The Ontario Securities Commission

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

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

August 15, 2013

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

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Judith N. Robertson	—	JNR
AnneMarie Ryan	—	AMR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

August 20, 2013 10:30 a.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
August 21, 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: JEAT
August 23, 2013 10:00 a.m.	**Pro-Financial Asset Management Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
August 26, 2013 10:00 a.m.	**Children's Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT

August 27, 2013 2:30 p.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/C. Watson in attendance for Staff Panel: JDC
September 4, 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: AJL
September 4, 2013 11:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 C. Watson in attendance for Staff Panel: EPK
September 5, 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
September 6, 2013 10:00 a.m.	**Heritage Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: TBA
September 9, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: EPK/CWMS
September 11, 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: JDC
September 12, 2013 2:00 p.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/C. Watson in attendance for Staff Panel: JDC

September 16-19, September 23, September 25, September 27 – 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 C. Price in attendance for Staff Panel: JDC/DL/AMR
September 17, 2013 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s.127(1) and (5) A. Heydon/Y. Chisholm in attendance for Staff Panel : EPK
September 23, 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
September 27, 2013 11:00 a.m.	**Global Consulting and Financial Services, Global Capital Group, Crown Capital Management Corp., Michael Chomica, Jan Chomica and Lorne Banks** s.127 C. Rossi in attendance for Staff Panel: AJL
October 1, 2013 10:00 a.m.	**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt** s. 127 M. Vaillancourt in attendance for Staff Panel: JEAT
October 9, 2013 10:00 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 C. Rossi 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: EPK
October 22, 2013 3:00 p.m.	**Knowledge First Financial Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
October 25, 2013 10:00 a.m.	**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

November 4 and November 6-18, 2013 10:00 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 D. Ferris in attendance for Staff Panel: TBA
November 4 and November 6-11, 2013 10:00 a.m.	**Portfolio Capital Inc., David Rogerson and Amy Hanna-Rogerson** s.127 J. Lynch in attendance for Staff Panel: TBA
November 25-29, 2013 10:00 a.m.	**Global Consulting and Financial Services, Global Capital Group, Crown Capital Management Corp., Michael Chomica, Jan Chomica and Lorne Banks** s.127 C. Rossi in attendance for Staff Panel: AJL
December 4, 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: TBA
January 13, January 15-27, January 29 – February 10, February 12-14 and February 18-21, 2014 10:00 a.m.	**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
January 27, 2014 10:00 a.m.	**Welcome Place Inc., Daniel Maxsood also known as Muhammad M. Khan, Tao Zhang, and Talat Ashraf** s. 127 G. Smyth in attendance for Staff Panel: TBA
February 3, 2014 10:00 a.m.	**Tricoastal Capital Partners LLC, Tricoastal Capital Management Ltd. and Keith Macdonald Summers** s.127 C Johnson/G. Smyth in attendance for Staff Panel: TBA
March 17-24 and March 26, 2014 10:00 a.m.	**Newer Technologies Limited, Ryan Pickering and Rodger Frey** s. 127 and 127.1 B. Shulman in attendance for staff Panel: TBA
March 31 – April 7, April 9-17, April 21 and April 23-30, 2014 10:00 a.m.	**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
March 31-April 7 and April 9-11, 2014 10:00 a.m.	**Ronald James Ovenden, New Solutions Capital Inc., New Solutions Financial Corporation and New Solutions Financial (Ii) Corporation** s. 127 Y. Chisholm in attendance for Staff Panel: TBA

September 15-22, September 24, September 29 – October 6, October 8-10, October 14-October 20, October 22 – November 3 and November 5-7, 2014	**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
10:00 a.m.	
In writing	**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
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 Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 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 and Sandra Gale** s.127 C. Johnson 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	**David M. O'Brien** s. 37, 127 and 127.1 B. Shulman in attendance for Staff Panel: TBA

TBA	**Beryl Henderson** s. 127 C. Weiler 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	**Ernst & Young LLP** s. 127 and 127.1 A. Clark 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	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: TBA	

TBA **Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein**

s. 127

A. Clark/J. Friedman in attendance for Staff

Panel: TBA

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

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA **Bunting & Waddington Inc., Arvind Sanmugam and Julie Winget**

s. 127 and 127.1

M. Britton/A. Pelletier in attendance for Staff

Panel: TBA

TBA **Ernst & Young LLP (Audits of Zungui Haixi Corporation)**

s. 127 and 127.1

A. Clark/J. Friedman in attendance for Staff

Panel: TBA

TBA **Jowdat Waheed and Bruce Walter**

s. 127

J. Lynch in attendance for Staff

TBA **Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA **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: TBA

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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

1.1.2 CSA Consultation Paper 54-401 – Review of the Proxy Voting Infrastructure

Canadian Securities Administrators / Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 54-401
Review of the Proxy Voting Infrastructure

August 15, 2013

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Part 1 – Introduction

1.1 Shareholder voting and its importance to Canadian capital markets

A fundamental feature of share ownership in Canada is the right to vote on matters affecting the corporation.

Corporate law gives shareholders the right to vote for directors and the right to vote for their removal. It gives them the right to approve an auditor's appointment. It also gives them the right to approve certain fundamental changes and transactions, including change of control transactions or significant asset sales.

Securities legislation also gives shareholders important voting rights. Reporting issuers must obtain minority shareholder approval for certain types of special transactions.[1] Recently, we published for comment proposed new frameworks for the regulation of shareholder rights plans, including a proposal that would give shareholders voting rights to approve or terminate a rights plan adopted by a board.[2]

Finally, exchanges also require shareholder votes in a number of circumstances. The Toronto Stock Exchange's (**TSX**) policies require shareholder approval for certain types of dilutive transactions, and the detailed disclosure of the proxy votes received for individual directors.[3] The TSX is also considering whether listed companies must adopt majority voting.[4] The TSX Venture Exchange (**TSXV**) requires shareholder approval for major corporate actions such as a change of business, reverse take-over and certain qualifying transactions of capital pool companies.[5]

Shareholder voting is one of the most important methods by which shareholders can affect governance, communicate preferences and signal confidence or lack of confidence in an issuer's management and oversight. Issuers also rely on shareholder voting to confirm the approval of important corporate transactions or votes on governance matters such as shareholder rights plans or stock option plans. Shareholder voting is therefore fundamental to, and enhances the quality and integrity of, our public capital markets.

1.2 Proxy voting's relation to shareholder voting

A shareholder vote takes place at a meeting of shareholders.[6] Historically, under common law, a corporation's shareholders had to attend meetings in person in order to exercise their right to vote. However, if the corporation's articles permitted, a shareholder could appoint another individual, known as a **proxy**, to attend and act on his behalf at a meeting of shareholders in the same manner, and to the same extent as if the shareholder were himself present at the meeting. The appointment was effected through a written instrument known as an "instrument of proxy". Eventually, the term "proxy" was used increasingly to refer to the written instrument that gave an individual voting authority, while the individual who was given voting authority was known as the **proxy holder** or **nominee**.[7]

With the development of securities markets and public, widely-held corporations, it became increasingly unlikely that shareholders of public corporations could attend and vote in person at meetings. Canadian corporate legislation gave shareholders the right to attend and vote at shareholder meetings by proxy by the mid-20th century. However, corporate and securities legislation did not prescribe a detailed proxy system until after the Kimber Committee's Report of 1965 (the **Kimber Report**). The Kimber Report's recommendations formed the basis for reforms in corporate and securities legislation that established the current proxy voting regime.[8] This regime consists of the following elements:

- mandatory solicitation of proxies from shareholders by management,
- a prescribed form of proxy for management and others who solicit proxies, and
- mandatory provision of an information circular by management or others who solicit proxies.

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1 *Protection of Minority Security Holders in Special Transactions,* Multilateral Instrument 61-101 (February 2008).

2 Notice and Request for Comment – Proposed National Instrument 62-105 *Security Holder Rights Plans,* Proposed Companion Policy 62-105CP *Security Holder Rights Plans* and Proposed Consequential Amendments (March 14, 2013). The *Autorité des marchés financiers* also published concurrently Consultation Paper *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* inviting comment on an alternative approach to that contemplated by the CSA proposal (March 14, 2013).

3 Section 611(c) of Part VI of the TSX Company Manual.

4 Proposed Amendments to Part IV of the TSX Company Manual (October 4, 2012), online: <http://tmx.complinet.com/en/display/display_main.html?rbid=2072&element_id=821>.

5 Policy 5.2 *Change of Business and Reverse Takeovers* of the TSX Venture Exchange Corporate Finance Manual.

6 For a high-level overview of the shareholder meeting process, see Appendix A. We use the term "shareholder" in this Consultation Paper generally to refer to all securityholders.

7 *Report of the Attorney General's Committee on Securities Legislation in Ontario* (March 1965) at 49; Kevin P. McGuinness, Canadian Business Corporations Law, 2d. ed. (2007: LexisNexis Canada Inc.) at 1177.

8 Welling, *Corporate Law in Canada: The Governing Principles*, 2d. ed. (1991: Butterworths Canada Ltd.) at 499.

Currently, the vast majority of voting occurs through proxy voting. Accurate proxy voting, therefore, is integral to the legitimacy of shareholder voting and fosters confidence in our capital markets. Efficient capital markets depend critically on the manner in which shareholders exercise their voting rights.

In practice, proxy voting involves the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for a shareholder meeting; we refer to this as the **proxy voting infrastructure**.

Issuers and investors have a common interest in a reliable and transparent proxy voting infrastructure that reduces transaction costs, reduces discretion in processing votes and gives each vote its full weight. Issuers and investors have recently expressed a lack of confidence in the reliability of the proxy voting infrastructure and have engaged in discussions on how to address these concerns. Notable examples include:

- the publication by Davies Ward Phillips & Vineberg LLP of a discussion paper on "The Quality of the Shareholder Vote in Canada" in October 2010;[9]
- the Shareholder Voting Symposium held in June 2011 co-hosted by RBC Dexia Investor Services Limited (**RBC Dexia**), the British Columbia Investment Management Corporation and the Canadian Coalition for Good Governance;[10] and
- the Canadian Society of Corporate Secretaries' (**CSCS**) Shareholder Democracy Summit held in October 2011.[11]

It appears, however, that issuers and investors ultimately may not have sufficient access to information regarding, or control over, significant portions of the proxy voting infrastructure. As a result, it is difficult for them to assess the reliability of the infrastructure *as a whole*. It is important to assess the reliability of the proxy voting infrastructure as a whole because the value and weight of an individual investor's proxy vote ultimately is affected by all the other proxy votes that are solicited, collected, submitted and tabulated. For example, if an investor owns 100 shares, the relative weight of his 100 shares decreases as more shares are voted by others, and conversely, the relative weight increases as fewer shares are voted by others. Furthermore, the more others vote in accordance with the investor's vote, the more likely the investor will attain his desired voting outcome. To give full weight (but not under- or over-weight) to an investor's vote therefore requires a holistic approach to reviewing the proxy voting infrastructure.

The rise in institutional share ownership of public companies, the presence of activist hedge fund investors and the greater willingness of shareholders generally to challenge boards and management on governance and performance matters have seen a broad increase in proxy contests over the last few years. We anticipate this trend to continue and result in greater stress being imposed on the proxy voting infrastructure.

Given the importance of proxy voting to our capital markets and the difficulties issuers and investors face in establishing the reliability of the proxy voting infrastructure as a whole, we think more active securities regulatory involvement in reviewing the proxy voting infrastructure is appropriate. This increased involvement is consistent with our mission as securities regulators to, among other things, foster fair, efficient and vibrant capital markets.[12]

Part 2 – Overview of the Consultation Paper

2.1 Purpose of the Consultation Paper

We are publishing this consultation paper (the **Consultation Paper**) to outline and seek feedback from issuers, investors and other stakeholders on a proposed approach to address concerns regarding the integrity and reliability of the proxy voting infrastructure. We have identified two issues which we intend to examine further because, in our view, they have the most potential to impact the ability of the proxy voting infrastructure to function accurately and reliably. These issues are:

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9 Davies Ward Phillips & Vineberg LLP, *The Quality of the Shareholder Vote in Canada* (October 22, 2010) at 64, online: <http://www.dwpv.com/Sites/shareholdervoting/index.htm>. [*Davies Paper*]

10 RBC Dexia, *A Case for Change: Shareholder voting symposium summary report* (October 2011), online: <http://www.cscs.org/Resources/Documents/summit/Resources/RBC%20Dexia%20Shareholder_voting_report%20FINAL.pdf>. [*Dexia Report*]

11 CSCS Shareholder Democracy Summit, online: <http://www.cscs.org/SummitResources>. See also CSCS, *Shareholder Democracy Summit Inaugural Report* (October 24-25, 2011), online: <http://www.cscs.org/Resources/Documents/summit/Summit%20Repor.pdf>. [*CSCS Inaugural Report*]

12 CSA Mission Statement, online: <http://www.securities-administrators.ca/our-mission.aspx>.

1. Is accurate vote reconciliation occurring within the proxy voting infrastructure?

Vote reconciliation refers to the process by which proxy votes from registered shareholders and voting instructions from beneficial owners of shares are reconciled against the securities entitlements in the intermediated holding system.[13] We have identified two main reconciliation challenges. First, the intermediated holding system results in one share having multiple associated entitlements. Unless there is an effective system of reconciliation, there is a risk that valid proxy votes submitted to the tabulator ultimately are discarded because they cannot be properly matched to an appropriate omnibus proxy or registered position. Second, share lending creates a risk that the same share could be voted multiple times. We want to better understand whether the proxy voting infrastructure adequately addresses these vote reconciliation challenges.

2. What type of end-to-end vote confirmation system should be added to the proxy voting infrastructure?

End-to-end vote confirmation refers to a communication provided to shareholders that their proxy votes and voting instructions have been properly transmitted by the intermediaries, received by the tabulator and tabulated as instructed. Currently, the proxy voting infrastructure does not contain an end-to-end vote confirmation system for beneficial owners of shares, although efforts are underway to develop such functionality. We think that the lack of such functionality can undermine confidence in the accuracy and reliability of proxy voting results. We want to review the current development status of an end-to-end vote confirmation system, as well as consider what features such a system should incorporate.

These issues are described in more detail in Part 5 of the Consultation Paper.

While we recognize that there are other issues related to proxy voting that have been raised by market participants,[14] this Consultation Paper is focussed on issues that are directly related to the accuracy, transparency and integrity of the proxy voting infrastructure. However, to the extent that market participants have comments on other issues, we will consider these comments as part of our ongoing monitoring and consideration of the proxy voting system.

We are publishing this paper for a 90-day comment period and specifically seek comment on whether the focus on the two issues we intend to examine further is appropriate and whether we have asked the right questions in relation to each issue. We have also identified other potentially relevant issues for comment.

The comment period will end on **November 13, 2013.**

2.2 Structure of the Consultation Paper

This Consultation Paper is structured as follows:

- Part 3 outlines four factors that appear to have contributed, or have been suggested as contributing to, the complexity of proxy voting and vote reconciliation challenges;
- Part 4 outlines the key functions performed by the proxy voting infrastructure;
- Part 5 sets out the two issues described above and the questions we are asking about these issues;
- Part 6 set outs additional issues on which we are seeking information in order to better understand whether the proxy voting infrastructure is collecting, submitting and tabulating proxy votes reliably and with integrity; and
- Part 7 sets out proposed next steps.

Part 3 – Factors contributing to the complexity of proxy voting

In theory, all that is necessary for proxy voting to occur is for management of the issuer to send each shareholder that is recorded in the issuer's share register the prescribed management form of proxy and information circular, and for each shareholder to execute the proxy and send it back to management with directions as to how the shareholder wishes management to vote. In practice, however, proxy voting is a complicated process. We stress that we are not suggesting that a complex process necessarily lacks integrity. However, the complexity of proxy voting can make it difficult to establish that the proxy voting infrastructure is functioning reliably.

[13] Securities entitlements and the intermediated holding system are described in Part 3.

[14] Examples of such issues include "empty voting", anonymity for beneficial owners, vote reconciliation guidance provided under the Securities Transfer Association of Canada (**STAC**) proxy protocol, the discretion afforded to chairs of shareholders meetings to rule on proxies, broker solicitation fees and the role of proxy solicitors. These issues will not be specifically addressed in this Consultation Paper.

Based on prior feedback we have received[15] as well as our own review, the following appear to be the main factors contributing to the complexity of proxy voting as well as vote reconciliation challenges:

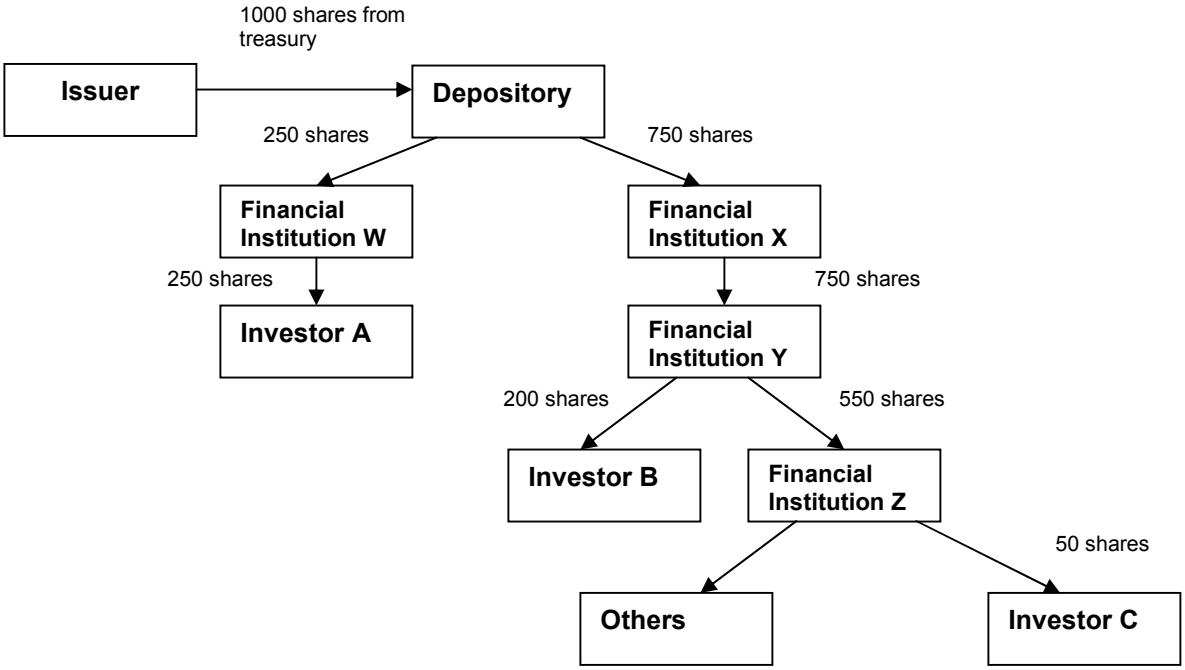
- the intermediated system of holding securities that supports clearing and settlement;
- securities lending;
- the use of voting agents[16] by investors; and
- the right of investors not to disclose their identities to issuers and others (the **OBO-NOBO** concept).

3.1 The intermediated holding system[17]

All major financial markets have adopted a system of centralized clearing and settlement services for publicly-traded securities in order to increase trading efficiency[18] and reduce risks in the trading, clearing and settlement process.

The clearing and settlement service settles securities transfers for participant financial institutions by crediting and debiting the relevant number of securities for each participant account if the aggregate trades by that participant results in a net change in the number of securities in the participant's account (known as **netting**).

Figure 1: Intermediated holding system (simplified)



Note: The 1000 shares could be certificated or uncertificated, depending on the particular legal framework or market practice.

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15 See for example "CSA Notice and Request for Comments - Proposed Amendments to NI 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy 54-101CP Communication with Beneficial Owners of Securities of a Reporting Issuer" (April 9, 2010) and related comments, online: <http://www.osc.gov.on.ca/en/24468.htm>, and OSC Staff Notice 54-701 Regulatory Developments Regarding Shareholder Democracy Issues (January 14, 2011) and related comments, online: <http://www.osc.gov.on.ca/en/30575.htm>.

16 We use the term "**voting agents**" broadly in this Consultation Paper to refer to advisors such as proxy advisory firms and investment managers (see Section 3.2).

17 This section is derived from Paech, Phillip, "Cross-border issues of securities law: European efforts to support securities markets with a coherent legal framework", Briefing for the European Parliament's Committee on Economic and Monetary Affairs (May 2011), online: <http://www.lse.ac.uk/collections/law/staff/philipp-paech.htm>. [*Paech*]

18 For example, intermediation was necessary for the formation of modern stock exchanges.

In conjunction with the clearing and settlement system, a central securities depository will take custody of security certificates or maintain electronic records of securities holdings. The depository will maintain accounts for the participant financial institutions (W and X in the illustration above).[19] The participant financial institutions (W and X) maintain accounts for their clients, who can be investors (Investor A) or other intermediaries (Y is a client-intermediary of X, and in turn, Z is a client-intermediary of Y). In most jurisdictions, there will be at least one and often more than one layer of intermediaries between an ultimate investor and the depository. This system of holding securities is known in Canada and the United States as the **indirect holding system**; however, it is more precise to refer to the **intermediated holding of securities** or **intermediated holding system**, as it can be unclear what is meant by an "indirect" holding.[20]

Another important feature of intermediated holding systems is that while an intermediary's own securities and client securities are booked to distinct accounts with the intermediary's own account provider, client assets generally are "pooled" in the client account and cannot be distinguished per client:

> Intermediaries typically hold securities on an unallocated basis. In other words, the interests of all participants or investors holding interests in like securities are held together in a commingled pool or fungible bulk. The rights of the participants and lower-tier investors relate to securities held in a designated account rather than attaching to particular securities. Pooling all like securities in a single account results in greater settlement efficiencies by reducing the overall costs of administering and reconciling separate holdings.[21]

Currently, a significant majority of shares of reporting issuers are held in the intermediated holding system. [22]

While the development of the intermediated holding system was clearly important for trading efficiency and reduction of systemic risk, two important policy issues had to be addressed.

The first issue involved property rights. An investor historically established ownership of a share either by being registered on the corporation's register, or possessing a share certificate. What was the property interest an investor had in shares they purchased and held in intermediary accounts? This question was ultimately resolved through the adoption of provincial securities transfer legislation based on the concept of a **securities entitlement**.[23] A "securities entitlement" is a right that is equivalent to, but not actually, a direct property right in the security. The entitlement holder's interest is asserted against the entitlement holder's own immediate intermediary, e.g. a client against the dealer with whom he has his account, or the dealer against the clearing agency/depository. Another feature of this securities entitlement model is that the Canadian Depository for Securities Limited (**CDS**) is registered as the holder of most shares on the reporting issuer's register. The securities entitlement model is used in Canada and the U.S.; other jurisdictions have different legal frameworks – see Appendix B.

Although investors in the intermediated holding system do not actually own shares, but rather have securities entitlements, we will use the term "shares" instead of "securities entitlements" in this Consultation Paper for ease of discussion.

The second issue involved voting rights.[24] Under corporate law, only the registered holder has the right to vote, either in person or by proxy, at a meeting. How would investors who hold their shares in the intermediated holding system (as securities entitlements) be able to exercise their voting rights? To address this concern, the CSA approved National Policy Statement 41

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19 In Canada, there has been a significant move away from paper certificates. For more information on this process in Canada, see CDS Clearing and Depository Services Inc., "Going Paperless in the Canadian Securities Market: Presentation to Issuers, Underwriter and Law Firms" (2010), online: <http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-BEOservices?Open>.

20 For example, an investor sets up a holding company and holds shares of an issuer through that company. The holding company in turn is registered on the issuer's share register as the holder of those shares. In this situation, the investor is holding the shares "indirectly", but not through the intermediated holding system.

21 Mohamed F. Khimji, "The Securities Transfer Act – The Radical Reconceptualization of Property Rights in Investment Securities", (2007) 45 Alberta L. Rev. 137, at 142. See also CDS Participant Rules (Release 2012.12.10), s. 6.1.3 Holding of Securities: "Securities deposited in the Depository Service and identified by the same Security Identifier form a fungible bulk."

22 It is difficult to provide definitive statistics on what percentage of reporting issuer shares are held in the intermediated holding system. However, note that in the case of TELUS Corporation, approximately 95% of its shares were held by CDS. See *TELUS Corporation v. CDS Clearing and Depository Services Inc.*, 2012 BCSC 1539 (CanLII).

23 The CSA established a task force at the request of the CSA Chairs and the Uniform Law Conference of Canada (**ULCC**) to (i) develop a uniform securities transfer act (**USTA**) that would be as uniform and harmonious as possible with Revised Article 8 of the Uniform Commercial Code; and (ii) promote the uniform implementation of the USTA in each province. A final version of the USTA was adopted as a uniform act by the ULCC on August 26, 2004. To date, securities transfer legislation based on the USTA has been adopted in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut.

24 Another issue was information rights, i.e., how investors would receive disclosure that shareholders were entitled to such as financial statements. This issue will not be discussed in this Consultation Paper.

Shareholder Communication (**NP 41)** in the late 1980s. NP 41 was subsequently reformulated as National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) which came into effect on July 1, 2002.[25]

NI 54-101 requires, in connection with a reporting issuer meeting, that the reporting issuer, CDS and each intermediary that holds shares of that reporting issuer in the intermediated holding system, take certain steps. The purpose of these steps is to facilitate investors or **beneficial owners**[26] directing their intermediaries how their shares are to be voted at the meeting.[27] The following is a highly simplified summary of these steps:

- CDS must transfer its authority to vote in person or by proxy to each CDS participant in respect of the shares that the CDS participant holds in its account with CDS. The document that transfers voting authority from CDS (as the top-most intermediary and registered holder) to its participant intermediaries is commonly referred to as the **CDS omnibus proxy**.[28]

- A reporting issuer must provide each CDS participant who holds shares of the reporting issuer with the appropriate numbers of copies of meeting materials requested by the CDS participant for forwarding to all beneficial owners (including beneficial owners who hold through an intermediary that is a client account holder of the CDS participant).

- Each CDS participant must send the meeting materials and a request for voting instructions to each of its client account holders. If the account holder is itself an intermediary, then the CDS participant will provide the account holder with the appropriate quantity of meeting materials so that the intermediary can send them to its own account holders. The intermediary also will include a request for voting instructions.

- If the reporting issuer chooses to send meeting materials directly to, and solicit voting instructions from, non-objecting beneficial owners or NOBOs, the CDS participant must transfer its authority to vote in person or by proxy (obtained from CDS) to management of the reporting issuer. The document is known as the **NOBO omnibus proxy**.[29]

Dissidents are permitted but not required to send meeting materials and solicit voting instructions from beneficial owners. However, dissidents are incentivized to solicit votes from beneficial owners, as under securities law and some corporate statutes, shares held by an intermediary on behalf of an investor cannot be voted without instructions from the investor.[30]

In order to streamline the process of soliciting votes and collecting voting instructions through multiple levels of intermediaries, intermediaries developed an **intermediary omnibus proxy**. The intermediary omnibus proxy allows meeting materials to be sent to, and votes to be returned from, the intermediary that is closest to the ultimate beneficial owner, by-passing higher levels of intermediaries.[31] Intermediary omnibus proxies are not contemplated by NI 54-101, and were developed based on interpretations of statutory corporate law and the common law on proxy voting. They generally are of relevance only for institutional holdings and cross-border holdings.

The last intermediary in the chain, i.e., the intermediary with whom the beneficial owner holds an account, generally will not transfer voting authority down to the investor unless the investor specifically asks for it. NI 54-101 requires that an intermediary include an option for the investor to request voting authority from the intermediary (commonly known as an **appointee request**) in the request for voting instructions. A request for voting authority can be made by appropriately filling in the request for voting instructions or by another document in writing. Beneficial owners will not typically request this voting authority through an appointee request. Instead, they will provide voting instructions to the intermediary they have an account with directing how the intermediary should proxy vote.

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25 NP 41 was based on the recommendations of the Joint Regulatory Task Force on Shareholder Communication, whose members were securities regulators, corporate law administrators and representatives of stock exchanges, depositaries, transfer agents and other interested groups.

26 The term "beneficial owner" has a specific meaning under NI 54-101. For purposes of this paper, the term "beneficial owner" will be used in a looser sense to refer to an investor who is not a registered holder of shares, and whose ownership is through a securities entitlement in an intermediary account.

27 Canadian and U.S. securities legislation explicitly places the primary onus for soliciting voting instructions from beneficial owners on the issuer and the intermediaries. In contrast, Australia and the U.K. legislation leave it to beneficial owners and intermediaries to make these arrangements privately.

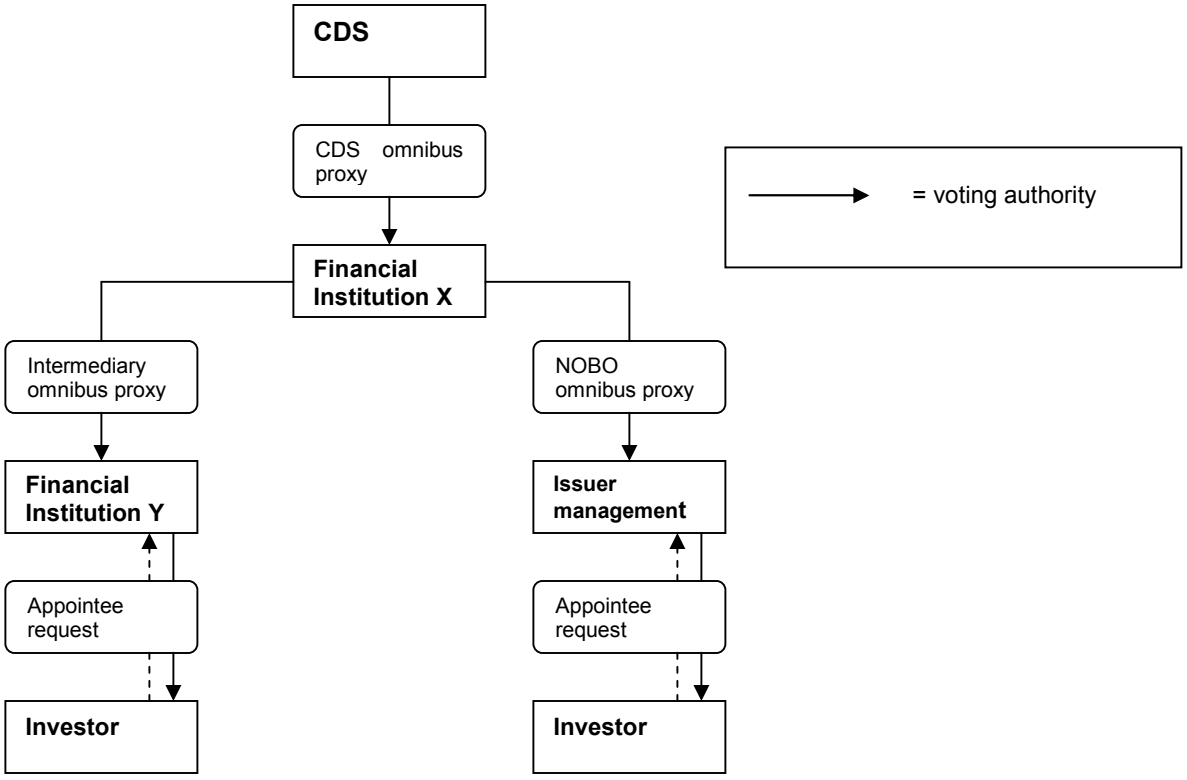
28 Form 54-101F3 *Omnibus Proxy (Depositories).*

29 Form 54-101F4 *Omnibus Proxy (Proximate Intermediaries).* The OBO-NOBO concept is further discussed in s. 3.4 below.

30 See, for example, the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (**CBCA**), s.153.

31 Also known as a **mini omnibus proxy**.

Figure 2: System of proxies down the intermediated holding system



Note: In the case of cross-border issuers, the U.S. depository, Depository Trust and Clearing Corporation (**DTCC**) issues a similar DTCC omnibus proxy. The DTCC omnibus proxy is not regulated by NI 54-101 or other Canadian securities regulation.

3.2 Share lending

Share lending is the market practice whereby shares are temporarily transferred from one party (the **lender**) to another party (the **borrower**) in return for a fee.

