, contrary to subsection 38(3) of the Act and contrary to the public interest.

[208] Staff submitted that Loman made representations to L.N. and R.F. with respect to the future listing of Majestic shares on a stock exchange for the purpose of effecting trades in Majestic securities. Investor L.N. testified that Loman told him Majestic and Suncastle intended to take products onto the public market, and that "[t]hrough Majestic/Suncastle or a company to be formed on the stock exchange they were going to take it to the public market as a unit, as a cartridge and ink." (L.N. – Transcript of November 14, 2011at pp. 83-84). Investor R.F. testified that both Bishop and Loman mentioned that Majestic had "plans to go public in the short future" (R.F. – Transcript of November 16, 2011 at p. 28).

[209] We find these comments lack clarity with respect to whether Majestic was to be listed on an exchange. Investor L.N.'s testimony seems to suggest that the companies sought to introduce certain products to public consumers. In the latter instance, the investor was told that the companies had "plans" to go public, but not that Majestic "will" or "would" be listed as specified in the language of the relevant provision. Accordingly, we do not find Loman in breach of subsection 38(3) of the Act or that his actions in this respect were contrary to the public interest.

E. Did Adams, Bishop and/or Kricfalusi authorize, permit or acquiesce in non-compliance with Ontario securities law by one or both of the Corporate Respondents, such that they are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest?

1. The Law

[210] Under the Act, a director or officer or an individual who performs similar functions can be liable for breaches of securities law by a corporation. Section 129.2 of the Act states:

> **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.

[211] In subsection 1(1) of the Act, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person" and an "officer" is defined as:

> (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 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).

[212] The Commission determined in *Momentas* that the threshold for a finding of liability against a director or officer under section 129.2 of the Act is low. Indeed, merely acquiescing in the conduct or activity in question will satisfy the requirement of liability. The *Momentas* panel discussed the threshold and defined the terms "authorize", "permit" and "acquiesce" as follows:

> 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*, *supra* at para. 118)

[213] Section 129.2 of the Act attaches liability to directors and officers or individuals who perform similar functions (ie. a "***de facto***" director or officer) who authorize, permit or acquiesce in the non-compliance of a company, whether or not any proceedings have been commenced against the company itself.

2. Analysis

[214] Based on the evidence, we find that Adams and Bishop authorized, permitted or acquiesced in non-compliance with Ontario securities law by Majestic. We also find that Adams and Kricfalusi authorized, permitted or acquiesced in non-compliance with Ontario securities law by Suncastle.

[215] Corporate records reveal that Adams was an original officer of 1562497 Ontario Inc., Majestic's predecessor, and subsequently a director of Majestic after its amalgamation on April 1, 2006. Adams apparently resigned as secretary and director of Majestic on November 16, 2006. Adams also held the position of secretary of Suncastle as of and from June 28, 1995. He hired Bishop to sell Majestic securities on behalf of Majestic and Suncastle and agreed to commission-based compensation packages for each.

[216] Bishop was appointed as Majestic's secretary and vice-president of corporate finance on November 16, 2006. As discussed above at paragraphs 13 and 65, Bishop is a director of Majestic and has acknowledged that he was engaged to fill the position of vice president and signed an agreement which supported that fact.

[217] Kricfalusi became president and director of Suncastle as of April 1, 2006.

[218] In light of the evidence and admissions referred to above, we find that Adams, being a director of Majestic until November 16, 2006, and an officer of a predecessor to Majestic prior to April 1, 2006, and Bishop as a director and/or officer of Majestic as of and from November 16, 2006, authorized, permitted or acquiesced in the commission of the violations of sections 25, 38 and 53 of the Act by Majestic, and are deemed, pursuant to section 129.2 of the Act, to also have not complied with the Ontario securities law and to have acted contrary to the public interest.

[219] Furthermore, we find that Adams and Kricfalusi, being directors and/or officers of Suncastle, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act by Suncastle, and are deemed, pursuant to section 129.2 of the Act, to also have not complied with the Ontario securities law and to have acted contrary to the public interest.

F. Did Majestic fail to file a report of exempt distribution of Majestic shares with the Commission contrary to section 6.1 NI 45-106?

1. The Law

[220] Section 6.1 of NI 45-106 states:

> **Report of exempt distribution**
>
> **6.1** Subject to section 6.2 [When report not required], if an issuer distributes a security of its own issue, the issuer must file a report in the local jurisdiction in which the distribution takes place on or before the 10th day after the distribution under the following exemptions:
>
> (a) section 2.3(2) [*Accredited investor*]; […]

2. Analysis

[221] If we had accepted that this was a legitimate exempt distribution of Majestic securities pursuant to the accredited investor exemption found at subsection 2.3(2) of NI 45-106, or if it had been established that another exemption under 45-106 had been available and applicable to the treasury distribution of Majestic securities, Majestic would have been required to file a report of exempt distribution under section 6.1 of NI 45-106. Having found that this was not a legitimate exempt distribution pursuant to the accredited investor exemption or another exemption under 45-106 and that Majestic breached subsection 53(1) of the Act, as a result, no filing of a report of exempt distribution is required of Majestic under NI 45-106.

[222] In the circumstances, we do not find Majestic in breach of section 6.1 of NI 45-106.

