**The Ontario Securities Commission**

# OSC Bulletin

November 14, 2013

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

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# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**November 14, 2013**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

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

Unless otherwise indicated in the date column, all hearings will take place at the following location:

Ontario Securities Commission
Cadillac Fairview Tower
20 Queen Street West, 17th Floor
Toronto, Ontario
M5H 3S8

Telephone: 416-597-0681 Telecopier: 416-593-8348

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| Lawrence E. Ritchie, Vice Chair | — | LER |
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| Christopher Portner | — | CP |
| Judith N. Robertson | — | JNR |
| AnneMarie Ryan | — | AMR |
| Charles Wesley Moore (Wes) Scott | — | CWMS |

**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| November 18, November 20, November 22 – December 2, December 4-5, December 9-16, December 18-20, 2013, January 15-27, January 30 – February 7, March 3-7 and April 28-30, 2014<br><br>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**<br><br>s. 127<br><br>C. Price/A. Pelletier in attendance for Staff<br><br>Panel: EPK/DL/AMR |
| November 21, 2013<br><br>10:00 a.m. | **Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: JEAT |
| November 22, 2013<br><br>10:00 a.m. | **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**<br><br>s. 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: VK |
| November 26, 2013<br><br>2:00 p.m. | **Children's Education Funds Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |

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|---|---|---|
| November 28-29, 2013<br><br>10:00 a.m. | **MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric**<br><br>s. 127 and 127(1)<br><br>D. Ferris in attendance for Staff<br><br>Panel: MGC/CP |
| December 5, 2013<br><br>10:00 a.m. | **Quadrexx Asset Management Inc., Quadrexx Secured Assets Inc., Offshore Oil Vessel Supply Services LP, Quibik Income Fund and Quibik Opportunities Fund**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| December 9, 2013<br><br>10:00 a.m. | **Bradon Technologies Ltd., Joseph Compta, Ensign Corporate Communications Inc. and Timothy German**<br><br>s. 127 and 127.1<br><br>C. Weiler in attendance for Staff<br><br>Panel: JEAT |
| December 10, 2013<br><br>10:00 a.m. | **Andrea Lee Mccarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)**<br><br>s. 127<br><br>J. Feasby/C. Watson in attendance for Staff<br><br>Panel: JDC |
| December 12, 2013<br><br>10:00 a.m. | **Pro-Financial Asset Management Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| December 16, 2013<br><br>10:00 a.m. | **Heritage Education Funds Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| December 17, 2013<br><br>3:30 p.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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: EPK |
| January 6, 2014<br><br>2:00 p.m. | **Kevin Warren Zietsoff**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |
| January 13, January 15-27, January 29 – February 10, February 12-14 and February 18-21, 2014<br><br>10:00 a.m. | **International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll.**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: TBA |
| January 27, 2014<br><br>10:00 a.m. | **Welcome Place Inc., Daniel Maxsood also known as Muhammad M. Khan, Tao Zhang, and Talat Ashraf**<br><br>s. 127<br><br>G. Smyth in attendance for Staff<br><br>Panel: TBA |

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|---|---|
| February 3, 2014<br><br>10:00 a.m. | **Tricoastal Capital Partners LLC, Tricoastal Capital Management Ltd. and Keith Macdonald Summers**<br><br>s. 127<br><br>C Johnson/G. Smyth in attendance for Staff<br><br>Panel: TBA |
| February 10 and February 12-18, 2014<br><br>10:00 a.m. | **Portfolio Capital Inc., David Rogerson and Amy Hanna-Rogerson**<br><br>s. 127<br><br>J. Lynch in attendance for Staff<br><br>Panel: TBA |
| March 17-24 and March 26, 2014<br><br>10:00 a.m. | **Newer Technologies Limited, Ryan Pickering and Rodger Frey**<br><br>s. 127 and 127.1<br><br>B. Shulman in attendance for staff<br><br>Panel: TBA |
| March 27, 2014<br><br>10:00 a.m. | **AMTE Services Inc., Osler Energy Corporation, Ranjit Grewal, Phillip Colbert and Edward Ozga**<br><br>s. 127<br><br>C. Rossi in attendance for Staff<br><br>Panel: JEAT |
| March 31 – April 7, April 9-17, April 21 and April 23-30, 2014<br><br>10:00 a.m. | **Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Educational Trust Foundation and Margaret Singh**<br><br>s. 127 and 127.1<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: TBA |
| March 31 – April 7 and April 9-11, 2014<br><br>10:00 a.m. | **Ronald James Ovenden, New Solutions Capital Inc., New Solutions Financial Corporation and New Solutions Financial (Ii) Corporation**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: TBA |
| April 14-15, April 21, April 23 – May 5 and Ma 7, 2014<br><br>10:00 a.m. | **Ground Wealth Inc., Michelle Dunk, Adrion Smith, Joel Webster, Douglas DeBoer, Armadillo Energy Inc., Armadillo Energy, Inc., and Armadillo Energy, LLC (aka Armadillo Energy LLC)**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |
| May 5, May 7-16, May 21 – June 2 and June 4-12, 2014<br><br>10:00 a.m. | **Fawad Ul Haq Khan and Khan Trading Associates Inc. carrying on business as Money Plus**<br><br>s. 60 and 60.1 of the *Commodity Futures Act*<br><br>T. Center in attendance for Staff<br><br>Panel: TBA |

| | | |
|---|---|---|
| June 2, 4-6, 10-16, 18-20, 24-30, July 3-4, 8-14, 16-18, 22-25, August 11, 13-15, 19-25, 27-29, September 2-8, 10-15, October 15-17, 28-31, November 3, 5-7, 11, 19-21, 25-28, December 1, 3-5, 9-15, 17-19, 2014, January 7-12, 14-16, 20-26, 28-30, February 3-9, 11-13 and February 17-20, 2015<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA | |
| September 15-22, September 24, September 29 – October 6, October 8-10, October 14-20, October 22 – November 3 and November 5-7, 2014<br><br>10:00 a.m. | **Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)**<br><br>s. 127<br><br>T. Center/D. Campbell in attendance for Staff<br><br>Panel: TBA | |
| November 11-17, 19-21, November 25 – December 1, December 3-5, 9-15, 17-19, 2014, January 14-16, 20-26, 28-30, February 3-9, 11-13, 17-23, 25-27 and March 3-6, 2015<br><br>10:00 a.m. | **Ernst & Young LLP**<br><br>s. 127 and 127.1<br><br>Y. Chisholm / H. Craig in attendance for Staff<br><br>Panel: TBA | |
| | | May 1, 2015<br><br>10:00 a.m. | **Ernst & Young LLP (Audits of Zungui Haixi Corporation)**<br><br>s. 127 and 127.1<br><br>J. Friedman in attendance for Staff<br><br>Panel: TBA |
| | | In writing | **Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: EPK |
| | | In writing | **Blackwood & Rose Inc., Steven Zetchus and Justin Kreller (also known as Justin Kay)**<br><br>s. 37, 127 and 127.1<br><br>C. Rossi in attendance for Staff<br><br>Panel: JEAT |
| | | In writing | **Bunting & Waddington Inc., Arvind Sanmugam and Julie Winget**<br><br>s. 127 and 127.1<br><br>M. Britton/A. Pelletier in attendance for Staff<br><br>Panel: EPK |
| | | In writing | **Global Consulting and Financial Services, Global Capital Group, Crown Capital Management Corp., Michael Chomica, Jan Chomica and Lorne Banks**<br><br>s. 127<br><br>C. Rossi in attendance for Staff<br><br>Panel: AJL |

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 **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 **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 **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

J. Friedman in attendance for Staff

Panel: TBA

TBA **Jowdat Waheed and Bruce Walter**

s. 127

J. Lynch in attendance for Staff

Panel: TBA

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 **Conrad M. Black, John A Boultbee and Peter Y. Atkinson**

s. 127 and 127.1

J. Friedman in attendance for Staff

Panel: TBA

TBA **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: TBA

TBA **North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **David Charles Phillips and John Russell Wilson**

s. 127

Y. Chisholm/B. Shulman in attendance for Staff

Panel: TBA

TBA **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

TBA **Weizhen Tang**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert Cranston**

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

### 1.1.2 Notice of Redaction – York Rio Resources Inc. et al.

**NOTICE OF REDACTION**

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

**AND**

**IN THE MATTER OF
YORK RIO RESOURCES INC.,
BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ,
PETER ROBINSON, ADAM SHERMAN, RYAN DEMCHUK,
MATTHEW OLIVER, GORDON VALDE AND
SCOTT BASSINGDALE**

(2013), 36 O.S.C.B. 3499. The Reasons and Decision issued on March 25, 2013 were redacted by Order of the Panel.

Dated: November 6, 2013

## 1.3 News Releases

### 1.3.1 OSC Publishes Annual Summary Report to Assist Registrants

**FOR IMMEDIATE RELEASE
November 7, 2013**

**OSC PUBLISHES ANNUAL SUMMARY REPORT
TO ASSIST REGISTRANTS**

**TORONTO** – The Ontario Securities Commission (OSC) today published an Annual Summary Report, which sets out expectations for firms and individuals directly regulated by the OSC (including exempt market dealers, portfolio managers, and investment fund managers).

Staff Notice 33-742 – *2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, is designed to enhance the understanding by firms and individuals of their important obligations under Ontario securities law.

"This report is a key part of our ongoing outreach to Ontario registrants," said Debra Foubert, Director of Compliance and Registrant Regulation at the OSC. "We strongly encourage registrants to read and use this report in order to ensure they are fully compliant with our requirements."

The report was prepared by the OSC's Compliance and Registrant Regulation Branch, which registers and oversees approximately 1,300 firms and 66,000 individuals (together, registrants) that trade or advise in securities or commodity futures, or act as investment fund managers.

The report covers:

- new and proposed rules impacting registrants;
- trends in deficiencies from compliance reviews of registrants;
- suggested practices to address compliance deficiencies;
- current trends in registration issues; and,
- recent registrant misconduct cases of interest.

The OSC is a regulatory body responsible for overseeing Ontario's capital markets. The OSC administers and enforces Ontario's securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practice and to foster fair and efficient capital markets and confidence in capital markets.