Although share lending transactions are commonly described as "loans", they in fact involve a transfer of title of the shares against a collateralized undertaking to return equivalent shares either on demand or at the end of an agreed term. The "borrower" is the new owner of the shares, and is entitled to vote the shares, receive any dividend or interest payments paid during the loan term or sell the shares on (e.g., to satisfy a short sale). However, the borrower is generally contractually required to make equivalent payments to the "lender" for any dividend and interest payments on the securities over the life of the loan; therefore the lender still "owns" or is "long" the share in economic terms.

Share lenders are generally institutions such as pension and mutual funds and insurance companies. Dealers may also be able to lend any shares that retail investors have purchased on margin. Borrowers are generally dealers and hedge funds who require shares for trading activities. In between are market intermediaries (in the broad sense of the term), who establish lending programs to facilitate lending. As noted by one commenter,

> The importance of intermediaries in the market partly reflects the fact that securities lending is a secondary activity for many of the beneficial owners and underlying borrowers. Intermediaries provide valuable services, such as credit enhancement and the provision of liquidity, by being willing to borrow securities at call while lending them for term. They also benefit from economies of scale, including the significant investment in technology required to run a modern operation. Intermediaries such as custodian banks lend securities as agents on behalf of beneficial owners, alongside the other services provided to these clients. In some markets specialist securities lending agents have also emerged. Agents agree to split securities lending revenues with lenders and may offer indemnities against certain risks, such as borrower default.[32]

[32] Mark C. Faulkner, "An Introduction to Securities Lending", at 9-10, online: <http://www.bankofengland.co.uk/markets/Documents/gilts/securitieslending.pdf >.

Share lending results in investors retaining economic exposure to lent shares without corresponding voting rights. This aspect of share lending generally only becomes important when a meeting is about to occur, and an investor decides that it wants to vote. Unless the lender (or its lending intermediary) has made appropriate arrangements, such as arranging to recall equivalent shares from the borrower or some other source in time for the record date, or contracting with the borrower that voting authority remains with the lender, the lender will not be legally entitled to vote. Nevertheless, the investor may still be noted as an "owner" in the intermediary's records. Without mechanisms in place to properly track lending activity and prevent investors who have lent shares from voting, therefore, there is a risk that a lent share may be voted by both the lender and whoever is the owner of that share on the record date.[33]

3.3 Use of voting agents

It is quite common for an investor to fully or partially delegate the voting authority for shares in its account to a professional investment advisor such as an investment manager.[34] While this practice has most commonly been associated with institutional holdings, retail investors who hold their shares in managed accounts (i.e., an investment account that is owned by an individual investor, but managed by a professional investment manager) will also delegate voting authority to the investment manager.[35] In this situation, we note that there is no mechanism in place to confirm that it is the advisor, and not the investor, who is solicited for voting instructions. NI 54-101 does not explicitly address this issue.

3.4 The OBO-NOBO concept

A unique feature of the Canadian (and U.S.) proxy voting infrastructure is the OBO-NOBO concept, which was first developed in the 1980s in the U.S. and introduced into Canadian securities policy shortly thereafter. An **OBO** (or "objecting beneficial owner") is a beneficial owner of shares in the intermediated holding system who objects to the intermediary disclosing his name, contact information and securities holdings. A **NOBO** (or "non-objecting beneficial owner") is a beneficial owner who does not object to disclosure of the above information.[36]

It is important to note two significant differences between how the OBO-NOBO concept is applied in Canada versus the U.S.:

- In the U.S., an issuer is not permitted to send meeting materials (except annual reports) and solicit voting instructions directly from NOBOs; in Canada, an issuer has the option of doing so.
- In the U.S., issuers must send meeting materials through intermediaries to all beneficial owners regardless of OBO-NOBO status and pay the associated intermediary fees; in Canada, an issuer can choose not to pay the fees charged by intermediaries for sending meeting materials to OBOs.[37]

Currently, just over half of all beneficial owner accounts in Canada are OBO accounts, and this trend has been increasing over the past few years.[38]

For Canadian **institutional investors**, whom we believe generally prefer OBO status, choosing OBO status originally appeared to have been motivated by the factors listed below:

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33 The interaction of share lending with proxy voting is not regulated by NI 54-101 or other securities legislation.

34 The term "investment manager" in this Consultation Paper is equivalent in broad terms to a person registered in the category of "portfolio manager" under securities legislation, who is authorized to provide advice to a client with respect to investing in, buying or selling any type of securities, with or without discretionary authority granted by the client to manage the client's portfolio. However, we use the term "investment manager" as this is the more common term.

35 Often known as **wrap accounts**.

36 In Canada, NI 54-101 requires intermediaries to obtain a client's OBO-NOBO preferences when the client opens an account.

37 Both these aspects of NI 54-101 were the subject of extensive comment and discussion during the formulation of NI 54-101. Some have criticized the absence of a requirement in Canada that issuers pay intermediary fees for sending meeting materials to, and soliciting voting instructions from, OBOs leading to the disenfranchisement of OBOs. Others take the view that such a requirement would effectively impose a surcharge on Canadian reporting issuers where an investor has selected OBO status.

Further information can be found in the notices accompanying the publications for comment during the formulation of NI 54-101. See, for example, Notice of Proposed National Instrument 54-101 and Rescission of National Policy Statement No. 41 Communication with Beneficial Owners of Securities of a Reporting Issuer (February 27, 1998), online: <http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_19980227_54-101_n.jsp>; Notice of Proposed Changes to Proposed National Instrument 54-101 and Rescission of National Policy Statement No. 41 Communication with Beneficial Owners of Securities of a Reporting Issuer (July 17, 1998), online: <http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_19980717_54-101.jsp>; Proposed Changes to Proposed National Instrument 54-101 and Rescission of National Policy Statement No. 41 Communication with Beneficial Owners of Securities of a Reporting Issuer (September 1, 2000), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20000901_54-101ni.pdf>.

For a discussion of how the U.S. developed its NOBO-OBO concept, see Alan L. Beller and Janet L. Fisher, "The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareholder Communication and Voting,", online: <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf>. [*U.S. OBO-NOBO Paper*]

38 *Davies Paper*, *supra* note 9 at 64.

1. Ability to ensure that meeting materials are delivered through desired proxy voting channels

Canadian institutional investors access their meeting materials and vote electronically through proxy voting channels offered by their intermediaries. In Canada, choosing NOBO status could result in an issuer sending them meeting materials and soliciting voting instructions outside of these preferred channels. As described by one custodian at the CSCS Shareholder Democracy Summit:

> When OBO/NOBO forms first came out, and RBC [Dexia] tried to explain it to clients, the big question in return was "what does this mean for me as an investor/voter?"
>
> Majority decided to be OBO so as to be able to electronically vote [through their preferred voting platform] and go through Broadridge and not be inundated by mailings.[39]

2. Ability to maintain anonymity when voting

When an issuer conducts a NOBO solicitation, the issuer is able to identify the votes submitted by each NOBO, as there is no legal requirement that proxy votes be kept confidential from the issuer. Choosing NOBO status in effect prevents an institutional investor from having sole discretion over whether to vote anonymously through its intermediary,[40] or to disclose how it has voted to the issuer.[41]

3. Ability to keep investment strategies confidential from issuer and/or the public

Certain investors may wish to keep their investment or their broader investment strategies confidential. Investors may also have concerns that an issuer's management would have a negative view of the investment or that third parties would attempt to replicate particular investment strategies by obtaining information regarding the holdings of a particular issuer.

4. Institutional investors generally are still able to receive meeting materials and vote even if they are OBOs

Under NI 54-101, issuers are not required to pay intermediaries for forwarding meeting materials to, and soliciting voting instructions from, OBOs. They are, however, required to pay intermediaries for these activities in respect of NOBOs. This nuance of Canadian securities law generally has been immaterial to institutional investors, because they have made their own arrangements with their intermediaries to receive meeting materials and requests for voting instructions through electronic proxy voting channels.

For Canadian **retail investors**, the reasons for choosing OBO status are less clear, and some suggest that retail investors would not choose to be OBOs if they fully understood the concept. One frequently-cited study is a survey conducted by a proxy working group of the New York Stock Exchange, which found that if the full consequences of NOBO-OBO status were explained to the investor, and if there was an administrative price tag of $50 for being an OBO, 95% of investor would ***not*** choose to be an OBO.[42]

Some participants have suggested that eliminating the OBO-NOBO concept and permitting direct communication and solicitation in all cases can make the proxy voting system more reliable. The U.S. Council of Institutional Investors, for example, supports an "incremental approach that promotes less reliance on – or eliminates altogether – the OBO/NOBO distinction and otherwise increases the potential for direct communications"; while acknowledging that elimination of the OBO-NOBO concept would "implicate complex strategic, cost, logistical and other considerations of critical importance" and would require "detailed analysis by the various affected constituencies to obtain a clearer picture of the logistical changes, costs and potential disruptions it could entail".[43]

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39 *CSCS Inaugural Report*, *supra* note 11 at 47.

40 This process will be described in more detail in the next section.

41 *CSCS Inaugural Report*, *supra* note 11 at 78.

42 Opinion Research Corporation, Investor Attitudes Study Conducted for NYSE Group (April 7, 2006), online: <http://www.nyse.com/pdfs/Final_ORC_Survey.pdf>. The result of this survey should be treated with caution in the Canadian context. Unlike in the U.S., one of the consequences of choosing to be a NOBO is that the issuer has the right to send meeting materials to and solicit voting instructions from the NOBO.

43 *U.S. OBO-NOBO Paper, supra* note 37, at 2 and 21.

Part 4 – Overview of the proxy voting infrastructure

The proxy voting infrastructure in Canada encompasses the following functions:

1. identifying the entities in the intermediated holding system who, for the purposes of a meeting, have the right (broadly-defined) to submit voting instructions and direct intermediaries how to vote. These entities include the voting agents to whom the investor has delegated partial or full voting authority;

2. delivering the appropriate materials to these entities and soliciting voting instructions; and

3. collecting the voting instructions and executing them by transmitting proxy votes to the official tabulator, including provision of any necessary supporting documentation to establish that the entity that is transmitting proxy votes has authority to do so.

In Canada, the vast majority of intermediaries (approximately 97%) have contracted with a single service provider to perform these functions: Broadridge Investor Communication Solutions Canada (**Broadridge**). Broadridge's parent, Broadridge Financial Solutions, Inc., is a U.S. public company that provides investor communications and other technology-based services to banks, broker-dealers, mutual funds, and corporations in the United States and globally. Broadridge supports 72 proximate Canadian intermediaries representing 230 financial institutions and approximately 3,600 public issuers in Canada, as well as custodians and institutional investors. The following sections, therefore, will focus to a large degree on Broadridge's operations in its capacity as agent for the intermediaries.

4.1 Generating the voter list

As noted above, securities legislation requires issuers and intermediaries to take positive steps to send materials and solicit voting instructions from beneficial owners in the intermediated holding system.

The first step in this process is generating a list of voters. In operational terms, this involves the following activities:[44]

1. The issuer (generally through its transfer agent[45]) notifies Broadridge of a shareholder meeting and the record date for notice for the meeting;

2. Broadridge notifies the intermediaries of the shareholder meeting on the evening of the record date;

3. On the record date plus one, the intermediaries send Broadridge their back office files, which contain details of client accounts holding the issuer's shares as of the record date;[46] and

4. Broadridge loads the data into its proxy processing system, and applies a number of criteria, set by the issuer (i.e., meeting selection type and material delivery), to determine which of these accounts ultimately will be sent meeting materials and solicited for voting instructions. These criteria will be described in the next section.

Each individual intermediary, not Broadridge, generates the back office files and determines which applicable client accounts will be included in those files. Broadridge offers a reporting service to intermediaries[47] if it detects that the share position in an intermediary's back office file does not match the intermediary's CDS position, or there is no record of that position at all.[48]

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[44] These and other processes set out in the Consultation Paper are described in Broadridge's *Canadian Intermediary Services Guide 2011*, online: <https://materials.proxyvote.com/Approved/EPLST1/20110323/OTHER_82813/HTML1/broadridge-cisg2011_0037.htm>.

[45] A ***transfer agent*** is generally a trust company appointed by a corporation to transfer ownership of its shares. In the majority of instances, the trust company in its capacity as transfer agent maintains the shareholder register and provides other related services. Transfer agents in Canada generally belong to the Securities Transfer Association of Canada. Current STAC members are: Alliance Trust Company, Canadian Stock Transfer Company Inc., Capital Transfer Agency Inc., Computershare Investor Services, Eastern Trust, Equity Financial Trust Company, Olympia Trust Company, State Street Trust Company Canada, Trans Canada Transfer Inc. and Valiant Trust Company.

[46] Note that back office files for intermediaries that are CDS participants are distinct from the records of shares in the intermediary's CDS account. CDS has one list of records and the intermediaries have another list.

[47] The intermediary must participate in the service.

[48] There are two reports generated as part of this service. The **CDS Record Date Position Comparison Report** is generated 72 hours after record date and displays, among other things, whether an intermediary's position is over or under the CDS reported position. The **CDS Position Missing Report** is also generated 72 hours after record date and alerts an intermediary where no depository position is recorded for the intermediary, but the intermediary has reported a position to Broadridge.

4.2 Sending the materials and soliciting voting instructions

Daily data processing occurs for all intermediary back office files. A number of data routines are processed to determine the criteria for which records will be processed, i.e., who will be provided with meeting materials and solicited for voting instructions. The following are the main factors that determine if a record is loaded.

1. Client account preferences (subject to issuer override)

Intermediaries are required by NI 54-101 to obtain their clients' preferences as to what types of meeting-related materials their clients wish to receive.[49] Broadridge determines their preferences from the data provided by the intermediary. These preferences are made at the intermediary account level, and not on an issuer-specific level. Specifically, a client can choose to receive no materials at all (thus surrendering the right to have his voting instructions be solicited), all materials, or only those materials relating to "special meetings".[50] However, an issuer can send materials to and solicit votes from any beneficial owner (thus overriding a beneficial owner's preference in this regard), so long as it pays all associated intermediary fees for sending the materials.

2. Whether the issuer is doing a NOBO solicitation

As discussed above, issuers have the choice under NI 54-101 of sending materials directly to, and soliciting voting instructions from NOBOs.[51] If an issuer has made this choice, NOBO records will not be processed and NOBO information will be provided to the issuer's transfer agent (the **NOBO list**). In this case, issuers generally will use their transfer agents to send the meeting materials to the NOBOs.

3. Whether the issuer is paying for sending of materials to OBO accounts

Under NI 54-101, issuers are required to pay fees to the intermediaries if they use intermediaries to send meeting materials to, and solicit voting instructions from, NOBOs. However, issuers are not required to pay fees to intermediaries in respect of OBOs.[52] Broadridge has standing instructions from intermediaries as to whether the intermediary will bear the sending and solicitation costs where the issuer does not pay. If neither the issuer nor the intermediary pays for sending, the OBO accounts for that intermediary are not processed. The issuer's decision not to pay for the material distribution may result in OBO investors not receiving the materials and being solicited for voting instructions.

4. Whether the account is a managed account

Intermediaries can provide Broadridge with data as to which accounts are "managed accounts", i.e., an investment account that is owned by an individual investor, but managed by a professional investment manager with voting authority. Managed accounts are created through an intricate process that requires the assignment of account designators through the intermediary and the "wrapping" of accounts through a series of preference management tables maintained by Broadridge. Broadridge will "suppress" the individual account record from mailing so that only the investment manager is provided with an aggregated voting instruction form. This function is not required by NI 54-101 but was designed as an efficient and cost saving proprietary feature for investment managers who have discretionary voting authority over client accounts.

Once the records are loaded, Broadridge will apply additional processes to refine to whom the meeting materials will be sent based on information provided by the intermediaries.

1. Aggregating shares in managed accounts

Broadridge will aggregate shares for the investment manager who has voting authority over those shares. This process is not required by NI 54-101 but is required to support managed account processing.

2. Intermediary omnibus proxy processing

As previously discussed, there may be multiple levels of intermediaries in between the ultimate investor/beneficial owner and CDS. In order to enable the intermediary closest to the investor (i.e., the intermediary with whom the investor holds an account) to submit proxy votes to an official tabulator, each intermediary along the holding system must execute an intermediary omnibus proxy and notify the tabulator.

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[49] NI 54-101, s. 3.2. There is no equivalent concept under US securities law.

[50] NI 54-101, s. 1.1.

[51] Under U.S. securities law, issuers cannot mail meeting materials directly to their investors (other than the annual report).

[52] See footnote 37.

If an intermediary provides Broadridge with information as to which of their client accounts is an omnibus account, Broadridge's proxy processing system is able to process this information so that:

- meeting materials are sent to the client-intermediary for forwarding to its clients, and not to the account provider intermediary; and
- an intermediary omnibus proxy is generated that transfers voting authority from the account provider intermediary to the client-intermediary. This intermediary omnibus proxy is sent to the official tabulator and is matched against the proxy votes submitted by the client-intermediary.

Broadridge will also generate a NOBO omnibus proxy where the issuer is sending meeting materials to NOBOs directly, which transfers voting authority from the intermediaries to issuer's management.

3. Identifying which sending channel and method will be used

Broadridge offers distinct channels based on preferences for intermediaries to send meeting materials and request voting instructions that supports both institutional investor and retail investor clients.

Institutional investors may subscribe to Broadridge's institutional "ProxyEdge" service for accounts held through intermediaries. Institutional investors are able to view meeting materials electronically as well as vote. In addition to ProxyEdge®, Broadridge's proxy processing platform can also provide data to other service platforms such as ProxyExchange®, the proxy voting channel established by Institutional Shareholder Services. At least one institutional investor, Ontario Teachers' Pension Plan (**Teachers'**), has also developed a custom channel with Broadridge, which enables Teachers' to receive and download meeting information via a data file from Broadridge.[53]

Intermediaries who are account providers for **retail investors** will use Broadridge to send meeting materials in paper form by mail or, where the intermediary has obtained a consent to electronic delivery from the client beneficial owner, by email containing an embedded link to the issuer's material and to Broadridge's Internet voting site, www.ProxyVote.com. Broadridge will also generate the request for voting instructions required by NI 54-101 (known as a **voting instruction form**) for inclusion in the meeting materials. The paper voting instruction form will have a 12-digit control number printed on it that enables an investor to vote. Where an email is sent, the control number is embedded as a hyperlink.

Where an issuer sends meeting materials and solicits voting instructions from NOBOs, it generally will use the services of a transfer agent to send meeting materials in paper form by mail, or where the transfer agent has obtained a consent to electronic delivery, by email. The transfer agent will provide its own voting control number.

4.3 Collecting voting instructions and transmitting proxy votes to the official tabulator

Institutional investors by and large submit their voting instructions to their intermediary account providers through Broadridge's ProxyEdge® or Institutional Shareholder Services Inc.'s ProxyExchange®.

Retail investors can submit voting instructions to their intermediary account providers through any of the following methods:

- *Online voting* at www.ProxyVote.com, using their 12-digit control number;
- *Telephone voting* at toll-free numbers established by Broadridge, also using the 12-digit control number; or
- *Mailing* in the voting instruction form to Broadridge.

Broadridge will generate **tabulation reports** (also known as **vote reports**) that contain the voting instructions received from investors, aggregated by intermediary. Broadridge, under the authority of a **client proxy**[54] that authorizes it to submit proxy votes on behalf of the intermediary, provides these tabulation reports to a meeting's official tabulator. The data in the tabulation reports constitute the proxy votes submitted by the intermediaries for the meeting.

Broadridge does not modify any of the voting data that is transmitted by beneficial owners through the intermediaries. However, Broadridge also offers an **Over Reporting Prevention Service**, for intermediaries that wish to participate, that notifies intermediaries when Broadridge receives voting instructions for an intermediary that in the aggregate exceed the intermediary's CDS position as at the record date. An **Overvote Pending Report** is made available online for access by the intermediary to review the voted positions that have caused the situation. This service will "pend" or hold all voting transactions for records

[53] Bill Mackenzie et al., "Shareholders' Panel Combined Paper", at 6, online: <http://www.cscs.org/Resources/Documents/summit/Resources/Day1/Shareholders/Institutional%20Investor%20Paper.pdf> [*CSCS Shareholders' Panel Combined Paper*].

[54] Neither the tabulation reports nor the client proxy are regulated by NI 54-101 or other securities regulation.

received over the depository position, and pended votes can only be released for submission in a tabulation report if the positions are matched, either because:

- the intermediary adjusts its reported depository position; or
- the intermediary adjusts positions for one or more of the intermediary's client accounts.

If an issuer has sent meeting materials to NOBOs, its transfer agent will have its own voting channels for investors. For example, Computershare Investor Services (**Computershare**) offers online voting at www.investorvote.com, telephone voting, and the option to return voting instructions through the mail. These votes will not be included in the tabulation reports submitted by Broadridge, and are submitted directly to the tabulator.

4.4 Tabulating the votes

Issuers will designate a person, usually its transfer agent, to act as an **official tabulator** for a meeting. The official tabulator will review the proxy votes it receives and assess whether these are valid votes that should be counted for the meeting.[55] The official tabulator will apply the "presumptions" contained in the STAC Proxy Protocol where there is a dispute whether to accept a proxy unless the issuer's governing statute, articles or bylaws provide otherwise or unless factual evidence rebutting any of such presumptions is presented to the official tabulator. However, the meeting chair has considerable discretion over whether a particular proxy vote count tabulated by the official tabulator should be accepted or not and can overrule the STAC Proxy Protocol presumption.

As a first step, a tabulator must reconcile or match the intermediary proxy votes it receives against:

- the depository omnibus proxies and intermediary omnibus proxies that have been sent to the tabulator; and/or
- registered holders' positions on the issuer's share register.

In addition to the depository omnibus proxies and intermediary omnibus proxies, tabulators may also receive **restricted proxies**. A restricted proxy refers to a proxy used by an intermediary to directly submit proxy votes to the tabulator (i.e., outside the tabulation reports generated by Broadridge) on behalf of a client for whom it holds shares.

For example, if a purchaser has acquired shares of an issuer after the record date and has made it a condition of purchase that the seller give the purchaser voting authority, the purchaser may be able to vote the shares even though he or she was not a shareholder on the record date by contacting its intermediary and asking for the issuance of a restricted proxy. The intermediary will execute a proxy that states that the intermediary is submitting proxy votes for that portion of shares that it holds on behalf of the client who has purchased the shares (with the name of the client and amount of shares disclosed). Generally speaking, if the number of shares covered by the restricted proxy does not exceed the number of shares that the intermediary is entitled to vote (as verified by the tabulator), the tabulator will accept the proxy votes for tabulation.[56]

If a particular intermediary submits proxy votes that the tabulator is unable to reconcile against an appropriate omnibus proxy, the tabulator will try to resolve the problem. However, if no resolution is achieved before the tabulator completes its tabulation for the meeting, the excess votes could be discarded, or some other downward adjustment could be made to the proxy votes submitted by that intermediary, depending on the approach taken by the meeting's chair.

Part 5 – Proposed issues for further review

Based on stakeholder feedback provided to us, as well as our own review of proxy voting and the proxy voting infrastructure, we have identified two issues that we intend to examine further:

1. Is accurate vote reconciliation occurring within the proxy voting infrastructure?
2. What type of end-to-end vote confirmation system should be added to the proxy voting infrastructure?

[55] Vote tabulation is not regulated by NI 54-101 or other securities legislation. STAC has issued a proxy protocol that outlines the reconciliation process that transfer agents apply. See STAC, "**Proxy Protocol**" (March 2012) online: <http://www.stac.ca/Public/PublicShowFile.aspx?fileID=199>.

[56] Restricted proxies are not regulated by NI 54-101 or other securities regulation.

With respect to each issue, we set out a non-exhaustive list of questions that we think are relevant to our examination.

We are seeking comment on whether our focus on these two issues is appropriate in reviewing the accuracy and reliability of the proxy voting infrastructure. We are also seeking comment on the specific questions we have identified as relevant to addressing these two issues.

In addition to identifying these two primary issues, we have also identified other issues that are relevant to the integrity of the proxy voting system. These issues are outlined in Part 6.

We stress that we have not come to any conclusion as to whether any further securities regulation is warranted in these areas. We also note that, depending on the securities regulatory response proposed, we may have to seek rule-making authority to regulate some of these areas.

5.1 Vote reconciliation

A central function of the proxy voting infrastructure is to facilitate vote reconciliation. We have identified two main reconciliation challenges. First, the intermediated holding system results in one share having multiple associated entitlements. Unless there is an effective system of reconciliation, there is a risk that valid proxy votes submitted to the tabulator ultimately are discarded because they cannot be properly matched to an appropriate omnibus proxy or registered position. Second, share lending creates a risk that the same share could be voted multiple times. We want to better understand whether the proxy voting infrastructure adequately addresses these vote reconciliation challenges.

We note that reconciliation issues are not uniquely Canadian, and have been identified as a concern in the U.S., the U.K. and in Australia – see Appendix C.

Effectively addressing reconciliation challenges ultimately may require longer-term reforms of the various record dates and proxy cut-offs under corporate law, as well as investments in technology to increase the speed at which reconciliation can occur. Over the short- to medium-term, however, we think that examining specific aspects of the proxy voting infrastructure in more detail may enable us to better understand reconciliation challenges and possible solutions.

We note that we do not suggest that the list below is exhaustive. As part of our examination, we also would like to find out if there are other situations of multiple voting.

5.1.1 Impact of share lending on generating the voter lists

We know that some intermediaries include lent shares in the intermediary back office files provided to Broadridge for purposes of generating the voter list. The Investment Industry Association of Canada (**IIAC**) has stated in a comment letter to us that member practice and standard industry procedure are not to adjust client ownership data downward to reflect any lent shares. It submits that it is also standard industry practice to treat the lender as the beneficial owner of shares on loan with an entitlement to vote; but that IIAC members would not submit a vote for a lent share unless they received a proxy from the dealer who borrowed the shares allowing the lender dealer to vote the lent share. If the lender dealer is unable to obtain such a proxy, the record date position held by the lender will be reduced by the appropriate number of shares on loan.[57]

There is a concern that this practice creates an operational risk that beneficial owners may be able to submit votes even if they are not entitled to do so.

Questions:

1. What processes do intermediaries implement to prepare their back office files for transmission to Broadridge? In particular what, if any, adjustments are made before the files are provided to Broadridge, e.g., in the case of retail clients, to address margin account shares that can be loaned by intermediaries, and in the case of institutional clients, shares that are part of a share lending program?

2. How frequently do intermediaries' back office files transmitted to Broadridge reflect share positions that exceed their CDS reported position? What percentage of their positions are being voted?

3. If Broadridge notifies an intermediary that the share position in its back office file exceeds its CDS position, what, if any processes does the intermediary implement to reconcile the share positions?

[57] IIAC response letter to OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (March 31, 2011), online: <http://www.osc.gov.on.ca/en/30575.htm>.

4. How do the dealer members of IIAC in practice ensure that no vote is submitted for a lent share unless they have received a proxy from the dealer who borrowed the shares?

5. Where do intermediaries document the relevant processes, and is a client investor or an issuer able to access this information?

6. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

7. Which party (the lender or the borrower) should have the right to vote in a share lending transaction? Should securities regulators specifically address which party to a share lending transaction should have the right to vote?

5.1.2 Omnibus proxies and restricted proxies

It appears to us that missing or incomplete omnibus proxy documentation can create reconciliation challenges for tabulators that could result in proxy votes being discarded or otherwise adjusted downward.

It also appears to us that the use of restricted proxies could create a risk that the same position is voted twice. Using the example of a share purchase after the record date, there should be a mechanism in place to determine if the seller (who was the beneficial owner of the shares on the record date) has voted the shares, and if so, to subtract those votes from the relevant Broadridge tabulation report; however, it is not clear if this is in fact the case.

Questions:

1. How often are tabulation issues caused as a result of missing or incomplete omnibus proxy documentation? How could this be remedied?

2. How often, and in what circumstances, are restricted proxies being used?

3. Do intermediaries have documented policies and procedures regarding when they will issue a restricted proxy for a client?

4. An intermediary who submits a restricted proxy should ensure that the same position is not also being voted through the tabulation report submitted by Broadridge. Are intermediaries doing so, and how do they document that they have done so?

5. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

5.1.3 Over-reporting and over-voting

Over-reporting refers to the situation where an intermediary returns more votes than are reflected in the intermediary's CDS participant account. This practice is also referred to as **over-voting**, although some use the term over-voting more narrowly to refer to a situation where intermediary proxy votes accepted by a tabulator are later determined to be invalid due to the vote exceeding the intermediary's actual position. The existence of over-reporting and over-voting are cited as proof that proxy voting results lack integrity.

Questions:

1. How often do over-reporting and over-voting occur (including pending over-votes that are ultimately resolved)?[58]

2. To what extent do over-reporting or over-voting situations actually reflect a situation where an investor is attempting to vote when it does not have the right to vote (e.g., because it has lent shares and has no voting entitlement as at the record date), as opposed to other reasons such as missing omnibus proxy documentation?

[58] According to a Computershare analysis of public company meetings held in Canada for which Computershare acted as transfer agent between 2009 and 2011, unresolved over-reporting situations occurred in at least 17% of the meetings. See Computershare response letter to OSC Statement of Priorities for Financial Year to End March 31, 2013 (May 28, 2012), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20120528_11-766_donaldsonl_makuchc.pdf>.

3. Is over-reporting or over-voting more common for certain types of intermediaries than others, e.g., smaller intermediaries, intermediaries who do not subscribe to Broadridge's services? Are NOBO solicitations by issuers a factor in the frequency of over-reporting or over-voting?

4. If Broadridge notifies an intermediary of a pending over-vote, what processes does the intermediary implement to reconcile the share positions?

5. Where do intermediaries document these processes, and is a client or an issuer able to access this information?

6. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

5.2 End-to-end vote confirmation

Currently, investors do not have the ability to confirm that voting instructions they submit to their intermediaries have ultimately been received and counted. As Teachers' has noted:

> Our main issue with the current proxy voting system is the lack of an end-to-end vote confirmation. Once we have voted, there is no communication to tell us that 1) our vote was ultimately received by the company and 2) that the vote was entered as instructed. This lack of confirmation becomes more problematic as meetings become more contested. Without a confirmation that the vote was received and recorded as cast, there remains a nagging question as to whether or not our votes were received and/or cast as instructed. This anxiety increases the closer the vote is."[59]

Questions:

1. Broadridge has advised us that it has started to develop end-to-end vote confirmation functionality.[60] What is the current formulation and development status of end-to-end vote confirmation functionality in Canada?

2. What functionality should be part of an end-to-end vote confirmation system? For example, should voter anonymity be built into the functionality, or is disclosure of voter identities necessary for an effective system? At what point in the proxy voting process should investors receive confirmation as to whether their vote will be accepted, and at what level, e.g., at an intermediary level or at an investor account level?[61]

6. Other issues

6.1 Impact of the OBO-NOBO concept on voting integrity

There has been some suggestion that the OBO-NOBO concept reduces the reliability of proxy votes.

Questions:

1. Are there any specific instances where the existence of the OBO-NOBO concept has compromised the accuracy and reliability of proxy voting?

2. Would temporarily allowing issuers and official tabulators access to the identity of OBOs for purposes of tabulation improve the reliability and accuracy of proxy voting? Would it make the reconciliation process more effective? Would this prejudice investors?

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59 *CSCS Shareholders' Panel Combined Paper*, *supra* note 53 at 6.

60 Broadridge response letter to OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (March 31, 2011), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20110331_54-701_roschp.pdf>.

61 The University of Delaware's John L. Weinberg Center for Corporate Governance convened a roundtable on proxy voting consisting of 33 members representing all parts of the U.S. proxy voting system (the **Weinberg Center Roundtable**). Under the Weinberg Center Roundtable's formulation of end-to-end voting, confirmation would only occur after the intermediary (Broadridge) has submitted its final tabulation report and the official tabulator for the meeting would confirm that the intermediary's aggregate share position was voted in accordance with the tabulation report. It was not explicitly contemplated that proxy votes to the tabulator would be broken down by beneficial owner account (e.g., through use of the 12-digit control number on the voting instruction form), nor would the tabulator be required to confirm that it has counted the shares associated with a specific account. See University of Delaware, "Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation" (August 2011), online: <http://www.sec.gov/comments/s7-14-10/s71410-300.pdf>.