VII. CONCLUSION

[223] For the reasons given above, we find that:

(a) Majestic, Suncastle, Adams, Bishop, Kricfalusi, Loman and CBK traded in Majestic securities and/or engaged in acts in furtherance of trades in Majestic securities without having been registered under the Act to do so, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest;

(b) Majestic, Suncastle, Adams, Bishop, Kricfalusi, Loman and CBK engaged in an illegal distribution of securities contrary to subsection 53(1) of the Act and contrary to the public interest;

(c) Adams made deceptive representations to induce an investor to purchase Majestic securities contrary to the public interest;

(d) Majestic, through Bishop, and Adams and Bishop, in their individual capacities, made prohibited representations with respect to the future listing or quoting of Majestic shares on a stock exchange or quotation system, contrary to subsection 38(3) of the Act and contrary to the public interest;

(e) Adams and Bishop authorized, permitted or acquiesced in commission of violations of securities law by Majestic, and are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest; and

(f) Adams and Kricfalusi authorized, permitted or acquiesced in commission of violations of securities law by Suncastle, and are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest.

[224] We will also issue an order dated February 21, 2013 which sets down the date for the hearing with respect to sanctions and costs in this matter.

Dated at Toronto this 21st day of February, 2013.

“Paulette L. Kennedy”

“Edward P. Kerwin”

3.1.3 HEIR Home Equity Investment Rewards Inc. et al.

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

AND

IN THE MATTER OF
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.

SETTLEMENT AGREEMENT
BETWEEN STAFF AND ERIC DESCHAMPS

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Eric Deschamps ("Deschamps").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 29, 2011, and amended February 14, 2012 against Deschamps (the "Proceeding") according to the terms and conditions set out in Part V of this Settlement Agreement. Deschamps agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. Deschamps agrees with the facts as set out in Part III of this Settlement Agreement. To the extent that Deschamps does not have personal knowledge of certain facts as described below, he believes those facts to be true and accurate.

4. Staff and Deschamps agree that the facts and admissions set out in Part III of this Settlement Agreement are made without prejudice to Deschamps in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings currently pending or which may be brought by any other person, corporation or agency.

A. OVERVIEW

5. Since September 2008, Deschamps was the "Chief Spiritual Officer" of HEIR Home Equity Investment Rewards Inc. ("HEIR"), as well as one of its salespeople. Up to and including August 3, 2010, Deschamps, on behalf of HEIR, engaged in various activities that constituted trading or acts in furtherance of trading of securities when he and HEIR were not registered with the Commission and when no exemptions from registration were available to them under the Act. Further, Deschamps and HEIR advised, engaged in and/or held themselves out as engaging in the business of advising with respect to investing in or buying securities without proper registration.

6. Among the securities traded and distributed by Deschamps and HEIR were those offered by Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso and the Caruso Companies as defined below (collectively the "Canyon Respondents").

7. Deschamps' and HEIR's activities involved trades in securities not previously issued which were therefore distributions. None of the Respondents has ever filed a preliminary prospectus or a prospectus with the Commission, and Deschamps is not aware of any prospectus receipt having ever been issued to qualify the sale of any of the securities that were traded by Deschamps or HEIR.

8. This conduct was in breach of the Act and in a manner that was contrary to the public interest.

B. BACKGROUND

9. Deschamps is a resident of Ontario and a member of HEIR since approximately 2006. In September 2008, he became the "Chief Spiritual Officer" of HEIR, and was employed in an executive position under the direction of Archibald Robertson ("Robertson"). He also became a salesperson for HEIR at that same time. For a period of approximately nine months, Deschamps was also HEIR's National Sales Leader and HEIR's salespeople reported to him.

10. Robertson is the sole shareholder and director of HEIR and its directing mind. He is also the sole shareholder and director of FFI First Fruit Investments Inc. ("FFI") and Wealth Building Mortgages Inc. ("Wealth Building") (together with HEIR, are collectively the "HEIR Entities") and the directing mind of those companies. The HEIR Entities shared their principal office and centre of administration in Ottawa, Ontario.

11. Brent Borland ("Borland") is a resident of the United States of America ("U.S.") and the founder of Canyon Acquisitions, LLC ("Canyon U.S.") He is Chief Executive Officer ("CEO") and a directing mind of Canyon U.S. and Canyon Acquisitions International, LLC ("Canyon Nevis") (collectively the "Canyon Entities").

12. Wayne D. Robbins ("Robbins") is a U.S. resident and the President of the Canyon Entities, and, along with Borland, a directing mind of these companies.

13. Marco Caruso ("Caruso") is a resident of Belize, who represented himself to be a director and/or officer and directing mind of Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd. which are purportedly land development companies incorporated in Caribbean countries (collectively the "Caruso Companies").

14. None of the respondents was registered with the Commission in any capacity at any time.

C. UNREGISTERED ACTIVITIES OF DESCHAMPS AND HEIR

i) Trading and Illegal Distribution in Securities

15. From at least September 2008 through August 3, 2010 (the "Material Time"), HEIR ran a private investment club under the direction of its founder, Robertson. Throughout the Material Time, HEIR offered its fee paying members access to certain investments of various third parties, including the following (collectively the "Third Party Entities"):

    a. the Canyon Respondents;

    b. the Skyline Apartment Real Estate Investment Trust (the "Skyline REIT") based in Ontario;

    c. Capital Mountain Holding Corporation, a company incorporated in Texas, and its related entities (collectively the "Capital Mountain Entities"); and

    d. Walton Capital Management Inc., a company incorporated in Ontario, and its related entities (the "Walton Entities").

16. The investment products of the Third Party Entities constituted securities under Ontario securities laws (collectively the "Securities"), and included the following investments:

    a. investment contracts offered by or through the Canyon Entities and Caruso Companies;

    b. units of the Skyline REIT ("Skyline Securities");

    c. promissory notes of the Capital Mountain Entities; and

    d. shares, limited partnership units or other securities in the Walton Entities offered by or through Walton Capital Management Inc..