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### 1.3.2 OSC Announces New Members of Investor Advisory Panel

**FOR IMMEDIATE RELEASE**
**November 1, 2013**

**OSC ANNOUNCES NEW MEMBERS OF INVESTOR ADVISORY PANEL**

**TORONTO** – The Ontario Securities Commission (OSC) has announced four new members of its Investor Advisory Panel and the Panel's new Chair. The Panel comments on OSC proposals, including rules, policies and the annual Statement of Priorities, brings forward policy issues for consideration and advises on the effectiveness of the OSC's investor protection initiatives.

The new members joining the Panel will each serve a two-year term:

| | |
|---|---|
| Jane Ambachtsheer | Partner of Mercer, where she leads their global responsible investment business. |
| Harold Geller | Leader in Financial Loss Recovery Group of McBride Bond Christian LLP. |
| Alison Knight | Past senior executive for companies in the financial services sector and board member for numerous professional, regulatory and not for profit organizations including the Consumers Council of Canada. |
| Ursula Menke | Retired Commissioner, Financial Consumer Agency of Canada. |

The Panel has been expanded to nine members from eight. The new members join continuing members Paul Bates, Connie Craddock, Alan Goldhar, Ken Kivenko and Cary List. Following the completion of his one year term, Paul Bates has decided not to continue as Chair of the Panel due to the demands of his other professional obligations. "We would like to extend our thanks to Mr. Bates for his effective leadership of the Panel over the past year and are delighted that he will remain to offer his expertise and perspective to the Panel," said Mary Condon, Vice-Chair of the OSC. Ms. Craddock has been appointed Chair of the Panel and will serve a one-year term.

"The Panel has become an important voice for investors in the regulatory process, and the new members have been selected to ensure that the Panel continues to represent a broad range of relevant experience, skills, knowledge and perspectives," said Mary Condon. "I am pleased that Connie Craddock has agreed to serve as Chair of the Panel." As a former senior communications executive at the Investment Industry Regulatory Organization of Canada (IIROC), Ms. Craddock has extensive knowledge of the capital markets and issues related to Canadian investors.

Full biographical information on all Panel members, along with details on IAP meetings and other activity is available in the Investor Advisory Panel section of the OSC website.

**For Media Inquiries:**

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media_inquiries@osc.gov.on.ca

### 1.3.3 Vernon Smith Charged Quasi Criminally with Unregistered Trading, Unregistered Advising and Breaching OSC Cease Trade Orders

**FOR IMMEDIATE RELEASE**
**November 6, 2013**

**VERNON SMITH CHARGED QUASI CRIMINALLY**
**WITH UNREGISTERED TRADING, UNREGISTERED ADVISING AND**
**BREACHING OSC CEASE TRADE ORDERS**

**TORONTO** – The Ontario Securities Commission (OSC) announced today that Vernon Smith of Barrie, Ontario has been charged with alleged breaches of s. 122(1)(c) of the *Securities Act* (Ontario) following an investigation by the OSC's Joint Serious Offences Team (JSOT).

Smith was charged with one count of trading without registration and one count of advising without registration. Both are required under the *Securities Act*.

Smith was also charged with trading in securities of Ticker Communications when he was subject to a temporary cease trade order by the Commission dated November 22, 2007, and one count of trading in securities of Ticker at a time when he was prohibited from trading by order of the Commission dated November 17, 2010.

"We are pleased to see momentum by the JSOT, working jointly with the RCMP in this new alliance to protect investors from harm. This case demonstrates that the JSOT will aggressively pursue offenders who do not abide by our cease trade orders," said Tom Atkinson, Director of Enforcement at the OSC.

The first court appearance for Smith in this matter is scheduled to take place December 11, 2013 at 9:00 a.m. in Courtroom # 111 at Old City Hall – Ontario Court of Justice, 60 Queen Street West, Toronto, Ontario.

JSOT was established in May 2013 by the OSC as an enforcement partnership between the OSC and the Royal Canadian Mounted Police Financial Crime program. The primary objective of JSOT is to protect investors and further enhance confidence in the Canadian capital markets through effective enforcement. This will be accomplished through collaborative investigations of serious violations of the law using the provisions of the Ontario Securities Act and/or the Criminal Code of Canada.

The JSOT appreciates the assistance provided to this investigation by BaFin (German Federal Financial Supervisory Authority) and the British Columbia Securities Commission.

Smith continues to be subject to a cease trade order prohibiting him from trading in securities. Investors are urged to check the registration of any person or company offering an investment opportunity and to review the OSC investor materials available at www.osc.gov.on.ca.

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### 1.3.4 Howard Rash Sentenced to Nine Months in Jail for Breaching Ontario Securities Act

**FOR IMMEDIATE RELEASE5**
**November 8, 2013**

**HOWARD RASH SENTENCED TO NINE MONTHS IN JAIL**
**FOR BREACHING ONTARIO SECURITIES ACT**

**TORONTO** – Howard Rash was sentenced to nine months in jail yesterday after pleading guilty to one count of fraud and one count of breaching a cease trade order contrary to the *Securities Act* (Ontario) before the Honourable Justice William A. Gorewich of the Ontario Court of Justice. Rash was also sentenced to two years of probation following completion of his nine month jail term.

Rash admitted that, between September of 2007 and June of 2008, he fraudulently sold units in partnerships of "New Gold LLP" to the public. These sales were made by Rash over the telephone from the offices of a company called Global Energy Group Ltd. in Concord, Ontario. Rash received over $300,000 in fraudulent commissions.

At least $14.75 million (U.S.) of New Gold LLP securities were sold by Rash and others working out of the Global Energy Group offices.

During this period, Rash was subject to a previous cease trade order (CTO) of the OSC made on July 23, 2007. The CTO was put in place against Rash as a result of his illegal involvement in a company called Momentas Corporation and prohibited him permanently from trading in securities.

In his conversations with victims, Rash used a false name, lied about where he was located and provided false information about the assets owned by New Gold. Rash also did not tell victims that he was subject to the CTO, which prohibited him from selling securities in Ontario.

The CTO and other documents related to Rash and Momentas Corporation are available on the OSC website at www.osc.gov.on.ca.

Under section 122 of the Act, the OSC has the authority to lay quasi-criminal charges against individuals or companies in the Ontario Court of Justice for alleged violations of the Act. Quasi-criminal means that a jail term is a possible sanction if a defendant is convicted of a violation of the Act. The OSC pursues cases in court in order to seek sanctions and penalties that send a strong message of deterrence to those who try to exploit investors.

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

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### 1.3.5 OSC – IIROC Market Structure Conference, November 21, 2013 – The Canadian Equity Market: Structural Challenges Amidst Rapid Change

**FOR IMMEDIATE RELEASE**
**November 15, 2013**

**MEDIA ADVISORY**
**OSC – IIROC MARKET STRUCTURE CONFERENCE, NOVEMBER 21, 2013**
***THE CANADIAN EQUITY MARKET: STRUCTURAL CHALLENGES AMIDST RAPID CHANGE***

**TORONTO** – The Ontario Securities Commission (OSC) and the Investment Industry Regulatory Organization of Canada (IIROC) invite you to a joint conference on November 21, 2013, which will examine the structural challenges facing the Canadian equity markets amidst rapid change.

The event will feature OSC Chair & CEO Howard I. Wetston, Q.C., and IIROC President & CEO Susan Wolburgh Jenah in an interactive question and answer session on the regulatory challenges in the Canadian market. This session will be moderated by BNN's Howard Green.

Other highlights include:

- Presentation on the need to examine the regulatory framework in an ever-changing landscape;
- Update on IIROC's HFT (Phase III) & Dark Liquidity impact studies;
- Expert-led panels on the competitive landscape in North America, trading and data fees, new marketplaces and recent developments impacting market quality.

**What:** The Canadian Equity Market: *Structural Challenges Amidst Rapid Change*

**When:** Thursday, November 21, 2013
8:15 a.m. - 3:00 p.m.

**Where:** Toronto Board of Trade
77 Adelaide Street West,
Toronto, Ontario

CLICK HERE FOR FULL AGENDA

**Members of the media are asked to register in advance** as space is limited. Please contact avitunski@osc.gov.on.ca or karcher@iiroc.ca to reserve your spot.

The OSC is the regulatory body responsible for overseeing Ontario's capital markets. The OSC administers and enforces Ontario's securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets.

## 1.4 Notices from the Office of the Secretary

### 1.4.1 Vincenzo (Vincent) Sirianni

**FOR IMMEDIATE RELEASE**
**November 6, 2013**

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

**AND**

**IN THE MATTER OF**
**VINCENZO (VINCENT) SIRIANNI**

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

A copy of the Reasons and Decision and Order dated November 5, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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416-593-8263

Alison Ford
Media Relations Specialist
416-593-8307

For investor inquiries:

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

### 1.4.2 York Rio Resources Inc. et al.

**FOR IMMEDIATE RELEASE**
**November 6, 2013**

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

**AND**

**IN THE MATTER OF**
**YORK RIO RESOURCES INC.,**
**BRILLIANTE BRASILCAN RESOURCES CORP.,**
**VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ,**
**PETER ROBINSON, ADAM SHERMAN, RYAN DEMCHUK,**
**MATTHEW OLIVER, GORDON VALDE AND**
**SCOTT BASSINGDALE**

**TORONTO** – The Reasons and Decision in this matter, dated March 25, 2013, have been redacted by Order of the Panel.

A copy of the redacted Reasons and Decision, dated March 25, 2013, is available at www.osc.gov.on.ca.

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### 1.4.3 Systematech Solutions Inc. et al.

**FOR IMMEDIATE RELEASE**
**November 6, 2013**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing dates of November 7 and 8, 2013 are vacated.

A copy of the Order dated November 5, 2013 is available at www.osc.gov.on.ca.

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### 1.4.4 Ground Wealth Inc. et al.