6.2 Inability of investment manager to vote due to gaps in managed account information

As described above, in order to submit voting instructions to intermediaries, beneficial owners must receive a request for voting instructions with a 12-digit control number.[62] If a beneficial owner does not receive it, or it receives it late, the owner's shares may not be voted or may not be voted by the proxy-cut-off.

Managed account processing was designed to facilitate the voting of discretionary accounts in a retail environment for an investment manager. We understand that clients within a managed account relationship can make arrangements with their investment manager to vote their position directly if requested. However, a concern has been raised that some managed account platforms offered to retail investors do not offer the option for a third party investment manager to vote the shares owned by the investor. In particular, it has been suggested that there are not enough address fields associated with a managed account to accommodate both the beneficial owner and investment manager information. Another difficulty is that managed accounts often aggregate multiple investment managers in one pool.[63]

As a result, it has been suggested that some of the intermediary back office files provided to Broadridge do not have the information necessary to send meeting materials to, or solicit voting instructions from, the appropriate investment manager(s).

Questions:

1. Are managed accounts in fact experiencing the issues that have been identified? If so, what are the causes for an investor not receiving or receiving a request for voting instructions late?

2. Are clients made aware of these issues and, if so, what are the remedies?

3. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these issues?

6.3 Accountability of service providers

The complexity of proxy voting and of the proxy voting infrastructure means that it can be difficult for issuers and investors to obtain the necessary information to understand and use the proxy voting infrastructure. Issuers and investors rely heavily on service providers such as transfer agents and proxy solicitors to navigate the proxy voting infrastructure. They also rely on intermediaries, who in turn rely on service providers such as Broadridge.

Concerns have been raised as to whether there are appropriate mechanisms in place so that service providers and others are accountable for their roles in the proxy voting infrastructure.

Questions:

1. What mechanisms are in place to support the accountability of the various service providers in proxy voting?[64] How effective are these mechanisms?

2. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework?[65] What changes would be desirable?

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62 Or an equivalent voting control number provided by a transfer agent in the case of a direct NOBO solicitation by an issuer.

63 *CSCS Shareholders' Panel Combined Paper*, *supra* note 53 at 10.

64 Section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) requires a registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage the risks associated with its business in accordance with prudent business practices. Additional guidance is provided in the companion policy (**31-103CP**) with respect to the elements in an effective compliance system.

Part 11 of 31-103CP also provides guidance on general business practices when outsourcing and states that "[r]egistered firms are responsible and accountable for all functions that they outsource to a service provider" and that "[r]egistered firms should follow prudent business practices and conduct a due diligence analysis of prospective third-party service providers". It states that firms should "conduct ongoing reviews of the quality of outsourced services", and that "[t]he regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm itself performed the activities".

65 For example, there are existing requirements regarding the maintenance of books and records by registrants, which can be the subject of compliance reviews. See for example OSC Notice 33-724 (2004) *OSC Compliance Team, Capital Markets Branch, Annual Report*, which noted an increase in the number of deficiencies relating to proxy voting for the period April 1, 2003 to March 31, 2004 in a review of investment counsel and portfolio managers (**ICPM**). The report also noted: "…many advisers have inadequate written policies and procedures on proxy voting. Also, we noted that proxies were not always voted and there was no process to deal with contentious matters. Another common issue was the lack of disclosure of the proxy voting responsibility in the investment management agreement with clients." OSC Staff Notice 33-728 *2007 Annual Report – Compliance Team* indicated that a common deficiency among smaller ICPMs (those with assets under $250 million) was in maintenance of books and records, including regarding proxies voted or proxy logs.

7. Next steps

We intend to engage in targeted consultations with stakeholders to assist us in gathering information and providing different perspectives on the issues discussed in this Consultation Paper. These external consultations may include holding a roundtable following the comment period and forming an advisory committee to serve as a forum for sharing data and discussing possible policy initiatives. Depending on the outcome of our review and consultations, we may conclude that no further regulatory action is required or, alternatively, identify specific areas for policy reform. **We stress that we have not come to any conclusions whether any specific regulatory measures are desirable.**

8. Request for Comment

Please provide your comments in writing by **November 13, 2013**. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (Windows format, Word).

Address your submission to the following Canadian securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Financial and Consumer Services Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments **only** to the addresses that follow. Your comments will be distributed to the other participating CSA member jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
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E-mail: comments@osc.gov.on.ca

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Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and at www.lautorite.qc.ca and may be posted on the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

9. Questions

Please refer your questions to any of:

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Appendix A

Overview of the Shareholder Meeting Process

This Appendix provides a high-level overview of the shareholder meeting process.

Directors generally are required under most corporate statutes to call an annual meeting of shareholders not later than fifteen months after holding the last preceding annual meeting and, in any case, no later than six months after the end of the issuer's preceding financial year. TSX policies require TSX-listed issuers to hold an annual meeting of shareholders within six months from the end of their fiscal year, or at such earlier time as is required by applicable legislation. TSXV policies have similar requirements. Directors also can call a special meeting at any time.

1. Notice and setting the record date

Corporate statutes and company articles or bylaws generally require that notice of a meeting be provided at least 21 days but not more than 60 days prior to the date of the shareholder meeting.[66]

In addition, the issuer must set a record date. Under some corporate statutes (e.g., the *Canada Business Corporations Act* (**CBCA**)), issuers are theoretically able to set two record dates, one for those registered shareholders who are entitled to receive notice of a meeting, and one for those shareholders entitled to vote. [67] In practice, issuers usually set a single date as both the notice record date of the meeting and the voting record date. Otherwise, two sets of meeting materials would have to be sent out, and there would have to be some mechanism in place to identify and discard any proxy votes submitted by registered shareholders as of the notice record date who were no longer registered as of the voting record date.

2. Generating the voter list

(a) Registered shareholders

Under corporate law, an issuer identifies its registered shareholders by looking at the share register maintained by its transfer agent, and prepares a list of voters based on that list. [68]

(b) Beneficial owners

Securities legislation effectively requires intermediaries to generate a list[69] of their beneficial owner clients as at the "**beneficial ownership determination date**"[70] who are entitled to:

- receive the management information circular, and
- have their voting instructions solicited, through receiving a voting instruction form.

At least 20 days before the record date[71], the transfer agent sends to the "proximate intermediaries" (Broadridge) a "Request for Beneficial Ownership Information".[72]

Within 3 business days of receiving the Request for Beneficial Ownership Information, the proximate intermediaries (Broadridge) are required to provide information regarding the number of sets of meeting materials required (which also reflects the number of materials required by intermediary account holders of the proximate intermediary).

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66 NI 54-101, s. 2.1 requires the notice record date to be no more than 60 days and no less than 30 days before the meeting date, but all of the corporate statutes specify 21 days (with the exception of Ontario, which specifies 30 days, and the statutes of Nova Scotia, Prince Edward Island and Quebec which do not provide for record dates for notice of the meeting). In addition, NI 54-101 further requires that the record date be set at not less than 40 days before a meeting where notice-and-access is used as a method of sending meeting materials.

67 CBCA, s. 134(1)(c) and (d).

68 CBCA, s. 135(1)(a).

69 The specific mechanics of generating this list are described in Broadridge's *2011 Canadian Intermediary Services Guide*.

70 This date is typically the record date for both notice of meeting and voting.

71 NI 54-101, s. 2.5.

72 Form 54-101F2 *Request for Beneficial Ownership Information*. For purposes of this discussion, a proximate intermediary is a CDS participant.

3. Sending materials and soliciting voting instructions

(a) Registered shareholders

The issuer (through its transfer agent) sends to the registered shareholder the management information circular and the management form of proxy. These materials must be delivered between 21 and 60 days before the meeting date.[73] The transfer agent is required to file and post on SEDAR a certificate of mailing with respect to the registered holders.[74]

(b) Beneficial owners

The issuer will decide whether materials will be delivered either by the issuer (through its transfer agent) to NOBOs or only by the intermediaries (Broadridge) to all beneficial owners. Meeting materials must be mailed 21 days before the date of the meeting; however, if the issuer is using notice-and-access, the materials must be sent at least 30 days before the meeting.[75] NI 54-101 sets out timelines for when issuers must provide proximate intermediaries (Broadridge) with appropriate sets of materials, and when intermediaries (Broadridge) must send out the materials.

4. Collecting voting instructions

(a) Registered shareholders

Registered shareholders execute and return the management form of proxy that is sent to them. Shareholders must provide these voting instructions in writing.[76] The majority of registered shareholders submit their proxy votes in paper form.

(b) Beneficial owners

Beneficial owners most commonly return their voting instructions electronically (by telephone, fax, Internet, or through the relevant electronic platform). These instructions are submitted to either the intermediary (Broadridge) or the transfer agent (as applicable). Voting is controlled in electronic systems by providing to the investor a unique control number.

5. Transmitting proxy votes/voting instructions

(a) Registered shareholders

Under many Canadian corporate statutes, an issuer can set a proxy cut-off; however, a proxy cut-off generally must be no more than 48 hours (excluding Saturdays, Sundays and holidays) preceding the commencement of the meeting in respect of which the proxy relates. Some issuers take advantage of the full 48-hour proxy cut-off; others provide for a 24-hour proxy cut-off.

Typically, the transfer agent is responsible for tabulating the proxies submitted by registered shareholders.[77]

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[73] *Canada Business Corporations Regulations*, 2001, S.O.R./2001-512, s. 44; National Instrument 51-102 *Continuous Disclosure Obligations*, s. 9.2.

[74] Transfer agents will often also deliver to their clients an Affidavit or Declaration of Mailing, to provide them with sworn assurance that the meeting has been properly constituted.

[75] NI 54-101, s. 2.9. Note that if one intermediary receives meetings materials from another intermediary, it is required to send those materials on to its investor clients within one business day of receipt. However, this step is skipped since Broadridge delivers proxy materials on behalf of virtually all of the intermediaries.

[76] See CBCA, s. 153. However, under National Policy 11-201 *Electronic Delivery of Documents*, the "in writing" requirement for voting instructions can be satisfied by electronic delivery of a document, including telephone delivery, so long as the electronic format ensures the integrity of the information in the document and enables the recipient to maintain a permanent record of the information.

[77] The transfer agent will do the same for voting instructions received from NOBOs if the transfer agent has done the NOBO mailing on behalf of the issuer.

(b) Beneficial owners

Broadridge compiles voting instructions into a tabulation report aggregated by intermediary and then electronically delivers the tabulation report to the official tabulator. [78]

Broadridge recommends voting instructions to be received by it at least one business day before the proxy cut-off date (to enable the preparation of the tabulation report prior to the proxy cut-off time).

If the issuer has sent meeting materials to, and solicited voting instructions directly from NOBOs, the NOBOs will return their voting instructions directly to the transfer agent.

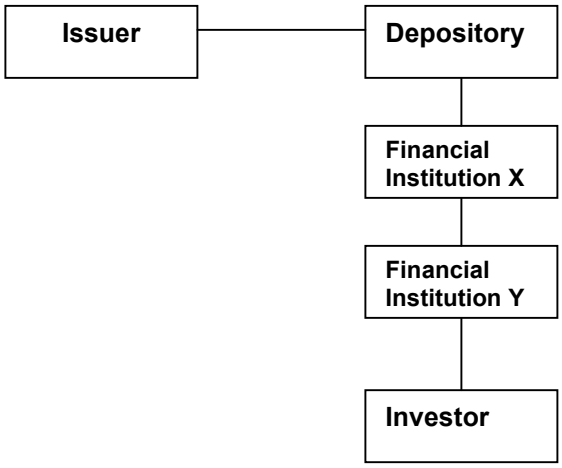
[78] Broadridge issues tabulation reports on behalf of its intermediaries based on the schedule below:

- 15-day Vote Report – if material is mailed 25 or more calendar days prior to the meeting, the first vote report will be issued 15 calendar days prior to the meeting.
- 10-day Vote Report – if material is mailed 15 to 25 calendar days prior to the meeting, the first vote report will be issued 10 calendar days prior to the meeting.
- Daily Vote Reports – beginning on the 9th calendar day prior to the meeting, daily reports will be issued up to and including the meeting day.
- Day before Meeting – a vote report will be generated about 7:00 p.m. (Eastern Time) the evening prior to the meeting.
- Day of Meeting – a vote report will be generated the morning of the meeting.

The first vote report Broadridge issues will be cumulative. It will show all the votes returned up to that time. Any supplemental vote reports will show only newly-returned votes, which must be added to the first votes reported. See Broadridge *Canadian Intermediary Services Guide 2011*, *supra* note 45 at 13.

Appendix B[79]

Differing Legal Frameworks Applicable to Intermediated Holding Systems



Model	Security Entitlement Model (Canada and U.S.)	Trust Model (England and Wales, Ireland, Australia)	Undivided Property Model (France)	Pooled Property Model (Germany, Austria, Japan)
Depository	CDS nominee is registered holder and legal owner	CREST (U.K.) or CHESS (Australia) assumes role of company register under corporate law and has no legal interest	Euroclear acts as a register and has no legal interest in the securities	Clearstream (Germany) and other equivalents maintain a pool of securities and have no legal interest in the securities
Financial Institution X	CDS participant holds security entitlement in respect of CDS	CREST participant is the legal owner of the securities they hold in CREST, whether for their own or clients' account	Has no legal interest in the securities	No legal interest other than a residual interest comparable to possession or *de facto* control
Financial Institution Y	Holds securities entitlement in respect of FI X	Equitable owner of securities in account with FI X	Has no legal interest in the securities	No legal interest other than a residual interest comparable to possession or *de facto* control
Investor	Holds security entitlement in respect of FI Y	Equitable owner of securities in account with FI Y	Full property over the securities in account with FI Y; however, the investor can only access his securities through FI Y and not through any other intermediary at a higher level	Shared interest in the pool of securities located at the level of the depository; however, the investor can only access his securities through FI Y and not through any other intermediary at a higher level

[79] The information in this Appendix is derived from *Paech, supra* note 17.

Some jurisdictions (the Nordic countries, Greece and Poland, China and Brazil) have “transparent systems” in which investors hold accounts directly with the depository, and financial institutions merely “operate” the accounts; however, this system does not work for cross-jurisdictional holdings, because foreign intermediaries are not part of the special legal and operational framework necessary to be an account operator. In that case, a custodian will hold an account with the depository, and the ownership framework is similar to the pooled property model.

Note that this chart does not address other important differences in legal structure that affect the voting and property rights of issuers and investors in these jurisdictions, e.g., corporate laws, insolvency laws, property rules and securities and/or financial market regulations. This chart therefore should not be read as suggesting that a particular legal framework for an intermediated holding system is superior to another.

Appendix C

Reviews of Proxy Voting in the U.S., U.K., Australia and France

Institutional investors, custodians and regulators in other jurisdictions have also engaged in reviews of the proxy voting infrastructure and the accuracy of proxy votes. Below is a non-exhaustive list of these initiatives.

- **United States.** The Securities and Exchange Commission published a concept release on July 14, 2010 (the **SEC Concept Release**) seeking public comment on a wide range of topics related to the U.S. proxy system. The SEC Concept Release sought input on three general areas: (1) ensuring the accuracy, transparency, and efficiency of the voting process, (2) enhancing shareholder communication and participation, and (3) addressing the relationship between voting power and economic interest. The SEC Concept Release described the concerns related to these three areas that have been expressed by market participants and presented several possible regulatory responses to such concerns.[80] The SEC received nearly 250 comment letters in response and, as of this time, has not engaged in any rulemaking with respect to the topics addressed by the SEC Concept Release.

- **United Kingdom.** Institutional shareholders, custodians and regulators formed a Shareholder Voting Working Group in 1999 to review impediments to voting shares in U.K. companies and prepared a series of reports between 2001 and 2007. The 2007 report noted the continued problem of "lost" votes and the difficulties in tracing the vote from the investor to the issuer/registrar. The report described a vote tracing exercise conducted by Georgeson Shareholder Ltd. which found that of the votes cast by 25 institutional investors at an annual meeting, 4.97% were "lost", with the most common reason (49.6%) being that too many votes were submitted on the record date, resulting in the votes being rejected. The 2007 report recommend that the participants involved in the voting process should undertake steps to make the process more efficient and transparent, establish a clear audit trail and urged more companies to undertake tracing exercises to determine whether any votes have been lost.[81] On April 26, 2012, the Institute of Chartered Secretaries and Administrators Registrars Group published a guidance note on the practical issues around voting at general meetings; which among other things, sets out views and guidance on how certain reconciliation issues should be addressed.[82]

- **Australia.** In September 2007, the Investment and Financial Services Association (now the Financial Services Council) made submissions to a Parliamentary Joint Committee on Corporations and Financial Services inquiry into shareholder engagement and participation. The submissions noted concerns regarding the integrity of the proxy voting system and recommended legislative and industry based reforms to improve the system. The Parliamentary Joint Committee on Corporations and Financial Services issued its final report on shareholder engagement and participation in June 2008, which included high-level recommendations aimed at improving the integrity of the proxy voting system.[83] The Australian government is continuing to consider the recommendations in this report. In September 2011, the Australian Institute of Company Directors published a report that noted continued concern over "lost", miscounted and discarded votes, and the lack of an audit trail to establish that investor votes have been voted as instructed.[84]

- **France.** AMF France established in 2001 a working group on improving the exercise of shareholder voting rights at general meetings, and in 2012 presented a report for public consultation. The working group noted that non-resident institutional investors faced a risk of not having their votes counted at meetings due to the complexity of the long chain of service providers used by these investors and their custodians. The working group also noted that a number of improvements had been made to the voting system in France; however, shareholders who wished to receive relevant meeting information and have their votes counted should

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80 U.S., *Concept Release on the U.S. Proxy System*, U.S. Securities and Exchange Commission, Release No. 34-62495, (July 14, 2010) at 7, online: <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

81 Paul Myners, "Review of the Impediments to Voting UK Shares: Report by Paul Myners to the Shareholder Voting Working Group – An Update on Progress Three Years On" (July 2007) at 1-2, online: <http://www.investmentfunds.org.uk/press-centre/2007/20070730/>.

82 Institute of Company Secretaries and Administrators Registrars Group, Practical issues around voting at general meetings (April 2012), online: <https://www.icsaglobal.com/assets/files/pdfs/guidance/Guidance%20notes%202012/ICSA%20Registrars%20Group%20Best%20Practice%20Note%20-%20Practical%20issues%20around%20voting%20at%20general%20meetings%20-%20April%202012.pdf>.

83 Parliamentary Joint Committee on Corporations and Financial Services, Better Shareholders – Better Company: Shareholder engagement and participation in Australia (June 2008), online: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/completed_inquiries/2008-10/sharehold/report/index.htm>.

84 Australian Institute of Company Directors, Institutional Share Voting and Engagement: Exploring the Links Between Directors, Institutional Shareholders and Proxy Advisers (September 2011) at 8, online: <http://www.companydirectors.com.au/Director-Resource-Centre/Research-reports/~/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx>.

consider being registered directly on the issuer's books or hold shares in bearer form with a French custodian.[85]

[85] Olivier Poupart Lafarge, "Final Report of the Working Group on General Meetings of Shareholders of Listed Companies", (July 2, 2012) at 23 and 27, online: <http://www.amf-france.org/en_US/Publications/Rapports-des-groupes-de-travail/Archives.html?docId=workspace%3A%2F%2FSpacesStore%2Fa985cfe0-4354-4fca-aba4-234cdf408d74>.

1.3 News Releases

1.3.1 Canadian Securities Regulators Provide Update On Transition To New National Systems Service Provider

FOR IMMEDIATE RELEASE
August 12, 2013

CANADIAN SECURITIES REGULATORS PROVIDE UPDATE
ON TRANSITION TO NEW NATIONAL SYSTEMS SERVICE PROVIDER

Toronto – The Canadian Securities Administrators (CSA) today provide additional information on the transition process to the new CSA National Systems service provider, CGI Information Systems and Management Consultants Inc. (CGI).

On October 12, 2013, CGI will assume responsibility for the hosting, operation and maintenance of the System for Electronic Document Analysis and Retrieval (SEDAR), the System for Electronic Disclosure by Insiders (SEDI) and the National Registration Database (NRD) (collectively, the "CSA National Systems"). The implementation cutover will occur over the weekend of October 12, during which time the systems will not be available to market participants. More details will be provided as the October date approaches.

From October 12, 2013, the CSA Service Desk will provide a single point of contact for all CSA National Systems, user and system fees billing related enquiries and issues. For continuity purposes, the contact information for the CSA Service Desk will remain the same (telephone number 1-800-219-5381; fax number 1-866-729-8011). The CSA Service Desk will provide service in both English and French.

Enquiries of a regulatory nature should continue to be directed to the appropriate regulatory authority.

A number of market participants currently access one or all of the CSA National Systems through a virtual private network (VPN) connection. These connections must be reconfigured to point to the new service provider's infrastructure before the transition on October 12. A CSA/CGI network transition team will work with market participants and their network staff/providers to assist in making these changes. Any market participant with a current VPN connection who has not been contacted by the end of August should contact the network transition team by email at CSAsystransition@csa-acvm.ca, and include the contact information (name, phone number, and e-mail address) of their network prime.

SEDAR filers/filing agents who currently have the SEDAR client software installed on their workstations will be provided with a software update. This update must be installed after the cutover to access the SEDAR system. Additional information on this requirement will be provided in September and will be made available on the SEDAR website.

Please forward any questions concerning today's update or relating to the transition in general to CSAsystransition@csa-acvm.ca.

The CSA, the council of the 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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Alberta Securities Commission
403-297-4481

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Richard Gilhooley
British Columbia Securities Commission
604-899-6713

1.3.2 OSC Staff Seek Input on New Exchange Proposed by Aequitas Innovations Inc.

FOR IMMEDIATE RELEASE
August 13, 2013

OSC STAFF SEEK INPUT ON NEW EXCHANGE PROPOSED BY AEQUITAS INNOVATIONS INC.

TORONTO – Staff of the Ontario Securities Commission (Staff) today published a Notice and Request for Comment regarding the pre-filing by Aequitas Innovations Inc. to establish a new equities exchange in Canada. Aequitas is proposing to operate an exchange to trade securities of issuers listed on Aequitas as well as securities listed on other recognized exchanges in Canada.

Staff are seeking comment at this time on specific aspects of the Aequitas proposal which have been filed as part of a pre-filing. Staff are requesting comment to help further inform staff and gather any new information and input from stakeholders in advance of any filing by Aequitas of an application for recognition as an exchange. In order to receive recognition to operate as an exchange, Aequitas would be required to first file an application with the Commission, for which there would be an additional public comment period.

To comment, please refer to the Notice and Request for Comment, which is available on the OSC website at www.osc.gov.on.ca. The comment period is open until September 27, 2013.

For media inquiries:
media_inquiries@osc.gov.on.ca

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416-593-8307

Follow us on Twitter: OSC_News

For Investor Inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.3 Canadian Securities Regulators Review Canada's Proxy Voting Infrastructure for Shareholders

FOR IMMEDIATE RELEASE
August 15, 2013

CANADIAN SECURITIES REGULATORS REVIEW
CANADA'S PROXY VOTING INFRASTRUCTURE FOR SHAREHOLDERS

Toronto – To facilitate discussions among market participants regarding the integrity and reliability of Canada's proxy voting infrastructure, the Canadian Securities Administrators (CSA) today published for comment, Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*.

The increase in shareholder engagement over the last few years has imposed greater stress on Canada's proxy voting system, which is why reviewing the proxy voting infrastructure for shareholders is a priority for the CSA. The Consultation Paper identifies a number of areas for discussion that the CSA has determined may impact the accuracy of the infrastructure. Among other things, the issues are whether the current infrastructure adequately supports accurate and reliable vote counting, and whether a vote confirmation system should be introduced so that shareholders can be confident their votes have been transmitted, received and counted at a shareholder meeting.

"Shareholder voting gives individual shareholders a voice on important corporate issues and the confidence that they have ultimate control over membership on the board of directors," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "It is important that the CSA thoroughly examine the proxy voting infrastructure and ensure the quality, integrity and legitimacy of the shareholder voting process in Canada."

Shareholder voting straddles corporate law and securities legislation, making it an integral component of Canada's capital markets.

Public comment on the Consultation Paper will inform the CSA's next steps, which could include the development of an ad-hoc advisory committee to provide the CSA with different stakeholder perspectives, as well as public consultation sessions.

A copy of the Consultation Paper is available on CSA members' websites. The comment period is open until November 13, 2013.

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

For more information:

Carolyn Shaw-Rimmington
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Autorité des marchés financiers
514-940-2176

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604-899-6713

Ainsley Cunningham
The Manitoba Securities Commission
204-945-4733

Wendy Connors-Beckett
Financial and Consumer Services Commission,
New Brunswick
506-643-7745

Tanya Wiltshire
Nova Scotia Securities Commission
902-424-858

Daniela Machuca
Financial and Consumer Affairs
Authority of Saskatchewan
306-798-4160

Janice Callbeck
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902-368-6288

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Rhonda Horte
Office of the Yukon Superintendent
of Securities
867-667-5466

Donn MacDougall
Office of the Superintendent of Securities
Government of the Northwest Territories
867-920-8984

Louis Arki
Nunavut Securities Office
867-975-6587

1.4 Notices from the Office of the Secretary

1.4.1 Global Consulting and Financial Services et al.

FOR IMMEDIATE RELEASE
August 7, 2013

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP,
CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and
LORNE BANKS

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GLOBAL CONSULTING AND FINANCIAL SERVICES
AND JAN CHOMICA

TORONTO – Following a hearing held on August 6, 2013, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Jan Chomica.

A copy of the Order dated August 6, 2013 and Settlement Agreement dated July 23, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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SECRETARY

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1.4.2 Oversea Chinese Fund Limited Partnership et al.

FOR IMMEDIATE RELEASE
August 7, 2013

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

AND

IN THE MATTER OF
OVERSEA CHINESE FUND LIMITED
PARTNERSHIP, WEIZHEN TANG AND
ASSOCIATES INC., WEIZHEN TANG CORP.
AND WEIZHEN TANG

TORONTO – The Commission issued a Temporary Order in the above named which provides that the Temporary Order is extended until August 23, 2013 and the hearing of this matter is adjourned to August 21, 2013 at 10:00 a.m. without prejudice to the Respondents to bring an application to vary the Temporary Order pursuant to section 144 of the Act.

A copy of the Temporary Order dated July 31, 2013 is available at www.osc.gov.on.ca.

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1.4.3 Tricoastal Capital Partners LLC et al.

FOR IMMEDIATE RELEASE
August 7, 2013

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

AND

IN THE MATTER OF
TRICOASTAL CAPITAL PARTNERS LLC,
TRICOASTAL CAPITAL MANAGEMENT LTD.
and KEITH MACDONALD SUMMERS

TORONTO – The Commission issued a Temporary Order in the above named which provides that (i) the Temporary Order is extended until February 5, 2014, or until further order of the Commission; and (ii) the hearing of this matter is adjourned to February 3, 2014 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.

A copy of the Temporary Order dated August 6, 2013 is available at www.osc.gov.on.ca.

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1.4.4 Sandy Winick et al.

FOR IMMEDIATE RELEASE
August 8, 2013

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

AND

IN THE MATTER OF
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.

TORONTO – The Commission issued its Reasons and Decision following the hearing on the merits held *In Writing* with respect to Sandy Winick and Gregory J. Curry in the above named matter.

The Commission also issued an Order which provides that the hearing to determine sanctions and costs with respect to Sandy Winick and Gregory J. Curry will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, on September 12, 2013 at 2:00 p.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary.

A copy of the Reasons and Decision and the Order dated August 7, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Churchill VII Debenture 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).

August 2, 2013

McCullough O'Connor Irwin LLP
Suite 2600, Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Lesley Hobden

Dear Madam:

Re: Churchill VII Debenture Corp. (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Cheryl McGillivray"
Manager, Corporate Finance
Alberta Securities Commission

2.1.2 Anatolia Energy Corp. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

Citation: Anatolia Energy Corp., Re, 2013 ABASC 347

August 6, 2013

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary, AB T2P 4K7

Attention: Chris Straub

Dear Sir:

Re: Anatolia Energy Corp. (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Tom Graham, CA"
Director, Corporate Finance

2.1.3 Man Investments Canada Corp. and GLG EM Income Fund

Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – Relief granted to a commodity pool from subsection 2.1(1), 2.2(1) and paragraphs 2.5(2)(a) and (b) of National Instrument 81-102 Mutual Funds to permit the commodity pool to gain exposure to, and purchase and hold, another investment fund in a two-tier structure, subject to certain conditions. The bottom fund will observe NI 81-102, except as permitted by NI 81-104 and in accordance with exemptive relief obtained by the Top Fund including that the bottom fund may engage in short selling.

Relief granted to permit purchases at the next weekly net asset value after order received two business days before, even though net asset value is calculated daily – daily net asset value calculated to provide more frequent and up-to-date information – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1), 2.5(2)(a), 2.5(2)(c), 9.3, 19.1.

July 18, 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
MAN INVESTMENTS CANADA CORP.
(the Filer) and
GLG EM INCOME FUND
(the Top Fund)

DECISION

Background

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

(i) to revoke and replace the Previous Decision (as defined below); and

(ii) to grant exemptive relief pursuant to Part 19 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), from the following provisions of NI 81-102, as further described below:

a. subsections 2.1(1), 2.2(1) and 2.5(2)(a) and (c) to permit the Top Fund to gain exposure to, and purchase and hold, securities of GLG Emerging Markets Income Portfolio II Ltd. (the **Bottom Fund**), which has adopted the investment restrictions contained in NI 81-102 and is managed in accordance with these restrictions, except as otherwise permitted by National Instrument 81-104 *Commodity Pools* (**NI 81-104**), and in accordance with any exemptions therefrom obtained by the Top Fund including that the Bottom Fund may engage in short selling in accordance with the terms of this decision; and

b. section 9.3 to permit the issue price of the Units (as defined below) of the Top Fund to which a purchase order pertains to be the net asset value (**NAV**) per Unit determined on the next Weekly Valuation Date (as defined below) after receipt by the Top Fund of a purchase order two business days before.

(collectively, the **Requested Relief**)

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

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

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

Interpretation

Unless expressly defined herein, terms in this application have the respective meanings given to them in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is the trustee and manager of the Top Fund.

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

3. The Filer's head office is located in Toronto, Ontario.

4. None of the Filer, the Top Fund or Bottom Fund is in default of any securities legislation in any of the Jurisdictions.

The Top Fund and the Previous Decision

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

6. The Top Fund is a reporting issuer in each of the Jurisdictions and units of the Top Fund (the **Units**) are currently qualified for distribution in each of the Jurisdictions under the current prospectus of the Top Fund dated May 18, 2012, as amended by Amendment No. 1 dated November 20, 2012 (collectively, the **Current Prospectus**).

7. Pursuant to the section 62(1) of the Legislation, the lapse date for the Current Prospectus was May 18, 2013 (the **Current Lapse Date**). In order to comply with the requirements of the Legislation, the final renewal prospectus for the Fund was required to be filed on or before May 28, 2013 and a receipt obtained by June 7, 2013. The Filer obtained a previous decision dated May 28, 2013 providing for an extension of the time limits pertaining to filing the renewal prospectus of the Top Fund as if the Current Lapse Date of the Current Prospectus was June 28, 2013.

8. The Top Fund's investment objectives are: (i) to provide holders of Class L Units and Class M Units with monthly tax-advantaged distributions; (ii) to provide holders of Class P Units, Class Q Units, Class R Units and Class S Units with monthly distributions; and (iii) to preserve capital while providing the opportunity for long-term capital appreciation for holders of Units. The Top Fund has been created to provide exposure to an actively managed, liquid and diversified set of securities and other instruments across various asset classes primarily within global currency markets and global emerging markets such as countries in Latin America, Central and Eastern Europe, the Middle East, Africa and Asia (the **Underlying Assets**). In managing the Underlying Assets, GLG Partners LP (the **GLG Investment Manager**) will pursue its strategy through both active trading and investment principally in interest rate securities and instruments, sovereign and corporate credit instruments and other fixed income securities, foreign exchange instruments and derivatives (including futures and forward contracts) that provide exposure to these asset classes.

9. The Bottom Fund will acquire the Underlying Assets. The return to the Top Fund will be based on the performance of the Bottom Fund, which, in turn, will be based on the performance of the Underlying Assets.

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

11. The Filer obtained a previous decision dated May 18, 2012 (the **Previous Decision**) exempting the Top Fund from subsections 2.5(2)(a) and (c) of NI 81-102 to permit the Top Fund to obtain exposure to the Bottom Fund through one or more specified derivatives.