17. Most HEIR members purchased the Securities and many invested in more than one. During the Material Time, HEIR and its consultants arranged the sale of at least $50 million in securities of the Third Party Entities and other issuers to hundreds of investors consisting of HEIR members and others referred by HEIR consultants.

18. By September 2008, all of the investment opportunities with the Third Party Entities described above had already been arranged by Robertson and other HEIR personnel, and the majority of sales facilitated by HEIR had already occurred. Deschamps was not involved with finding any of the investment products of the Third Party Entities, or any other

investment opportunities, and he relied upon the representations of HEIR and Robertson about the extent of due diligence done on those opportunities.

19. Deschamps acknowledges that he, Robertson and the HEIR Entities engaged in the following activities between September 2008 and August 3, 2010, which were consistent with HEIR's practices before he became its employee:

    a. advertising and promoting HEIR and/or the Securities through frequent appearances on radio show programs, networking and by maintaining a website for HEIR;

    b. holding one-on-one sessions with potential investors that promoted HEIR and the Securities;

    c. holding HEIR seminars and meetings with potential investors and arranging for presentations to be given by the Third Party Entities, including Borland and Robbins on behalf of the Canyon Respondents, who attended the HEIR meetings and gave presentations promoting the Securities and provided promotional and other materials including offering memoranda to potential investors;

    d. arranging trips for HEIR members to resort locations to promote the Securities and meet representatives of the Third Party Entities, including Borland, Robbins and Caruso, with the HEIR Entities often paying for some of the associated expenses;

    e. arranging for potential investors to have access to Third Party Entities' webinars regarding the Securities and otherwise facilitating investment in the Securities; and/or

    f. employing and/or contracting commissioned sales agents to bring in new members and/or solicit investment in the Securities.

20. In addition, Deschamps acknowledges that he is aware of at least one instance in which the HEIR Entities accepted funds intended to purchase Securities offered by at least one of the Third Party Entities.

21. The HEIR Entities received commissions from the Third Party Entities for their activities during the Material Time, which commissions exceeded $2 million during Deschamps' tenure. The HEIR Entities then paid HEIR's salespeople such as Deschamps, a portion of those commissions while retaining a large portion for use by the HEIR Entities.

22. With respect to the investment contracts of the Canyon Respondents and the promissory notes of the Capital Mountain Entities, no steps were taken to rely on any exemption to the prospectus and registration requirements under Ontario securities laws. While Deschamps acknowledges that investments in Canyon and Capital Mountain are Securities, Deschamps was advised by Robertson and/or Canyon or Capital Mountain that these investments were real estate transactions and, as a result, at that time he mistakenly believed that these were not Securities. Deschamps failed to do any due diligence beyond discussions with Robertson and others acting on behalf of HEIR to determine whether these were in fact Securities.

23. In trading or distributing some of the Securities, such as the Skyline Securities and the securities of the Walton Entities, Deschamps was advised by Robertson that the investments were purportedly made in reliance upon the accredited investor exemption or one of the other exemptions set out in National Instrument 45-106 – *Prospectus and Registration Exemptions* (the "Purportedly Exempt Securities"). However, a significant number of investors to whom the Purportedly Exempt Securities were sold and distributed did not meet the requirements necessary to qualify as accredited investors or any of the other exemptions.

24. Deschamps and HEIR obtained financial and other information from potential investors. In some instances, Deschamps, Robertson and/or HEIR knew or ought to have known that the investors were not accredited or otherwise exempt.

25. Deschamps, Robertson and HEIR failed to ensure that the requirements for the exemptions to the registration and prospectus requirements were met.

26. Through the acts described above, Deschamps, Robertson and HEIR engaged in, and held themselves out as engaging in, the business of trading in securities in Ontario.

27. The Securities had not been previously issued. None of the Respondents has ever filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued from the Director to qualify the sale of any of the Securities.

ii) Unregistered Advising by Deschamps and HEIR

28. In addition to solicitations and other acts in furtherance of trading, Deschamps, Robertson and HEIR expressly or impliedly recommended or endorsed the Securities to potential investors. They also recommended specific allocations of investment funds to be made by potential investors in regard to the Securities.

iii) Benefits Received by Deschamps

29. For his involvement with HEIR, in addition to salary and commissions on sales of HEIR memberships, Deschamps received commissions on the sales of securities that he arranged. In particular, directly and through a company he controlled, he received $7,766.48 as his share of commissions for sales of Securities offered by the Canyon Respondents. Deschamps did not profit from sales of Capital Mountain, but lost money by investing in it, as did members of his family. Deschamps did receive commission payments from the HEIR Entities for a single sale of Skyline Securities to an investor who did meet the minimum investment exemption.

D. Deschamps' Cooperation with Staff's Investigation

30. Deschamps cooperated with Staff in its investigation by agreeing to provide documents and testimony and has worked diligently with Staff to resolve this matter without the need for a full hearing.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

31. By engaging in the conduct described above, Deschamps admits and acknowledges that he has breached Ontario securities law by contravening sections 25 and 53 of the Act, and Deschamps admits and acknowledges that he has acted contrary to the public interest in that:

a. Deschamps, by his involvement in the sales of Securities, as described above, traded in securities (in that he acted directly or indirectly in furtherance of a trade in Securities) and/or engaged in, or held himself out as engaging in, the business of trading in securities, where no exemptions were available, without being registered to trade in securities, contrary to section 25 of the Act and contrary to the public interest;

b. Deschamps engaged in, or held himself out as engaging in, the business of advising with respect to investing in securities without being registered to advise in securities, contrary to section 25 of the Act and contrary to the public interest; and

c. The actions of Deschamps related to the sale of securities constituting distributions of securities where no preliminary prospectus and prospectus were issued nor receipted by the Director, and where no exemptions were available, contrary to section 53(1) of the Act and contrary to the public interest.