**FOR IMMEDIATE RELEASE**
**November 6, 2013**

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

**AND**

**IN THE MATTER OF**
**GROUND WEALTH INC., MICHELLE DUNK,**
**ADRION SMITH, JOEL WEBSTER,**
**DOUGLAS DEBOER, ARMADILLO ENERGY INC.,**
**ARMADILLO ENERGY, INC.,**
**and ARMADILLO ENERGY, LLC**
**(aka ARMADILLO ENERGY LLC)**

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

1. The pre-hearing conference is adjourned and shall continue on January 15, 2014 at 10:00 a.m.;

2. A motion requested by Staff will be heard at a confidential hearing on February 6, 2014 at 10:00 a.m.;

3. The hearing on the merits shall commence on April 14, 2014 at 10:00 a.m. and shall continue until May 7, 2014, save and except for April 16, 17, 18 and 22 and May 6, 2014 (the "Merits Hearing"); and

4. The February 2013 Temporary Order is extended as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, to two days following the conclusion of this proceeding, including the issuance of the Commission's decision on sanctions and costs should a sanctions hearing be required following the conclusion of the Merits Hearing in this matter.

A copy of the Order dated November 5, 2013 is available at www.osc.gov.on.ca.

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**1.4.5 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al.**

**FOR IMMEDIATE RELEASE**
**November 7, 2013**

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

**AND**

**IN THE MATTER OF**
**MRS SCIENCES INC.**
**(FORMERLY MORNINGSIDE CAPITAL CORP.),**
**AMERICO DEROSA, RONALD SHERMAN,**
**EDWARD EMMONS, IVAN CAVRIC AND**
**PRIMEQUEST CAPITAL CORPORATION**

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

1. the confidential pre-hearing conference will continue on November 20, 2013 at 9:00 a.m. or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties, if necessary; and

2. if the parties determine that such confidential pre-hearing conference is no longer necessary, the parties shall notify the Office of the Secretary by 4:30 p.m. on November 18, 2013 to vacate the November 20, 2013 confidential pre-hearing conference.

A copy of the Order dated November 7, 2013 is available at www.osc.gov.on.ca.

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### 1.4.6 Systematech Solutions Inc. et al.

**FOR IMMEDIATE RELEASE**
**November 8, 2013**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing dates of November 11, 12, 13, 14, 15 and 18, 2013 are vacated.

A copy of the Order dated November 7, 2013 is available at www.osc.gov.on.ca.

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### 1.4.7 Eda Marie Agueci et al.

**FOR IMMEDIATE RELEASE**
**November 11, 2013**

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

**AND**

**IN THE MATTER OF**
**EDA MARIE AGUECI, DENNIS WING,**
**SANTO IACONO, JOSEPHINE RAPONI,**
**KIMBERLEY STEPHANY, HENRY FIORILLO,**
**GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA,**
**IAN TELFER, JACOB GORNITZKI and**
**POLLEN SERVICES LIMITED**

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

The Merits Hearing shall continue January 15, 16, 17, 20, 21, 22, 23, 24, 27, 30, 31, February 3, 4, 5, 6, 7, and March 3, 4, 5, 6, 7, 2014. The panel shall hear oral closing submissions of all participating parties in the Merits Hearing on April 28, 29 and 30, 2014 from 10:00 a.m. to 4:30 p.m.

A copy of the Order dated November 8, 2013 is available at www.osc.gov.on.ca.

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Rainy River Resources Ltd. – s. 1(10)(a)(ii)

**Headnote**

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

**Applicable Legislative Provisions**

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

November 5, 2013

Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Dear Sirs/Mesdames:

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

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

### 2.1.2 Counsel Portfolio Services Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(f), 2.3(h), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest in commodities up to 10% of net assets. Investments in non-silver and gold commodities are capped at 2.5% of net assets per commodity sector. The Fund already had existing relief for trading in in leveraged ETFs, inverse ETFs, gold ETFs, silver ETFs, leveraged gold ETFs and leveraged silver ETFs traded on Canadian or US stock exchanges, subject to 10 % total exposure in gold and silver, and certain conditions. The decision revokes and replaces the prior decision.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.3(f), 2.3(h), 2.5(2)(a), 2.5(2)(c), 19.1.

**October 31, 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**
**COUNSEL PORTFOLIO SERVICES INC.**
**(Counsel)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from Counsel on behalf of the existing and future mutual funds managed by Counsel or an affiliate of Counsel (collectively, the **Filer**) that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) other than money market funds (the **Existing Funds** and the **Future Funds**, respectively, together, the **Funds**, and individually, a **Fund**) under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

(a) to revoke and replace the Previous Decision (as defined below), and

(b) to exempt the Funds from the prohibitions contained in paragraphs 2.3(f), 2.3(h), 2.5(2)(a), 2.5(2)(b) and 2.5(2)(c) of NI 81-102 to permit each Fund to invest in the following:

(i) silver, Permitted Silver Certificates (as defined below) and Silver Derivatives (as defined below) (the Silver Derivatives, together with silver and Permitted Silver Certificates is hereinafter referred to as **Silver**);

(ii) Underlying ETFs (as defined below), and

(iii) Commodity ETFs (as defined below), (collectively, the **Exemption Sought**).

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

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

(b) the 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 other provinces and territories of Canada.

**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. The following additional terms have the following meanings:

**Commodity ETFs** means ETFs (as defined below) traded on a stock exchange in Canada or the United States that invest, directly or indirectly through derivatives, in physical commodities, including but not limited to gold and silver.

**ETFs** means exchange-traded funds.

**IPU** means an “index participation unit” as defined in NI 81-102.

**Permitted Silver Certificates** means certificates that represent silver that is:

(i) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate;

(ii) of a minimum fineness of 999 parts per 1,000;

(iii) held in Canada;

(iv) in the form of either bars or wafers; and

(v) if not purchased from a bank listed in Schedule I, II or III of the *Bank Act* (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a province or territory of Canada.

**Silver Derivative** means a specified derivative, the underlying interest of which is silver.

**Underlying ETFs** means:

(i) ETFs that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the ETF's **Underlying Index**) by a multiple of up to 200% (**Leveraged Bull ETFs**) or an inverse multiple of up to 200% (**Leveraged Bear ETFs**, which together with Leveraged Bull ETFs are referred to collectively in this decision as **Leveraged ETFs**);

(ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of up to 100% (**Inverse ETFs**);

(iii) ETFs that seek to replicate the performance of gold or silver or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis, and

(iv) ETFs that seek to provide daily results that replicate the daily performance of gold or silver or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis (the ETF's **Underlying Gold or Silver Interest**), by a multiple of up to 200% (**Leveraged Gold ETFs** and **Leveraged Silver ETFs**, respectively),

(the ETFs referred to in (iii) above, Leveraged Gold ETFs and Leveraged Silver ETFs are referred to collectively in this decision as the **Gold and Silver ETFs**).

**Representations**

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

1. The Filer is a corporation governed by the laws of Ontario and is registered as a Portfolio Manager and Investment Fund Manager in Ontario and as an Investment Fund Manager in Newfoundland and Labrador.

2. The Filer is the manager of each of the Existing Funds and will be the manager of each of the Future Funds. The Filer is the portfolio manager of, or has appointed a sub-adviser for, each of the Existing Funds, and will be the portfolio manager of, or will appoint a sub-adviser for, each of the Future Funds.

3. Each Existing Fund is, and each Future Fund will be: (a) an open-end mutual fund established under the laws of Canada or the laws of a province or territory of Canada, (b) a reporting issuer under the laws of some or all of the provinces or territories of Canada, and (c) governed by the provisions of NI 81-102.

4. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces or territories of Canada under a simplified prospectus, annual information form and fund facts prepared in accordance with National Instrument 81-101 *Mutual Funds Prospectus Disclosure* (**NI 81-101**) and filed with and receipted by the securities regulators in the applicable provinces or territories of Canada.

5. Neither the Filer nor any of the Existing Funds is in default of securities legislation in any of the provinces or territories of Canada.

*The Previous Decision*

6. The Filer obtained a previous decision dated September 7, 2011 (the **Previous Decision**) exempting the Funds from paragraphs 2.3(f), 2.3(h), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to purchase and hold securities of the Underlying ETFs. The Previous Decision also permitted the Funds to purchase and hold silver, Permitted Silver Certificates and Silver Derivatives.

7. The Previous Decision did not permit the Funds to purchase and hold securities of Commodity ETFs. As a result, the Filer has requested that the Previous Decision be revoked and replaced by this decision in order to permit the Funds to invest in Commodity ETFs pursuant to this decision.

8. The Filer has determined that it would be in the best interests of the Funds to receive the Exemption Sought and replace the Previous Decision with this decision.

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

*Investments in Gold and Silver*

10. In addition to investing in gold, the Funds propose to have the ability to invest in Silver.

11. To obtain exposure to gold or silver indirectly, the Funds intend to use specified derivatives the underlying interest of which is gold or silver and invest in the Gold and Silver ETFs (which together with gold, silver, permitted gold certificates and Permitted Silver Certificates are referred to collectively in this decision as **Gold and Silver Products**).

12. NI 81-102 allows mutual funds to purchase gold or permitted gold certificates or enter into a specified derivative the underlying interest of which is gold, in its recognition that gold is a fairly liquid

commodity. The Filer is requesting a similar investment flexibility that would permit a Fund to make investments in silver, based on the same rationale applied for gold and its liquidity.

13. The Filer believes that the markets in gold and silver are highly liquid, and there are no liquidity concerns with permitting a Fund to invest in Gold and Silver Products.

14. Permitting a Fund to invest in Gold and Silver Products will provide the portfolio manager, or sub-adviser of the Funds, as the case may be, with additional flexibility to increase gains for the Fund in certain market conditions which may have otherwise caused the Fund to have significant cash positions and therefore deter from its ability to achieve its investment objective.

*The Underlying ETFs*

15. Each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.

16. Each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the corresponding daily performance of its Underlying Index.

17. Each Leveraged Gold ETF and Leveraged Silver ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold or Silver Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold or Silver Interest.

*Commodity ETFs*

18. Each Commodity ETF is or will be an "investment fund" as such term is defined under the *Securities Act* (Ontario).

19. The securities of each Commodity ETF trade or will trade on stock exchanges in Canada or the United States.

20. The assets of each Commodity ETF consist or will consist primarily of one or more physical commodities or derivatives that have an underlying interest in such physical commodity or commodities. These physical commodities may include, but are not limited to, agriculture or livestock (such as soy meal, sugar, wheat, cotton, coffee and live cattle), energy (such as crude oil, gasoline, heating oil, gas oil and natural gas), precious metals (such as gold, silver and platinum) and industrial metals (such as copper and aluminum).