12. The Previous Decision represented that the Top Fund will obtain exposure to the economic returns of the Bottom Fund through one or more forward sale agreements (each a **Forward Agreement**) entered into with one or more Canadian chartered banks and/or their affiliates (each a **Counterparty**). The character conversion measure announced in Federal Government's Economic Action Plan 2013 prevents investment funds, including the Top Fund, from increasing the notional amount of existing derivative forward agreements, including the Forward Agreement, after March 20, 2013, which would be required if additional units of the Top Fund were issued.

13. The Requested Relief is required to permit the Top Fund to purchase and hold securities of the Bottom Fund in order to obtain exposure to the Underlying Assets in respect of additional units of the Top Fund issued after the character conversion measure was announced. The Top Fund will purchase and hold securities of the Bottom Fund and obtain exposure to the securities of the Bottom Fund through a Forward Agreement or other specified derivative.

The Bottom Fund and the Underlying Assets

14. The Bottom Fund is an exempted company with limited liability incorporated in the Cayman Islands on February 13, 2012 that will acquire the Underlying Assets.

15. GLG Partners (Cayman) Limited (the **GLG Manager**) will act as manager of the Bottom Fund. The Underlying Assets will be actively managed by the GLG Investment Manager, a limited partnership registered under the Limited Partnership Act 1907 of England and Wales. The GLG Investment Manager is authorized and regulated in the United Kingdom by the Financial Conduct Authority.

16. The Bottom Fund is a reporting issuer under the *Securities Act* (Ontario) and the *Securities Act* (Québec) and subject to the continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). Accordingly, the financial statements and other reports required to be filed by the Bottom Fund will be available through SEDAR.

17. The Bottom Fund is a mutual fund because holders of its securities will be entitled to receive, on demand, an amount computed by reference to the NAV of the Bottom Fund. However, the Bottom Fund will not distribute any securities under its non-offering prospectus. Accordingly, the Bottom Fund will be a mutual fund to which NI 81-106 applies, but will not be subject to the requirements of either NI 81-102 or NI 81-104.

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

19. The Bottom Fund has adopted the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by NI 81-104, and in accordance with any exemptions therefrom obtained by the Top Fund including that the Bottom Fund may engage in short selling as more fully described below.

20. The GLG Investment Manager will monitor the Bottom Fund's compliance with its investment restrictions for the Underlying Assets.

21. The direct and indirect investment by the Top Fund in securities of the Bottom Fund will constitute more than 10% of the NAV of the Top Fund.

22. The Top Fund complies, and will comply, with the requirements under NI 81-106 relating to the top 25 positions portfolio holdings disclosure in its management reports of fund performance as if the Top Fund were investing directly in the Underlying Assets.

23. The prospectus of the Top Fund discloses that fees and expenses payable by the Top Fund or holders of Units in respect for the same service will not be duplicated as a result of the direct or indirect investment by the Top Fund in securities of the Bottom Fund.

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

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

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

25. The direct and indirect investment by the Top Fund in securities of the Bottom Fund represents the business judgement of responsible persons uninfluenced by considerations other than the best interest of the Top Fund and the holders of Units, respectively.

Short Selling

26. The Bottom Fund wishes to be able to engage in a limited, prudent and disciplined amount of short selling. Each short sale made by the Bottom Fund will comply with its investment objectives. In order to effect short sales of securities, the Bottom Fund will borrow securities from either its custodian or a dealer (in either case, a **Borrowing Agent**), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

27. The GLG Investment Manager will monitor the short positions of the Bottom Fund at least as frequently as daily.

Purchase Price

28. Units of the Top Fund may be purchased or redeemed on a weekly basis on each Monday, or if Monday is not a business day, the following business day (the **Weekly Valuation Date**) at a price equal to the NAV per Unit. Purchase and redemption orders must be received before 4:00 p.m. (Toronto time) on the second business day immediately preceding a Weekly Valuation Date to be processed at the Unit price calculated as at the next Weekly Valuation Date.

29. Subsection 14.2(3) of NI 81-106 requires that the NAV of an investment fund be calculated at least once every business day if the fund will use specified derivatives. Since the Top Fund will use Forward Agreements, it will calculate NAV once every business day.

30. Sections 9.3 and 10.3 of NI 81-102 require that the purchase or redemption price of units of a mutual fund be the NAV per unit next determined after receipt, by the mutual fund, of the purchase or redemption order.

31. Notwithstanding section 10.3 of NI 81-102, section 6.2 of NI 81-104 permits the redemption price of units of a commodity pool to be the NAV per unit determined on the first or second business day after the date of receipt by the commodity pool of the redemption order. However, there is no similar exception with respect to the purchase price of units of a commodity pool.

32. The Filer has structured the Top Fund's operations so that it can consolidate all purchase and redemption orders into one efficient weekly transaction. It has determined that effecting such purchases and redemptions on a weekly basis strikes the best balance between the needs of purchasers to invest or access their assets in a timely manner and the need to provide timely exposure to the Underlying Assets held by the Bottom Fund.

33. The Filer has determined that it would be in the best interests of the Top Fund and the holders of Units to receive the Requested Relief and replace the Previous Decision with this decision.

34. As of the date of this decision, the Filer will no longer rely on the Previous Decision.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

(a) the Top Fund is a commodity pool subject to NI 81-102 and NI 81-104;

(b) the Bottom Fund is an investment fund that complies with the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Top Fund including that the Bottom Fund may engage in short selling in accordance with the terms of this decision;

(c) the direct and indirect investment by the Top Fund in securities of the Bottom Fund is in accordance with the fundamental investment objectives of the Top Fund;

(d) the prospectus of the Top Fund discloses, and any annual information form filed will disclose, that the Top Fund will directly and indirectly invest in securities of the Bottom Fund and the risks associated with such an investment;

(e) no securities of the Bottom Fund are distributed in Canada other than to the Top Fund or the Counterparty under the Forward Agreement or otherwise to a counterparty under a forward agreement;

(f) each short sale made by the Bottom Fund will comply with its investment objectives;

(g) the Top Fund disclosed in its prospectus and the Bottom Fund disclosed in its prospectus the following information:

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

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

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

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

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

6. whether risk measurement procedures or simulations are used to test the Underlying Assets under stress conditions;

(h) the Bottom Fund and the GLG Manager will implement the following controls when conducting short sales of securities:

1. securities will be sold short for cash, with the Bottom Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

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

3. the Bottom Fund will receive cash for securities sold short within normal trading settlement periods for the market in which the short sale is effected;

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

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

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

(B) the Bottom Fund's portfolio advisor has pre-arranged to borrow the securities for the purpose of such sale; or

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

(i) the securities sold short will not include any of the following:

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

(ii) an illiquid asset;

(iii) a security of an investment fund other than an index participation unit.

(j) the aggregate market value of all securities sold short by the Bottom Fund does not exceed 40% of the NAV of the Bottom Fund on a daily marked-to-market basis;

(k) the aggregate market value of all securities of a particular issuer sold short by the Bottom Fund, whether direct short positions or indirect short positions through specified derivatives, does not exceed 10% of the NAV of the Bottom Fund on a daily marked-to-market basis;

(l) the Bottom Fund will deposit its assets with the Borrowing Agent as security in connection with the short sale transaction;

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

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

(o) the Bottom Fund will not use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover;

(p) the Bottom Fund will not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless the dealer is a registered dealer in Canada and is a member of Investment Industry Regulatory Organization of Canada (or IIROC);

(q) the Bottom Fund will not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside of Canada unless that dealer:

(i) is a member of a stock exchange and is subject to a regulatory audit; and

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

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

(s) the Bottom Fund and the GLG Manager will maintain appropriate internal controls regarding its short sales prior to conducting any short sales, including written policies and procedures, risk management controls and proper books and records;

(t) the Bottom Fund and the GLG Manager will keep proper books and records of all short sales and all of its assets deposited with Borrowing Agents as security; and

(u) the Top Fund uses the NAV per Unit determined on the next Weekly Valuation Date after receipt by the Top Fund of a purchase order two business days before to calculate the issue and redemption price of Units.

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

2.1.4 Morguard North American Residential Real Estate Investment Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations – Application for relief from requirement in Section 8.4 of NI 51-102 to include certain financial statement disclosure in a business acquisition report required to be filed in connection with a significant acquisition – Vendor not in possession of, and unable to, access or obtain certain financial statements for the period prior to the acquisition of the property – Filer completed the acquisition of the subject properties – Filer has made every reasonable effort to obtain access to, or copies of, the historical accounting records in respect of the acquired subject properties but such efforts were unsuccessful – Certain financial statements are not material since the subject properties are not material in the context of the combined operations of the filers and its portfolio of properties as a whole – Prospectus includes satisfactory alternative financial statements or other information required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102– Relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 8.4.

June 27, 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
MORGUARD NORTH AMERICAN RESIDENTIAL
REAL ESTATE INVESTMENT TRUST
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief pursuant to Part 13 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), from the requirement in section 8.4 of NI 51-102 to include certain financial statements in a business acquisition report (**BAR**) required to be filed by the Filer in connection with a significant acquisition completed by the Filer in April and May 2013.(the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is an unincorporated, open-ended real estate investment trust governed by a declaration of trust. Its principal, registered and head office is located at 55 City Centre Drive, Suite 1000, Mississauga, Ontario, L5B 1M3.

2. The Filer owns multi-unit residential properties in Canada and the United States which consist of interests in 11,160 residential suites that are located in Ontario, Alberta, Colorado, Florida, Georgia, Louisiana, North Carolina and Texas including the Acquisition Properties (as defined below).

3. The Filer is a reporting issuer, or the equivalent thereof, in each of the provinces and territories of Canada.

4. The Filer's units are listed and posted for trading on the Toronto Stock Exchange under the symbol MRG.

5. On December 21, 2012, the Filer entered into an agreement to acquire a portfolio of 12 multi-unit residential properties (the **Acquisition Properties**) from subsidiaries of Pearlmark Real Estate Partners, L.L.C. (the **Pearlmark Vendors**), entities at arm's length to the Filer, for an aggregate purchase price of US$458.5 million, including estimated transaction costs of Cdn$7.7 million (the **Acquisition**).

6. The Filer completed the purchase of six of the Acquisition Properties on April 17, 2013, one of the Acquisition Properties May 17, 2013 and the remaining five Acquisition Properties on May 22, 2013.

7. The Acquisition is a "significant acquisition" for the Filer pursuant to 8.3 of NI 51-102.

8. Pursuant to Section 8.3 of NI 51-102 and Section 8.1(4) of Companion Policy 51-102CP – *Continuous Disclosure Obligations*, the Filer is required to file a BAR within 75 days of completion of the Acquisition containing the financial information required by Section 8.4 of NI 51-102 which requires:

   a. unaudited pro forma combined financial statements for the year ended December 31, 2012 of the Filer including the Acquisition Properties, and

   b. audited combined financial statements for the years ended December 31, 2012 and December 31, 2011 of the Acquisition Properties (collectively, the **BAR Disclosure Requirements**).

9. The Filer does not have the necessary financial statements for the year-ended December 31, 2011 to meet the BAR Disclosure Requirements for certain Acquisition Properties identified as 4408 John F. Kennedy Parkway, Fort Collins, Colorado (**Settlers Creek**) , 2055 Barrett Lakes Blvd NW, Kennesaw, Georgia (**Barrett Walk**), and 3235 Trimblestone Lane, Raleigh, North Carolina (**Perry Point** and together with Settlers Creek and Barrett Walk, the **Subject Properties**) for the following periods:

   a. Settlers Creek prior to April 21, 2011;

   b. Barrett Walk prior to July 20, 2011; and

   c. Perry Point prior to July 21, 2011(collectively, the **Missing Financial Information**).

10. The Missing Financial Information includes periods prior to the acquisition date of each of the Subject Properties by the Filer.

11. The Filer requested the Missing Financial Information from the applicable Pearlmark Vendor and was advised by the Pearlmark Vendor that the respective Pearlmark Vendor are not in possession of the Missing Financial Information and are not able to access or obtain such information, as it relates to a period prior to the time that the Subject Properties were acquired.

12. The Filer has made every reasonable effort to obtain access to, or copies of, the Missing Financial Information, but such efforts were unsuccessful.

13. But for the Missing Financial Information, the Filer is able to satisfy the BAR Disclosure Requirements for the Acquisition Properties and otherwise satisfy the requirements to prepare and file a BAR in accordance with NI 51-102.

14. The Filer submits that the Missing Financial Information is not material since the Subject Properties are not material in the context of the combined operations of the Filer and its portfolio of properties, as a whole including the Acquisition Properties.

15. The Acquisition Properties Historical Financial Statements were not relied upon by the Filer in making its investment decision to acquire the Acquisition Properties.

16. In lieu of the BAR Disclosure Requirements, the Filer will include in the BAR the following financial statements:

   a. unaudited pro forma combined financial statements for the year ended December 31, 2012 of the Filer which include the Acquisition Properties (the **Pro Forma Financial Statements**); and

   b. audited combined financial statements (U.S. GAAP) for the years ended December 31, 2012 and December 31, 2011 of the Acquisition Properties (other than with respect to the Subject Properties, the financial statements for the year-ended December 31, 2011 exclude the following periods (which periods were prior to the respective acquisition dates by the vendor of the applicable Acquisition Property): (i) Settlers Creek prior to April 21, 2011, (ii) Barrett Walk prior to July 20, 2011 and (iii) Perry Point prior to July 21, 2011, (collectively, the **Acquisition Properties Historical Financial Statements**).

17. The Pro Forma Financial Statements will include information regarding all of the Acquisition Properties (including the Subject Properties). The Pro Forma Financial Statements will be reviewed by the Filer's auditors.

18. Full financial information relating to the Subject Properties will be included in the Acquisition Properties Historical Financial Statements for the year ended December 31, 2012 and over five months of financial information for the year ended December 31, 2011 for two of the Subject Properties and over eight months of financial information for the year ended December 31, 2011 for one of the Subject Properties. Accordingly, the Acqui-

sition Properties Historical Financial Information will be missing less than four months of financial information for Settlers Creek and less than eight months of financial information for each of Barrett Walk and Perry Point.

19. Management of the Filer considers the Acquisition Properties (including the Subject Properties) to be stable properties which are not subject to seasonality, and therefore is of the view that the Acquisition Properties Historical Financial Statements for the year ended December 31, 2012 are indicative of the results for the comparative period ended December 31, 2011.

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 with respect to the BAR provided that the Filer includes in the BAR the following financial statements required to be filed by the Filer in connection with a significant acquisition completed by the Filer in April and May 2013.:

a. the Pro Forma Financial Statements; and

b. the Acquisition Properties Historical Financial Statements.

"Sonny Randhawa"
Manager, Corporate Finance

2.1.5 Diaz Resources Ltd. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

Citation: Diaz Resources Ltd., Re, 2013 ABASC 352

August 7, 2013

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

Attention: Jessica M. Brown

Dear Madam:

Re: Diaz Resources Ltd. (the Applicant) – Application for a decision under the securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Tom Graham, CA"
Director, Corporate Finance

2.1.6 Purpose Investments Inc. and Purpose Diversified Real Asset Fund

Headnote

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

Applicable Legislative Provisions

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

July 26, 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
PURPOSE INVESTMENTS INC.
(the Filer)

AND

IN THE MATTER OF
PURPOSE DIVERSIFIED REAL ASSET FUND
(the Commodity Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Commodity Fund and such other exchange-traded commodity pools as may be established by the filer or an affiliate of the filer in the future (together with the Commodity Fund, the **Commodity Pools**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting, in accordance with the terms of this decision, relief from section 3.2(2)(a) of National Instrument 81-104 – *Commodity Pools* (**NI 81-104**) to permit the required initial investment of $50,000 in each Commodity Pool to be redeemed on certain conditions (the **Requested Relief**).

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

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

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

Interpretation

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

Unless otherwise specified, all references to money amounts are to Canadian currency.

Representations

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

1. The Filer is a corporation incorporated under the laws of the Jurisdiction.

2. The registered office of the Filer is located at 77 King Street West, TD North Tower, 21st Floor, Toronto, Ontario.

3. The Filer is registered as an investment fund manager, portfolio manager and an exempt market dealer under the *Securities Act* (Ontario).

4. The manager of each Commodity Pool will be the Filer or an affiliate thereof.

5. The Filer is not in default of securities legislation in any of the Jurisdictions.

6. Each of the Commodity Pools, is or will be, a mutual fund subject to NI 81-102 and a commodity pool, as such term is defined under NI 81-104, in that the Commodity Pools will have adopted fundamental investment objectives that permit the Commodity Pool to gain exposure to or invest in specified derivatives that is not permitted under NI 81-102.

7. The Commodity Fund filed in accordance with National Instrument 41-101 – *General Prospectus Requirements* a long form prospectus dated May 1, 2013. The Commodity Fund offers ETF shares as well as Series A, Series F and Series I shares.

8. The Filer or an affiliate acting as investment fund manager has or will provide seed capital by investing an aggregate of at least $50,000 in the securities of the Commodity Pool before the time of filing the (final) prospectus of that Commodity Pool.

9. Pursuant to section 3.2(2) of NI 81-104, unless a redemption, repurchase or return is effected as part of the dissolution or termination of the commodity pool, a commodity pool may redeem, repurchase or return any amount invested in securities issued upon the investment in the commodity pool referred to in section 3.2(1)(a) of NI 81-104 only if securities issued under section 3.2(1)(a) of NI 81-104 that had an aggregate issue price of $50,000 remain outstanding and at least $50,000 invested under section 3.2(1)(a) of NI 81-104 remains invested in the commodity pool.

10. The Filer wishes to be able to redeem the seed capital invested under section 3.2(1)(a) of NI 81-104 in accordance with this decision.

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

12. The Commodity Pools will be properly managed for the benefit of investors because, as the manager of the Commodity Pools, the Filer will be obliged in accordance with the terms of the constating document of the Commodity Pools, and in accordance with legislative requirements, to at all times act honestly and in good faith, and in the best interest of the Commodity Pools, and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

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

14. If the Commodity Pools were governed solely by the provisions of NI 81-102 (rather than NI 81-104), the Filer would be allowed to redeem its seed capital investment in a Commodity Pool upon the Commodity Pool having received subscriptions totalling not less than $500,000 from investors other than the persons or companies referred to in section 3.1(1)(a) of NI 81-102. A Commodity Pool will not issue securities to investors other than the persons or companies referred to in section 3.2(1)(a) of NI 81-104 unless

subscriptions from such other investors aggregating at least $500,000 have been received and accepted by it.

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 Seed Capital Relief is granted, provided that:

(a) the Filer may not redeem any of its initial investment in a Commodity Pool until $5 million in subscriptions has been received by the Commodity Pool from persons or companies other than the persons and companies referred to in section 3.2(1)(a) of NI 81-104;

(b) if, after the Filer redeems its initial investment in a Commodity Pool in accordance with condition 2(a) immediately above, the value of the securities subscribed for by investors other than the persons and companies referred to in section 3.2(1)(a) of NI 81-104 drops below $5 million for more than 30 consecutive days, the Filer will, unless the Commodity Pool is in the process of being dissolved or terminated, reinvest $50,000 in the Commodity Pool and maintain that investment until the value of securities subscribed for by investors other than the persons and companies referred to in section 3.2(1)(a) of NI 81-104 is at least $5 million;

(c) the Filer or affiliate acting as investment fund manager complies with the applicable requirements of registration as an investment fund manager under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* including by maintaining excess working capital of a minimum of $100,000 or such other amount as may be required by NI 31-103; and

(d) the basis on which the Filer may redeem any of its initial investment of $50,000 in a Commodity Pool will be disclosed in any prospectus of the Commodity Pool filed after the date of this decision.

"Darren McKall"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 Purpose Investments Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Novel relief granted to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – Relief granted from the requirement in NI 41-101 to prepare and file a long form prospectus for exchange-traded series provided that a simplified prospectus is prepared and filed in accordance with NI 81-101 – Exchange-traded series and mutual fund series referable to same portfolio and have substantially identical disclosure – Relief permitting all series of funds to be disclosed in same prospectus – Disclosure required by NI 41-101 for exchange-traded series and not contemplated by NI 81-101 will be disclosed in prospectus under relevant headings.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, s. 19.1.

August 2, 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
PURPOSE INVESTMENTS INC.
(the Filer)

DECISION

I. BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Purpose Core Dividend Fund, Purpose Tactical Hedged Equity Fund, Purpose Monthly Income Fund, Purpose Total Return Bond Fund (collectively, the **Existing Funds**), each Existing Fund being a separate class of shares of Purpose Fund Corp., and any additional funds of which the Filer will be the manager and which are structured in the same manner as the Existing Funds (the **Future Funds** and together with the Existing Funds, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the Legislation) granting, in accordance with the terms of this decision, relief from National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) to prepare and file a long form prospectus for the ETF Shares (defined below) in the form prescribed by Form 41-101F2 *Information Required in an*

Investment Fund Prospectus provided that the Filer files a prospectus for the ETF Shares in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), other than the requirements pertaining to the filing of a fund facts document (the **Requested Relief**).

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

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

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

II. 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.

(a) **Basket** means, in relation to the ETF Shares of a Fund, a group of securities or assets representing the constituents of the Fund.

(b) **Designated Broker** means a registered dealer that enters into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Shares of the Fund.

(c) **Exchange** means the Toronto Stock Exchange (**TSX**) or another stock exchange recognized by the Ontario Securities Commission.

(d) **Prescribed Number of ETF Shares** means, in relation to a Fund, the number of ETF Shares of the Fund determined from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

(e) **Shareholder** means a holder of one or more ETF Shares or Mutual Fund Shares of a Fund.

(f) **Dealer** means a registered dealer (that may or may not be a Designated Broker) that enters into a continuous distribution agreement with the Filer or an affiliate of the Filer on behalf of a Fund, pursuant to which the Dealer may subscribe for and purchase ETF Shares from the Fund.

Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.

III. REPRESENTATIONS

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

1. The Filer is a corporation incorporated under the laws of the Jurisdiction.

2. The registered office of the Filer is located at 77 King Street West, TD North Tower, 21st Floor, Toronto, Ontario.

3. The Filer is registered as an investment fund manager, portfolio manager and an exempt market dealer under the *Securities Act* (Ontario).

4. The manager of each Fund will be the Filer or an affiliate thereof.

5. The Filer is not in default of securities legislation in any of the Jurisdictions.

6. Each of the Funds is a separate class of shares of Purpose Fund Corp. Purpose Fund Corp. is a mutual fund corporation established under the laws of the Province of Ontario. The authorized capital of Purpose Fund Corp. includes an unlimited number of classes of non-cumulative, redeemable, non-voting shares. Each class of shares consists of four series, namely, Series A shares, Series F shares, Series I shares (collectively, the "**Mutual Fund Shares**") and exchange-traded series (the "**ETF Shares**"). ETF Shares of each Fund will be listed on the TSX and will be available to all investors. Each corporate class is a separate investment fund having specific investment objectives and is specifically referable to a separate portfolio of investments.

7. The Funds are or will be mutual funds governed by the laws of Ontario and each Fund will be a reporting issuer under the laws of all of the Jurisdictions. Each Fund offers or will offer ETF Shares and Mutual Fund Shares.

8. Each Fund is, or will be, subject to NI 81-102 *Mutual Funds* (**NI 81-102**), subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

9. The Funds filed in accordance with NI 41-101 a preliminary long form prospectus dated May 1, 2013 with respect to the proposed offering of ETF Shares.

10. The Funds filed in accordance with NI 81-101 a preliminary simplified prospectus and annual information form dated May 1, 2013 with respect to the proposed offering of Mutual Fund Shares.

11. The Filer has applied to list the ETF Shares of the Existing Funds on the TSX. The Filer will not file a

final prospectus for any of the Funds in respect of the ETF Shares until the TSX or another recognized stock exchange has conditionally approved the listing of ETF Shares.

12. Mutual Fund Shares may be subscribed for or purchased directly from a Fund through qualified financial advisors or brokers.

13. ETF Shares may be subscribed for or purchased directly from a Fund by Dealers or Designated Brokers and orders may be placed for ETF Shares in the Prescribed Number of ETF Shares or an integral multiple thereof.

14. Each Fund will appoint one or more Designated Brokers to perform certain functions, which include standing in the market with a bid and ask price for ETF Shares for the purpose of maintaining liquidity for ETF Shares.

15. Each Dealer or Designated Broker that subscribes for ETF Shares will deliver, in respect of each Prescribed Number of ETF Shares to be issued, a Basket or cash in an amount sufficient so that the value of the Basket or cash delivered is equal to the NAV of the ETF Shares next determined following the receipt of the subscription order.

16. Neither the Dealers nor the Designated Brokers will receive any fees or commissions in connection with the issuance of ETF Shares to them. On the issuance of ETF Shares, an administrative fee may be charged to a Dealer or Designated Broker to offset the expenses (including any applicable TSX additional listing fees) incurred in issuing the ETF Shares.

17. Except as described above, ETF Shares may not generally be purchased directly from a Fund. Investors will generally be expected to purchase ETF Shares through the facilities of the applicable Exchange. ETF Shares may be issued directly to Shareholders upon a reinvestment of dividends or switch from the ETF Shares of one Fund to the ETF Shares of another Fund.

18. Shareholders that are not Designated Brokers or Dealers that wish to dispose of their ETF Shares will generally be able to do so by selling their ETF Shares on the applicable Exchange, through a registered dealer, subject only to customary brokerage commissions. A Shareholder that holds a Prescribed Number of ETF Shares of a Fund or an integral multiple thereof will be able to exchange such ETF Shares with the Fund for cash and/or Baskets. A Shareholder will also be able to redeem ETF Shares for cash at a redemption price equal to 95% of the closing price of the ETF Shares on the applicable Exchange on the date of redemption.

19. The Filer believes it is more efficient and expedient to include all of the series of each Fund in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the shares of the Funds by permitting disclosure relating to all series of shares to be included in one prospectus.

20. The Filer will ensure that any additional disclosure included in the simplified prospectus and annual information form relating to the ETF Shares will not interfere with an investor's ability to differentiate between the Mutual Fund Shares and the ETF Shares and their respective attributes.

21. The Funds will file summary documents for the ETF Shares in connection with the filing of any prospectus.

22. The Funds will comply with the provisions of NI 81-101 when filing any amendment or pro forma prospectus.

IV. DECISION

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

(a) the Filer files a simplified prospectus and annual information form in respect of the ETF Shares in accordance with the requirements of NI 81-101, other than the requirements pertaining to the filing of a fund facts document;

(b) the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1 *Contents of Simplified Prospectus* or Form 81-101F2 *Contents of Annual Information Form*) in respect of the ETF Shares, in each Fund's simplified prospectus and/or annual information form, as applicable; and

(c) the Filer includes disclosure regarding this decision under the heading "Additional Information" and "Exemptions and Approvals" in each Fund's simplified prospectus and annual information form, respectively.

"Raymond Chan"
Manager, Investment Funds
Ontario Securities Commission

2.1.8 Purpose Investments Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Technical relief granted to mutual funds from Parts 9, 10 and 14 of NI 81-102 to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – Relief permitting funds to treat exchange-traded series in a manner consistent with treatment of other ETF securities in continuous distribution in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – Relief permitting funds to treat mutual fund series in a manner consistent with treatment of other conventional mutual fund securities in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – National Instrument 81-102 – Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 14.1, 19.1.

August 6, 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
PURPOSE INVESTMENTS INC.
(the Filer)

DECISION

I. BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Purpose Core Dividend Fund, Purpose Tactical Hedged Equity Fund, Purpose Monthly Income Fund, Purpose Total Return Bond Fund, Purpose Diversified Real Asset Fund (collectively, the **Existing Funds**), each of which is a separate class of shares of Purpose Fund Corp., and any additional funds of which the Filer will be the manager and which are structured in the same manner as the Existing Funds (the **Future Funds** and together with the Existing Funds, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to exempt the Funds from Parts 9, 10 and 14 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Requested Relief**).

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

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

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

II. 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.

(a) **Basket** means, in relation to the ETF Shares of a Fund, a group of securities or assets representing the constituents of the Fund.

(b) **Designated Broker** means a registered dealer that enters into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Shares of the Fund.

(c) **Exchange** means the Toronto Stock Exchange (TSX) or another stock exchange recognized by the Ontario Securities Commission.

(d) **Prescribed Number of ETF Shares** means, in relation to a Fund, the number of ETF Shares of the Fund determined from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

(e) **Shareholder** means a holder of one or more ETF Shares or Mutual Fund Shares of a Fund.

(f) **Dealer** means a registered dealer (that may or may not be a Designated Broker) that enters into a continuous distribution agreement with the Filer or an affiliate of the Filer on behalf of a Fund, pursuant to which the Dealer may subscribe for and purchase ETF Shares from the Fund.

III. REPRESENTATIONS

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

1. The Filer is a corporation incorporated under the laws of the Jurisdiction.

2. The registered office of the Filer is located at 77 King Street West, TD North Tower, 21st Floor, Toronto, Ontario.

3. The Filer is registered as an investment fund manager, portfolio manager and an exempt market dealer under the *Securities Act* (Ontario).

4. The manager of each Fund will be the Filer or an affiliate thereof.

5. The Filer is not in default of securities legislation in any of the Jurisdictions.

6. Each of the Funds is a separate class of shares of Purpose Fund Corp. Purpose Fund Corp. is a mutual fund corporation established under the laws of the Province of Ontario. The authorized capital of Purpose Fund Corp. includes an unlimited number of classes of non-cumulative, redeemable, non-voting shares. Each class of shares consists of four series, namely, Series A shares, Series F shares, Series I shares (collectively, the **Mutual Fund Shares**) and exchange-traded series (the **ETF Shares**). ETF Shares of each Fund will be listed on the TSX and will be available to all investors. Each class of shares is a separate investment fund having specific investment objectives and is specifically referable to a separate portfolio of investments.

7. The Funds are or will be mutual funds governed by the laws of Ontario and each Fund will be a reporting issuer under the laws of all of the Jurisdictions. Each Fund offers or will offer ETF Shares and Mutual Fund Shares. The ETF Shares operate in the same manner as other exchange-traded funds subject to NI 81-102. The Mutual Fund Shares operate in the same manner as other conventional mutual funds subject to NI 81-102.

8. Each Fund is, or will be, subject to NI 81-102, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

9. The Filer has applied to list the ETF Shares of the Existing Funds on the TSX. The Filer will not file a final prospectus for any of the Funds in respect of the ETF Shares until the TSX or another recognized stock exchange has conditionally approved the listing of ETF Shares.

10. Mutual Fund Shares will not be listed and may be subscribed for or purchased directly from a Fund through qualified financial advisors or brokers.

11. ETF Shares may be subscribed for or purchased directly from a Fund by Dealers or Designated Brokers and orders may be placed for ETF Shares in the Prescribed Number of ETF Shares or an integral multiple thereof.

12. Each Fund will appoint one or more Designated Brokers to perform certain functions, which include standing in the market with a bid and ask price for ETF Shares for the purpose of maintaining liquidity for ETF Shares.

13. Each Dealer or Designated Broker that subscribes for ETF Shares will deliver, in respect of each Prescribed Number of ETF Shares to be issued, a Basket or cash in an amount sufficient so that the value of the Basket or cash delivered is equal to the NAV of the ETF Shares next determined following the receipt of the subscription order.

14. Neither the Dealers nor the Designated Brokers will receive any fees or commissions in connection with the issuance of ETF Shares to them. On the issuance of ETF Shares, an administrative fee may be charged to a Dealer or Designated Broker to offset the expenses (including any applicable TSX additional listing fees) incurred in issuing the ETF Shares.

15. Except as described above, ETF Shares may not generally be purchased directly from a Fund. Investors will generally be expected to purchase ETF Shares through the facilities of the applicable Exchange. ETF Shares may be issued directly to Shareholders upon a reinvestment of dividends or switch from the ETF Shares of one Fund to the ETF Shares of another Fund.

16. Shareholders that are not Designated Brokers or Dealers that wish to dispose of their ETF Shares will generally be able to do so by selling their ETF Shares on the applicable Exchange, through a registered dealer, subject only to customary brokerage commissions. A Shareholder that holds a Prescribed Number of ETF Shares of a Fund or an integral multiple thereof will be able to exchange such ETF Shares with the Fund for cash and/or Baskets. A Shareholder will also be able to redeem ETF Shares for cash at a redemption price equal to 95% of the closing price of the ETF Shares on the applicable Exchange on the date of redemption.

17. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Shares and ETF Shares being offered in a single fund structure. Accordingly, without the Requested Relief, the Filer and the Funds would not be able to technically comply with those parts of the Instrument.

18. The Requested Relief will permit the Filer and the Funds to treat the ETF Shares and the Mutual Fund Shares as if such shares were separate funds in connection with their compliance with Parts 9, 10 and 14 of NI 81-102. The Requested Relief will enable each of the ETF Shares and Mutual Fund Shares to comply with Parts 9, 10

and 14 of NI 81-102 as appropriate for the type of share being offered.

IV. DECISION

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

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

(a) with respect to its Mutual Fund Shares, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and

(b) with respect to its ETF Shares, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

2.1.9 Fiera Capital Corporation and Fiera Tactical Bond Yield Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the requirements contained in subsection 2.1(1) and in paragraph 2.5(2)(a) of National Instrument 81-102 and revocation of a prior exemptive relief.

Applicable Legislative Provisions

National Instrument 81-102 respecting Mutual Funds, ss. 2.1(1), 2.5(2)(a), 19.1.

[Translation]

August 9, 2013

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

AND

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

AND

IN THE MATTER OF
FIERA CAPITAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
FIERA TACTICAL BOND YIELD FUND
(the Fund)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption under section 19.1 of *Regulation 81-102 respecting Mutual Funds* (c. V-1.1, r. 39) (**Regulation 81-102**) from the requirements in subsection 2.1(1) and paragraph 2.5(2)(a) of Regulation 81-102 in order to permit the Fund to invest directly, or indirectly through the use of specified derivatives, in securities of Fiera Tactical Bond Yield Fund II (formerly, Fiera Tactical Bond Fund) (the **Reference Fund**) (the **Exemption Sought**).

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

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

b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (c. V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* (c. V-1.1, r. 3), Regulation 11-102 and Regulation 81-102 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 corporation incorporated under the *Business Corporations Act* (R.S.O. 1990, c. B.16) of Ontario.

2. The Filer's head office is located at 1501 McGill College Avenue, suite 800, Montréal, Québec, Canada, H3A 3M8.

3. The Filer is the investment fund manager, portfolio manager and promoter of the Fund and the Reference Fund.

4. The Filer is duly registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador. The Filer is also duly registered in all jurisdictions of Canada as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer. In addition, the Filer is duly registered in Québec as a derivatives portfolio manager pursuant to the *Derivatives Act* (c. I-14.01), in Ontario as a commodity trading manager pursuant to the *Commodity Futures Act* (R.S.O. 1990, c. C.20) of Ontario and in Manitoba as adviser pursuant to the *Commodity Futures Act* (CCSM c. C152) of Manitoba.

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

The Fund

6. The Fund (formerly, Fiera Sceptre Tactical Bond Yield Fund) is an open-ended investment trust established under the laws of Ontario pursuant to an amended and restated trust agreement dated April 26, 2011, as amended (the **Trust Agreement**). RBC Investor Services Trust acts as trustee.

7. The Fund is a reporting issuer under the securities legislation of each jurisdiction of Canada.

8. The Fund is a mutual fund subject to Regulation 81-102 and a commodity pool, as defined in section 1.1 of *Regulation 81-104 respecting Commodity Pools* (c. V-1.1, r. 40) (**Regulation 81-104**), since the Fund has adopted fundamental investment objectives that permit the Fund to use specified derivatives in a manner that is not permitted by Regulation 81-102.

9. From June 15, 2011 to April 8, 2013, the Fund distributed its Class A and Class F units under a prospectus governed by *Regulation 41-101 respecting General Prospectus Requirements* (c. V-1.1, r. 14) (**Regulation 41-101**) in all jurisdictions of Canada.

10. The Fund's investment objective is to generate a moderate level of current income and capital appreciation in all market environments with minimal correlation to traditional forms of fixed income and equity investments primarily through exposure to fixed income securities. The Fund aims at providing its unitholders with enhanced diversification and an improved risk/reward profile compared to conventional fixed income portfolios.

11. To pursue its investment objective, the Fund obtains exposure to the returns of the Reference Fund by using a forward contract (the **Forward Contract**) with the Canadian Imperial Bank of Commerce whose long-term debt has a designated rating. Generally, the Fund seeks to obtain an exposure to the Reference Fund that corresponds approximately to 100% of its net asset value. Accordingly, the return of the Fund will depend on the return of the Reference Fund by virtue of the Forward Contract. The Fund may also purchase units of the Reference Fund where the Filer is of the opinion that it would be more efficient to do so.

12. Through the use of the Forward Contract, the Fund characterizes the economic return of the Reference Fund as capital gains; such return would otherwise be treated as ordinary income in the hands of a unitholder.

13. The settlement date of the Forward Contract is August 17, 2016.

14. On April 8, 2013, the Fund ceased to offer the Units further to the publication of the 2013 Federal Budget. In conjunction with the 2013 Federal Budget announced on March 21, 2013, the Department of Finance (Canada) released a Notice of Ways and Means Motions containing proposed amendments to the ITA that, if enacted, would limit the ability of the Fund to use the Forward Contract to convert fully-taxable ordinary income into capital gains for tax purposes.

15. On August 2, 2013, further to the publication of a document entitled *Backgrounder: Proposed Technical Changes to the Transitional Rules for the Economic Action Plan 2013 Character Conversion Measure*, the Fund has filed with each jurisdiction of Canada a preliminary prospectus governed by Regulation 41-101.

16. According to the Trust Agreement, the net asset value of the Fund is calculated on each day on which the Toronto Stock Exchange is open for trading and such other day or days as determined from time to time by the Filer.

17. The Fund is not in default of securities legislation in any jurisdiction of Canada.

The Reference Fund

18. The Reference Fund is an open-ended investment trust established under the laws of Ontario pursuant to the Trust Agreement. RBC Investor Services Trust acts as trustee.

19. On June 15, 2011, the Reference Fund became a reporting issuer under the securities legislation of Québec pursuant to the receipt of a prospectus filed by the Reference Fund for the sole purpose of becoming a reporting issuer.

20. On May 14, 2013, the Reference Fund filed with each jurisdiction of Canada a preliminary prospectus governed by Regulation 41-101 in order to proceed with an initial public offering. It is expected that the Reference Fund will become a reporting issuer in all jurisdictions of Canada upon the issuance of a receipt for its final prospectus (the **Final Prospectus**).

21. The Reference Fund is a mutual fund and; upon issuance of a receipt for the Final Prospectus, it will be subject to Regulation 81-102 and will be a commodity pool, as such term is defined in section 1.1 of Regulation 81-104, since the Reference Fund has adopted fundamental investment objectives that permit the Reference Fund to use specified derivatives in a manner that is not permitted by Regulation 81-102.

22. The Reference Fund's investment objective is to generate a moderate level of current income and capital appreciation in all market environments with minimal correlation to traditional forms of fixed income and equity investments primarily through direct or indirect investment in fixed income securities.

23. According to the Trust Agreement, the net asset value of the Reference Fund is calculated on each day on which the Toronto Stock Exchange is open for trading and such other day or days as determined from time to time by the Filer.

24. The Reference Fund in not in default of securities legislation in any jurisdiction of Canada.

Reasons for the Exemption Sought

25. In accordance with subsection 2.5(1) of Regulation 81-102, the Fund is considered to directly hold the units of the Reference Fund.

26. The purchase and holding of units of the Reference Fund by the Fund will comply with the requirements of section 2.5 of Regulation 81-102 respecting investments in other mutual funds, except for the requirement of paragraph 2.5(2)(a) of Regulation 81-102 considering that the Reference Fund will not distribute its units under a simplified prospectus governed by *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure* (c. V-1.1, r.38). In addition, the Fund will not benefit from the statutory exemption provided under paragraph 2.1(2)(c) of Regulation 81-102 respecting concentration restriction since this provision requires that the purchase of units issued by a mutual fund be made in accordance with section 2.5 of Regulation 81-102.

27. On June 17, 2011, the Fund obtained from the Canadian securities regulatory authorities an exemptive relief (no 2011-FIIC-0140) from subsection 2.1(1), paragraph 2.5(2)(a) and paragraph 2.5(2)(c) of Regulation 81-102 (the **Prior Exemptive Relief**). However, one of the conditions of the Prior Exemptive Relief is that the units of the Reference Fund be distributed only to accredited investors, as defined in *Regulation 45-106 respecting Prospectus and Registration Exemptions* (c. V-1.1, r. 21). Upon the issuance of a receipt for the Final Prospectus, the Reference Fund will become a reporting issuer in all jurisdictions of Canada and does not intend to limit the distribution of its units to accredited investors.

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.

Consequently, the Decision Makers revoke the Prior Exemptive Relief and grant the Exemption Sought. This decision will be effective on the date of the receipt for the Final Prospectus.

"Gilles Leclerc"
Senior Director, Corporate Finance
Autorité des marchés financiers

2.2 Orders

2.2.1 Telus Corporation – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 4,000,000 of its common shares from one of its shareholders – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
TELUS CORPORATION

ORDER
(Clause 104(2)(c))

UPON the application (the **Application**) of TELUS Corporation (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the **Issuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to 4,000,000 (collectively, the **Subject Shares**) of its common shares (the **Common Shares**) in one or more trades from BMO Nesbitt Burns Inc. (the **Selling Shareholder**);

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 10, 23 and 24, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The Issuer maintains its registered office at Floor 5, 3777 Kingsway, Burnaby, British Columbia and its executive office at Floor 8, 555 Robson, Vancouver, British Columbia.

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

4. The authorized share capital of the Issuer consists of 4,000,000,000 shares, divided into: (i) 2,000,000,000 Common Shares without par value; (ii) 1,000,000,000 First Preferred shares without par value and; (iii) 1,000,000,000 Second Preferred shares without par value. As at May 17, 2013, 653,798,896 Common Shares, no First Preferred Shares and no Second Preferred Shares were issued and outstanding.

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

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

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 4,000,000 Common Shares and that the Subject Shares were not acquired in anticipation of resale to the Issuer pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority (**Off-Exchange Block Purchases**).

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

9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX as of May 21, 2013 (the **Notice**), the Issuer is permitted to make normal course issuer bid (the **Normal Course Issuer Bid**) purchases for up to 15,000,000 Common Shares. In accordance with the Notice, the Normal Course Issuer Bid is conducted through the facilities of the TSX, the NYSE or such other means as may be permitted by the TSX or a securities regulatory authority, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**), including, private agreements under an issuer bid exemption order issued by a securities regulatory authority.

10. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring on or before September 30, 2013 (each such purchase, a **Proposed Purchase**) for a purchase price (the **Purchase Price**) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price of the Common Shares on the TSX and below the bid-ask price for the Common Shares at the time of each Proposed Purchase.

11. The Issuer intends to implement an automatic share purchase plan (**ASPP**) to permit the Issuer to make purchases under its Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in its shares during internal blackout periods, including regularly scheduled quarterly blackout periods. Under the ASPP, at times it is not subject to blackout restrictions the Issuer may, but is not required to, instruct the designated broker to make purchases under its Normal Course Issuer Bid in accordance with the terms of the ASPP. Such purchases will be determined by the broker in its sole discretion based on parameters established by the Issuer prior to any blackout period in accordance with TSX rules, applicable securities laws (including this Order) and the terms of the agreement between the broker and TELUS. The ASPP has been approved by the TSX and may be implemented as early as June 30, 2013, and from time to time thereafter.

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

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

14. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the

Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

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

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

17. The Notice contemplates that purchases under the Normal Course Issuer Bid may be made by such other means as may be permitted by the TSX or a securities regulatory authority.

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

19. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Common Shares under the Normal Course Issuer Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds on hand.

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

21. To the best of the Issuer's knowledge, as of May 17, 2013, the "public float" for the Common Shares represented more than 99.6% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

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

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

24. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer nor the Trading Products Group of, nor personnel of, the Selling Shareholder that have negotiated the Agreement or have made, or participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

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

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

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

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

d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid and in accordance with the Notice and the TSX NCIB Rules, as applicable;

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

f) at the time that each Agreement is entered into by the Issuer and the Selling

Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Trading Products Group of, nor personnel of, the Selling Shareholder that have negotiated the Agreement or have made, or participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

g) the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases and (ii) that information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, will be available on the System for Electronic Document Analysis and Retrieval (SEDAR) following the completion of each such purchase;

h) the Issuer will report information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase; and

i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid.

DATED at Toronto this 14th day of June, 2013.

"C. Wesley M. Scott"
Commissioner
Ontario Securities Commission

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

2.2.2 Global Consulting and Financial Services et al. – ss. 37, 127(1)

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP,
CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and
LORNE BANKS

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GLOBAL CONSULTING AND FINANCIAL SERVICES
AND JAN CHOMICA

ORDER
(Sections 37 and 127(1))

WHEREAS by Notice of Hearing dated March 27, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on April 17, 2013, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Global Consulting and Financial Services ("Global Consulting"), Global Capital Group, Crown Capital Management, Michael Chomica, Jan Chomica and Lorne Banks. 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 27, 2013;

AND WHEREAS Global Consulting and Jan Chomica (the "Respondents") entered into a settlement agreement with Staff dated July 23, 2013 (the "Settlement Agreement") in which the Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 27, 2013, subject to the approval of the Commission;

WHEREAS on July 25, 2013, the Commission issued a Notice of Hearing pursuant to sections 37 and 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statements of Allegations of Staff, and upon hearing submissions from the Respondents and from Staff;

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 clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondents cease permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is prohibited permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents permanently from the date of the approval of the Settlement Agreement;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Jan Chomica is reprimanded;

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

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

(h) pursuant to subsection 37(1) of the Act, Jan Chomica is prohibited permanently, from the date of the approval of the Settlement Agreement, from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

DATED at Toronto this 6th day of August, 2013.

"James E. A. Turner"

2.2.3 Oversea Chinese Fund Limited Partnership 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
OVERSEA CHINESE FUND LIMITED
PARTNERSHIP, WEIZHEN TANG AND
ASSOCIATES INC., WEIZHEN TANG CORP.
AND WEIZHEN TANG**

**TEMPORARY ORDER
Subsections 127(7) and (8)**

WHEREAS on March 17, 2009, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following temporary orders (the "Temporary Order") against Oversea Chinese Fund Limited Partnership ("Oversea"), Weizhen Tang and Associates Inc. ("Associates"), Weizhen Tang Corp. ("Corp.") and Weizhen Tang, (collectively, the "Respondents"):

1. that all trading in securities of Oversea, Associates and Corp. shall cease;

2. that all trading by the Respondents shall cease; and

3. that the exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on March 17, 2009, pursuant to subsection 127(6) of the Act, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on March 18, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 1, 2009 at 2:00 p.m.;

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

AND WHEREAS prior to the April 1, 2009 hearing date, Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order, Notice of Hearing, and Staff's supporting materials;

AND WHEREAS on April 1, 2009, counsel for the Respondents advised the Commission that the Respondents did not oppose the extension of the Temporary Order;

AND WHEREAS on April 1, 2009, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order until September 10, 2009;

AND WHEREAS on April 1, 2009, the Commission ordered that the Temporary Order be extended, pursuant to subsection 127(8) of the Act, to September 10, 2009 and the hearing be adjourned to September 9, 2009;

AND WHEREAS on September 8, 2009, the Commission ordered, on consent, that the Temporary Order be extended until September 26, 2009 and the hearing be adjourned until September 25, 2009 at 10:00 a.m.;

AND WHEREAS on September 24, 2009, the Commission ordered, on consent, that the Temporary Order be extended until October 23, 2009 and the hearing be adjourned until October 22, 2009 at 10:00 a.m.;

AND WHEREAS on October 22, 2009, the Commission ordered, on consent, that the Temporary Order be extended until November 16, 2009 and the hearing be adjourned until November 13, 2009 at 10:00 a.m.;

AND WHEREAS on November 13, 2009, the Respondents brought a motion before the Commission to have the Temporary Order varied to allow Weizhen Tang to trade (the "Tang Motion") and Staff opposed this motion;

AND WHEREAS on November 13, 2009, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

AND WHEREAS on November 13, 2009, the Commission considered the materials filed by the parties, the evidence given by Weizhen Tang, and the submissions of counsel for Staff and counsel for the Respondents;

AND WHEREAS on November 13, 2009, the Commission was of the opinion that, pursuant to subsection 127(8) of the Act, satisfactory information had not been provided to the Commission by any of the Respondents; it was in the public interest to order that the Tang Motion be denied; the Temporary Order be extended until June 30, 2010; and the hearing be adjourned to June 29, 2010 at 10:00 a.m.;

AND WHEREAS on June 29, 2010, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

AND WHEREAS on June 29, 2010, the Respondents and Staff filed materials, including the Affidavit of Jeff Thomson, sworn on June 23, 2010;

AND WHEREAS on June 29, 2010, the Commission considered the materials filed by the parties, the submissions of counsel for Staff and counsel for the Respondents, and the submissions of Weizhen Tang;

AND WHEREAS on June 29, 2010, the Commission ordered that the Temporary Order be extended until March 31, 2011, and the hearing be adjourned to March 30, 2011, at 10:00 a.m.;

AND WHEREAS on March 30, 2011, no one appeared on behalf of the Respondents despite being given notice of the appearance;

AND WHEREAS on March 30, 2011, the Commission ordered that the Temporary Order was extended until May 17, 2011, and the hearing was adjourned to May 16, 2011 at 10:00 a.m.;

AND WHEREAS on May 16, 2011, Staff made submissions and sought an extension of the Temporary Order and the Respondent Weizhen Tang appeared on behalf of all Respondents and made submissions opposing the extension of the Temporary Order;

AND WHEREAS on May 16, 2011, the Commission concluded pursuant to subsection 127(8) of the Act that satisfactory information had not been provided to the Commission by any of the Respondents;

AND WHEREAS on May 16, 2011, the Commission ordered that the Temporary Order be extended until November 1, 2011 and the hearing be adjourned to October 31, 2011 at 10:00 a.m.;

AND WHEREAS on October 31, 2011, Staff appeared before the Commission seeking an extension of the Temporary Order;

AND WHEREAS on October 31, 2011, Weizhen Tang appeared on behalf of all Respondents opposing the extension of the Temporary Order;

AND WHEREAS on October 31, 2011, Staff and the Respondents filed materials and made submissions before the Commission;

AND WHEREAS on October 31, 2011, the Commission considered the materials filed by the parties, the submissions of counsel for Staff and the submissions of Weizhen Tang;

AND WHEREAS on October 31, 2011, the Commission concluded pursuant to subsection 127(8) of the Act that satisfactory information was not provided by any of the Respondents;

AND WHEREAS on October 31, 2011, the Commission advised Weizhen Tang that the Respondents could bring a motion under section 144 of the Act to vary the Temporary Order prior to the next hearing date;

AND WHEREAS on October 31, 2011, the Commission ordered that the Temporary Order be extended to September 24, 2012 and that the hearing be adjourned to September 21, 2012, at 10:00 a.m.;

AND WHEREAS on September 21, 2012, the Commission ordered that the Temporary Order be extended to January 21, 2013 and that the hearing be adjourned to January 18, 2013 at 10:00 a.m.;

AND WHEREAS on January 18, 2013, Staff appeared before the Commission to request an extension of the Temporary Order and no one appeared on behalf of the Respondents despite being given notice of the hearing;

AND WHEREAS Weizhen Tang indicated by email dated January 17, 2013 that he opposes the extension of the Temporary Order and attached materials to his email;

AND WHEREAS Weizhen Tang was not able to appear before the Commission due to an appearance in another matter;

AND WHEREAS on January 18, 2013, the Commission ordered that the Temporary Order be extended until February 4, 2013 and the hearing of this matter be adjourned to February 1, 2013 at 2:00 p.m.;

AND WHEREAS on February 1, 2013, Staff appeared before the Commission to request an extension of the Temporary Order and no one appeared on behalf of the Respondents despite being given notice of this hearing;

AND WHEREAS Staff informed the Commission that, following the appearance before the Commission on January 18, 2013, Weizhen Tang advised Staff via email that his criminal sentencing hearing before the Superior Court of Justice was also scheduled to continue on February 1, 2013;

AND WHEREAS Staff further informed the Commission that counsel for Staff was informed on February 1, 2013 at approximately 1:30 p.m. that Weizhen Tang was going to be sentenced by the Superior Court of Justice at 3:00 p.m.;

AND WHEREAS Weizhen Tang had indicated through materials provided to Staff and the Commission that he opposed the extension of the Temporary Order;

AND WHEREAS on February 1, 2013, the Commission ordered that the Temporary Order be extended until February 6, 2013 and the hearing of this matter be adjourned to February 5, 2013 at 9:30 a.m.;

AND WHEREAS on February 5, 2013, Staff appeared before the Commission to request an extension of the Temporary Order and no one appeared on behalf of the Respondents;

AND WHEREAS on February 5, 2013 Staff informed the Commission that, immediately following the appearance before the Commission on the afternoon of February 1, 2013, counsel for Staff attended at the Superior Court of Justice and personally advised the amicus curiae in the criminal proceedings involving Weizhen Tang that the hearing of this matter was adjourned to February 5, 2013 at 9:30 a.m. and that this information was then conveyed to Weizhen Tang by the amicus curiae;

AND WHEREAS Staff informed the Commission that, at approximately 4:30 p.m. on February 1, 2013, Weizhen Tang was sentenced by the Superior Court of Justice to six years in the penitentiary and that shortly thereafter Weizhen Tang was taken into custody;

AND WHEREAS on February 5, 2013, the Commission ordered that the Temporary Order be extended until August 1, 2013 and the hearing of this matter be adjourned to July 31, 2013 at 10:00 a.m. without prejudice to the Respondents to bring an application to vary the Temporary Order pursuant to section 144 of the Act;

AND WHEREAS on July 31, 2013, Staff appeared before the Commission to request an extension of the Temporary Order and no one appeared on behalf of the Respondents despite Weizhen Tang personally being served with a copy of the Order of February 5, 2013;

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

IT IS HEREBY ORDERED THAT the Temporary Order is extended until August 23, 2013 and the hearing of this matter is adjourned to August 21, 2013 at 10:00 a.m. without prejudice to the Respondents to bring an application to vary the Temporary Order pursuant to section 144 of the Act.

DATED at Toronto this 31st day of July, 2013.

"James E. A. Turner"

2.2.4 Tricoastal Capital Partners LLC et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
TRICOASTAL CAPITAL PARTNERS LLC,
TRICOASTAL CAPITAL MANAGEMENT LTD.
and KEITH MACDONALD SUMMERS

TEMPORARY ORDER
(Subsections 127(1) & 127(8))

WHEREAS on July 25, 2013, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

1. pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Capital") (collectively, the "Respondents") or their agents shall cease; and

2. pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to the Respondents or their agents;

AND WHEREAS the Commission ordered that pursuant to subsection 127(6) of the Act, the Temporary Order shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on July 26, 2013, the Commission issued a Notice of Hearing (the "Notice of Hearing") to consider the extension of the Temporary Order, to be held on August 6, 2013 at 11:00 a.m.;

AND WHEREAS counsel for the Respondents advised Staff that they consent to a six-month extension of the Temporary Order;

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

IT IS HEREBY ORDERED that the Temporary Order is extended until February 5, 2014, or until further order of the Commission;

IT IS FURTHER ORDERED that the hearing of this matter is adjourned to February 3, 2014 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.

DATED at Toronto this 6th day of August, 2013.

"James E. A. Turner"

2.2.5 Sandy Winick 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
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.

ORDER
(Section 127 of the Securities Act)

WHEREAS on January 27, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on January 27, 2012, to consider whether it is in the public interest to make certain orders against Sandy Winick ("**Winick**"), Andrea Lee McCarthy ("**McCarthy**"), Kolt Curry, Laura Mateyak ("**Mateyak**"), Gregory J. Curry ("**Greg Curry**"), American Heritage Stock Transfer Inc. ("**AHST Ontario**"), American Heritage Stock Transfer, Inc. ("**AHST Nevada**"), BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (aka Liquid Gold International Inc.) ("**Liquid Gold**"), and Nanotech Industries Inc. ("**Nanotech**");

AND WHEREAS on April 1, 2011, the Commission issued a temporary cease trade order, pursuant to subsections 127(1) and 127(5) of the Act, that all trading in securities of BFM, AHST Ontario, AHST Nevada and Denver Gardner Inc. cease and that all trading by Kolt Curry, Mateyak, AHST Ontario, AHST Nevada, McCarthy, Winick and Denver Gardner Inc. cease (the "Temporary Order");

AND WHEREAS the Temporary Order, as amended, was extended from time to time and, on March 23, 2012, was extended until the conclusion of the merits hearing;

AND WHEREAS on October 17, 2012, the Commission ordered, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"), that the hearing on the merits would proceed as a written hearing (the "**Written Hearing**");

AND WHEREAS on November 2, 2012, Staff filed an Amended Statement of Allegations and the Commission issued an Amended Notice of Hearing;

AND WHEREAS on November 30, 2012, Staff filed evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law;

AND WHEREAS on January 21, 2013, on consent of Staff and counsel for McCarthy, BFM and Liquid Gold (the "**McCarthy Respondents**"), the Commission granted an application to sever the matter, as against the McCarthy Respondents and adjourned that matter to a date to be fixed by the Office of the Secretary of the Commission in consultation with counsel;

AND WHEREAS on April 12, 2013, the Commission ordered, on consent, that the Written Hearing is converted back to an oral hearing on the merits to be heard on May 15th and 16th, 2013, pursuant to Rule 11.5 of the *Rules of Procedure*;

AND WHEREAS on May 15, 2013, Staff appeared and counsel for Kolt Curry, Mateyak and AHST Ontario appeared before the Commission and advised the panel that an Agreed Statement of Facts had been reached for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") and jointly requested that the hearing on the merits, as it relates to the Curry Respondents, be severed;

AND WHEREAS on May 16, 2013, the Commission ordered that the hearing as against the Curry Respondents is severed from the main proceeding in this matter;

AND WHEREAS the remaining respondents, Winick, Greg Curry and Nanotech, did not make submissions or tender evidence in response to Staff's evidentiary briefs and written submissions of November 30, 2012 and did not appear;

AND WHEREAS following a hearing on the merits with respect to Winick, Greg Curry and Nanotech, the Commission issued its Reasons and Decision on August 7, 2013;

IT IS ORDERED that:

1. Staff shall serve and file written submissions on sanctions and costs sought against Winick and Greg Curry (the "**Respondents**") by 4:00 p.m. on August 26, 2013;

2. the Respondents shall serve and file responding written submissions on sanctions and costs, if any, by 4:00 p.m. on September 9, 2013;

3. an oral hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on September 12, 2013, at 2:00 p.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary;

4. 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; and

5. pursuant to subsections 127(1), (7) and (8) of the Act, the Temporary Order, as amended, is extended as against Winick until the conclusion of the proceeding.

Dated at Toronto this 7th day of August, 2013.

"James D. Carnwath"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Global Consulting and Financial Services et al.

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES, GLOBAL CAPITAL GROUP,
CROWN CAPITAL MANAGEMENT CORP., MICHAEL CHOMICA, JAN CHOMICA and LORNE BANKS

SETTLEMENT AGREEMENT
BETWEEN STAFF AND GLOBAL CONSULTING AND FINANCIAL SERVICES AND JAN CHOMICA

PART I – INTRODUCTION

1. By Notice of Hearing dated March 27, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on April 17, 2013, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Global Consulting and Financial Services ("Global Consulting"), Global Capital Group ("Global Capital"), Crown Capital Management, Michael Chomica, Jan Chomica and Lorne Banks. 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 27, 2013.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 37 and 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Global Consulting and Jan Chomica (the "Respondents").

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated March 27, 2013 against the Respondents (the "Proceeding") in accordance with the terms and conditions set out below. The Respondents consent to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

Overview

4. This proceeding, as it relates to Jan Chomica, centres on Jan Chomica's conduct in facilitating the use of two Ontario bank accounts to receive and disburse funds, directly or indirectly, obtained from the victims of two separate but similarly structured "advance-fee" schemes at the request and under the direction of her brother: Michael Chomica.

5. Jan Chomica registered Global Consulting as a sole proprietorship in Ontario in December 2006 and opened bank accounts in the name of Global Consulting at bank branches located in Ontario (the "Global Consulting Bank Accounts").

6. From October 2009 to October 2010 (the "Material Time"), approximately USD $224,000 and CAD $23,500 was transferred to the Global Consulting Bank Accounts in furtherance of the fraudulent advance-fee schemes discussed further below.

7. Jan Chomica was the sole signatory on the Global Consulting Bank Accounts at all times. However, during the Material Time, Jan Chomica carried out transactions in the Global Consulting Bank Accounts, including the disbursement of funds fraudulently obtained from investors, solely at the direction, and for the benefit, of her brother: Michael Chomica.

8. Jan Chomica is a resident of Ontario.

9. None of Jan Chomica, Michael Chomica or Global Consulting has ever been registered with the Commission in any capacity.

The Global Consulting Scheme

10. From approximately January 2008 to October 2010, persons falsely purporting to be representatives of various organizations solicited shareholders primarily residing in the United Kingdom (the "Global Consulting Investors") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "Global Consulting Scheme").

11. The Global Consulting Scheme involved an artificial offer to purchase shares owned by the Global Consulting Investors at inflated prices. The offer to purchase the Global Consulting Investors' shares and the subsequent communications were part of an artifice designed solely to extract money from the Global Consulting Investors.

12. As part of the Global Consulting Scheme, the Global Consulting Investors were contacted by persons purporting to act for various governmental agencies, including the U.S. Securities and Exchange Commission and the Commission, as well as certain fictitious organizations purportedly involved in the transactions, and directed to make certain payments in order to complete the transactions. The payments were purportedly necessary to cover taxes and various other costs.

13. The persons carrying out the solicitations did not work for the governmental agencies they purported to represent, they used aliases when communicating with the Global Consulting Investors, and they presented the Global Consulting Investors with false and forged documents.

14. In or around October 2009, Michael Chomica made the Global Consulting Bank Accounts available to the perpetrators of the Global Consulting Scheme and from approximately October 2009 to October 2010 (the "Global Consulting Material Time"), pursuant to the solicitations outlined above, the Global Consulting Investors were instructed to send their advance fees to the Global Consulting Bank Accounts.

15. At least 4 Global Consulting Investors paid advance-fees totalling USD $109,685 and CAD $23,478 to the Global Consulting Bank Accounts as a result of the solicitations outlined above.

16. During the Global Consulting Material Time, Jan Chomica carried out transactions in the Global Consulting Bank Accounts at Michael Chomica's direction. The funds deposited into the Global Consulting Bank Accounts were withdrawn in cash or otherwise disbursed at the direction, and for the benefit, of Michael Chomica.

17. The purported purchases of the Global Consulting Investors' shares never occurred and the Global Consulting Investors suffered a complete loss of the amounts they paid as advance fees.

18. Jan Chomica was not involved in the solicitation of the Global Consulting Investors; however, Jan Chomica ought to have known that in carrying out transactions in the Global Consulting Bank Accounts, as noted above, she was directly or indirectly engaging in a course of conduct relating to securities that perpetrated a fraud on the Global Consulting Investors.

The Global Capital Scheme

19. From approximately March 2010 to September 2010 (the "Global Capital Material Time"), persons, including Michael Chomica, using aliases and purporting to act on behalf of Global Capital Group ("Global Capital"), solicited shareholders in Dixon, Perot & Champion Inc. residing in Europe, the United Kingdom, Asia and Africa (the "DP&C Shareholders") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "Global Capital Scheme").

20. Michael Chomica was the architect and directing mind of the Global Capital Scheme and he operated it from his residential apartment located on Bloor Street East in Toronto (the "Bloor Street Address").

21. The Global Capital Scheme involved an artificial offer to exchange shares in Dixon, Perot & Champion Inc. (the "DP&C Shares") owned by the DP&C Shareholders for shares in Microsoft Inc. (the "Microsoft Shares"). The DP&C Shares were virtually worthless and illiquid at the time of the solicitations, however, the DP&C Shareholders were told that Global Capital valued them at prices ranging from USD $6 to $14. Whereas the Microsoft Shares were valued at prices ranging from USD $24 to $27.

22. The offer to exchange the DP&C Shareholders' shares and the subsequent communications were part of an artifice designed solely to extract money from the DP&C Shareholders.