PART V – TERMS OF SETTLEMENT

32. Deschamps agrees to the terms of settlement listed below and to the Order attached hereto, made pursuant to subsection 127(1) and section 127.1 of the Act that:

(a) The settlement agreement is approved;

(b) Deschamps will cooperate with Staff in its investigation including testifying as a witness for Staff in any proceedings commenced or continued by Staff or the Commission relating to the matters set out herein and meeting with Staff in advance of that proceeding to prepare for that testimony;

(c) Deschamps will be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(d) Trading in any securities by Deschamps cease for a period of seven (7) years from the date of the Order attached as Schedule "A", pursuant to paragraph 2 of subsection 127(1) of the Act;

(e) Acquisition of any securities by Deschamps is prohibited for a period of seven (7) years from the date of the Order attached as Schedule "A", pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(f) Any exemptions contained in Ontario securities law do not apply to Deschamps, for a period of seven (7) years from the date of the Order attached as Schedule "A", pursuant to paragraph 3 of subsection 127(1) of the Act;

(g) Deschamps shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager, (except as set out in paragraph 32(h) below) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

(h) Deschamps is prohibited, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, for a period of seven (7) years from the date of the Order attached as Schedule "A" from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Deschamps is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as he, his spouse, and/or immediate family are the only holders of the securities of the corporation;

(i) Deschamps is prohibited for a period of seven (7) years from the date of the Order attached as Schedule "A", from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(j) Deschamps shall pay to the Commission an administrative penalty of $7,233.52, for his failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(k) Deschamps shall disgorge to the Commission the sum of $7,766.48, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(l) After the payments set out in paragraphs 32 (j) and (k) are made in full, as an exception to the provisions of paragraphs 32 (d), (e) and (f) Deschamps is permitted to trade in or acquire securities in his personal registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or for any registered education savings plan ("RESP") accounts for which he is a beneficiary or a sponsor; and

(m) Until the entire amount of the payments set out in paragraphs 32 (j) and (k) is paid in full, the provisions of paragraphs 32 (d), (e) and (f) shall continue in force without any limitation as to time period.

33. In regard to the payments ordered above, Deschamps agrees to personally make a payment of $625.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement. Deschamps further agrees to pay at least $625.00 by cheque one month after the Commission approves this Settlement Agreement and to pay by cheque at least $625.00 every month thereafter until the $15,000 amount ordered above in paragraphs 32 (j) and (k) is paid in full. Deschamps will not be reimbursed for, or receive a contribution toward, these payments from any other person or company other than voluntary assistance from his immediate family.

34. Deschamps undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 32 (c) to (i) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

35. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 36 below.

36. If the Commission approves this Settlement Agreement and Deschamps fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Deschamps . These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and Deschamps fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraphs 32 (j) and (k) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

37. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for February 25, 2013, or on another date agreed to by Staff and Deschamps, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

38. Staff and Deschamps agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Deschamps ' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

39. If the Commission approves this Settlement Agreement, Deschamps agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

40. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

41. Whether or not the Commission approves this Settlement Agreement, Deschamps will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

42. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between Staff and Deschamps before the settlement hearing takes place will be without prejudice to Staff and Deschamps; and

    (b) Staff and Deschamps will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

43. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless Staff and Deschamps both agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

44. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

45. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED this 13 th day of February , 2013.

_____ _____

Witness: Jasmine Brown ERIC DESCHAMPS

DATED this 14th day of February, 2013.

_____

TOM ATKINSON
Director, Enforcement Branch

SCHEDULE "A"

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

AND

**IN THE MATTER OF
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; LACENCIA ESTATES DEVELOPMENT, LTD.; COPAL RESORT DEVELOPMENT GROUP, LLC; RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.; AND THE PLACENCIA HOTEL AND RESIDENCES LTD.**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
ERIC DESCHAMPS**

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

WHEREAS on March 29, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Eric Deschamps ("Deschamps") and others. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated March 29, 2011 and amended February 14, 2012;

AND WHEREAS Deschamps entered into a Settlement Agreement with Staff of the Commission dated _____, 2013 (the "Settlement Agreement") in which Deschamps agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 29, 2011, subject to the approval of the Commission;

AND WHEREAS on _____, 2013 , the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Deschamps;

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

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

IT IS HEREBY ORDERED THAT:

46. The settlement agreement is approved;

47. pursuant to paragraph 6 of subsection 127(1) of the Act, Deschamps shall be reprimanded;

48. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Deschamps cease for a period of seven (7) years from the date of this Order;

49. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Deschamps is prohibited for a period of seven (7) years from the date of this Order;

50. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Deschamps, for a period of seven (7) years from the date of this Order;

51. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Deschamps shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph (g) below);

52. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Deschamps is prohibited for a period of seven (7) years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Deschamps is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as he, his spouse, and/or his immediate family are the only holders of the securities of the corporation;

53. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Deschamps is prohibited for a period of seven (7) years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter;

54. pursuant to paragraph 9 of subsection 127(1) of the Act, Deschamps shall pay to the Commission an administrative penalty of $7,233.52 for his failure to comply with Ontario securities law, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

55. pursuant to paragraph 10 of subsection 127(1) of the Act, Deschamps shall disgorge to the Commission the sum of $7,766.48, obtained as a result of non-compliance with Ontario securities law, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

56. After the payments set out in paragraphs (i) and (j) are made in full, as an exception to the provisions of paragraphs (c), (d) and (e), Deschamps is permitted to trade in or acquire securities in his personal registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or for any registered education savings plan ("RESP") accounts for which he is a beneficiary or a sponsor;

57. Until the entire amount of the payments set out in paragraphs (i) and (j) is paid in full, the provisions of paragraphs (c), (d) and (e) shall continue in force without any limitation as to time period; and

58. In regard to the payments ordered above, Deschamps agrees to make a payment of $625.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement. Deschamps further agrees to pay at least $625.00 by cheque one month after the Commission approves this Settlement Agreement and to pay by cheque at least $625.00 every month thereafter until the entire amount of the payments set out in paragraphs (i) and (j) is paid in full. Deschamps will not be reimbursed for, or receive a contribution toward, these payments from any other person or company other than voluntary assistance from his immediate family.