21. The objective of each Commodity ETF is or will be to:

    (a) reflect the price of the applicable physical commodity or commodities (less the Commodity ETF's expenses and liabilities) on an unlevered basis, or

    (b) track the performance of an index which is intended to reflect the changes in the market value of the physical commodity or commodities sector.

*Investment in IPUs, the Underlying ETFs, the Commodity ETFs and Silver*

22. In addition to investing in securities of ETFs that are IPUs, the Funds propose to have the ability to invest in the Underlying ETFs and the Commodity ETFs, whose securities are not IPUs.

23. The amount of the loss that can result from an investment by a Fund in an Underlying ETF or a Commodity ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF or the Commodity ETF, respectively.

24. Any investment by a Fund will be made in compliance with the custodian requirements in Part 6 of NI 81-102.

25. Each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in Underlying ETFs, Commodity ETFs and Silver.

26. But for the Exemption Sought, paragraph 2.3(f) of NI 81-102 would prohibit a Fund from purchasing Silver.

27. But for the Exemption Sought, paragraph 2.3(h) of NI 81-102 would prohibit a Fund from entering into Silver Derivatives.

28. But for the Exemption Sought, paragraph 2.3(h) of NI 81-102 would prohibit a Fund from purchasing a Silver ETF or a Leveraged Silver ETF.

29. But for the Exemption Sought, paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund from purchasing or holding a security of an Underlying ETF and a security of a Commodity ETF, because the Underlying ETFs and the Commodity ETFs may not be subject to both NI 81-102 and NI 81-101.

30. But for the Exemption Sought, paragraph 2.5(2)(b) of NI 81-102 would prohibit a Fund from purchasing or holding securities of some Commodity ETFs, because some Commodity ETFs may hold more than 10% their net assets in securities of other mutual funds.

31. But for the Exemption Sought, paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund from purchasing or holding securities of some Underlying ETFs and securities of some Commodity ETFs, because some Underlying ETFs and some Commodity ETFs will not be qualified for distribution in the local jurisdiction.

32. An investment by a Fund in securities of an Underlying ETF, in securities of a Commodity ETF and/or Silver will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

33. Part B of the Funds' simplified prospectus discloses or will disclose under the section entitled "Investment Objectives and Strategies" the Funds' ability to invest in Silver, Underlying ETFs and Commodity ETFs pursuant to the Exemption Sought.

34. The Part B of each Fund's simplified prospectus that seeks to rely on the Exemption Sought will disclose under the section entitled "What are the risks of investing in this Fund?" the risks associated with such Fund's investments in Silver, Underlying ETFs and Commodity ETFs.

35. If the Exemption Sought represents a material change for any Existing Fund, the Filer will comply with the material change reporting obligations for that Existing Fund.

**Decision**

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

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

(a) the investment by a Fund in securities of an Underlying ETF, securities of an Commodity ETF and/or Silver is in accordance with the fundamental investment objectives of the Fund;

(b) a Fund does not short sell securities of an Underlying ETF or securities of a Commodity ETF;

(c) the securities of the Underlying ETFs and the securities of the Commodity ETFs, respectively, are traded on a stock exchange in Canada or the United States;

(d) a Fund does not enter into any transaction if immediately after the transaction, more than 20% of the net asset value of the Fund, taken at market value at the time of the transaction, would consist of, in aggregate, securities of Underlying ETFs, Commodity ETFs and all securities sold short by the Fund;

(e) a Fund does not purchase Gold and Silver Products if, immediately after the transaction, the market value exposure to gold or silver through the Gold and Silver Products is more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction;

(f) a Fund does not purchase Gold and Silver Products if, immediately after the transaction, more than 10% of the net asset value, in aggregate, of the Fund, taken at market value at the time of the transaction, would consist of Gold and Silver Products, securities of Underlying ETFs and securities of Commodity ETFs;

(g) a Fund does not purchase securities of an Underlying ETF if, immediately after the transaction, more than 10% of the net asset value, in aggregate, of the Fund, taken at market value at the time of the transaction, would consist of Gold and Silver Products, securities of Underlying ETFs and securities of Commodity ETFs;

(h) a Fund does not purchase securities of a Commodity ETF if, immediately after the transaction, more than 10% of the net asset value, in aggregate, of the Fund, taken at market value at the time of the transaction, would consist of Gold and Silver Products, securities of Underlying ETFs and securities of Commodity ETFs;

(i) the prospectus of each Existing Fund discloses upon the Existing Fund's renewal immediately following the date of this decision (i) in Part B of the Existing Fund the fact that the Existing Fund has obtained relief to invest in Silver, securities of Underlying ETFs and securities Commodity ETFs and (ii) in the risk disclosure section of the Existing Fund that seeks to rely on the Exemption Sought the risks associated with an Existing Fund's investment in Silver, securities of the Underlying ETFs and securities of the Commodity ETFs, and

(j) the prospectus of each Future Fund discloses (i) in Part B of the Future Fund the fact that the Future Fund has obtained relief to invest in Silver, securities of Underlying ETFs and securities Commodity ETFs and (ii) in the risk disclosure section of the Future Fund that seeks to rely on the Exemption Sought the risks associated with a Future Fund's

investment in Silver, securities of the Underlying ETFs and securities of the Commodity ETFs.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

### 2.1.3 Desjardins Investments Inc. and the Desjardins Funds

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from sections 2.8(1)(d) and 2.8(1)(f)(i) of National Instrument 81-102 – Mutual Funds to permit the Funds, when they open or maintain a long position in a standardized future or forward contract or when they enter into or maintain a swap position and during the periods when the Funds are entitled to receive payments under the swap, to use as cover, a right or obligation to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.8(1), 19.1.

**[Translation]**

**October 29, 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**
**DESJARDINS INVESTMENTS INC.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**THE DESJARDINS FUNDS**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption relieving the Funds (as defined below), under section 19.1 of the *Regulation 81-102 respecting Mutual Funds* (c. V-1.1, r. 39) (**Regulation 81-102**) from the requirements in paragraph 2.8(1)(d) and subparagraph 2.8(1)(f)(i) of Regulation 81-102 to permit each of the Funds when it:

a) opens or maintains a long position in a debt-like security that has a component that is a long position in a forward contract, or in a standardized future or forward contract, or

b) enters into or maintains a swap position and during the periods when the Fund is entitled to receive payments under the swap,

to use as cover, a right or an obligation to sell an equivalent quantity of the underlying interest of the forward, standardized future or swap (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 subsection 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, Yukon, Northwest Territories and Nunavut; 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.

**Funds** means the existing mutual funds, other than money market funds, for which the Filer or a duly registered affiliate of the Filer acts as investment fund manager and any mutual fund, other than a money market fund, subsequently established for which the Filer, or a duly registered affiliate of the Filer, will act as investment fund manager.

**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* of Québec (LRQ, c. S-31.1).

2. The Filer's head office is located at 1, Complexe Desjardins, South Tower, P.O. Box 34, Montréal, Québec, Canada, H5B 1E4.

3. The Filer, or an affiliate of the Filer, acts or will act as the investment fund manager of each of the Funds.

4. The Filer is duly registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador.

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

The Funds

6. Securities of the Funds are or will be distributed in all jurisdictions of Canada through a simplified prospectus prepared in accordance with *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure* (c. V-1.1, r. 38) and, accordingly, each Fund is, or will be, a reporting issuer in all jurisdictions of Canada.

7. Each of the Funds is or will be a mutual fund subject to the requirements of Regulation 81-102.

8. Each of the Funds is not in default of securities legislation in any jurisdictions of Canada.

9. Desjardins Global Asset Management Inc. (**DGAM**), or an affiliate of the Filer, acts or will act as portfolio manager of the Funds and is also responsible for retaining portfolio sub-advisers for the Funds. DGAM is duly registered in Alberta, Manitoba, Nova Scotia, Ontario and Québec as an adviser in the category of portfolio manager. DGAM is also duly registered in Québec as a derivatives portfolio manager pursuant to the *Derivatives Act* (RSQ, c. I-14.01) and in Ontario as a commodity trading manager pursuant to the *Commodity Futures Act* (RSO 1990, c. C.20). Any affiliate of the Filer acting as portfolio manager for the Funds is or will be duly registered under the appropriate categories.

10. Many of the Funds may use specified derivatives under their investment strategies to replicate market indices. This strategy permits the Funds to gain exposure to securities and financial markets instead of investing in the securities directly and to lower trading costs. The Funds may also use derivative instruments to:

    (a) reduce risk by protecting the Funds against potential losses from changes in interest rates;

    (b) reduce the impact of currency fluctuations on the Funds' portfolio holdings; and

    (c) provide protection for the Funds' portfolios and reduce the overall volatility of returns.

11. When specified derivatives are used for non-hedging purposes, the Funds are subject to the cash cover requirements of Regulation 81-102.

Reasons for the Exemption Sought

12. Paragraph 2.8(1)(d) and subparagraph 2.8(1)(f)(i) of Regulation 81-102 do not permit covering a long position in a debt-like security that has a component that is a long position in a forward contract or in a standardized future or forward contract or a position in a swap for a period when a fund is entitled to receive payments under the swap, in whole or in part, with a right or obligation to sell an equivalent quantity of the underlying interest of the forward, future or swap. In other words, these sections of Regulation 81-102 do not permit the use of put options or short forward, future or swap positions to cover long forward, future or swap positions.

13. The regulatory frameworks in other countries recognize the hedging properties of options for all categories of derivatives, including long positions evidenced by standardized futures or forwards or in respect of a swap where a fund is entitled to receive payments from the counterparty, provided they are covered by an amount equal to the difference between the market price of a holding and the strike price of the option that was bought or sold to hedge it. Regulation 81-102 effectively imposes the requirement to overcollateralize, since the maximum liability to the fund under the scenario described is equal to the difference between the market value of the long position and the exercise price of the option.