23. As part of the Global Capital Scheme, the DP&C Shareholders were informed that they had to make certain payments in order to complete the transactions. The payments were purportedly necessary to cover the difference in value between the

DP&C Shares and the Microsoft Shares. However, once this initial payment was made, the DP&C Shareholders were solicited for additional payments to cover taxes and various other costs.

24. The DP&C Shareholders were instructed to send the funds representing the advance fees to the account of Commonwealth Capital Corp. ("Commonwealth"), an Isle of Man corporation, at the Bank of Nevis in St. Kitts and Nevis (the "Commonwealth Bank Account"). During the Global Capital Material Time, Michael Chomica controlled the Commonwealth Bank Account.

25. At least five DP&C Shareholders paid advance-fees totalling USD $160,470 to the Commonwealth Bank Account as a result of the solicitations noted above.

26. The majority of the funds transferred to the Commonwealth Bank Account by the DP&C Shareholders were then transferred by Michael Chomica to the Global Consulting Bank Accounts.

27. During the Global Capital Material Time, Jan Chomica carried out transactions in the Global Consulting Bank Accounts at Michael Chomica's direction. The funds deposited into the Global Consulting Bank Accounts were withdrawn in cash or otherwise disbursed at the direction, and for the benefit, of Michael Chomica.

28. The purported exchange of the DP&C Shareholders' shares never occurred, the DP&C Shareholders never received any Microsoft Shares and instead suffered a complete loss of the amounts paid towards the advance fees.

29. Jan Chomica was not involved in the solicitation of the DP&C Shareholders; however, Jan Chomica ought to have known that in carrying out transactions in the Global Consulting Bank Accounts, as noted above, she was directly or indirectly engaging in a course of conduct relating to securities that perpetrated a fraud on the DP&C Shareholders.

Michael Chomica's Convictions for Fraud Contrary to Section 126.1 of the Act

30. On May 2, 2012, a four count Information was sworn pursuant to the Act and the *Provincial Offences Act*, R.S.O. 1990. s. P. 33, as amended, charging, *inter alia*, Michael Chomica and Jan Chomica with two counts of fraud contrary to the Act in connection with the Global Consulting Scheme and the Global Capital Scheme.

31. On February 14, 2013, Michael Chomica pleaded guilty in the Ontario Court of Justice to 3 counts of fraud contrary to sections 122 and 126.1(b) of the Act in connection with, inter alia, the Global Consulting Scheme and the Global Capital Scheme. Michael Chomica's guilty plea was accepted by the Court and he was convicted and sentenced to 2 years in the penitentiary.

32. As part of his plea of guilt, Michael Chomica admitted the truth of a Statement of Facts for Guilty Plea (the "Statement of Facts") that was filed as an exhibit in that proceeding.

33. In the Statement of Facts, Michael Chomica admitted, among other things, that he controlled the Global Consulting Bank Accounts and that Jan Chomica carried out transactions in the accounts at his instruction.

34. Following Michael Chomica's sentencing on March 14, 2013, Staff withdrew the charges against Jan Chomica.

PART IV – RESPONDENT'S POSITION

35. It is Jan Chomica's position that she was unaware of the solicitations being made to investors and solely carried out transactions in the Global Consulting Bank Accounts at the direction, and for the benefit, of her brother for which she did not receive compensation.

PART V – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

36. By engaging in the conduct described above, the Respondents admit and acknowledge that they contravened Ontario securities law during the Material Time in the following ways:

(a) During the Material Time, the Respondents traded in and engaged in and held themselves out as engaging in the business of trading in securities without being registered to trade in securities, contrary to subsection 25(1) of the Act and contrary to the public interest; and

(a) During the Material Time, the Respondents engaged or participated in acts, practices or a course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

37. The Respondents admit and acknowledge that they acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 36 (a) and (b) above.

PART VI – TERMS OF SETTLEMENT

38. The Respondents agree to the terms of settlement listed below.

39. The Commission will make an order, pursuant to section 37 and subsection 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondents cease permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is prohibited permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents permanently from the date of the approval of the Settlement Agreement;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Jan Chomica is reprimanded;

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

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

(h) pursuant to subsection 37(1) of the Act, Jan Chomica is prohibited permanently, from the date of the approval of the Settlement Agreement, from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

40. The Respondents undertake to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in sub-paragraphs 39 (b) to (h) above.

PART VII – STAFF COMMITMENT

41. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the facts set out in Part III herein, subject to the provisions of paragraph 42 below.

42. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fail to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

43. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondents for the scheduling of the hearing to consider the Settlement Agreement.

44. Staff and the Respondents agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding the Respondents' conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

45. If this Settlement Agreement is approved by the Commission, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

46. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

47. Whether or not this Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

48. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondents leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Respondents; and

(b) Staff and the Respondents shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and the Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

49. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Respondents and Staff or as may be required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

50. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

51. A facsimile copy of any signature will be as effective as an original signature.

Dated this 23 day of July, 2013.

Signed in the presence of:

"David North"
Witness:

"Jan Chomica"
Jan Chomica

Personally and on behalf of Global Consulting and Financial Services

Dated this 23 day of July, 2013

"Tom Atkinson"
STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this 23 day of July, 2013

SCHEDULE "A"

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP,
CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and
LORNE BANKS

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GLOBAL CONSULTING AND FINANCIAL SERVICES
AND JAN CHOMICA

ORDER
(Sections 37 and 127(1))

WHEREAS by Notice of Hearing dated March 27, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on April 17, 2013, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Global Consulting and Financial Services ("Global Consulting"), Global Capital Group, Crown Capital Management, Michael Chomica, Jan Chomica and Lorne Banks. 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 27, 2013;

AND WHEREAS Global Consulting and Jan Chomica (the "Respondents") entered into a settlement agreement with Staff dated _____, 2013 (the "Settlement Agreement") in which the Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 27, 2013, subject to the approval of the Commission;

WHEREAS on _____, 2013, the Commission issued a Notice of Hearing pursuant to sections 37 and 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statements of Allegations of Staff, and upon hearing submissions from the Respondents and from Staff;

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 clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondents cease permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is prohibited permanently from the date of the approval of the Settlement Agreement, with the exception that Jan Chomica shall be permitted to trade for her own account, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any

"exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents permanently from the date of the approval of the Settlement Agreement;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Jan Chomica is reprimanded;

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

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

(h) pursuant to subsection 37(1) of the Act, Jan Chomica is prohibited permanently, from the date of the approval of the Settlement Agreement, from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

DATED at Toronto this _____ day of _____, 2013.

3.1.2 Sandy Winick 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
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.

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing:	In Writing		
Decision:	August 7, 2013		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Submissions:	Jonathan Feasby Cameron Watson Harald Marcovici (Student-at-law)	–	For Staff of the Ontario Securities Commission

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I. INTRODUCTION

[1] This proceeding arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") dated January 27, 2012, 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, also dated January 27, 2012, filed by Staff of the Commission ("**Staff**") against Sandy Winick, ("**Winick**"), Andrea Lee McCarthy ("**McCarthy**"), Kolt Curry ("**Kolt Curry**"), Laura Mateyak ("**Mateyak**"), and Gregory J. Curry ("**Greg Curry**"), American Heritage Stock Transfer Inc., ("**AHST Ontario**"), American Heritage Stock Transfer, Inc., ("**AHST Nevada**"), BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (also known as Liquid Gold Inc.) ("**Liquid Gold**"), and Nanotech Industries Inc. ("**Nanotech**").

[2] On October 17, 2012, the Commission ordered that, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"), the hearing on the merits would proceed as a written hearing. Staff filed an Amended Statement of Allegations in respect of the same parties on November 2, 2012 and the Commission issued an Amended Notice of Hearing on the same day.

[3] On January 21, 2013, on consent of Staff and counsel for McCarthy, BFM and Liquid Gold (the "**McCarthy Respondents**"), the Commission granted an application to sever the matter, as against the McCarthy Respondents, and adjourned the matter with respect to the McCarthy Respondents to a date to be fixed by the office of the Secretary of the Commission in consultation with counsel.

[4] On May 16, 2013, the Panel accepted an Agreed Statement of Facts for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") and found that the Curry Respondents had contravened Ontario securities law and acted contrary to the public interest. On May 16, 2013, on the request of Staff and counsel for the Curry Respondents, the Commission ordered that the hearing against the Curry Respondents be severed from the main proceeding in this matter and scheduled a sanctions hearing in respect of the Curry Respondents for August 27, 2013.

[5] Staff submitted that Nanotech is dissolved and has been inactive since 2009. As such there are no formal allegations against Nanotech and Staff further submits that no formal findings are sought against Nanotech.

[6] As a result, I will not be making further analysis or findings with respect to the McCarthy Respondents, the Curry Respondents or Nanotech. The following reasons and decision include my findings with respect to Winick and Greg Curry (collectively, the "**Respondents**") in the continuation of the written hearing on the merits.

A. Allegations

[7] Staff alleges that in three separate, but connected, schemes Winick engaged in unregistered trading, illegally distributed securities, perpetrated securities fraud on other persons or companies and made statements that a reasonable investor would consider relevant in deciding whether to enter or maintain a trading or advising relationship. Staff alleges that the statements were untrue or omitted information necessary to prevent the statements from being false or misleading. Staff further alleged that Greg Curry, as officer and director of BFM, and Winick, as directing mind and de facto director and officer of BFM, Liquid Gold, Nanotech, AHST Ontario and AHST Nevada, authorized, permitted or acquiesced in commission of breaches of Ontario Securities law by those respective corporations and therefore Greg Curry and Winick are deemed to also have not complied with Ontario Securities law.

[8] Staff alleges that from June 2009 through December 2010, at least 50 investors outside of Canada purchased shares in BFM, an Ontario company, through telephone salespeople claiming to represent an investment bank from Singapore called Denver Gardner Inc. ("**Denver Gardner**"). Staff alleges that BFM never had an operating business during this investment scheme (the "**BFM Scheme**"). Despite this, 28 BFM nvestors wired more than CDN $360,000 into bank accounts in Ontario to purchase shares in BFM. Staff alleges that over 50% of those funds were withdrawn in cash, transferred to accounts held by Winick or McCarthy or used to pay personal credit card bills. Staff alleges that all of the funds were disposed of on items unrelated to the business of BFM.

[9] Staff further alleges that from June 2009 through November 2010, at least eight investors outside of Canada purchased shares in Liquid Gold, an Ontario company, also through telephone salespeople claiming to represent Denver Gardner. Staff alleges that Liquid Gold never had an operating business or any assets other than cash during this investment scheme (the "**Liquid Gold Scheme**"). Liquid Gold received approximately USD $2.6 million during the Liquid Gold Scheme, of which approximately USD $85,000 was from the sale of its shares to investors. Staff alleges that over 98% of the funds received by Liquid Gold were disbursed on expenses unrelated to the alleged business of the company, including payments to credit cards in Winick's name.

[10] Lastly, Staff alleges that from May 2009 through August 2010, at the direction of Winick, Kolt Curry and others sent correspondence from an Ontario company, AHST Ontario, and a Nevada company, AHST Nevada, to approximately 10,000 people enclosing share and warrant certificates in Nanotech, an inactive Wyoming company (the "**Nanotech Letter**"). The recipients of the Nanotech Letter included both BFM investors and Liquid Gold investors. The Nanotech Letter stated that the recipient was entitled to an unpaid dividend in the form of shares and purchase warrants and further claimed that the warrants could be exercised at a price substantially lower than the price at which Nanotech was currently trading (the "**Nanotech Letter Scheme**"). Staff alleges that this statement, which implied investors could make an immediate and substantial profit, was false.

[11] For the purpose of these reasons, reference to the material time as a whole shall pertain to conduct of the Respondents occurring from May 2009 to December 2010 (the "**Material Time**").

B. Temporary Order

[12] On April 1, 2011, the Commission issued a temporary cease trade order that all trading in securities of BFM, AHST Ontario, AHST Nevada and Denver Gardner cease and that all trading by the Curry Respondents, McCarthy, Winick and Denver Gardner cease (the "**Temporary Order**"). The Temporary Order also provided that any exemptions contained in Ontario securities law do not apply to any of the parties named. The Temporary Order, as amended, was extended from time to time, and on March 23, 2012, it was extended until the conclusion of the merits hearing.

C. The Respondents

[13] Winick is a resident of Ontario and Bangkok, Thailand. At one point, during the Material Time, Winick lived at McCarthy's residence in Ontario.

[14] Greg Curry is a resident of Bangkok, Thailand. Greg Curry is registered a director of BFM.

D. Other Related Parties

[15] BFM was incorporated in Ontario on November 25, 2008. Liquid Gold was incorporated in Ontario on May 26, 2009. McCarthy is a resident of, a registered director of BFM and sole director of Liquid Gold. McCarthy had signing authority over the AHST Ontario HSBC bank account and sole signing authority over bank accounts for BFM and Liquid Gold.

[16] AHST Ontario was incorporated in Ontario on February 23, 2005 and AHST Nevada was incorporated in Nevada on November 17, 2004. Kolt Curry is a resident of Ontario and Bangkok, Thailand. He is the son of Greg Curry and husband of Mateyak. Kolt Curry was sole director, sole shareholder, President, Secretary and Treasurer of each of AHST Nevada and AHST Ontario at registration (the "**AHST Entites**").

[17] Mateyak is a resident of Ontario and Bangkok, Thailand. Mateyak became sole director, President, Secretary and Treasurer of AHST Ontario as of November 21, 2006. She had signing authority over the AHST Ontario HSBC bank account.

[18] Nanotech was incorporated in Wyoming on September 20, 2007, but was formerly incorporated under other names.

II. PRELIMINARY ISSUES

A. Failure of the Respondents to Participate

[19] Throughout the proceeding, Staff provided a number of Affidavits of Service as evidence that they served each of the Respondents in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "***SPPA***") and the Commission's Rules of Procedure. Neither of the Respondents participated in the written hearing.

[20] Subsection 6(1) of the *SPPA* requires that the tribunal provide "reasonable notice of the hearing" to the parties to a proceeding. Subsection 7(1) of the *SPPA*, permits a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. Similarly, subsection 7(2) of the *SPPA* permits a tribunal to proceed where notice of a written hearing has been given and the party fails to participate. Subsection 7(2) of the *SPPA* states:

> [7](2)Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) [to satisfy the tribunal that there is good reason for not holding a written hearing] nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

[21] Further, Rule 7.1 of the Commission's *Rules of Procedure* 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.

[22] The Commission has previously exercised its jurisdiction to proceed when it is satisfied that an absent respondent has been given adequate notice (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***") at para. 18; *Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 at paras. 110-112).

[23] Staff filed the Affidavit of Peaches A. Barnaby, sworn on October 15, 2012, as evidence of service on the Respondents via email of the Notice of Hearing and the Statement of Allegations and advising the Respondents that Staff intended to apply to convert the hearing on the merits in this matter to a written hearing. The same affidavit attaches a response from Greg Curry which indicates that Greg Curry would not attend the scheduled hearing. Staff also filed the Affidavit of Service of Peaches A. Barnaby, sworn on November 30, 2012, as evidence of service on the Respondents via email of the Amended Notice of Hearing, the Amended Statement of Allegations and the Commission's order of October 17, 2012, converting the matter into a written hearing.

[24] I am satisfied that notice of the written hearing was served on the Respondents, that Staff took all reasonable steps available to provide reasonable notice of this proceeding to the Respondents and that I am entitled to proceed in their absence in accordance with section 7 of the *SPPA* and Rule 7.1 of the Commission's *Rules of Procedure*.

B. Jurisdiction Over the Respondents

[25] Although the Respondents were not both resident in Ontario during the Material Time, I accept Staff's submission that there is sufficient evidence connecting the Respondents to Ontario, including:

- BFM, Liquid Gold and AHST Ontario are Ontario based corporations;
- the Respondents were officers and/or directors or *de facto* officers and/or directors of BFM, Liquid Gold and/or AHST Ontario;and
- Bank accounts for BFM, Liquid Gold and AHST Ontario were situated in Ontario.

[26] I agree with the panel in *Lehman Brothers* that a substantial connection to Ontario entitles the Commission to exercise its jurisdiction over the Respondents. The panel in that matter found:

> In this case, the offers to purchase TBS shares were made to investors outside Ontario. […] In addition, Lehman Corp. purported to operate from outside Ontario, namely, from Montreal, Quebec. However, the evidence discloses that some substantial aspects of each transaction occurred within Ontario. Investor funds

were sent to accounts located in Toronto on the instructions of Lehman Corp. and Marks. These accounts were opened and maintained by either Lounds or Higgins, both Ontario residents, in the name of Emerson or Triad, both sole proprietorships established and registered in Ontario. The evidence shows that investor funds were withdrawn and disbursed in Toronto for the benefit of these two Ontario residents.

We find that there is a substantial connection to Ontario thereby entitling the Commission to exercise jurisdiction over the Respondents.

(*Re Lehman Brothers & Associates Corp.* (2011), 34 O.S.C.B. 12717 at paras. 35-37)

[27] I find that the Respondents have a substantial connection to Ontario warranting the exercise of jurisdiction by this panel.

III. ISSUES

[28] The issues before me are as follows:

(a) Did Winick trade in and engage in or hold himself out as engaging in the business of trading in securities of BFM, Liquid Gold and Nanotech without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) of the *Act*, as subsequently amended on September 28, 2009, and contrary to the public interest?

(b) Did Winick distribute securities of BFM, Liquid Gold and Nanotech without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to subsection 53(1) of the *Act* and contrary to the public interest?

(c) Did Winick, directly or indirectly, engage or participate in any acts, practices or courses of conduct relating to securities of BFM and Liquid Gold, that he knew or reasonably ought to have known perpetrated a fraud on any person or company contrary to subsection 126.1(b) of the *Act* and contrary to the public interest?

(d) Did Winick make a statement that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with Winick which was untrue or omitted information necessary to prevent the statement from being false or misleading in the circumstances, contrary to subsection 44(2) of the *Act* and contrary to the public interest?

(e) Did Winick, as *de facto* director and/or officer of BFM, Liquid Gold, the AHST Entities and Nanotech, authorize, permit or acquiesce in the non-compliance with Ontario securities law by respective employees, agents or representatives of those companies and is Winick therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act* and has he acted contrary to the public interest?

(f) Did Greg Curry, as director of BFM, authorize, permit or acquiesce in the non-compliance with Ontario securities law by BFM or by the employees, agents or representatives of BFM and is Greg Curry therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act* and has he acted contrary to the public interest?

IV. EVIDENCE

A. Standard of Proof

[29] The standard of proof in this written hearing is the civil standard of proof on a balance of probabilities and evidence must be sufficiently clear, convincing and cogent (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 46 and 49).

B. Admissibility of Evidence

[30] The Commission 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. Subsection 15(1) of the *SPPA* states:

What is admissible in evidence at a hearing

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.

[31] The weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115; *Sunwide*, above at para. 22). I admitted the hearsay evidence tendered by Staff, subject to my consideration of the weight to be given to that evidence.

C. Overview of the Evidence Tendered

[32] In support of the allegations, Staff relies on:

(a) The Affidavit of Daniella Kozovski, sworn November 29, 2012, and entered as Exhibit 1 to this written hearing, together with seven volumes of exhibits to her affidavit, being Volumes 1A, 1B, 2A, 2B, 3, 4 and 5 ("**Ex. 1, Vol. __**");

(b) The Affidavit of Lori Toledano, sworn November 27, 2012 and entered as Exhibit 2 to this written hearing, together with 6 volumes of exhibits to her affidavit, being Volumes 1, 2, ,3, 4, 5 and 6 ("**Ex. 2, Vol. __**");

[33] As previously stated, neither of the Respondents tendered evidence, made submissions or otherwise participated in this written hearing.

[34] Staff submits that all of the documentary evidence that Staff rely upon to prove the allegations against the Respondents is also corroborated and consistent with other documentary evidence. This documentary evidence included banking documents, subscription and other legal agreements, lists of investors, emails, printouts of websites, copies of letters and emails from certain of the Respondents with other respondents or third parties and copies of legal documents referring to transactions between certain of the Respondents and third parties. I accept Staff's submission that while all of the documentary evidence is itself hearsay evidence, nevertheless, taken as a whole, the evidence is corroborative and consistent within itself and with the contents of Exhibits 1 and 2.

[35] I have read Affidavit of Daniella Kozovski and reviewed the documents contained in Ex. 1, Vols. 1A, 1B, 2A, 2B, 3, 4 and 5. Where Ms. Kozovski cites specific material to support a paragraph in her deposition, I have followed those references to satisfy myself that the documents cited support the facts deposed. In particular, Ms. Kozovski relied upon the Affidavit of Andrea McCarthy, sworn November 28, 2012, which attested to conduct of Winick that is relevant to this proceeding (Ex. 1 Vol. 3, Tab 14).

[36] In attempting to construct a narrative history of the matter, including findings of fact, I have compressed many paragraphs in the Ms. Kozovski's affidavit and I have often adopted the language of Ms. Kozovski where it would serve no purpose to recast it. Briefly put, I accept her evidence concerning the activities of the Respondents.

[37] I have read the Affidavit of Lori Toledano and reviewed the documents in Ex. 2, Vols. 1-6 inclusive. Ms. Toledano examined 11 bank accounts and credit card accounts relating to the Respondents. She prepared sources and applications of funds for each bank account and characterized the destination of funds expended. Ms. Toledano obtained bank records for AHST Ontario, Kolt Curry, Winick, Mateyak and others related to the AHST Entities. McCarthy was a signing officer on the AHST Ontario's bank accounts and leased the mailbox for its Hamilton address, on which Winick was listed as a joint holder. Surveillance revealed that Winick was living at McCarthy's residence in Ontario during the Material Time. Further summonses revealed that McCarthy was a signing officer on the bank accounts on BFM and Liquid Gold. Those account records show deposits from individuals outside Canada consistent with the purchase of securities.

[38] My review persuades me that Ms. Toledano's analyses are reliable and give an accurate history of the movement of funds from investors to Winick and related parties and the movement of those funds among the Respondents and companies they controlled.

[39] A search warrant was issued for McCarthy's residence in Ontario. During the search more than 10 banker's boxes of documents, including thousands of Nanotech letters, were collected. Documents and correspondence relating to Denver Gardner, BFM, Liquid Gold and the AHST Entities were also gathered.

[40] Staff conducted voluntary interviews with McCarthy and Kolt Curry. Staff also corresponded with investors in BFM and Liquid Gold, as well as recipients of the Nanotech letter. Furthermore, Staff produced certificates pursuant to section 139 of the *Act*, which demonstrate that neither of the Respondents was registered during the Material Time.

D. The BFM Scheme

[41] The BFM scheme took place from June 2009 through to December 2010 (the "**BFM Material Time**"). BFM was incorporated on November 25, 2008 by McCarthy at Winick's instructions and registered to McCarthy's home address. BFM's advertised mailing address was a mailbox in Toronto, Ontario, to which Winick and McCarthy had been granted access. At Winick's instruction McCarthy also opened Canadian and United States dollar bank accounts (respectively, "**BFM CAD Account**" and "**BFM USD Account**") for BFM at TD Canada Trust ("**TD**") of which she was the sole signatory (collectively, the "**BFM Accounts**").

[42] On Winick's instructions, McCarthy created a website for BFM using content provided by Winick. She provided her name as the administrative and technical contact for the website and registered it to her residence. A draft version of the material for the BFM website, listing "Sandy" as the author in the document's metadata, was tendered. On the website, BFM made statements that made it appear the company was actively engaged in the fertilizer business. In spite of this representation, McCarthy confirmed to Staff that BFM never had any assets or operations other than one contract discussed below with respect to Bio-Fertilis Inc. ("**Bio-Fertilis**"), a fertilizer company. McCarthy also confirmed to Staff that BFM never had a board meeting, a shareholders meeting, passed any by-laws or kept any minutes and never had any employees.

[43] As shown in the charts of the sources and uses of funds reproduced later in these reasons, BFM's only source of funds was the sale of its own securities to investors. McCarthy has acknowledged that the majority of those funds were spent on matters entirely unrelated to the stated business of BFM.

[44] BFM agreed to invest capital in the amount of USD $1.5 million in Bio-Fertilis. However, it never advanced any money for that purpose. On Winick's direction, McCarthy advanced $500,000 from Liquid Gold to Bio-Fertilis on behalf of BFM. According to the agreement, further payments were to be made but, as McCarthy confirmed, Winick terminated the deal because it was too "risky".

(i) Sale and Distribution of BFM Securities

[45] McCarthy confirmed to Staff that BFM sold previously unissued securities over the phone to foreign investors, through an investment bank in Singapore called Denver Gardner. The records of the BFM Accounts attached as exhibits to the Affidavit of Ms. Toledano show that from June 2009 through December 2010, at least 28 foreign resident investors wired over CDN $360,000 to the BFM Accounts. McCarthy confirmed that those sums were deposits from the BFM investors purchasing shares.

[46] In March 2011, the Royal Thai Police seized three USB memory sticks containing electronic files related to the operation of a boiler room connected to the Respondents (the "**RTP documents**"). The RTP documents were obtained by Staff. Among the RTP documents was one entitled "Client share listing for Denver Gardner – BFM Shareholders.doc" which listed names and contact information of BFM investors, including some of the 28 that wired funds to the BFM Accounts in Ontario. The RTP documents also included client statements, on Denver Gardner letterhead, for 50 individual BFM investors, including those who deposited funds in the BFM Accounts. "Sandy" is identified as the author of all the BFM client statements. McCarthy confirmed that at Winick's direction, she signed BFM share certificates and sent them to BFM investors.

(ii) Non-Existence of Denver Gardner

[47] The Denver Gardner website indicates that the company "is a premier provider of wealth management, securities trading and sales, corporate finance and investment banking services."(Ex. 1, Vol 1B, Tab 1D). Ms. Kozovski's investigation caused her to conclude that Denver Gardner was a fictional company invented by Winick to mislead investors about the identity of the sellers of BFM and Liquid Gold securities. The RTP documents contain hundreds of pages of material related to Denver Gardner, including draft instructions on how to use the website, Denver Gardner invoices, Denver Gardner press releases, Denver Gardner "call scripts" and the Denver Gardner client statements. "Sandy" is shown as the author of all these documents. Ms. Kozovski was unable to generate any internet hits that appeared to be related to an investment bank in Singapore called Denver Gardner, other than its own website. The Denver Gardner website appears to have been copied from other online sources. Ms. Kozovski was unable to find any reference to or listing of Denver Gardner on the Government of Singapore's search engine. Staff's attempts to deliver correspondence and proceeding documents via courier were returned as undeliverable. Further, investors were instructed to wire funds, not to Denver Gardner, but directly to bank accounts held by BFM and Liquid Gold.

(iii) BFM Investors

K.D. (United Kingdom)

[48] K.D. is a resident of the United Kingdom and the largest single BFM investor. He learned about BFM as a result of an unsolicited call from "Tom Hill" at Denver Gardner. K.D. wired funds to the BFM Accounts on two occasions: (i) on September 15, 2009, he wired CDN $30,783.21; and (ii) on October 23, 2009, he wired CDN $74,543.61. After much pestering, he finally received two share certificates for BFM. He engaged in substantial email correspondence with McCarthy regarding his investments in BFM. McCarthy would respond with emails which stated that BFM's business was moving ahead and that projects were proceeding as anticipated.

H.K. (Germany)

[49] H.K. resides in Germany and confirmed that he invested in BFM. He received a call from "Chris Stevens" at Denver Gardner, who told H.K. that he could sell certain shares that H.K. currently held "at a very good price" if H.K. used the proceeds to buy shares of BFM. H.K. provided Staff with correspondence from BFM dated May 17, 2010, enclosing his share certificate. Ms. Toledano's analysis of the BFM Accounts shows that H.K. transferred CAD $8,485.16 to the BFM CAD Account and USD $2,870 to the BFM USD Account. The RTP documents included a client statement for H.K. showing his BFM shares.

Mr. J. O. & Mrs. J.O. (Ireland)

[50] Mr. J.O. and Mrs. J.O. are residents of Ireland and investors in BFM. Mrs. J.O. was first contacted in July 2009 by a "Chris Stevens" of Denver Gardner in Singapore, who recommended that she buy shares in BFM and Liquid Gold. Ms. Toledano's analysis of the BFM Accounts shows that Mrs. J.O. wired USD $16,571.49 to the BFM USD Account. The RTP documents included a client statement for Mrs. J.O. showing her BFM shares.

L.M. (Isreal)

[51] L.M. was a BFM investor located in Isreal. She received a call from "Tom Hill" at Denver Gardner around July 2009, in which the representative asked L.M. about her current investments. An offer was made to purchase shares she had in another company as part of her purchase in BFM, since, she was told, the BFM shares were a better investment. L.M. stayed in contact with "Hill" and another male at Denver Gardner who identified himself as "Paul Bradley". L.M. was advised that BFM was going public on November 16, 2009. Ms. Toledano's analysis of the BFM Accounts shows that L.M. invested CAD $61,920.64 and USD$4,504.18.

(iv) Disposition of BFM Investor Funds

[52] The following chart shows the source of funds in the BFM CAD Account, which funds were primarily composed of BFM investor funds, redacted for privacy reasons:

BFM CAD Account **June 3, 2009 to December 10, 2009** (amounts > $1,000 CAD)	
Description	Total ($)
Account Inflows:	
A. & L. M. (Israel)	*61,920.64*
C. B. (Sweden)	*30,785.13*
C. G. (Denmark)	*4,451.15*
I. G. (Denmark)	*9,247.19*
I. B. (Sweden)	*5,125.65*
K. & S. D. (United Kingdom)	*105,326.82*
H.K. (Germany)	*8,485.16*
K. L. (Norway)	*1,553.03*

M. D. S. (Belgium)	*7,027.12*	
R. H. (Sweden)	*6,394.62*	
T. V. E. W. S. (Sweden)	*19,237.63*	
		259,554.14
From BFM USD Account		35,502.05
From First European American Credit Ltd.		2,500.00
	Total Inflows:	297,556.19

(Ex. 2)

[53] McCarthy acknowledged that part of her role with BFM was to make withdrawals and transfers from the BFM Accounts as and when Winick directed her to do so. Those transfers included dispersing funds to pay personal expenses of Winick and his wife, as well as McCarthy's own personal expenses, and dispersing funds to other recipients for purposes unrelated to the business of BFM.

[54] The withdrawals and transfers Winick directed McCarthy to make from the BFM CAD Account included the following (rounded to the nearest hundred in CAD):

(a) $153,900 to cover Visa and American Express credit card payments for Winick, his wife and McCarthy, including at least $18,600 to McCarthy's personal Visa account and $54,800 to the American Express account she held jointly with Winick;

(b) $28,000 to a joint bank account held by Winick and McCarthy;

(c) $26,800 to Worldwide Capital Group Inc. and Imanos and Co. Inc., two companies controlled by Winick;

(d) $16,400 to Sherwood Digital Copy & Print to cover printing expenses related to the Nanotech Letter Scheme;

(e) $12,500 in cash withdrawals;

(f) $5,600 to Kolt Curry;

(g) $4,000 to Mateyak;

(h) $3,300 to BFM's USD Account;

(i) $2,800 to pay federal taxes unrelated to BFM; and

(j) $1,100 to Toronto Hydro on behalf Winick's wife.

[55] Ms. Toledano's analysis of the BFM CAD Account shows a total outflow of funds in the amount of CAD$283,982.03 from June 3, 2009 to December 10, 2009.