DATED at Toronto this _____ day of February, 2013.

_____
James E. A. Turner

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Platmin Limited	13 Feb 13	25 Feb 13		27 Feb 13
Poseidon Concepts Corp.	26 Feb 13	11 Mar 13		
EDCI Holdings, Inc.	22 Feb 13	06 Mar 13		
Sportsclick Inc.	20 Feb 13	04 Mar 13		
First Choice Products Inc.	11 Feb 13	22 Feb 13	22 Feb 13	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Order

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

THERE ARE NO ITEMS FOR THIS WEEK.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
02/05/2013	2	Air Lease Corporation - Notes	18,946,800.00	2.00
02/07/2013	283	Amaya Gaming Group Inc. - Units	30,000,000.00	30,000.00
02/01/2013	7	American Solar Direct Holdings Inc. - Units	1,672,822.50	675,000.00
01/01/2012 to 12/31/2012	2	AMI Balanced Fund - Units	9,215,679.26	N/A
01/01/2012 to 12/31/2012	1	AMI Canadian Equity Pooled Fund - Units	316,286.81	N/A
01/01/2012 to 12/31/2012	2	AMI Capped Canadian Equity Pooled Fund - Units	9,597,440.75	N/A
01/01/2012 to 12/31/2012	1	AMI Corporate Bond Pooled Fund - Units	221,248.26	N/A
01/01/2012 to 12/31/2012	1	AMI Fixed Income Pooled Fund - Units	155,657.73	N/A
01/01/2012 to 12/31/2012	6	AMI Growing Income Pooled Fund - Units	303,793.07	N/A
01/01/2012 to 12/31/2012	2	AMI Money Market Pooled Fund - Units	4,414,889.07	N/A
01/01/2012 to 12/31/2012	12	AMI Small Cap Pooled Fund - Units	10,647,641.57	N/A
01/01/2012 to 12/31/2012	16	Artemis Asset Allocation Fund - Units	358,060.00	358,060.00
01/01/2012 to 12/31/2012	12	Artemis U.S. Real Estate Fund LP - Units	1,500,000.00	150,000.00
01/30/2013	2	Auxilium Pharmaceuticals, Inc. - Notes	401,320.00	2.00
01/01/2012 to 12/31/2012	28	Bissett Core Equity Trust - Units	12,701,104.38	N/A
01/30/2013	138	Bonnefield Canadian Farmland LP II - Units	22,318,000.00	22,318.00
01/30/2013	1	Bright Horizons Family Solutions Inc. - Common Shares	154,508.20	7,000.00
05/07/2012	1	CellAegis Devices Inc. (amended) - Preferred Shares	65,616.66	5,953.00
01/31/2013	137	Centurion Apartment Real Estate Investment Trust - Units	5,209,455.76	461,217.80
01/19/2012 to 12/31/2012	33	Deans Knight Equity Growth Fund - Units	4,933,920.16	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/19/2012 to 12/31/2012	46	Deans Knight Income Fund - Units	28,495,970.50	N/A
01/31/2013	22	Digital Globe, Inc. - Notes	10,897,275.20	22.00
02/08/2013	1	El Condor Minerals Inc. - Common Shares	733,500.00	14,670,000.00
08/01/2012	1	Eleven Fund - Units	150,000.00	13,653.61
06/01/2012	2	Eleven Fund - Units	265,000.00	24,318.17
05/01/2012	1	Eleven Fund - Units	1,200,000.00	106,318.88
03/01/2012	3	Eleven Fund - Units	589,999.00	51,901.35
01/01/2012	4	Eleven Fund - Units	805,465.00	75,000.23
01/29/2013	2	First American Financial Corporation - Notes	5,995,617.01	2.00
02/05/2013	2	First Reliance Real Estate Investment Trust - Units	152,000.00	15,678.02
01/01/2012 to 12/31/2012	19	Franklin Templeton Institutional Balanced Trust (formerly, Bissett Institutional Balanced Trust) - Units	126,280,315.76	N/A
01/01/2012 to 12/31/2012	5	GEM Balanced Pool - Units	26,731,019.95	2,550,127.88
01/01/2012 to 12/31/2012	5	GEM Canadian Equity Pool - Units	12,376,466.84	1,796,879.06
01/01/2012 to 12/31/2012	5	GEM Fixed Income Pool - Units	13,806,576.54	8,448,033.16
01/01/2012 to 12/31/2012	5	GEM Global Equity Pool - Units	9,116,681.42	1,075,276.89
10/22/2012 to 12/31/2012	3	Guardian Balanced Income Fund - Units	874,925.25	87,179.59
09/30/2012 to 12/31/2012	1	Guardian Growth & Income Fund - Units	1,032,787.56	103,266.17
02/01/2013	1	HD Supply, Inc. - Note	29,961,000.00	1.00
01/29/2013	2	Hyde Park Residences Inc. - Trust Units	300,000.00	6.00
01/30/2013	2	InvestPlus Vantage LP - Limited Partnership Units	247,500.00	2,490.00
01/28/2013	175	Jaguar Land Rover Automotive plc - Notes	503,450,000.00	3,333.00
01/25/2013	1	Jaguar Mining Inc. - Common Shares	5,039,000.00	570,919.00
12/06/2012 to 12/07/2012	3	KmX Corp. - Debentures	990,000.00	3.00
01/28/2013 to 02/01/2013	48	League IGW Real Estate Investment Trust - Units	1,386,771.58	1,386,771.58
01/01/2012 to 12/31/2012	3	MFS MB Emerging Markets Equity Fund - Units	27,846,449.40	1,509,390.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2012 to 12/31/2012	21	MFS MB Global Equity Fund - Units	430,530,445.89	40,400,133.57