14. Since overcollateralization imposes a cost on the Funds, the Filer believes the Funds will benefit from the Exemption Sought.

15. Paragraph 2.8(1)(c) of Regulation 81-102 permits a mutual fund to write a put option and cover it with buying a right or obligation to sell an equivalent quantity of the underlying interest of the written put option. This position has risks that are similar to a long position in a future, forward or swap. Accordingly, it is submitted that the Funds should be permitted to cover a long position in a debt-like security that has a component that is a long position in a forward contract or in a standardized future or forward contract or swap, with a put option or a short future, forward or swap.

16. To the extent that the Funds use derivatives, DGAM and portfolio sub-managers retained on behalf of the Funds are responsible for ensuring that derivatives are used in a manner that is consistent with the applicable investment objectives and restrictions of the Funds and that the derivatives comply with the requirements set out in Regulation 81-102. The Filer, DGAM and each portfolio sub-manager have their own policies and procedures relating to the use of derivatives. All derivative transactions for a Fund must be recorded on a real time basis and immediately reflected in the Fund's portfolio management records. Derivative positions are monitored daily to ensure that they comply with all regulatory requirements, including any cash cover requirement.

17. The prospectus and annual information form of the Funds discloses the policies and practices of the Filer regarding the use of derivatives and, upon renewal, will include disclosure of the nature of the Exemption Sought in respect of the Funds.

18. On January 25th, 2008, the Fédération des caisses Desjardins du Québec (the **Fédération**) acting at that time on behalf of the Desjardins Funds as investment fund manager obtained relief from the securities regulatory authorities from paragraph 2.7(1)(a), subsection 2.8(1) and subparagraphs 2.8(1)(d) and (f)(i) of Regulation 81-102 (the **Prior Exemptive Relief**).

19. In April 2012, Regulation 81-102 was amended in order to, among other things, remove the term limit on specified derivatives and to provide mutual funds more flexibility in selecting securities for use as cash cover. Consequently, the Funds do not need relief from paragraph 2.7(1)(a) and subsection 2.8(1) of Regulation 81-102.

20. Considering that the Prior Exemptive Relief has been issued in favour of the Fédération, the Filer is hereby seeking the Exemption Sought in order for the Funds to benefit from the Prior Exemptive Relief notwithstanding the fact that the Filer, being an affiliate of the Fédération, replaced the Fédération and currently acts as investment fund manager of the Funds.

**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 provided that:

(a) a Fund shall not open or maintain a long position in a debt-like security that has a component that is a long position in a forward contract or in a standardized future or forward contract unless the Fund holds:

(i) cash cover in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative;

(ii) a right or obligation to sell an equivalent quantity of the underlying interest of the future or forward contract, and cash cover that together with margin on account for the position, is not less than the amount, if any, by which the strike price of the future or forward contract exceeds the strike price of the right or obligation to sell the underlying interest; or

(iii) a combination of the positions referred to in paragraphs (i) and (ii) above that is sufficient, without recourse to other assets of the Fund, to enable the Fund to acquire the underlying interest of the future or forward contract;

(b) a Fund shall not enter into or maintain a swap position unless for periods when the Fund would be entitled to receive payments under the swap, the Fund holds:

(i) cash cover in an amount that, together with margin on account for the swap and the market value of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap;

(ii) a right or obligation to enter into an offsetting swap on an equivalent quantity and with an equivalent term and cash cover that, together with margin on account for the position, is not less than the aggregate amount, if any, of the obligations of the Fund under the swap less the obligations of the Fund under such offsetting swap; or

(iii) a combination of the positions referred to in paragraphs (i) and (ii) above that is sufficient, without recourse to other assets of the Fund, to enable the Fund to satisfy its obligations under the swap;

(c) the Fund will not:

(i) purchase a debt-like security that has an option component or an option; or

(ii) purchase or write an option to cover any positions under paragraphs 2.8(1) (b), (c), (d), (e) and (f) of Regulation 81-102;

if immediately after the purchase or writing of such option, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would be in the form of:

(i) purchased debt-like securities that have an option component or purchased options, in each case, held by the Fund for purposes other than hedging; or

(ii) options used to cover any positions under paragraphs 2.8(1)(b), (c), (d), (e) and (f) of Regulation 81-102;

(d) on the date that is the earlier of:

(i) the date when an amendment to the annual information forms of the Funds are filed for reasons other than the Exemption Sought; or

(ii) the date that the renewal annual information forms of the Funds are receipted;

the Funds shall:

(i) disclose the nature and terms of the Exemption Sought in the annual information form of such Funds with a cross reference thereto in the prospectus of the Funds; and

(ii) include a summary of the nature and terms of the Exemption Sought in the prospectus of the Funds under the Investment Strategies section, or in the introduction to Part B of the prospectus with a cross reference thereto under the Investments Strategies section for the Funds;

(e) this decision will terminate on the coming into force of any securities legislation relating to the use as cover of a right or obligation to sell an equivalent quantity of the underlying interest of the forward, standardized future or swap in compliance with section 2.8 of Regulation 81-102.

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

### 2.1.4 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer granted relief to purchase debt securities from related principal dealer and revoke existing relief – internal reorganization will result in filer acquiring asset management business of affiliate including management of funds – affiliate had relief but terms do not permit relief to flow through to Filer following reorganization - relief needed to ensure continuity for funds relying on relief – related dealer is a significant principal dealer in debt securities in Canada – transactions to be subject to terms and conditions to ensure transparent and independent pricing of securities.

**Applicable Legislative Provisions**

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b)(ii), 15.1.

**October 30, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**THE FUNDS**
**(as defined below)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on its own behalf and on behalf of existing mutual funds and future mutual funds of which the Filer or an affiliate of the Filer is the portfolio adviser and to which National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) applies (each, an **NI 81-102 Fund** and collectively, the **NI 81-102 Funds**), and on behalf of existing mutual funds and future mutual funds of which the Filer or an affiliate of the Filer is the portfolio adviser and to which NI 81-102 does not apply (each, a **Pooled Fund** and collectively, the **Pooled Funds**), and on behalf of existing closed-end funds and future closed-end funds, being investment funds of which the Filer or an affiliate of the Filer is the portfolio adviser that are reporting issuers and are not mutual funds (each, a **Closed-End Fund** and collectively, the **Closed-End Funds** and together with the NI 81-102 Funds and the Pooled Funds, the **Funds**), for

(a) a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer or an affiliate of the Filer, as the registered adviser of a Fund, from the prohibition in Section 13.5(2)(b)(ii) of National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**) to permit the Funds to purchase or sell a security from or to the investment portfolio of an associate of the Filer or an affiliate of the Filer (the **Principal Trade Relief**); and

(b) to revoke and replace the GCIC Relief (as defined below) (the **Revocation Relief**)

(the Principal Trade Relief and the Revocation Relief are collectively, the **Requested Relief**).

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

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

(d) 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*, MI 11-102, NI 81-102 and in National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning if used in this decision, unless otherwise defined.

In this Decision Document the term **Related Party** will be used to refer to an associate of the Filer, or an affiliate of the Filer, that is a principal dealer (**Principal Dealer**) in the Canadian debt securities market.

**Representations**

This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds:

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario.

2. The Filer, or an affiliate of the Filer, is or will be the manager and/or adviser of the Funds.

3. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

4. The Filer or an affiliate of the Filer, as the registered adviser of a Fund, will be a responsible person under the Legislation.

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

6. BNS is the ultimate parent company of the Filer and of Scotia Capital Inc. (**Scotia Capital**). The Filer, as an affiliate of BNS, is deemed pursuant to the Legislation to beneficially own the securities owned by BNS (including the securities of Scotia Capital). As BNS beneficially owns more than 10% of the voting shares of Scotia Capital, Scotia Capital may be considered to be an associate of the Filer under the Legislation.

7. Scotia Capital is a Principal Dealer in the Canadian debt securities market, both primary and secondary and is, therefore, a Related Party.

8. Each Fund is or will be established under the laws of one of the Jurisdictions as an investment fund that is (a) an open-ended mutual fund trust, (b) an open-ended mutual fund corporation, or (c) a closed-ended limited partnership and/or closed-ended trust.

9. Each of the NI 81-102 Funds and the Closed-End Funds is or will be a reporting issuer in one or more of the Jurisdictions. The securities of each of the NI 81-102 Funds are, or will be, qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form that has been, or will be, prepared and filed in accordance with securities legislation of each of the relevant Jurisdictions. Securities of each of the Closed-End Funds have been, or will be, qualified for distribution in each of the Jurisdictions pursuant to a prospectus which has been, or will be, filed in accordance with the securities legislation of each of the Jurisdictions.

10. The securities of the Pooled Funds are or will be offered for sale only on an exempt basis pursuant to available prospectus and registration exemptions from the prospectus requirements in one or more of the Jurisdictions. None of the Pooled Funds is or will be a reporting issuer.

11. An Independent Review Committee (**IRC**) has been or will be established for each NI 81-102 Fund and each Closed Fund in accordance with the requirements of NI 81-107.

12. An IRC has also been or will be established for the Pooled Funds whose composition will be in accordance with section 3.7 of NI 81-107 and which will comply with the standard of care set out in section 3.9 of NI 81-107.

13. None of the Funds are in default of securities legislation in any of the Jurisdictions.

14. The Filer is seeking the Principal Trade Relief in order to allow the Funds to purchase debt securities from, or sell debt securities to, an associate of the Filer (or an affiliate of the Filer that acts as portfolio adviser to a Fund).

15. A Fund's purchase of securities of an issuer from the investment portfolio of an associate of the Filer (or an affiliate that acts as portfolio adviser to a Fund) is prohibited under the Legislation. A Fund is therefore prohibited from purchasing certain debt securities in the secondary market from a Principal Dealer that is a Related Party of the Filer, such as Scotia Capital (a **Restricted Transaction**).

16. The investment strategies of each Fund that will rely on the Principal Trade Relief permit the Fund to invest in debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (**Government Debt Securities**) or debt securities that are not Government Debt Securities (**Non-Government Debt Securities**).

17. There is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Funds, and frequently the only source of Non-Government Debt Securities for a Fund may be a Related Party such as Scotia Capital.