[56] The following chart shows the source of funds in the BFM US Dollar Account, which were primarily composed of BFM investor funds, redacted for privacy concerns:

BFM USD Account

June 3, 2009 to December 10, 2009

(amounts > $1,000 US)

Description	Total ($)
Account Inflows:	
A. & L. M. (Israel)	*4,504.18*
A. A. (United Kingdom)	*2,210.08*

A.(Denmark)	*2,783.81*	
C.O. (Ireland)	*5,583.87*	
D. (Netherlands)	*4,181.51*	
E.M.J. (United Kingdom)	*1,376.96*	
G.W. (Germany)	*11,952.50*	
I.W. (United Kingdom)	*11,736.40*	
I.B. (Sweden)	*7,628.88*	
Mr. J.O. & Mrs. J.O. (Ireland)	*16,571.49*	
H.K. (Germany)	*2,870.00*	
L.S. (Sweden)	*5,691.43*	
M.K. (Finland)	*4,158.14*	
O.L. (United Kingdom)	*2,368.14*	
P.R. (United Kingdom)	*3,063.70*	
R. & S. F. (Ireland)	*2,779.88*	
R. A. (United Kingdom)	*1,089.63*	
R. H. A. (Sweden)	*1,377.29*	
T. B. (Sweden)	*5,692.09*	
W. M. E. (South Africa)	*7,162.48*	104,782.46
From BFM CAD Account		3,000.00
From Winick / McCarthy - Joint Account		1,050.00
	Total Inflows:	**108,832.46**

(Ex. 2)

[57] The withdrawals and transfers Winick directed McCarthy to make from the BFM USD Account included the following (rounded to the nearest hundred in USD):

(a) $32,900 to BFM's CAD Account;

(b) $24,500 to a joint bank account held by Winick and McCarthy;

(c) $21,000 in cash withdrawals;

(d) $11,000 to First European American Credit Ltd. ("FEAC Ltd."), a company controlled by Winick;

(e) $6,500 in payments to Pink OTC markets for expenses related to other companies controlled by Winick;

(f) $4,700 to Lee Freed Holdings, a company McCarthy controlled; and

(g) $3,600 to Kolt Curry.

[58] Ms. Toledano's analysis of the BFM USD Account shows a total outflow of funds in the amount of USD$110,493.83 from June 3, 2009 to December 10, 2009.

(v) Greg Curry's Role in the BFM Scheme

[59] Greg Curry, according to McCarthy, has lived in Bangkok for several years. He has been a director of BFM since the company was incorporated in November 2008 and remained Winick's nominee throughout the time BFM was selling securities.

[60] As president of BFM, Greg Curry signed various documents related to BFM's plans to invest in Bio-Fertilis as discussed above. The President of Bio-Fertilis, D.H., provided Staff with a direction signed by Greg Curry as president of BFM in relation to

an earlier, aborted attempt to finance an investment in Bio-Fertilis. D.H. said he never dealt directly with Greg Curry in relation to negotiations between BFM and Bio-Fertilis, but that he understood from Winick that Greg Curry was the president of BFM until McCarthy began acting as president.

[61] Greg Curry received substantial funds directly from Winick and companies Winick controlled during the period in which he was acting as Winick's nominee, while the distribution of BFM shares was ongoing. As shown in the Affidavit of Ms. Toledano, Greg Curry received the equivalent of over USD $14,000 directly from Winick's accounts and the equivalent of over USD $64,000 from FEAC Ltd., a company of which Winick's wife was the sole director and officer.

E. The Liquid Gold Scheme

[62] The Liquid Gold Scheme took place from June 2009 through November 2010 (the "**Liquid Gold Material Time**"). On May 26, 2009, at Winick's request, McCarthy incorporated Liquid Gold. She named herself the sole director, as instructed by Winick, but acknowledged to Staff that Winick remained the directing mind of the company throughout the Liquid Gold Material Time. As with BFM, McCarthy opened Canadian and United States dollar bank accounts (respectively, "**Liquid Gold CAD Account**" and "**Liquid Gold USD Account**") for Liquid Gold in Ontario at the Bank of Montreal ("**BMO**") and a United States dollar TD account ("**Liquid Gold TD Account**") (collectively, the "**Liquid Gold Accounts**"). McCarthy first named herself the sole signatory, but later added her father as a signatory on the first two Liquid Gold Accounts noted above.

[63] Liquid Gold's website contains statements that made it appear as if it was an operating entity. Among other things, the website said Liquid Gold "has assumed the leadership role in the recovery of additional hydrocarbons from domestic sources, lessening the United States' dependence on foreign oil." McCarthy, the sole director of Liquid Gold, told Staff that she always understood that the company did not operated and did not have any oil or hydrocarbon recovery business. McCarthy confirmed that Liquid Gold never had a board meeting or shareholder meeting, passed any by-laws or kept any minutes of the corporation. Liquid Gold never had any employees.

(i) Sale and Distribution of Liquid Gold Securities

[64] Three individuals told Staff they were solicited by sales representatives from Denver Gardner to purchase shares in Liquid Gold. Five individuals wired funds directly to the Liquid Gold Accounts. A Liquid Gold shareholder list, which listed the five investors who transferred funds to the Liquid Gold Accounts, was found in the RTP documents and in hard copy among Winick's documents found in the Ontario residence he shared with McCarthy. The RTP documents included Denver Gardner client statements for seven individual Liquid Gold investors. Liquid Gold share certificate requests, authored by "Sandy" were found in the RTP documents. In total, the documents identify nine distinct Liquid Gold investors, but it is not known how the four who did not deposit funds into the Liquid Gold accounts paid for their shares.

(ii) Liquid Gold Investors

[65] Mr. J.O. and Mrs. J.O. are investors who had also invested in BFM. Mrs. J.O. purchased Liquid Gold shares through a telephone solicitor purporting to represent Denver Gardner. She wired USD $16,480.18 to the Liquid Gold USD Account.

[66] Three further deposits into the Liquid Gold USD Account came from W.E., in the amount of USD $7,559.69, O.B.J., in the amount of USD $50,252.16, and R.A., in the amount of USD $10,513.59. The Liquid Gold shareholder list, the share certificate requests and the Denver Gardner Liquid Gold client statements confirm they purchased Liquid Gold shares.

[67] The Liquid Gold TD Account, with almost no activity, shows a single deposit from a potential investor, H.G.K., in the amount of USD $1,373.57.

(iii) Disposition of Liquid Gold Investor Funds

[68] The Liquid Gold Accounts received substantial funds that are not known to be derived from the sale of shares to the public. A total of approximately USD $2.6 Million was deposited into the Liquid Gold Accounts. Those funds included approximately USD $85,000 raised through the sale of Liquid Gold shares to a total of four Liquid Gold investors between June 1, 2009 and November 18, 2010.

[69] McCarthy's understanding of the source of the additional funds was that "Sandy was sending it to take care of things that he needed to take care of" (Ex. 1, Vol. 3, Tab 2: Andrea McCarthy – Transcript of Voluntary Interview of May 18, 2011 at p. 167).

[70] As with the BFM Accounts, McCarthy acknowledged that part of her role with Liquid Gold was to make withdrawals and transfers from the Liquid Gold Accounts as and when Winick directed her to do so. McCarthy admitted that over "98% of the USD $2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold", including the approximate USD $85,000 wired by investors (Ex. 1 Vol. 3, Tab 14).

[71] The withdrawals and transfers McCarthy made from the Liquid Gold CAD Account included the following (rounded to the nearest hundred in CAD):

(a) $600,700 in payments to credit cards held by Winick;

(b) $88,400 in federal tax payments on behalf of Winick;

(c) $68,500 in cash withdrawals;

(d) $66,100 to pay a line of credit in McCarthy's name;

(e) $60,000 to McCarthy;

(f) $58,400 in payments to or on behalf of Winick's wife;

(g) $50,000 to repay a loan made to McCarthy;

(h) $38,600 in other credit card payments; and,

(i) $15,100 to Sherwood Digital Copy & Print to cover printing expenses related to the Nanotech Letter Scheme.

[72] The withdrawals and transfers McCarthy made from the Liquid Gold USD Account included the following (rounded to the nearest hundred in USD):

(a) $1,141,500 to the Liquid Gold CAD Account;

(b) $500,000 to Bio-Fertilis;

(c) $499,000 to purchase a term deposit, later cashed and disbursed at Winick's instruction;

(d) $170,000 to Kolt Curry;

(e) $48,000 to a joint account held by McCarthy and her father;

(f) $7,500 to Worldwide Capital Group, a company controlled by Winick; and,

(g) $6,500 to Pink Sheets OTC to cover expenses related to Liquid Gold and Blackout Media, another company controlled by Winick.

F. The Nanotech Letter Scheme

(i) Nanotech and the AHST Entities

[73] In 2005, Winick signed documents for the Wyoming Secretary of State as President of Nanotech's predecessor company. AHST Ontario acted as Nanotech's transfer agent.

[74] Kolt Curry incorporated AHST Nevada in the State of Nevada, United States, on November 17, 2004. Kolt Curry named himself President, Secretary, Treasurer and sole Director of AHST Nevada. He is the only shareholder of the company. Kolt Curry incorporated AHST Nevada to serve Winick's shell companies. In his voluntary interview with Staff, Kolt Curry described his role as follows:

> [Q. 83] So tell us, just to step back a bit, initially when Mr. Winick contacted you and started to talk about a transfer agency, tell us about exactly what was said there?
>
> [Kolt Curry] A. He said he had some shell corporations. I didn't really know what that meant, you know, but there were companies that did trades and as a transfer agent, you know, I would be paid for each and every trade. You know, they would send stocks to me, I would trade them. All I have to do is change the name of the stock and transfer it to the new name, and so it seemed pretty simple. Registered with the SEC. Filed my fingerprints. Everything went fine with the Securities and Exchange Commission, got registered and that's how it all came to be. You know, obviously, you know, for -- most of the companies in the beginning were all his and then that changed and I actually represent 20 or 21 companies now.
>
> (Ex. 1, Vol. 4, Tab 2: Kolt Curry – Transcript of Voluntary Interview of May 10, 2011 at p. 19)

[75] On Winick's instructions, Kolt Curry registered AHST Nevada as a transfer agent with the United States Securities and Exchange Commission (the "**SEC**") on December 21, 2004.

[76] On February 23, 2005, Kolt Curry incorporated AHST Ontario and appointed himself President, Secretary and Treasurer. He is also the sole shareholder of AHST Ontario. Kolt Curry then began using AHST Ontario to conduct the transfer business formerly done by AHST Nevada, as if it was the same company as AHST Nevada. He never told the SEC he was using an Ontario company. All Kolt Curry did was change the address of AHST Nevada to an Ontario address. On November 21, 2006, Kolt Curry removed himself as Director of AHST Ontario and Mateyak assumed the offices of President, Secretary, Treasurer, General Manager and sole director of the company.

[77] As of August 16, 2011, at the time of his continued interview with Staff, Kolt Curry said that AHST Ontario was acting as a transfer agent for 14 different companies, including Nanotech. He stated further that Winick referred virtually all of the 14 companies to him as transfer agent clients, including Nanotech.

(ii) The Nanotech Letter

[78] In early 2009, Winick telephoned Kolt Curry and provided verbal instructions on content of a letter to be sent to Nanotech shareholders. Based on the information Winick provided, Kolt Curry and one other individual prepared the Nanotech letter. Kolt Curry also received via email a list of approximately 10,000 addresses to which he was to send the letter. Briefly put, the Nanotech letter tells the recipient that the transfer agent discovered an unpaid Nanotech dividend, which entitled the recipient to 5,000 shares of Nanotech and 25,000 stock purchase warrants (the "**Nanotech Letter(s)**"). The recipient was invited to exercise the stock purchase warrants, one warrant for one common share of Nanotech, at a price of $2.75 per share. According to the Nanotech Letter, the Nanotech shares were trading at $4.93 per share. The Nanotech Letter enclosed a certificate for 5,000 common shares of Nanotech and a certificate for 25,000 Nanotech purchase warrants. Sample Nanotech Letters may be found at Ex. 1, Vol. 2B, Tab 45. Winick was listed as the author of a draft letter and the Nanotech Letters found in the RTP documents. Kolt Curry and McCarthy confirmed that Winick directed the payment of printing costs for the Nanotech Letter in the amount of at least $34,000. McCarthy admitted that she paid for the printing costs from the BFM Accounts and the Liquid Gold Accounts.

[79] Approximately 10,000 copies of the Nanotech Letter were sent to addresses provided by Winick. McCarthy admitted that the Nanotech Letters were mailed out from July 2009 until at least August 2010 (the "**Nanotech Material Time**"). A draft Nanotech Letter contained in the RTP documents and identified as being authored by "Sandy" was dated March 2, 2009 (the "**Draft Nanotech Letter**").

[80] In the fall of 2009, Winick, Kolt Curry and Mateyak left Ontario for Thailand. The Nanotech letter continued to be sent out through assistance provided by McCarthy, who was authorized to do AHST Ontario's banking and deal with the company's mail.

[81] Ms. Kozovski deposed in her affidavit that Staff did not identify any investor who actually sent money in response to the Nanotech Letter.

(iii) False and Misleading Statements in the Nanotech Letter

[82] The Nanotech Letter told recipients that the transfer agent "uncovered an unpaid dividend to you [the recipient]" and that attached to the dividend were shares and purchase warrants. Kolt Curry admitted the statement was false.

[83] The Nanotech Letter states that "[a]t the time of the writing of this letter the shares of Nanotech Industries Inc. are trading at $4.93". Ms. Toledano downloaded the trading history of Nanotech to show that Nanotech traded at $4.93 only once, in October 2008. The shares did not trade again until August 4th, 2009, at least three months after the first Nanotech Letters were sent when 200 shares changed hands at $0.05 each. Later, Nanotech Letters included an enclosure directing the recipient to disregard the $4.93 price specified and to confirm the current price online. The earliest Nanotech Letters were dated April 14, 2009 and evidence found in the RTP documents suggests that the enclosure was created in or after November 2009. Collectively, this supports a finding that a number of Nanotech Letters were sent with no enclosure qualifying the share price.

[84] The Nanotech Letter was typed on letterhead that uses the formal name of AHST Nevada (ie. with a comma) and the balance the letter refers to AHST Ontario (ie. without a comma). The Nanotech Letter was signed in the name of an individual who was the President of AHST Nevada and who never held any office with AHST Ontario. In fact, he never signed the Nanotech Letter at all. Kolt Curry and McCarthy both acknowledged that they stamped the signature on the Nanotech Letters.

[85] Some versions of the Nanotech Letter included a SEC transfer agent registration number, which corresponds to the registration granted to AHST Nevada in December 2004. Kolt Curry admitted that he had allowed the status of AHST Nevada to lapse in 2008 and was doing business through AHST Ontario, which was not registered through the SEC. The result is that the

letter represented the sender as a transfer agent registered with the SEC when it was not. The Draft Nanotech Letter does not contain the SEC registration number.

[86] Both the Nanotech Letter and Nanotech's website presented Nanotech as a going concern during the time of the Nanotech Letter Scheme. Nanotech's website dated September 15th, 2009 stated that:

> Nanotech Industries identifies patented, patent-pending and proprietary technologies at leading universities and funds the additional development of such technologies in exchange for the exclusive rights to commercialize any resulting products.
>
> (Ex. 1, Vol. 1A, Tab 2J)

[87] Nanotech has been listed as "inactive" and "administratively dissolved" by the Wyoming Secretary of State since March 14, 2009. Staff's investigation revealed no evidence that suggests Nanotech ever operated a business of any kind beyond the company's attempt to sell its own shares.

G. Further Evidence of Winick's Involvement

[88] On March 15, 2011, Winick, Greg Curry and others were arrested in Bangkok, Thailand for operating an illegal telemarketing fraud or "boiler room." Electronic files related to the operation of the boiler room, the RTP documents, were seized by the Royal Thai Police who provided copies to the Royal Canadian Mounted Police ("**RCMP**") liaison officer in Bangkok. Following the arrests in Bangkok, a search warrant was issued for McCarthy's residence in Ontario. During the search Staff seized more than 10 banker's boxes of documents including thousands of Nanotech Letters. Also obtained were documents and correspondence relating to Denver Gardner, BFM, Liquid Gold and the AHST Entities.

[89] In May 2011, Staff received from the RCMP liaison office in Bangkok the RPT documents on three DVDs, containing approximately 20,000 documents.

[90] The RTP documents included files in various electronic formats (ex. Microsoft Word, Microsoft Excel, .pdf, etc.). Applying information retrieval techniques to obtain what is commonly referred to as "meta data", the author of the RTP documents in many cases was identified as either "Sandy" or "Sandy Winick." A number of documents listing "Sandy" as the author were found among the documents recovered pursuant to the search warrant for McCarthy's residence in Ontario or were confirmed by other witnesses to have come from Winick.

[91] The RTP documents include the following:

- Over 3,000 addressed copies of the Nanotech Letter identifying "Sandy" as the author
- Shareholder lists for BFM and Liquid Gold
- Share certificate requests listing names of shareholders and number of BFM or Liquid Gold shares to be issued for each, listing "Sandy" as the author (the "**Share Certificate Requests**")
- Subscription agreements for the purchase of BFM securities
- Email pitches to swap Nanotech shares for BFM shares showing "Sandy" as the author
- "To Do" Lists referring to BFM, Liquid Gold, Nanotech and Denver Gardner, some of which identify "Sandy" as the author (the "**Winick To Do Lists**")
- Draft versions of the BFM website listing "Sandy" as the author
- Private Placement Memorandum for BFM indicating the document was authored by "Sandy"
- Invoices and "client statements" showing the purchase of BFM and Liquid Gold shares by Denver Gardner clients with "Sandy" as the author
- Weekly Denver Gardner newsletters showing "Sandy" as the author
- Denver Gardner "call scripts" for selling securities, authored by "Sandy"

[92] The Winick To Do Lists refer to most of the principal individuals and corporations involved in the BFM Scheme, Liquid Gold Scheme and Nanotech Letter Scheme. The Winick To Do Lists also assign various tasks to those participating in these

schemes, which suggests that Winick was directing activity for them. Two of the Winick To Do Lists also suggest that Winick was simultaneously and consciously planning the operations of Denver Gardner, BFM, Liquid Gold and Nanotech (Ex. 1, Vol. 2B, Tabs 25-27).

[93] The Private Placement Memorandum for BFM shares is dated May 31, 2010, describes the purported business of the company and offers a maximum of 3,000,000 shares at a price per unit of $3.00 (Ex. 1, Vol. 2A, Tab 18). It is not known if the BFM Private Placement Memorandum was ever sent to investors.

[94] Denver Gardner "call scripts" for selling securities include blank spaces in the place of company names and do not expressly refer to BFM, Liquid Gold or Nanotech (Ex. 1, Vol. 2B, Tab 22).

V. LAW

A. Trading Without Registration

[95] During the Material Time and prior to September 28, 2009, subsection 25(1)(a) of the *Act* prohibited trading in securities without being registered with the Commission. Subsection 25(1)(a) of the *Act* provided that:

> No person or company shall,
>
> (a) trade in a security […] 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 […]

[96] During the Material Time, on and after September 28, 2009, subsection 25(1) of the *Act* provided that:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

i) Trade in a Security

[97] With respect to the phrase "trade in a security" used in subsection 25(1)(a) of the *Act* or "trading in securities" used in subsection 25(1) of the *Act*, the definition of "trade" or "trading" under subsection 1(1) of the *Act* provides for a broad definition, which includes any sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

ii) Acts in Furtherance of Trade

[98] The Commission has adopted a contextual approach to determining whether non-registered individuals or companies have engaged in acts in furtherance of a trade. The contextual approach examines "the totality of the conduct and the setting in which the acts have occurred" and has as a primary consideration the effect the acts had on those to whom they were directed (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 77).

[99] A variety of conduct has been found by the Commission to constitute acts in furtherance of trade, including:

(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;

(g) meeting with individual investors;

(h) accepting investor funds for the purpose of an investment; and

(i) setting up a website that offers securities to investors;

(*Momentas*, above at para. 80; *Re Lett* (2004), 27 O.S.C.B. 3215 ("***Lett***") at paras. 48-51 and 64; *Re Allen* (2005), 28 O.S.C.B. 8541 ("***Allen***") at para. 85; *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***") at para. 133; *Re First Federal Capital (Canada) Corp.* (2003), 27 O.S.C.B. 1603 ("***First Federal***") at para. 45)

[100] Therefore, taking steps to facilitate the mechanical, or logistical, aspects of trading has been found by the Commission to be an act in furtherance of a trade. In *Lett*, investors transferred, deposited or caused to be deposited funds into the accounts of the corporate respondents, which had been opened by an individual respondent. The Commission found that the investors' funds were deposited into the accounts and accepted by the respondents for the purpose of selling securities and held that the respondents had carried out acts in furtherance of trades (*Lett*, above at paras. 60 and 64).

iii) Not Necessary to Complete Trade

[101] The respondent does not have to have direct contact or make a direct solicitation of an investor for an act to constitute an act in furtherance of a trade (*Lett*, above at paras. 48-51 and 64). An act in furtherance of a trade does not require that an investment contract be completed or that an actual trade otherwise occur (*Allen*, above at para. 85). Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the *Act*, which is to regulate those who trade, or who purport to trade, in securities (*First Federal*, above at paras. 46-47 and 51).

iv) Definition of Security

[102] The definition of "security" provided for in subsection 1(1)(e) of the *Act* includes "a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest".

v) Availability of Exemption

[103] Once Staff has established that a respondent has engaged in an activity for which registration or a prospectus is required, the onus is on the respondent to prove facts establishing the availability of an exemption.

B. Distribution of Securities Without a Prospectus

[104] Subsection 53 (1) of the *Act* provides that:

> 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.

[105] A "distribution" is defined in subsection 1(1)(a) of the *Act* to mean "a trade in securities of an issuer that have not been previously issued."

[106] The prospectus is a primary disclosure document that fulfils a legal requirement pursuant to subsection 56(1) of the *Act* to provide investors with full, true and plain disclosure relating to a security that is issued or proposed to be distributed. The information provided in a prospectus allows investors to properly assess risks of the investment and to make an informed decision on whether or not to invest and, as a result, the document plays a significant role in investor protection (*Limelight*, above at 139).

[107] As stated above, the onus is on the respondent to prove facts establishing the availability of an exemption from the prospectus requirement.

C. Prohibited Representation

[108] Subsection 44(2) of the *Act* states:

> **44.(2) Representation prohibited** – No person or company shall make a statement about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or

advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

[109] In *Carter*, a Director's decision, the Director found that the marketing materials of North American Financial Group ("**NAFG**"), an entity affiliated with Carter Securities Inc., violated subsection 44(2) of the *Act*. The Director in *Carter* decided that marketing materials provided to investors contained statements that are misleading, unsupported or not accurate, including:

a. No disclosure that a substantial percentage of NAFG's investor funds are invested in non-interest bearing related party loans

b. A lack of disclosure regarding NAFG's poor financial condition

c. NAFG has "grown to become a leader in the finance sector" and NAFG is "a leading non-bank finance lender"

d. Comparisons of NAFG's returns to those of low risk secured alternatives (Canada Savings Bonds and GICs)

e. "Quantitative analysis, understanding and interviewing every borrower is the foundation of our lending"

f. "Once a loan is advanced we continue to regularly monitor the borrower and the asset until the loan is repaid", etc.

(*Re Carter Securities Inc.* (2010), 33 O.S.C.B. 8691 ("***Carter***") at para. 53 and 74)

D. Securities Fraud

[110] Subsection 126.1(b) of the *Act* prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud. Subsection 126.1(b) of the *Act* states:

> **126.1 Fraud and Market Manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities […] that the person or company knows or reasonably ought to know […]
>
> (b) perpetrates a fraud on any person or company.

[111] In previous decisions, this Commission has adopted the interpretation of the fraud provision in provincial securities legislation as set out by the British Columbia Court of Appeal in the *Anderson* decision. In *Anderson*, the British Columbia Court of Appeal held that the fraud provision in the British Columbia *Securities Act*, which is similar to the Ontario provision, requires proof of the same elements of fraud as in a prosecution under the *Criminal Code*. The fraud provision in the *Act* merely broadens the ambit of liability to those who knew or reasonably ought to have known that a person or company engaged in conduct that perpetrated a fraud. The words "knows or reasonably ought to know" do not diminish the requirement of Staff to prove subjective knowledge of the facts concerning the dishonest act by someone accused of fraud (*Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.C.A. 7 at para. 26; leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.)).

[112] In previous decisions, this Commission has also referred to the legal test for fraud set out in the leading case of *Théroux*. In *Théroux*, McLachlin J. (as she then was) summarized he elements of fraud:

> …the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or putting of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist of knowledge that the victim's pecuniary interest are put at risk).
>
> (*R v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("***Théroux***") at para. 27)

[113] The act of fraud is established by two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or other fraudulent means. A dishonest act may be established by proof of "other fraudulent means." Other fraudulent means encompasses all other means other than deceit or falsehood, which can properly be characterized as dishonest and is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act" (*Théroux*, above, at para. 17). The courts have included within the meaning of "other fraudulent means" the "use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property" (*Théroux*, above, at para. 18). The use of investors' funds in an unauthorized manner has been determined to be "other fraudulent means" (*R. v. Currie*, [1984] O.J. No. 147 (Ont. CA) pp. 3-4).

[114] The second element of the actus reus of fraud, deprivation, is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims caused by the dishonest act. Actual economic loss suffered by the victim may establish deprivation, but it is not required. Prejudice or risk of prejudice to an economic interest is sufficient (*Théroux*, above, at paras. 16-17; *R. v. Olan*, [1978] 2 S.C.R. 1175).

[115] The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence (*Théroux*, above at para. 29).

E. Director and Officer Deemed Non-compliance With Ontario Securities Law

[116] Section 129.2 of the *Act* provides:

> **129.2 Directors and Officers** – For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario Securities law, a director or officer of the company of person who authorized, permitted or acquiesced in the noncompliance 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 had been made against the company or person under section 127.

[117] 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 attract liability. As stated in *Momentas*:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Momentas*, above at para. 118)

[118] A "director" is defined in subsection 1(1) of the *Act* to include "a director of a company or an individual performing a similar function or occupying a similar position for any person." The term "officer" is also defined in subsection 1(1) of the *Act*, which provides:

> "officer", with respect to an issuer or registrant, means,
>
> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or 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)

[119] Therefore, a respondent who performs similar functions to an officer or director is considered a *de facto* officer or director and maybe captured by the language of section 129.2 of the *Act* as a person who authorized, permitted or acquiesced to the noncompliance of Ontario securities law by the relevant company.

[120] Relevant factors, which have been identified for the determination of whether a representative is a *de facto* director or officer, include:

(a) appointing nominees as directors;

(b) responsibility for the supervision, direction, control and operation of the company;

(c) running the company from their office;

(d) negotiating on behalf of the company;

(e) serving as the company's sole representative on a trip to solicit investments;

(f) substantially reorganizing and managing the company;

(g) selecting the name of the company;

(h) arranging a public offering;

(i) making significant business decisions;

(j) acting in a position with similar remuneration and responsibility as a director or officer within the company;

(k) actively managing key aspects of the company's business;

(l) preparing and authorizing the content of corporate documents, including promotional materials, such as brochures or media releases;

(m) instructing law or accounting firms on behalf of the company;

(n) having financial and trading authorization over the accounts of the company, including signing authority over the company's bank account;

(o) making presentations on behalf of the company and inviting expressions of interest to purchase securities of the company;

(p) directing the sending of information packages, including a subscription agreement relating to the purchase of shares, to prospective investors; and

(q) being referred to in correspondence, documents or by others as a director or officer of the company.

(*Momentas*, above at paras. 102, 103, 106, 108, 112-116; *Re World Stock Exchange* (2000), 9 A.S.C.S. 658 (Alta. Sec. Comm.) at para. 14 (Q.L.); *Re Press* (1998), 7 A.S.C.S. 2178 (Alta. Sec. Comm.) at pp. 6-10)

[121] Also, section 129.2 of the *Act* captures conduct "whether or not any proceeding has been commenced against the company […] under Ontario Securities law or any order had been made against the company […] under section 127." Therefore, the company need not be a party to the proceeding against the officer or director or *de facto* officer or director for a finding to be made pursuant to section 129.2 of the *Act*.

VI. ANALYSIS

A. Winick, Greg Curry and the BFM Scheme

i) Unregistered Trading and Illegal Distribution

[122] Four BFM investors, K.D., H.K., Mrs. J.O. and L.M., confirmed that they received calls from a representative of Denver Gardner, who offered to sell them shares of BFM. Each of the four BFM investors subsequently wired funds to one of the BFM Accounts for their purchase BFM shares. McCarthy admitted to Staff that BFM sold previously unissued securities over the phone to individual foreign investors, which she understood to be done through an investment bank from Singapore called Denver Gardner.

[123] The BFM banking records show that from June 2009 through December 2009 at least 28 residents of various foreign countries wired a total of approximately CDN $360,000.00 to the BFM Accounts to purchase BFM shares (the "**BFM Investor Funds**"). I accept that Winick directed McCarthy to sign BFM share certificates and send them to BFM investors. I also find that the Share Certificate Requests listing names of shareholders and number of BFM shares to be issued for each were created by

Winick. The BFM share certificates received from multiple investors corroborated the number of shares Winick requested in the Share Certificate Requests.

[124] Winick's direction to McCarthy to sign and forward BFM shares to BFM investors and his determination of how many shares were to be issued to each investor are acts in furtherance of trades. These acts combined with the context in which the trades were effected, through solicitation by a fictitious entity led by Winick, leads me to conclude that Winick was orchestrating a complex trading scheme which included the issuance of BFM shares. Winick was not registered to trade in securities during the BFM Material Time. Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act*.

[125] Winick acted in furtherance of trades in BFM securities without being registered to do so, in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the BFM securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of BFM contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Securities Fraud

[126] As stated above, the act of fraud is established by two elements: (a) a dishonest act, determined objectively, by reference to what a reasonable person would consider to be a dishonest act; and (b) deprivation established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims, caused by the dishonest act. The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence.

[127] The Denver Gardner website indicates that the company "is a premier provider of wealth management, securities trading and sales, corporate finance and investment banking services." (Ex. 1, Vol 1B, Tab 1D). I find that Denver Gardner is a fictitious entity created by Winick to mislead investors. The RTP documents contain hundreds of pages of material related to Denver Gardner, including Denver Gardner "call scripts" and the Denver Gardner client statements for the BFM investors, which showed "Sandy" as the author. Ms. Kozovski was unable to generate any internet hits that appeared to be related to an investment bank in Singapore called Denver Gardner, other than its own website and the Denver Gardner website appears to have been copied from other online sources. Furthermore, investors were directed to provide funds directly to the BFM Accounts.

[128] BFM had no legitimate business. McCarthy confirmed to Staff that BFM had no assets or operations other than the alleged Bio-Fertilis Stock Purchase Agreement. BFM held no board or shareholder meetings, never passed any bylaws or kept any minutes. BFM's only source of funds was the sale of its own securities to investors. As directed by Winick, McCarthy's correspondence with BFM investors purported the fiction that BFM was an operating company and that Denver Gardner was a legitimate investment dealer hired to distribute BFM's shares.

[129] Winick directed McCarthy to create the BFM website, with content that Winick provided. The BFM website furthered the deceptive scheme by creating the appearance that BFM was an operating entity.

[130] Winick directed McCarthy to make transfers which dispersed BFM Investor Funds to pay personal expenses of Winick and his wife, as well as to other recipients, for purposes unrelated to the business of BFM. I find following investor funds were transferred from the BFM Accounts to or for the benefit of Winick:

(a) CAD $153,900 to cover Visa and American Express credit card payments for Winick, his wife and McCarthy, including CAD $54,800 to an American Express account McCarthy held jointly with Winick;

(b) CAD $28,000 and USD $24,500 to a joint bank account held by Winick and McCarthy;

(c) CAD $26,800 to Worldwide Capital Group Inc. and Imanos and Co. Inc., two companies controlled by Winick;

(d) USD $11,000 to FEAC Ltd., a company controlled by Winick;

(e) USD $6,500 in payments to Pink OTC markets for expenses related to other companies controlled by Winick; and

(f) CAD $1,100 to Toronto Hydro on behalf Winick's wife.

[131] Therefore Winick accepted funds from the BFM Accounts in the amount of approximately CAD$251,800, for his personal benefit. Winick also directed McCarthy to transfer $16,400 from the BFM CAD Account to cover printing expenses related to the Nanotech Letter Scheme, a purpose entirely unrelated to BFM's purported business.

[132] It can be inferred from the totality of the evidence that Winick knew or reasonably ought to have known that he was engaging in the conduct described above at paragraphs 118 to 122 and that Winick knew or reasonably ought to have known that his actions prejudiced or placed at risk the economic interests of BFM investors. McCarthy acknowledged that during the BFM Material Time the actions she took on behalf of BFM, including issuance of shares, communication with investors and disbursement of BFM Investor Funds, was guided by direction of Winick. The Winick To Do Lists assign various tasks to those participating in the BFM Scheme, Liquid Gold Scheme and Nanotech Letter Scheme (the "**Schemes**"), which suggest that Winick was consciously planning and directing activity for the Schemes.