01/01/2012 to 12/31/2012	7	MFS MB International Equity Fund - Units	145,869,488.31	17,244,236.59
01/29/2013	1	MM Realty Partners LP - Units	1,000,000.00	100,000.00
01/28/2013 to 02/01/2013	2	MOVE Trust/BNY Trust Company of Canada as Trustee - Notes	19,298,479.54	6.00
02/01/2013	23	Netflix, Inc. - Notes	16,527,486.30	23.00
01/31/2013	1	Obsidian Strategics Inc. - Unit	100,000.00	1.00
01/30/2013	1	OPKO Health, Inc. - Note	5,940,000.00	1.00
02/01/2013	43	Penske Truck Leasing Canada Inc./Location de Camions Penske Canada Inc. - Notes	374,576,250.00	374,576.00
01/01/2012 to 12/31/2012	6	Performance Balanced Fund - Limited Partnership Units	4,022,587.70	400,014.17
01/01/2012 to 12/31/2012	4	Performance Diversified Fund - Limited Partnership Units	28,119,571.29	28,119.57
01/01/2012 to 12/31/2012	1	Performance Growth Fund - Limited Partnership Units	89,000.00	7,527.51
02/29/2012 to 12/31/2012	15	Portland India Select Business Portfolio Trust - Units	170,751.11	N/A
07/29/2011 to 12/30/2011	9	Portland India Select Business Portfolio Trust (amended) - Units	685,894.21	N/A
02/11/2013	2	Probe Mines Limited - Common Shares	97,000.00	50,000.00
02/14/2013	2	ProMetic Life Sciences Inc. - Common Shares	194,178.09	539,383.00
01/28/2013	11	RAM River Coal Corp. - Common Shares	23,000,000.00	23,000,000.00
01/29/2013	1	Reliance Industries Limited - Note	20,058,000.00	1.00
01/29/2013	2	ROI Capital/2154197 Ontario Inc. & Benjamin Hospitality Inc. - Units	786,723.00	786,723.00
01/29/2013	1	ROI Capital/Argus Hospitality Group Ltd. - Units	995,170.24	995,170.24
01/31/2013	2	ROI Capital/Castlepoint Studio Partners Limited - Units	24,307.40	24,307.40
01/29/2013	2	ROI Capital/JD Development King St LP - Units	874,219.00	874,219.00
01/28/2013	3	ROI Capital/Newmarket Golden Space Inc. & Newmarket Gorham LP - Units	1,254,790.00	1,254,790.00
02/06/2013	6	Royal Bank of Canada - Notes	1,430,600.00	14,306.00
11/15/2012	1	SEAMARK Pooled Balanced Fund - Units	150,000.00	N/A
07/04/2012 to 12/20/2012	9	SEAMARK Pooled Low Volatility Equity Fund - Units	2,871,987.81	N/A
02/08/2013	3	Shoal Point Energy Ltd. - Units	34,600.00	576,667.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/16/2013	5	Signal Hill Realty LP - Limited Partnership Units	2,250,000.00	2,250,000.00
02/07/2013	3	Southeast Asia Mining Corp. - Debentures	55,860.00	57,000.00
11/01/2012	1	Spartan Multi Strategy Fund Limited Partnership - Units	3,900.00	359.74
10/01/2012	4	Spartan Multi Strategy Fund Limited Partnership - Units	51,700.00	4,723.32
09/01/2012	3	Spartan Multi Strategy Fund Limited Partnership - Units	36,500.00	N/A
08/01/2012	5	Spartan Multi Strategy Fund Limited Partnership - Units	90,600.00	N/A
07/01/2012	2	Spartan Multi Strategy Fund Limited Partnership - Units	45,690.00	4,128.75
06/01/2012	6	Spartan Multi Strategy Fund Limited Partnership - Units	184,914.66	N/A
05/01/2012	11	Spartan Multi Strategy Fund Limited Partnership - Units	352,537.32	N/A
04/01/2012	11	Spartan Multi Strategy Fund Limited Partnership - Units	524,940.00	N/A
03/01/2012	18	Spartan Multi Strategy Fund Limited Partnership - Units	573,793.27	N/A
02/01/2012	29	Spartan Multi Strategy Fund Limited Partnership - Units	2,130,623.25	N/A
01/01/2012	8	Spartan Multi Strategy Fund Limited Partnership - Units	730,138.00	N/A
01/01/2012 to 12/31/2012	4	Tapestry Global Growth Private Portfolio Corporate Class - Units	2,655,081.73	N/A
01/01/2012 to 12/31/2012	6	Tapestry Growth Private Portfolio Corporate Class - Units	257,877.31	N/A
01/01/2012 to 12/31/2012	1	Templeton Master Trust, Series 6 - Units	397,930.39	53,523.67
01/31/2013	7	Venturion Oil Limited - Common Shares	3,350,000.00	3,350,000.00
02/01/2012	11	Visum Multi Strategy RRSP Fund - Units	4,168,508.91	N/A
01/31/2013	16	Walton U.S. Dollar Income 2 Corporation - Bonds	1,166,990.00	11,330.00
02/06/2013	7	Zoetis Inc. - Common Shares	58,275,000.00	2,250,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 21, 2013
Offering Price and Description:
$110,103,000.00 - 3,210,000 Units
Price: $34.30 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
CIBC WORLDMARKETS INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
MACQUARIE CAPITALMARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2017525