18. The Filer considers granting the Principal Trade Relief to not be prejudicial to the public interest, given that the decision to transact securities purchases and sales with a Related Party will be made in the best interests of the Funds and free from the influence of that Related Party.

19. The Filer considers that a Fund may be prejudiced if it must refrain from entering into a Restricted Transaction, where to do so is consistent with its investment objective.

20. Related Parties do not influence the business judgment of the Filer in connection with the determination of the suitability of investments and information, and influence barriers are in place. Decisions made by the Filer as to which investments a Fund should hold are based on the best interests of such Fund, without consideration given to the interests of the party with whom a purchase or sale is transacted. This principle is reflected in the policies and procedures that have been and will be implemented and approved by the IRC for dealing with related parties.

21. The Filer is seeking the Revocation Relief in connection with a proposed internal reorganization of BNS's asset management business (the **Reorganization**).

22. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC Ltd. (**GCIC**), WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

23. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer which includes becoming portfolio adviser of Funds for which GCIC provided such services prior to the Reorganization.

24. The Reorganization does not involve an amalgamation.

25. Under a decision dated May 13, 2011, the Principal Regulator granted GCIC relief that is substantially the same as the Principal Trade Relief (the **GCIC Relief**). The Filer is not able to rely on the GCIC Relief because the terms of the GCIC Relief do not permit that relief to flow through to the Filer.

26. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief and to replace the GCIC Relief with the Principal Trade Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Principal Trade Relief is granted provided that:

(i) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;

(ii) at the time of the investment, the IRC has approved the transaction in accordance with section 5.2(2) of NI 81-107;

(iii) the Fund's manager complies with section 5.1 of NI 81-107, and the Filer or the affiliate and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transaction;

(iv) the bid and ask price of the security transacted are readily available, as contemplated by section 6.1(2)(c) of NI 81-107;

(v) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;

(vi) the purchase or sale is subject to "market integrity requirements" as defined in NI 81-107; and

(vii) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107.

This decision is effective on the Completion Date.

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

### 2.1.5 Mackenzie Financial Corporation

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation – relief required because of new U.S. requirements to clear over-the-counter derivatives including swaps – decision treats cleared swaps similar to other cleared derivatives – National Instrument 81-102 Mutual Funds.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.7(1) and (4), 6.8(1), 19.1.

**September 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**
**MACKENZIE FINANCIAL CORPORATION**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), exempting each Existing MFC Fund (as defined below) and all current and future mutual funds managed by the Filer that enter into Swaps (as defined below) in the future (each, a **Future MFC Fund** and, together with the Existing MFC Funds, each, a **MFC Fund** and, collectively, the **MFC Funds**):

(i) from the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

(ii) from the limitation in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(iii) from the requirement in subsection 6.1(1) of NI 81-102 to hold all portfolio assets of a mutual fund under the custodianship of one custodian in order to permit each MFC Fund to deposit cash and other portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin,

in each case, with respect to cleared Swaps (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 (the **Other Jurisdictions**).

**Interpretation**

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

**"CFTC"** means the U.S. Commodity Futures Trading Commission

**"Clearing Corporation"** means any of the Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, LCH.Clearnet Limited and any other clearing organization that is permitted to operate in the Jurisdiction or the Other Jurisdiction, as the case may be, where the MFC Fund is located

**"Dodd-Frank"** means the Dodd-Frank Wall Street Reform and Consumer Protection Act

**"Existing MFC Funds"** means any of Mackenzie Absolute Return Asia Fund, Mackenzie Global Tactical Fund, Sentinel Corporate Bond Fund, Sentinel North American Corporate Bond Fund, Symmetry Global Bond Fund, Symmetry Canadian Bond Fund and Universal World Real Estate Class

**"Futures Commission Merchant"** means any futures commission merchant that is registered with the CFTC and is a member of a Clearing Corporation

**"OTC"** means over-the-counter

**"Portfolio Advisor"** means each of the Filer and each affiliate of the Filer and each third party portfolio manager retained from time to time by the Filer to manage the investment portfolio of one or more MFC Funds

**"Swaps"** means the swaps that are, or will become, subject to a clearing determination issued by the CFTC, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranched credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol) at various tenors

**"U.S. Person"** has the meaning attributed thereto by the CFTC

**Representations**

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

1. The Filer is, or will be, the investment fund manager of each MFC Fund. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in the Province of Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in all other Canadian provinces and territories and as an investment fund manager in the Provinces of Newfoundland and Labrador and Québec. The head office of the Filer is in Toronto, Ontario.

2. The Filer is, or will be, the portfolio manager to the MFC Funds. Either an affiliate of the Filer or a third party portfolio manager is, or will be, the sub-advisor to certain of the MFC Funds.

3. Each MFC Fund is, or will be, a mutual fund created under the laws of the Province of Ontario and is, or will be, subject to the provisions of NI 81-102.

4. Neither the Filer nor the MFC Funds are, or will be, in default of securities legislation in any Jurisdiction.

5. The securities of each MFC Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each MFC Fund is, or will be, a reporting issuer or the equivalent in each Jurisdiction.

6. The investment objective and investment strategies of each MFC Fund permit, or will permit, the MFC Fund to enter into derivative transactions, including Swaps. Each Portfolio Advisor for the Existing MFC Funds considers Swaps to be an important investment tool that is available to it to properly manage each Existing MFC Fund's portfolio. Although the use of Swaps by the Existing MFC Funds is currently nominal, the Portfolio Advisors for the Existing MFC Funds are

putting in place the arrangements required to permit the Existing MFC Funds to enter into Swaps on a more substantial basis.

7. Dodd-Frank requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a clearing organization recognized by the CFTC. Generally, where one party to a Swap is a U.S. Person and the other party to the Swap is a mutual fund, such as a MFC Fund, that Swap must be cleared, absent an available exception, beginning on June 10, 2013. With respect to entities such as the MFC Funds, the compliance date for the clearing of iTraxx CDS indices is July 25, 2013.

8. Currently, the Existing MFC Funds may enter into Swaps on an OTC basis with a number of Canadian, U.S. and other international counterparties. These OTC Swaps are entered into in compliance with the derivative provisions of NI 81-102.

9. In order to benefit from both the pricing benefits and reduced trading costs that a Portfolio Advisor may be able to achieve through its trade execution practices for its advised investments funds and other accounts and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to have the MFC Funds enter into cleared Swaps.

10. In the absence of the Requested Relief, each Portfolio Advisor will need to structure the Swaps entered into by the MFC Funds so as to avoid the clearing requirements of the CFTC. The Filer respectfully submits that this would not be in the best interests of the MFC Funds and their investors for a number of reasons, as set out below.

11. The Filer strongly believes that it is in the best interests of the MFC Funds and their investors to be able to execute OTC derivatives with U.S. Persons, including U.S. swap dealers.

12. In its role as a fiduciary for the MFC Funds, the Filer has determined that central clearing represents the best choice for the investors in the MFC Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

13. A Portfolio Advisor may use the same trade execution practices for all of its advised investment funds and other accounts, including the MFC Funds. An example of these trade execution practices is block trading, where large number of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds and other accounts advised by one Portfolio Advisor. After June 10, 2013, these practices will include the use of cleared Swaps if such trades are executed with a U.S. swap dealer. If the MFC Funds are unable to employ these trade execution practices, then each affected Portfolio Advisor will have to create separate trade execution practices only for the MFC Funds and will have to execute trades for the MFC Funds on a separate basis. This will increase the operational risk for the MFC Funds, as separate execution procedures will need to be established and followed only for the MFC Funds. In addition, the MFC Funds will no longer be able to enjoy the possible price benefits and reduction in trading costs that a Portfolio Advisor may be able to achieve through a common practice for its advised funds and other accounts. In the Filer's opinion, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Swaps on a cleared basis.

14. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the MFC Funds. The Filer respectfully submits that the MFC Funds should be encouraged to comply with the robust clearing requirements established by the CFTC by granting them the Requested Relief.

15. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

16. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

**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, in respect of the deposit of cash and portfolio assets as margin:

(a) in Canada,

(i) the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and

(ii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the MFC Fund as at the time of deposit; and

(b) outside of Canada,

(i) the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

(ii) the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

(iii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the MFC Fund as at the time of deposit.

This decision will terminate on the earlier of (i) the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives, and (ii) two years from the date of this decision.

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

### 2.1.6 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to permit funds to invest in non-exchange traded debt securities issued by related parties and to permit pooled funds to also invest in exchange traded securities issued by related parties – related parties to funds are significant issuers of debt securities in Canada – funds managed by affiliate of filer have relief, but internal reorganization of filers asset management business could result in funds losing relief due to limited scope of current relief – transaction in non-exchanged traded debt securities will be subject to terms and conditions regarding pricing, arm's length purchasers and limits of purchases by funds – purchases of exchange traded securities by pooled funds will comply with NI 81-107.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(a), 111(2)(c)(ii), 111(3), 113.

**October 29, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**THE FUNDS**
**(as defined below)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing mutual funds and future mutual funds of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser and to which National Instrument 81-102 *Mutual Funds* (**NI 81-102**) applies (each, an **NI 81-102 Fund** and collectively, the **NI 81-102 Funds**) and on behalf of existing mutual funds and future mutual funds of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser to which NI 81-102 does not apply (each, a **Pooled Fund** and collectively, the **Pooled Funds** and collectively with the NI 81-102 Funds, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

(a) to exempt the Funds from the prohibitions in the Legislation (the **Related Party Prohibitions**) that prohibit a mutual fund from making or holding an investment:

  (i) in any person or company (a **Related Shareholder**) who is a substantial security holder of the Fund, its management company or distribution company (**Related Shareholder Relief**); or

  (ii) in an issuer (a **Related Person**) in which a Related Shareholder has a significant interest (**Related Person Relief** and together with the Related Shareholder Relief the **Requested Related Party Relief**); and

(b) to revoke and replace the Current Relief (as defined below) and the GCIC Relief (as defined below) (the **Revocation Relief**)

(the Requested Related Party Relief and the Revocation Relief are collectively, the **Requested Relief**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (together with Ontario, the **Jurisdictions**).

**Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 and National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning if used in this decision, unless otherwise defined.

**"Related Party"** means a Related Shareholder or a Related Person..

**Representations**

This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds:

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

3. The Filer or an affiliate of the Filer is, or will be, the manager and/or portfolio adviser to the Funds.

4. Each of the Funds is or will be a mutual fund established under the laws of Ontario or of Canada or of one of the other Jurisdictions.

5. The securities of each of the NI 81-102 Funds are, or will be, qualified for distribution pursuant to simplified prospectuses and annual information forms that have been, or will be, prepared and filed in accordance with the securities legislation of each of the Jurisdictions.

6. Each of the NI 81-102 Funds is, or will be, a reporting issuer in one or more of the Jurisdictions.

7. The securities of the Pooled Funds are or will be offered for sale only on an exempt basis pursuant to available prospectus and registration exemptions from the prospectus requirements in one or more of the Jurisdictions. None of the Pooled Funds is or will be a reporting issuer in any of the Jurisdictions.

8. The Filer and the Funds are not in default of securities legislation in any of the Jurisdictions.

9. The Filer is seeking the Requested Related Party Relief to permit the Funds to purchase and hold non-exchange traded securities that are debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Party (**Related Party NET Debt Securities**) and to permit the Pooled Funds to purchase exchange traded securities issued by a Related Party (**Related Party Exchange Traded Securities**).

10. The investment strategies of each of the Funds that will rely on the Requested Related Party Relief permit, or will permit, the Fund to invest in the securities purchased.

11. The manager of the Funds has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.

12. The manager of the Funds has also established or will establish an IRC in respect of the Pooled Funds, whose composition will be in accordance with section 3.7 of NI 81-107 and will comply with the standard or care set out in section 3.9 of NI 81-107.

13. Any purchase of securities of a Related Party by a Fund will be referred to the IRC of such Fund (in the case of an NI 81-102 Fund under subsection 5.1(1)(b) of NI 81-107).

14. Section 6.2 of NI 81-107 provides the NI 81-102 Funds with an exemption from Related Party Prohibitions in respect of purchasing exchange-traded securities, such as common shares, in the secondary market. It does not permit an NI 81-102 Fund, or the Filer on behalf of a NI 81-102 Fund, to purchase non-exchange-traded securities issued by Related Parties such as the Related Party NET Debt Securities.

15. NI 81-107 does not apply to the Pooled Funds as they are not reporting issuers. Accordingly, in the absence of the Requested Related Party Relief, the Pooled Funds may not purchase Related Party Exchange Traded Securities or Related Party NET Debt Securities.

16. Certain Related Parties of the Filer are significant issuers of securities including debt instruments that are not listed for trading on an exchange. The Filer considers that the Funds should have access to such securities for the following reasons:

    (a) In general, there is a limited supply of highly rated debt securities issued by issuers other than the federal or provincial government, and in particular, highly rated corporate debt securities;

    (b) diversification is reduced to the extent that a Fund is limited with respect to investment opportunities; and

    (c) to the extent that a Fund seeks to track or outperform a benchmark it is important for the Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Parties of the Filer are included in most Canadian debt indices.

17. The Filer has determined that it would be in the best interests of the Funds to have the ability to invest in Related Party NET Debt Securities.

18. The Filer has determined that it would be in the best interests of the Pooled Funds to have the same ability to invest in Related Party Exchange Traded Securities as the NI 81-102 Funds have.

19. Where a Related Party NET Debt Security is purchased by a Fund in a primary distribution or treasury offering (**Primary Offering**) pursuant to the Requested Related Person Relief:

    (a) the debt security, which cannot be an asset backed commercial paper security, will have a term to maturity of 365 days or more and will be issued by a Related Party that has been given and continues to have, at the time of purchase, a "designated rating" by a “designated rating organization” as those terms are defined in NI 81-102 ; and

    (b) the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.

20. Each Related Party NET Debt Security purchased by a Fund in the secondary market will, at the time of purchase have a "designated rating" by a “designated rating organization” as those terms are defined in NI 81-102.

21. If a Fund's purchase of Related Party NET Debt Securities involves an inter-fund trade with another Fund, either the provision of section 6.1(2) of NI 81-107 or the provisions of the relief received by the Filer, or an affiliate of the Filer, on behalf of the Funds dated November 1, 2013, as may be amended, as applicable, will apply to such transaction.

22. The Filer is seeking the Revocation Relief in connection with a proposed internal reorganization of BNS’s asset management business (the **Reorganization**).

23. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC Ltd. (**GCIC**), WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

24. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer, which includes becoming manager and/or portfolio advisor of Funds for which GCIC provided such services prior to the Reorganization.

25. The Reorganization does not involve an amalgamation.

26. Under Decisions dated October 28, 2009, the Principal Regulator granted the Filer relief that is substantially the same as the Requested Related Party Relief in connection with the purchase by the NI 81-102 Funds managed by the Filer, of Related Party NET Debt Securities in the primary and secondary markets (the **Current Relief**).

27. Under a Decision dated March 28, 2011, the Principal Regulator granted GCIC relief that included relief that is substantially the same as the Requested Related Party Relief (the **GCIC Relief**).

28. The Current Relief is not as broad as the GCIC Relief, as the GCIC Relief permits both NI 81-102 Funds and Pooled Funds to purchase Related Party NET Debt Securities in the primary and secondary markets and permits the Pooled Funds to purchase Related Party Exchange Traded Securities while the Current Relief does not apply to Pooled Funds.

29. The Filer will not be able to rely on the GCIC Relief following the Reorganization since the terms of that relief do not permit it to flow through to the Filer.

30. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief and to replace the Current Relief and the GCIC Relief with the Requested Related Party Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Requested Related Party Relief is granted to permit the Filer, or an affiliate of the Filer, to purchase and hold Related Party NET Debt Securities on behalf of the Funds on the condition that:

(i) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Fund;

(ii) the Related Party NET Debt Securities have a “designated rating” by a “designated rating organization” as those terms are defined in NI 81-102;

(iii) the IRC of the Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

(iv) the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

(v) in the case of Related Party NET Debt Securities to be purchased in a Primary Offering:

(A) the size of the Primary Offering is at least $100 million;

(B) at least 2 purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 - Underwriting Conflicts, collectively purchase at least 20% of the Primary Offering;

(C) no Fund shall participate in the Primary Offering if following its purchase the Fund together with related Funds will hold more than 20% of the securities issued in the Primary Offering;

(D) no Fund shall participate in the Primary Offering if following its purchase the Fund would have more than 5% of its net assets invested in Related Party NET Debt Securities of a Related Issuer;

(E) the price paid for the securities by a Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;

(vi) in the case of Related Party NET Debt Securities to be purchased in the secondary market:

(A) the price payable for the security is not more than the ask price of the security;

(B) the ask price of the security is determined as follows:

(I) If the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or

(II) If the purchase does not occur on a marketplace,

a. the Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or

b. If the Fund does not purchase the security from an independent, arm's length seller, the fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;

(C) the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

(vii) no later than the time a NI 81-102 Fund files its annual financial statements, or on or before the 90th day after the end of each financial year of a Pooled Fund, the Filer, or the affiliate of the Filer, files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief;

(viii) the IRC of the Fund complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filer, or the affiliate of the Filer, did not comply with any of the conditions of this decision; and

(ix) the decision with respect to the Related Party NET Debt Securities purchased pursuant to a Primary Offering or in the secondary market will expire on the coming into force of any securities legislation relating to fund purchases of Related Party NET Debt Securities purchased pursuant to a Primary Offering or in the secondary market.

(c) The decision of the principal regulator under the Legislation is that the Requested Related Party Relief is granted permitting the Pooled Funds to purchase and hold Related Party Exchange-Traded Securities on condition that:

(i) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Pooled Fund;

(ii) the IRC of the Pooled Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

(iii) the manager of the Pooled Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Pooled Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

(iv) the purchase is made in the secondary market on an exchange on which the securities are listed and traded;

(v) on or before the 90th day after the end of each financial year of a Pooled Fund, the manager of the Pooled Fund files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief;

(vi) the IRC of the Pooled Fund complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filer, or the affiliate of the Filer, did not comply with any of the conditions of this decision; and

(vii) the decision with respect to purchases of exchange-traded securities by the Pooled Funds will expire on the coming into force of any securities legislation relating to purchases of exchange-traded securities of a Related Party by mutual funds not governed by NI 81-102.

This decision is effective on the Completion Date.

"James E.A. Turner"
Vice-Chair
Ontario Securities Commission

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

### 2.1.7 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from related party transaction reporting requirements in s. 117 of the Securities Act to replace existing relief – Filer is "management company" to certain mutual funds – following an internal reorganization, filer will also become "management company" to other funds managed by an affiliate – Funds permitted to engage in certain related party transactions that trigger reporting requirements under the Act – existing relief for certain funds will not flow through to filer following reorganization – funds already provide substantially similar reporting in management reports on fund performance – relief will consolidate existing relief under the filer after the reorganization.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 117(1)(a), (c) and (d), 117(2).

**October 29, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer from the management company reporting requirements in the Legislation (the **Mutual Fund Conflict of Interest Reporting Requirements**) which require the Filer, or an affiliate to:

(a) file a report of every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(b) file a report of every transaction of purchase and sale effected by the mutual fund through any related person or company with respect to which the related person or company receives a fee either from the mutual fund or from the other party to the transaction or from both; and

(c) file a report of every transaction, other than an arrangement relating to insider trading in portfolio securities, in which the mutual fund is a joint participant with one or more of its related persons or companies;

in respect of the Funds (as defined below) (collectively, the **Conflict of Interest Reporting Relief**).

The Filer also seeks to revoke and replace the Current Relief (as defined below) and the GCIC Relief (as defined below) (the **Revocation Relief**) (the Mutual Fund Conflict of Interest Reporting Relief and the Revocation Relief are 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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick and Newfoundland and Labrador (together with Ontario, the Jurisdictions).

**Interpretation**

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

For purposes of paragraphs 6, 7, 8, 10, 11, 13, references to "**Filer**" includes the Filer and its affiliates.

**Funds** means mutual funds which are reporting issuers and for which the Filer or an affiliate acts as portfolio manager from time to time.