[133] Winick's use of Denver Gardner, a fictitious entity, to sell securities of BFM, a company with no legitimate assets or operations and no source of funds other than investment income, is a dishonest course of conduct that was detrimental to the economic interests of investors. Winick, through McCarthy, misrepresented the true nature of BFM's viability through correspondence with investors and the BFM website to further the fraudulent scheme. Further, Winick knowingly accepted BFM Investor Funds for his personal benefit, which is fraudulent conduct causing a direct deprivation to BFM investors. Finally, Winick knew or ought to have known that the funds from the BFM Accounts were BFM Investor Funds and that using them to further the Nanotech Letter Scheme was inappropriate diversion of those funds. As a result, Winick engaged in acts, practices or a course of conduct relating to securities, that he knew or reasonably ought to have known perpetrated a fraud on investors contrary to subsection 126.1(b) of the *Act* and contrary to the public interest.

iii) Director and/or Officer Liability

[134] Winick instructed McCarthy to incorporate BFM and to open the BFM Accounts in Ontario. Winick also directed McCarthy to create a website for BFM using content provided by Winick. BFM's address was a mailbox to which Winick and McCarthy had sole access. Winick received or benefitted from over half of the amount of investor funds in the BFM Accounts.

[135] Although Winick was not formally appointed as an officer or director of BFM during the BFM Material Time, he participated in all of the major business decisions of the company for the purposes of the BFM Scheme. One of the major initiatives undertaken by him was to raise capital by way of offering BFM securities to members of the public through Denver Gardner.

[136] Greg Curry was a director of BFM at the time the company was incorporated in November 2008 and held that position during the BFM Material Time. As president of BFM, Greg Curry signed an agreement to purportedly invest in Bio-Fertilis. His formal designation as a director of BFM and signature as president of the company lead me to conclude that Greg Curry was in fact a director of BFM during the BFM Material Time.

[137] I conclude that Winick was the directing mind and management of BFM and that he, as a *de facto* director and officer of BFM, authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by BFM. I also find that Greg Curry, as director of BFM, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by BFM. As a result, Winick and Greg Curry are deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

B. Winick and the Liquid Gold Scheme

i) Unregistered Trading and Illegal Distribution

[138] Three individuals confirmed that they were solicited by sales representatives from Denver Gardner to purchase shares in Liquid Gold. At least four investors, Mrs. J.O., W.E. O.B.J and R.A., wired a total of USD $84,805.62 directly to the Liquid Gold Accounts. The Liquid Gold shareholder list found in the RTP documents, and also in hardcopy among Winick's documents at the residence he shared with McCarthy, confirms that Mrs. J.O., W.E. O.B.J and R.A. were Liquid Gold investors.

[139] McCarthy admitted to Staff that Liquid Gold sold previously unissued securities over the phone to at least four foreign investors through telephone representatives claiming to work for Denver Gardner.

[140] The Share Certificate Requests, authored by Winick, also included requests for Liquid Gold shares to be issued for each investor noted at paragraph 129 above. Mrs. O.B. confirmed that after she wired funds to invest in Liquid Gold she received share certificates from AHST Nevada. The Denver Gardner client statement of Mrs. O.B. indicates that she received the same number of Liquid Gold shares as was requested by Winick in the Share Certificate Request for her. I find that Winick directed the issuance of Liquid Gold shares to Mrs. O.B.

[141] Directing the issuance of Liquid Gold shares through the Share Certificate Requests is an act in furtherance of trade. This course of conduct, combined with the context in which the trades were effected, through solicitation by a fictitious entity led by Winick, leads me to conclude that Winick was orchestrating a complex trading scheme which included the issuance of Liquid Gold shares. Winick was not registered to trade in securities during the Liquid Gold Material Time. Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act*.

[142] Winick acted in furtherance of trades in Liquid Gold securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the Liquid Gold securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of Liquid Gold contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Securities Fraud

[143] The evidence suggests that Liquid Gold did not have a legitimate business. Liquid Gold's website made it appear as if the company was operating an enterprise centered on the recovery of additional hydrocarbons from domestic sources. McCarthy, as sole director of Liquid Gold, told Staff that her understanding was the company was inactive. To McCarthy's knowledge, Liquid Gold never operated any oil of hydrocarbon recovery business and never had assets other than cash. Liquid Gold never had a board meeting or a shareholder meeting. Liquid Gold did not keep a minute book, pass any bylaws or have any employees.

[144] McCarthy admitted that over "98% of the USD $2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold", including the approximate USD $85,000 wired by investors (Ex. 1 Vol. 3, Tab 14). Winick directed McCarthy to make transfers, which dispersed funds to pay personal expenses of Winick and his wife, as well as to other recipients, for purposes unrelated to the business of Liquid Gold. I find following investor funds were transferred from the Liquid Gold Accounts to or for the benefit of Winick:

(a) CAD $600,700 in payments to credit cards held by Winick;

(b) CAD $88,400 in federal tax payments on behalf of Winick;

(c) CAD $58,400 in payments to or on behalf of Winick's wife;

(d) USD $499,000 to purchase a term deposit, later cashed and disbursed at Winick's instruction;

(e) $7,500 to Worldwide Capital Group, a company controlled by Winick; and

(f) $6,500 to Pink Sheets OTC to cover expenses related to Liquid Gold and Blackout Media, another company controlled by Winick.

[145] Therefore, Winick accepted nearly half of the funds from the Liquid Gold Accounts, or approximately CAD$1,260,500, for his personal benefit. Winick also directed McCarthy to transfer $15,100 from the Liquid Gold CAD Account to cover printing expenses related to the Nanotech Letter Scheme, another purpose entirely unrelated to Liquid Gold's purported business.

[146] I find, from the totality of the evidence, that Winick knew that he was engaging the conduct described above at paragraphs 135-136 and that Winick knew or reasonably ought to have known that his actions prejudiced or placed at risk the economic interests of Liquid Gold investors. McCarthy acknowledged that during the Liquid Gold Material Time steps she took on behalf of Liquid Gold, including disbursement of funds from the Liquid Gold Accounts, was guided by direction of Winick. Again, the Winick To Do Lists suggest that Winick was consciously planning and directing activity for the Schemes.

[147] As stated above, I accept that Denver Gardner is a fictitious entity created by Winick to mislead investors. Winick used Denver Gardner to sell shares of Liquid Gold, an inactive company, to the public, which is a dishonest course of conduct that was detrimental to the economic interests of investors. He knowingly accepted almost half of the funds in the Liquid Gold Accounts for his own personal benefit. By participating in this conduct, Winick engaged in acts, practices or a course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on investors contrary to subsection 126.1(b) of the *Act* and contrary to the public interest.

iii) De facto Director and/or Officer Liability

[148] As with BFM, Winick directed McCarthy to incorporate Liquid Gold and open the Liquid Gold Accounts in Ontario. Winick also directed McCarthy's disbursement of funds from Liquid Gold Accounts, including investor funds. Although Winick was not formally appointed as an officer or director of Liquid Gold during the Liquid Gold Material Time, he participated in the

major business decisions of the company for the purposes of the Liquid Gold Scheme. One of the major initiatives undertaken by him was to raise capital by way of offering Liquid Gold securities to members of the public through Denver Gardner.

[149] I conclude that Winick was the directing mind and management of Liquid Gold and that he authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by Liquid Gold. As a result, Winick is deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

C. Winick and the Nanotech Letter Scheme

i) Unregistered Trading and Illegal Distribution

[150] In early 2009, Winick called Kolt Curry and provided him with the content of the Nanotech Letter. The Draft Nanotech Letter was authored by Winick. Winick also sent Kolt Curry a list of approximately 10,000 addresses in Europe, Asia, Africa and Australia to which Kolt Curry was to send the letter.

[151] The Nanotech Letter enclosed 5,000 Nanotech shares and 25,000 Nanotech purchase warrants per recipient and told potential investors that if they wished to buy more shares in Nanotech, by exercising their share purchase warrants, they could send their funds directly to the address of AHST Nevada. Kolt Curry admitted that he signed the Nanotech share certificates on behalf of the AHST Entities as transfer agent. I conclude that the Nanotech shares enclosed in the Nanotech Letter had not been previously issued.

[152] Approximately 10,000 copies of the Nanotech Letter were in fact sent to addresses provided by Winick. McCarthy assisted Winick and Kolt Curry to continue sending the Nanotech Letter and enclosed share certificates after they left Ontario.

[153] Winick acted in furtherance of trading Nanotech shares by:

- providing the content for the Nanotech Letter, which included enclosure and distribution of Nanotech shares and purchase warrants;
- providing the list of addresses to which the Nanotech Letters were sent for the purpose of soliciting purchases of Nanotech shares through the purchase warrants; and
- arranging for the printing of the Nanotech Letter and certificates and directing McCarthy to pay for the costs in furtherance of distributing the Nanotech shares and purchase warrants.

[154] Winick was not registered to trade in securities during the Nanotech Material Time. Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act*.

[155] Winick acted in furtherance of trades in Nanotech securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the Nanotech securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of Nanotech contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Prohibited Representations

[156] To make a finding pursuant to subsection 44(2) of the *Act*, I must be satisfied that the respondent made a statement about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the respondent, which is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances.

[157] While the statements made in the Nanotech Letter were false, it is not clear from the Nanotech Letter that the statements were relevant to a reasonable investor in deciding whether to enter into a trading relationship with Winick. Having found below that Winick was not a *de facto* director and/or officer of the AHST Entities, the misstatements made on behalf of the AHST Entities cannot be said to have been made to further or maintain a trading or advising relationship between the potential investor and Winick. If anything, the misrepresentation would be relevant to a reasonable investor considering a trading or advising relationship with the AHST Entities and their principals.

[158] I am unable to find that Winick contravened subsection 44(2) of the *Act*.

iii) De facto Director and/or Officer Liability

[159] Kolt Curry incorporated AHST Nevada at Winick's suggestion, to serve Winick's shell companies. With Winick's assistance, Kolt Curry registered AHST Nevada as a transfer agent with the SEC. However, Kolt Curry also unequivocally stated that the AHST Entities were his own companies, he confirmed that he signed as president, even after his wife was registered in that role.

[160] Kolt Curry confirmed that Winick was the only person he ever dealt with at Nanotech. In early 2009, Winick asked Kolt Curry to prepare the Nanotech Letter based on information Winick provided. Winick also sent Kolt Curry a list of approximately 10,000 addresses to which he was to send the letter. Winick also directed McCarthy to pay the printing costs of the Nanotech Letters from the accounts of companies he controlled through her.

[161] Although Winick was not formally appointed as an officer or director of Nanotech during the Nanotech Material Time, he participated in major business decisions of the Nanotech for the purposes of the Nanotech Letter Scheme. One of the major initiatives undertaken by him was to distribute Nanotech shares and raise capital by offering Nanotech purchase warrants to members of the public through the AHST Entities.

[162] I conclude that Winick was the *de facto* director and/or officer of Nanotech and that he authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by Nanotech. As a result, Winick is deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[163] Despite Winick's involvement with the creation and registration of AHST Nevada and his apparent use of the AHST Entities, through Kolt Curry, to serve his companies, I cannot conclude that Winick was a *de facto* director or officer of the AHST Entities. Kolt Curry's interview with Staff made it apparent that Kolt Curry was in control of the AHST Entities, even after he was officially removed from corporate documents. It is not clear on the evidence that Winick directed or controlled the AHST Entities.

VII. CONCLUSION

[164] The BFM and Liquid Gold schemes I find to be entirely fraudulent. The activities of those involved in the Schemes include unregistered trading and illegal distributions.

[165] For the reasons given, I make the following findings in respect of Winick:

(a) Winick traded in and engaged in or held himself out as engaging in the business of trading in securities of BFM, Liquid Gold and Nanotech without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and contrary to the public interest;

(b) Winick distributed securities of BFM, Liquid Gold and Nanotech without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to subsection 53(1) of the *Act* and contrary to the public interest;

(c) Winick, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to securities of BFM and Liquid Gold, that he knew or reasonably ought to have known perpetrated a fraud on any person or company contrary to subsection 126.1(b) of the *Act* and contrary to the public interest; and

(d) Winick, as *de facto* director and/or officer of BFM, Liquid Gold and Nanotech, did authorize, permit or acquiesce in the non-compliance with Ontario securities law by respective employees, agents or representatives of those companies and Winick is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[166] I find that Greg Curry, as director of BFM, did permit or acquiesce in the non-compliance with Ontario securities law by BFM or by the employees, agents or representatives of BFM and Greg Curry is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[167] For the reasons outlined above, I will also issue an order dated August 7, 2013 which sets down the date for the hearing with respect to sanctions and costs in this matter. That order will also extend the temporary cease order of the Commission with respect to the Winick, dated March 23, 2012, until the conclusion of the proceeding.

Dated this 7th day of August, 2013.

"James D. Carnwath"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
New Sage Energy Corp.	07-Aug-13	19-Aug-13		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Auriga Gold Corp.	01 Aug 13	13 Aug 13			
Majescor Resources Inc.	15 Jul 13	26 Jul 13	26 Jul 13		

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
07/19/2013 to 07/26/2013	7	Barclays Bank PLC - Notes	443,000.00	N/A
02/21/2013	7	CareVest First MIC Fund Inc. - Preferred Shares	42,500.00	N/A
12/14/2012	1	Emerging Markets Local Currency Debt Fund - Common Shares	4,930,000.00	33,552.54
07/25/2013	1	Fortress MSR Opportunities Fund II A L.P. - Limited Partnership Interest	257,075,000.00	N/A
05/01/2012 to 04/30/2013	1	Franklin Templeton 2020 Conservative Portfolio - Trust Units	3,272,198.03	N/A
05/01/2012 to 04/30/2013	1	Franklin Templeton 2020 Growth Portfolio - Trust Units	603,690.15	66,157.93
05/01/2012 to 04/30/2013	1	Franklin Templeton 2020 Moderate Portfolio - Trust Units	4,288,175.99	438,528.73
05/01/2012 to 04/30/2013	1	Franklin Templeton 2030 Conservative Portfolio - Trust Units	3,453,842.18	334,092.26
05/01/2012 to 04/30/2013	1	Franklin Templeton 2030 Growth Portfolio - Trust Units	1,083,783.57	120,223.28
05/01/2012 to 04/30/2013	1	Franklin Templeton 2030 Moderate Portfolio - Trust Units	4,935,028.82	524,590.68
05/01/2012 to 04/30/2013	1	Franklin Templeton 2040 Conservative Portfolio - Trust Units	2,463,343.37	234,048.11
05/01/2012 to 04/30/2013	1	Franklin Templeton 2040 Growth Portfolio - Trust Units	1,564,464.20	178,834.62
05/01/2012 to 04/30/2013	1	Franklin Templeton 2040 Moderate Portfolio - Trust Units	2,780,470.89	310,371.68
05/01/2012 to 04/30/2013	1	Franklin Templeton 2045 Conservative Portfolio - Trust Units	56,531.12	5,341.27
05/01/2012 to 04/30/2013	1	Franklin Templeton 2045 Growth Portfolio - Trust Units	24,058.83	2,364.42
05/01/2012 to 04/30/2013	1	Franklin Templeton 2045 Moderate Portfolio - Trust Units	55,138.73	5,220.98
05/01/2012 to 04/30/2013	1	Franklin Templeton Retirement Portfolio - Trust Units	1,247,120.30	122,415.27
07/19/2013	1	GreenOak US Feeder II L.P. - Limited Partnership Interest	51,815,000.00	N/A
07/22/2013	1	Groupo Financiero Banorte S.A.B. de C.V. - Common Shares	4,432,500.00	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
03/23/2012	1	J.P. Morgan Bank Canada - Certificates	6,100,000.00	N/A
02/22/2012	6	J.P. Morgan Chase & Co. - Certificates	1,300,000.00	N/A
12/13/2012	1	J.P. Morgan Structured Products B.V. - Certificates	102,675.00	1.00
07/05/2012 to 06/07/2013	9	Large Cap Disciplined Equity Fund - Units	1,895,192.73	N/A
02/19/2013 to 03/28/2013	24	MCF Securities Inc. - Units	1,250,432.15	1,250,432.15
07/12/2013	1	Morrison Laurier Mortgage Corporation - Preferred Shares	50,000.00	N/A
02/01/2013	4	New Haven Mortgage Income Fund (1) Inc. - Common Shares	460,000.00	N/A
05/16/2013 to 05/25/2013	9	Newport Balanced Fund - Trust Units	348,405.09	3,164.19
07/18/2013 to 07/27/2013	57	Newport Balanced Fund - Trust Units	6,484,816.17	558,624.15
07/08/2013 to 07/17/2013	82	Newport Balanced Fund - Trust Units	3,191,508.03	23,792.36
05/16/2013 to 05/25/2013	6	Newport Canadian Equity Fund - Trust Units	269,408.72	1,003.32
05/16/2013 to 05/25/2013	3	Newport Fixed Income Fund - Trust Units	210,000.00	798.22
07/18/2013 to 07/27/2013	4	Newport Fixed Income Fund - Trust Units	1,397,643.13	13,236.20
07/08/2013 to 07/17/2013	6	Newport Fixed Income Fund - Trust Units	670,132.00	6,347.99
05/16/2013 to 05/25/2013	10	Newport Global Equity Fund - Trust Units	155,868.37	2,137.65
07/18/2013 to 07/27/2013	66	Newport Global Equity Fund - Trust Units	3,579,857.95	47,183.54
07/08/2013 to 07/17/2013	115	Newport Global Equity Fund - Trust Units	5,333,128.59	67,467.71
07/18/2013 to 07/27/2013	23	Newport North American Equity Fund - Trust Units	908,781.77	6,027.00
07/08/2013 to 07/17/2013	26	Newport North American Equity Fund - Trust Units	2,000,118.45	12,798.17
05/16/2013 to 05/25/2013	7	Newport Yield Fund - Trust Units	472,800.00	2,183.30
07/18/2013 to 07/27/2013	20	Newport Yield Fund - Trust Units	2,733,542.14	22,073.40
07/08/2013 to 07/17/2013	21	Newport Yield Fund - Units	1,302,300.00	10,544.80

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
07/23/2013	10	North American Palladium Ltd. - Flow-Through Shares	10,000,000.82	8,590,328.00
07/17/2013 to 07/19/2013	11	Phoenix Capital Fund - US - Trust Units	126,720.00	N/A
01/06/2012 to 02/01/2013	26	Secure Capital MIC Inc. - Preferred Shares	2,237,985.77	2,237,985.00
07/31/2012 to 09/28/2012	2	Small/Mid Cap Equity Fund - Units	6,254.38	N/A
03/16/2013	2	The Toronto Dominion Bank - Notes	10,000,000.00	2.00
08/15/2012	1	Townsend Real Estate Alpha Fund I L.P. - Limited Partnership Interest	22,500,000.00	1.00
07/22/2013 to 07/26/2013	31	UBS AG, Jersey Branch - Certificates	13,251,673.68	31.00
02/26/2013	7	UMC Financial Management Inc. - Limited Partnership Interest	1,500,000.00	N/A
07/23/2013	19	Wescan Energy Corp. - Units	435,886.60	8,302,602.00
08/31/2012 to 06/28/2013	3	World Equity Ex-US Fund - Units	429,371.56	N/A
06/07/2012 to 10/18/2012	14	World Equity Ex-US Fund - Units	12,987,131.76	N/A
07/23/2013	5	Pulis Registered Capital 1 Inc. - Bonds	317,100.00	3,171.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Alimentation Couche-Tard Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 5, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
Cdn.$*
Cdn.$* principal amount of *% Series * Senior Unsecured Notes Due *
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2091906

Issuer Name:
Aumento Capital IV Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated August 8, 2013
NP 11-202 Receipt dated August 8, 2013
Offering Price and Description:
Minimum of $420,000 (700,000.00 Common Shares)
Maximum of $600,000.00 (1,000,000 Common Shares)
Price: $0.60 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
David Danzigar
Project #2093518

Issuer Name:
Bioniche Life Sciences Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
MAXIMUM OFFERING $7,500,000.00 (* UNITS)
MINIMUM OFFERING $5,000,000.00 (* UNITS)
Price: $* per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2092085

Issuer Name:
BlackRock Balanced Portfolio
BlackRock Conservative Portfolio
BlackRock Defensive Portfolio
BlackRock Diversified Monthly Income Portfolio
BlackRock Growth Portfolio
BlackRock MaxGrowth Portfolio
BlackRock Security Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated August 7, 2013
NP 11-202 Receipt dated August 7, 2013
Offering Price and Description:
Series A, Series F and Series I Mutual Fund Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2092555

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated August 8, 2013
NP 11-202 Receipt dated August 8, 2013
Offering Price and Description:
$1,000,000,000.00 - Units, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2093287

Issuer Name:
Element Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 7, 2013
Offering Price and Description:
$300,566,875.00
29,612,500 Common Shares Issuable on Exercise of Outstanding Special Warrants
Per Special Warrant $10.15

Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2092456

Issuer Name:
Fidelity Global High Yield Investment Trust
Fidelity International Growth Investment Trust
Fidelity North American Dividend Private Pool
Fidelity U.S. Balanced Private Pool
Fidelity U.S. Multi-Cap Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated August 9, 2013
NP 11-202 Receipt dated August 9, 2013
Offering Price and Description:
Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5, Series F8 and Series O Securities
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2094138

Issuer Name:
Global Dividend Growers Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated August 9, 2013
NP 11-202 Receipt dated
Offering Price and Description:
Maximum: $* _* Offered Units
Price: $ * per Offered Unit
Minimum Purchase: 100 Offered Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Macquarie Private Wealth Inc.
Raymond James Ltd.
GMP Securities L.P.
Mackie Research Capital Corporation
Middlefield Capital Corporation
Dundee Securities Ltd.
Promoter(s):
Middlefield Limited
Project #2094282

Issuer Name:
Merus Labs International Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
$80,000,000.00
Debt Securities
Common Shares
Subscription Receipts
Warrants
Preferred Shares
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2092339

Issuer Name:
Pattern Energy Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form PREP Prospectus dated August 9, 2013
NP 11-202 Receipt dated August 12, 2013
Offering Price and Description:
US$ * - * Class A Common Shares
Price: US$ * per Class A common share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
MORGAN STANLEY CANADA LIMITED
Promoter(s):
PATTERN ENERGY GROUP LP
Project #2094680

Issuer Name:
Plymouth Realty Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 8, 2013
Offering Price and Description:
Minimum of 3,000,000 common shares and up to a Maximum of 6,000,000 common shares
PRICE: $0.10 PER COMMON SHARE
Minimum of $300,000 and up to a Maximum of $600,000
Underwriter(s) or Distributor(s):
M PARTNERS INC.
Promoter(s):
-
Project #2093488

Issuer Name:
Sophiris Bio Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 2, 2013
NP 11-202 Receipt dated August 2, 2013
Offering Price and Description:
US$65,000,000.00
5,000,000 Common Shares
US$13.00 per Common Share
Underwriter(s) or Distributor(s):
CITIGROUP GLOBAL MARKETS CANADA INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #2091721

Issuer Name:
Sophiris Bio Inc. (formerly Protox Therapeutics Inc.)
Principal Regulator - British Columbia
Type and Date:
Second Amended and Restated Preliminary Short Form Prospectus dated August 12, 2013
NP 11-202 Receipt dated August 12, 2013
Offering Price and Description:
US$65,000,000.00 - 5,000,000 Common Shares
Price: US$13.00 per Common Share
Underwriter(s) or Distributor(s):
CITIGROUP GLOBAL MARKETS CANADA INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #2091721

Issuer Name:
Agellan Commercial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
$500,000,000.00
Units
Debt Securities

Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2087926

Issuer Name:
AGF U.S. AlphaSector Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 8, 2013
NP 11-202 Receipt dated August 9, 2013
Offering Price and Description:
Mutual Fund Series, Series F, Series O and Series Q shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
AGF Investments Inc.
Project #2082025

Issuer Name:
Argent Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated August 7, 2013
NP 11-202 Receipt dated August 7, 2013
Offering Price and Description:
$75,072,000.00
7,360,000 UNITS
Price $10.20 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
FIRSTENERGY CAPITAL CORP.
Promoter(s):
Aston Hill Financial Inc.
Project #2089663

Issuer Name:
BMO Fixed Income ETF Portfolio (Series A, F, I and Advisor Series)
BMO Security ETF Portfolio (Series A, F, I and Advisor Series)
BMO Conservative ETF Portfolio (Series A, F, I and Advisor Series)
BMO Balanced ETF Portfolio (Series A, F, I and Advisor Series)
BMO Growth ETF Portfolio (Series A, F, I and Advisor Series)
BMO Equity Growth ETF Portfolio (Series A, F, I and Advisor Series)
BMO SelectTrust™ Fixed Income Portfolio (Series A, I and Advisor Series)
BMO U.S. Dollar Dividend Fund (Series A, F, I and Advisor Series)
BMO U.S. Dollar Balanced Fund (Series A, F, I and Advisor Series)
BMO Emerging Markets Bond Fund (Series A, F, I and Advisor Series)
BMO Preferred Share Fund (Series A, F, I, BMO Private Preferred Share Fund Series O and
Advisor Series)
BMO Tactical Dividend ETF Fund (Series A, F and Advisor Series)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated July 25, 2013 to the Simplified Prospectuses dated March 28, 2013
NP 11-202 Receipt dated August 8, 2013
Offering Price and Description:
Series A, F, I, Advisor , T5, T6 T8, H and C Series
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Guardian Group of Funds Ltd.
Promoter(s):
BMO Investments Inc.
Project #2007623

Issuer Name:
Colossus Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
$33,000,000.00
44,000,000 Units
Price: $0.75 per Unit
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
DUNDEE SECURITIES LTD.
CANACCORD GENUITY CORP.
CLARUS SECURITIES INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2086710

Issuer Name:
Portland Global Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated July 4, 2013 to the Simplified Prospectus and Annual Information Form dated October 1, 2012
NP 11-202 Receipt dated August 8, 2013
Offering Price and Description:
Series a, Series F, Series G and Series T units
Underwriter(s) or Distributor(s):
Portland Private Wealth Services Inc.
Promoter(s):
Portland Investment Counsel Inc.
Project #1946743

Issuer Name:
Purpose Diversified Real Asset Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 8, 2013
NP 11-202 Receipt dated August 12, 2013
Offering Price and Description:
ETF Shares, Series A, Series F and Series I shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Purpose Investments Inc.
Project #2055508

Issuer Name:
Redwood Equity Growth Class
Redwood Income Growth Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated August 6, 2013
NP 11-202 Receipt dated August 9, 2013
Offering Price and Description:
Series A anf F shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2083791

Issuer Name:
Tricon Capital Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 6, 2013
NP 11-202 Receipt dated August 6, 2013
Offering Price and Description:
34,150,000 Common Shares
Underwriter(s) or Distributor(s):
GMP Securities L.P.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Market Inc.
TD Securities Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2087970

Issuer Name:
WB III Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated August 12, 2013
NP 11-202 Receipt dated August 12, 2013
Offering Price and Description:
$500,000.00 (5,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
Ronald D. Schmeichel
Project #2086435

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Chapter 12

Registrations

THERE ARE NO ITEMS FOR THIS WEEK.

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Markeplaces

13.2.1 Aequitas Innovations Inc. – OSC Staff Notice and Request for Comment

OSC STAFF NOTICE AND REQUEST FOR COMMENT REGARDING

PROPOSED STRUCTURE OF TRADING FACILITIES

FOR A NEW EXCHANGE PROPOSED TO BE ESTABLISHED BY

AEQUITAS INNOVATIONS INC.

On August 13, 2013, OSC staff published a notice and request for comment on the OSC website pertaining to a proposal by Aequitas Innovations Inc. (Aequitas) for a new equities exchange (Notice). The Notice outlines and seeks specific comment on certain aspects of the proposed structure for Aequitas' trading facilities.

The comment period for the Notice will end on Friday, September 27, 2013. For additional details, please refer to the Notice published on the OSC website (http://www.osc.gov.on.ca).

13.3 Clearing Agencies

13.3.1 Notice of Effective Date – Technical Amendments to CDS Procedures for Housekeeping Changes – July 2013

NOTICE OF EFFECTIVE DATE – TECHNICAL AMENDMENTS TO CDS PROCEDURES

HOUSEKEEPING CHANGES – July 2013

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The following amendments are housekeeping changes made in the ordinary course of review of CDS's Participant Procedures, and are required for correction or stylistic enhancement.

The following changes are common to both the English and French language versions of the CDS manuals/forms:

DTC Direct Link Participant Procedures

- Section 4.1 – A correction to the daily collateral contribution section related to DTC Rule Filing SR-DTC-2013-01, effective June 21, 2013.

Depositary and Paying Agent Procedures

- Overview – Removal of a defunct department name from the manual.
- Section 1.2.1 – A correction to the Event Codes and Event Names introduced with the Due Bills project in 2011

U.S. Deposit and Withdrawal Procedures

- Chapter 2, Requesting security withdrawals – A correction to the description of the Direct Registration Option field introduced in 2011.

New York Link Participant Procedures

- Section 7.2 – A correction to the daily collateral contribution section related to DTC Rule Filing SR-DTC-2013-01, effective June 21, 2013.

CDSX Procedures and User Guide

- Section 2.2 – A separation of the trade transaction type to illustrate accounts eligible for exchange and non-exchange trades.
- Chapter 2, Inquiring on funds account – A description added to identify what makes up an unused line of credit funds amount.

Pledge and Settlement Procedures

- Chapter 6, Capturing Collateral or Funds – A correction on how to capture a security collateral item.

CDS Reporting Procedures

- Chapter 11 – Descriptions added for the Unconfirmed Deposit Report-24 Hour(custodian) and Unconfirmed Withdrawal Report-24 Hour(custodian) reports, implemented as part of the creation of a 24 Hour service level to the TRAX service in 2012.
- Section 25.3 – A description added to the Deleted Transaction report section to include trades deleted by SOLA.

Participating in CDS Services

- Sections 3.9, 3.9.1 – A grammatical correction to the name of the TRAX transfer requests service.
- Section 10.1 – A clarification added to the description of pending transactions reconsidered for settlement.

- Chapter 11, CAPS – An updated version of the Company Cap Allocation Detail screen to show the correct spacing between fields.

Trade and Settlement Procedures

- Chapter 8, Settlement of Trades – Minor corrections to the priority list for trade settlements.

Network Services Offering Forms – CDSX846/847/848

- Minor corrections to the application forms for CDS network services.

Additional amendments have been included in the French language versions to reflect terminology or linguistic changes, some of which have been requested by the *Autorité des marchés financiers.*

CDS procedure amendments are reviewed and approved by CDS's strategic development review committee (SDRC). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on July 25, 2013.

The proposed procedure amendments are available for review and download on the User Documentation page on the CDS website at www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed in this Notice are considered technical in nature, involving matters of routine operating procedures and administrative practices relating to the settlement services, to ensure consistency with a DTC rule, and to correct or enhance inaccurate referencing.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENTS

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*, and by the British Columbia Securities Commission pursuant to section 24(d) of the British Columbia *Securities Act*, and by the *Autorité des marchés financiers* pursuant to Section 169 of the Quebec *Securities Act*. The *Autorité des marchés financiers* has authorized CDS to carry on clearing activities in Québec pursuant to section 169 of the Quebec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The *Autorité des marchés financiers*, the Bank of Canada, the British Columbia Securities Commission and the Ontario Securities Commission are collectively referred to as the "Recognizing Regulators".

CDS has determined that these amendments will become effective on September 16, 2013.

D. QUESTIONS

Questions regarding this notice may be directed to:

Laura Ellick
Manager, Business Systems

CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: (416) 365-3872
Email: lellick@cds.ca

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Chapter 25

Other Information

25.1 Approvals

25.1.1 TriDelta Investment Counsel Inc. – s. 213(3)(b)

Headnote:

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited:

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

July 26, 2013

Miller Thompson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Attention: Susan Han

Dear Sirs/Medames:

Re: TriDelta Investment Counsel Inc. (the "Applicant")

Application under section 213(3)(b) of the Loan and Trust Corporations Act (ON) dated May 29, 2013

Application No. 2013/0336

Further to your application dated May 29, 2013 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of TriDelta High Income Balanced Fund and any other future mutual fund trusts that the Applicant may establish and manage from time to time, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of TriDelta High Income Balanced Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Sarah B. Kavanagh"

"Deborah Leckman"

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