Issuer Name:
APMEX Physical - 1 oz. Gold Redeemable Trust
Principal Regulator - Ontario
Type and Date:
Second Amended and Restated Preliminary Long Form PREP Prospectus dated February 14, 2013
NP 11-202 Receipt dated February 19, 2013
Offering Price and Description:
U.S.$* - *
Minimum Subscription: U.S.$1,000.00 -100 Units
Price U.S.$10.00 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
APMEX Precious Metals Management Services, Inc.
Project #1949829

Issuer Name:
DiaMedica Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 25, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
Offering: $ * - * Units
Price of $ * per Unit
Underwriter(s) or Distributor(s):
Sora Group Wealth Advisors Inc.
Promoter(s):
-
Project #2018537

Issuer Name:
DualEx Energy International Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 22, 2013
NP 11-202 Receipt dated February 22, 2013
Offering Price and Description:
MINIMUM $3,000,000.00 - * Units
MAXIMUM $8,000,000.00 - * Units
Price: $ * per Unit
Underwriter(s) or Distributor(s):
BEACON SECURITIES LIMITED
PI FINANCIAL CORP.
MAISON PLACEMENTS CANADA INC.
Promoter(s):
-
Project #2018212

Issuer Name:
Element Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated February 22, 2013
NP 11-202 Receipt dated February 22, 2013
Offering Price and Description:
$150,350,000.00 - 19,400,000 Common Shares
Price: $7.75 per Common Share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
BARCLAYS CAPITAL CANADA INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CORMARK SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
MANULIFE SECURITIES INCORPORATED
Promoter(s):
-
Project #2017943

Issuer Name:
Estrella International Energy Services Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated February 19, 2013
NP 11-202 Receipt dated February 21, 2013
Offering Price and Description:
Rights to Subscribe for up to * Common Shares
Subscription Price: CDN$ * per Common Shares
(upon the exercise of each * of a Right)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2016730

Issuer Name:
Great-West Lifeco Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated February 22, 2013
NP 11-202 Receipt dated February 22, 2013
Offering Price and Description:
$650,210,000.00 - 25,300,000 Subscription Receipts, each representing the right to receive one Common Share
Price: $25.70 per Subscription Receipt
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
MERRILL LYNCH CANADA INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
BARCLAYS CAPITAL CANADA INC.
CANACCORD GENUITY CORP.
CREDIT SUISSE SECURITIES (CANADA), INC.
J.P. MORGAN SECURITIES CANADA INC
MORGAN STANLEY CANADA LIMITED
Promoter(s):
-
Project #2018210

Issuer Name:
Javelina Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 15, 2013
NP 11-202 Receipt dated February 19, 2013
Offering Price and Description:
$ * - * Common Shares and * Common Share Purchase Warrants issuable on exercise or conversion of outstanding Subscription Receipts
Price: $ * per Subscription Receipt
Underwriter(s) or Distributor(s):
Casimir Capital Ltd.
Promoter(s):
Blaise Yerly
Project #2016275

Issuer Name:
Long Duration Credit Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 19, 2013
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
Class O Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
SEI Investments Canada Company
Project #2016876

Issuer Name:
NovaCopper Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Shelf Prospectus dated February 19, 2013
NP 11-202 Receipt dated February 21, 2013
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants to Purchase Common Shares, Share Purchase Contracts, Share Purchase or Equity Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1986160

Issuer Name:
San Gold Corporation
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated February 20, 2013
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
$50,000,000.00 - 8.00% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES DUE MARCH 31, 2018
Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2017057

Issuer Name:
Security Devices International Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
CDN$3,000,000.00 - 7,500,000 Common Shares
Price: CDN$0.40 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Gregory Sullivan
Project #2017644

Issuer Name:
SIR Royalty Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 21, 2013
Offering Price and Description:
$ * - * Units
Price: $ * per offered Unit
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2017466

Issuer Name:
Westshire Capital Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated February 20, 2013
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
$200,000.00 - 2,000,000 common shares
Price: $0.10 per common share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Jason P. Fuller
Project #2017018

Issuer Name:
Astar Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 14, 2013
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
$600,000.00 - 4,000,000 Shares
price of $0.15 per Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Stephen Stanley
Matthew Mason
Project #1998879

Issuer Name:
Brompton 2013 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 22, 2013
NP 11-202 Receipt dated February 22, 2013
Offering Price and Description:
$50,000,000.00 (Maximum) - 2,000,000 Limited Partnership Units
Price per Unit: $25
Minimum Subscription: $5,000.00 (200 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Burgeonvest Bick Securities Limited
Dundee Securities Ltd.
Mackie Research Capital Corporation
Raymond James Ltd.
Promoter(s):
BROMPTON FLOW-THROUGH MANAGEMENT LIMITED
BROMPTON FUNDS LIMITED
Project #1999924

Issuer Name:
BSM Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 21, 2013
Offering Price and Description:
$7,499,940.00 - 5,357,100 Common Shares
Price: $1.40 per Common Share
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
MGI SECURITIES INC.
LOEWEN, ONDAATJE, MCCUTCHEON LIMITED
Promoter(s):
-
Project #2014013

Issuer Name:
Coventry Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 15, 2013
NP 11-202 Receipt dated February 19, 2013
Offering Price and Description:
$6,000,000.00 - 18,750,000 Units
$0.32 per Unit
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2008822

Issuer Name:
Cynapsus Therapeutics Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 22, 2013
Offering Price and Description:
Minimum Offering of $6,000,000.00 (130,434,783 Units)
Maximum Offering of $8,000,000.00 (173,913,044 Units)
Price $0.046 per Unit
Underwriter(s) or Distributor(s):
M Partners Inc.
Promoter(s):
-
Project #1988098

Issuer Name:
InnVest Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 20, 2013
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
$100,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2014273

Issuer Name:
Lazard Emerging Markets Multi-Strategy Fund
Lazard Global Equity Income Fund
Principal Regulator - Ontario
Type and Date:
Simplified Prospectus dated February 21, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
Class A units, Class F units and Class I units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brandes Investment Partners & Co.
Project #2012142

Issuer Name:
Norrep MG Opportunity Class of Norrep MG Fund Ltd.
Principal Regulator - Alberta
Type and Date:
Simplified Prospectus dated February 22, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
Mutual Fund Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Hesperian Capital Management Ltd.
Project #2006892

Issuer Name:
Pembina Pipeline Corporation
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated February 22, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
$3,000,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2014345

Issuer Name:
TD Comfort Conservative Income Portfolio
TD Comfort Balanced Income Portfolio
TD Comfort Balanced Portfolio
TD Comfort Balanced Growth Portfolio
TD Comfort Growth Portfolio
TD Comfort Aggressive Growth Portfolio
TD Fixed Income Capital Yield Pool Class
TD Global High Yield Capital Class
TD Tactical Monthly Income Class
TD Dividend Income Class
TD Dividend Growth Class
TD International Value Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 14, 2013 to the Simplified Prospectus and Annual Information Form dated July 25, 2012
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Investment Services Inc.(for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series Units)
TD Investment Services Inc. (for Investor Series)
TD Waterhouse Canada Inc.
TD Asset Management Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and Premium Series units)
Promoter(s):
TD Asset Management Inc.
Project #1920544

Issuer Name:
TD International Value Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 14, 2013 to the Simplified Prospectus and Annual Information Form dated July 25, 2012
NP 11-202 Receipt dated February 20, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc.(for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series Units)
TD Waterhouse Canada Inc.
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Asset Management Inc. (for Investor Series units)
Promoter(s):
TD Asset Management Inc.
Project #1920556

Issuer Name:
TSO3 inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated February 25, 2013
NP 11-202 Receipt dated February 25, 2013
Offering Price and Description:
7,000,000.00 Common Shares
Price: $1.00 per Offered Share
Underwriter(s) or Distributor(s):
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
BYRON CAPITAL MARKETS LTD.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2015949

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Callidus Capital Management Inc. To: Callidus Capital Corporation	Investment Fund Manager and Exempt Market Dealer	February 21, 2013
Suspension pursuant to Section 29(1) of the Securities Act	Webb Asset Management Canada, Inc.	Portfolio Manager and Investment Fund Manager	February 22, 2013
Change in Registration Category	Worldsource Securities Inc.	From: Investment Dealer To: Investment Dealer and Investment Fund Manager	February 22, 2013

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Liquidnet Canada Inc. – Notice of Commission Approval of Proposed Changes

LIQUIDNET CANADA INC.

NOTICE OF COMMISSION APPROVAL
OF PROPOSED CHANGES

Liquidnet Canada Inc. has announced its plan to implement changes to its Form 21-101F2 (F2) to:

- allow the auto-negotiation counter to be reset after the Liquidnet system stops sending invites to a manual contra to avoid frustration;
- allow institutional subscribers (Members) to block interaction with specific streaming liquidity partners (SLPs) that are affiliated entities for regulatory or compliance restrictions on trading or block interaction with all SLPs; and
- allow Members to choose, on an order by order basis, whether or not to interact with IOC orders from SLPs (together, the Proposed Changes).

A notice describing the Proposed Changes was published in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto" (Review Protocol) on November 8, 2012 in this Bulletin. Pursuant to the Review Protocol, market participants were also invited by OSC staff to provide the Commission with feedback on the Proposed Changes. No comments were received.

The Proposed Changes were approved on February 25, 2012. Liquidnet Canada is expected to publish a notice indicating the intended implementation date of the Proposed Changes.

13.2.2 Omega ATS – Notice of Commission Approval of Proposed Changes and Notice of Withdrawal of Proposed Order Types

OMEGA ATS

NOTICE OF COMMISSION APPROVAL OF PROPOSED CHANGES AND NOTICE OF WITHDRAWAL OF PROPOSED ORDER TYPES

Omega ATS has proposed changes to its Form 21-101F2 (F2) to:

- create a mixed lot/odd book;
- introduce the Opening Limit Bid/Offer (OLBO) order type;
- introduce the Cross at Calculated Opening Price (X-COP) order type; and
- introduce the Cross at Market On Close (X-MOC) order type.

A notice describing the proposed changes was published in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto" (Review Protocol) on September 20, 2012 in this Bulletin. Pursuant to the Review Protocol, market participants were also invited by OSC staff to provide the Commission with feedback on the Proposed Changes. No comments were received.

Approved Proposed Changes

The following proposed changes were approved on February 25, 2012:

- creation of a mixed lot/odd book; and
- introduction of the OLBO order type;

Omega is expected to publish a notice indicating the intended implementation date of the Proposed Changes.

Withdrawn Proposed Changes

Omega ATS has withdrawn the proposed X-COP and X-MOC order types.

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