**NI 31-103** means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

**NI 81-102** means National Instrument 81-102 *Mutual Funds*.

**NI 81-106** means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*.

**Related Party** means Scotia Capital Inc. or other brokers or dealers that are subsidiaries or affiliates of The Bank of Nova Scotia from time to time.

**Representations**

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

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

3. Neither the Filer nor any of the Funds is in default under the securities legislation of any of the Jurisdictions.

4. The Funds are or will be mutual funds that are reporting issuers in each of the Jurisdictions.

5. Each Related Party is a "related person or company" to the Funds within the meaning of the Legislation because each Related Party is a subsidiary or affiliate of BNS, the parent company of the Filer.

6. The Filer is or will be the portfolio manager of the Funds and accordingly is a "management company" or equivalent under the Legislation.

7. A Fund is or will be a "related person or company" in respect of another Fund and in respect of other investment funds and managed accounts managed by the Filer, as such term is defined in section 106 of the Legislation.

8. Pursuant to section 6.1 of NI 81-10, as well as exemptive relief granted to the Funds from time to time, a Fund is permitted to purchase or sell securities with another Fund.

9. The Filer has discretion to allocate the brokerage transactions of the Funds in any manner that it believes to be in the Funds' best interests. The Filer may from time to time allocate brokerage business of the Funds to a Related Party for which it may receive a fee. The Filer uses the same criteria in selecting all brokers, regardless of whether the broker is a Related Party.

10. The Filer, as portfolio manager to the Funds may from time to time cause a Fund to participate as a joint participant with one or more other Funds in the purchase of securities under a distribution, including where a Related Party may act as an underwriter in connection with such offering.

11. In the absence of relief therefrom, the Mutual Fund Conflict of Interest Reporting Requirements would require the Filer to file, within 30 days of the end of the month in which each transaction occurs, a report of (i) any purchase or sale of securities between a Fund and another Fund or other Related Party (ii) any purchase or sale of securities by a Fund that is effected through a Related Party, in which that Related Party received a Fee for such services, either from the Fund or another party to the transaction, and (iii) every transaction in which, by arrangement, a Fund, with one or more Funds or Related Parties, acts as a joint participant. The report in each case, would have to disclose the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the related person or company receiving a fee, the name of the person or company that paid the fee to the related person or company and the amount of the fee received by the related person or company.

12. Pursuant to NI 81-106, the Funds prepare and file interim and annual management reports of fund performance (**MRFPs**) that disclose any transactions involving a Related Party, including the identity of that Related Party, the relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount, and any ongoing commitments to the related party.

13. It is costly and time consuming for the Filer to also provide the reports required by the Mutual Fund Conflict of Interest Reporting Requirements, which are substantially similar to the information required by NI 81-106 to be disclosed in the MRFPs, on a monthly and segregated basis for each Fund.

14. The Filer is seeking the Revocation Relief in connection with a proposed internal reorganization of BNS's asset management business (the **Reorganization**).

15. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC Ltd. (**GCIC**), WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

16. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer which includes becoming manager and/or portfolio advisor of Funds for which GCIC provided such services prior to the Reorganization.

17. The Reorganization does not involve an amalgamation.

18. Under an Order dated July 27, 2009, the securities regulatory authority or regulator in each of Ontario and Newfoundland and Labrador – as Coordinated Exemptive Relief Decision Makers – granted GCIC relief that is substantially the same as the Conflict of Interest Reporting Relief (the **GCIC Relief**).

19. Under an Order dated October 27, 2009, the Principal Regulator granted the Filer relief from the provisions of the Legislation requiring a management company to file a reporting within thirty days after each month end relating to every purchase or sale effected by a mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the **Current Relief**).

20. The Current Relief is not as broad as the GCIC Relief, as the Current Relief does not give relief from the requirement of the Legislation that (i) a report be filed of every transaction of purchase or sale of securities between the mutual fund and any related person or company and that (ii) a report be filed of every transaction, other than an arrangement relating to insider trading in portfolio securities, in which the mutual fund is a joint participant with one or more of its related persons or companies, which reports are required because the Funds may engage in transactions of securities with a Related Party and a Fund may be a joint participant in a transaction with a Related Party.

21. Filer is not able to rely on the GCIC Relief following the Reorganization as the terms of the GCIC Relief do not permit that relief to flow through to the Filer.

22. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief and to replace the Current Relief and the GCIC Relief with the Mutual Fund Conflict of Interest Reporting Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Conflict of Interest Reporting Relief is granted provided that:

(i) the annual and interim MRFP for each Fund disclose:

(A) the name of the related person or company;

(B) the amount of fees paid to each related person or company;

(C) the person or company who paid the fees, if they were not paid by the Fund; and

(ii) the records of portfolio transactions maintained by each Fund include, separately, for every portfolio transaction effected by the Fund through a related person or company:

(A) the name of the related person or company;

(B) the amount of fees paid to the related person or company; and

(C) the person or company who paid the fees.

This decision is effective on the Completion Date.

"James E. A. Turner"
Vice-Chair
Ontario Securities Commission

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

### 2.1.8 Sanofi

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from prospectus and dealer registration requirements in respect of certain trades in units made in connection with an employee share offering by a French issuer – Relief from prospectus and dealer registration requirements upon the redemption of units for shares of the issuer – The offering involves the use of collective employee shareholding vehicles, each a fonds communs de placement d'entreprise (FCPE) – The Filer cannot rely on the employee prospectus exemption in section 2.24 of National Instrument 45-106 Prospectus and Registration Exemptions and the exemption in section 8.16 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is not available as the Canadian employees are not employees of the FCPEs or a related entity of the FCPEs – Canadian employees will receive disclosure documents – The FCPEs are subject to the supervision of the French Autorité des marchés financiers – Relief granted, subject to conditions.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.
National Instrument 45-102 Resale of Securities, s. 2.14.
National Instrument 45-106 Prospectus and Registration Exemptions, s. 2.24.

**November 1, 2013**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**SANOFI**
**(the "Filer")**

**DECISION**

**Background**

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

1. an exemption from the prospectus requirements of the Legislation (the "**Prospectus Relief**") so that such requirements do not apply to

   (a) trades in:

      (i) units (the "**Principal Classic Units**") of the Sanofi Shares FCPE (the "**Principal Classic FCPE**"), which is a *fonds commun de placement d'entreprise* or "**FCPE**," a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors; and

      (ii) units (together with the Principal Classic Units, the "**Units**") of a temporary FCPE named Relais Sanofi shares (the "**Temporary Classic FCPE**"), which will merge with the Principal Classic FCPE following the Employee Share Offering (as defined below), such transaction being referred to as the "**Merger**", as further described below (the term "**Classic FCPE**" used herein means, prior to the Merger, the Temporary Classic FCPE, and following the Merger, the Principal Classic FCPE);

made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdiction or in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Northwest Territories (collectively, the "**Canadian Employees**," and Canadian Employees who subscribe for Units, the "**Canadian Participants**"); and

(b) trades of ordinary shares of the Filer (the "**Shares**") by the Classic FCPE to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants;

2. an exemption from the dealer registration requirements of the Legislation (the "**Registration Relief**") so that such requirements do not apply to the Sanofi Group (as defined below and which, for clarity, includes the Filer and the Canadian Affiliates (as defined below)), the Temporary Classic FCPE, the Principal Classic FCPE and Natixis Asset Management (the "**Management Company**") in respect of:

(a) trades in Units made pursuant to the Employee Share Offering to or with Canadian Employees; and

(b) trades in Shares by the Classic FCPE to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants.

(the Prospectus Relief and the Registration Relief, collectively, the "**Offering 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador (together with the Jurisdiction, the "**Jurisdictions**").

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions. The head office of the Filer is located in France and the Shares are listed on NYSE Euronext Paris and on the New York Stock Exchange (in the form of American Depositary Shares represented by American Depositary Receipts). The Filer is not in default under the Legislation or the securities legislation of the other Jurisdictions.

2. The Filer carries on business in Canada through certain affiliated companies that employ Canadian Employees, including sanofi-aventis Canada Inc., Sanofi Consumer Health Inc./Sanofi Santé Grand Public Inc., Merial Canada Inc. and Sanofi Pasteur Limited (collectively, the "**Canadian Affiliates**," and together with the Filer and other affiliates of the Filer, the "**Sanofi Group**"). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions. None of the Canadian Affiliates is in default under the Legislation or the securities legislation of the other Jurisdictions.

3. The Filer has established a global employee share offering for employees of the Sanofi Group (the "**Employee Share Offering**"). As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Classic FCPE on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

4. The Employee Share Offering is comprised of one subscription option, being an offering of Shares to be subscribed through the Temporary Classic FCPE, which Temporary Classic FCPE will be merged with the Principal Classic FCPE after completion of the Employee Share Offering, subject to the decision of the supervisory boards of the FCPEs and the decision of the French AMF (defined below) (the "**Classic Plan**").

5. Only persons who are employees of a member of the Sanofi Group during the subscription period for the Employee Share Offering and who meet other employment criteria (the "**Qualifying Employees**"), will be permitted to participate in the Employee Share Offering.

6. The Principal Classic FCPE and the Temporary Classic FCPE were established for the purposes of implementing employee share offerings and plans of the Filer. There is no current intention for these FCPEs to become reporting issuers under the Legislation or the securities legislation of the other Jurisdictions.

7. FCPEs are a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors. The Principal Classic FCPE and the Temporary Classic FCPE have been registered with the French Autorité des marchés financiers (the "**French AMF**"). Only Qualifying Employees will be allowed to hold Units issued pursuant to the Employee Share Offering.

8. All Units acquired in the Employee Share Offering by Canadian Participants will be subject to a hold period of approximately five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law and adopted under the Classic Plan in Canada (such as a release on death or termination of employment).

9. Under the Classic Plan, the subscription price will be the Canadian dollar equivalent of the average of the opening price of the Shares on NYSE Euronext Paris (expressed in Euros) on the 20 trading days preceding the date of the launch of the offering by the Board of Directors of the Filer, less a 20% discount

10. The Temporary Classic FCPE will apply the cash received from the Canadian Participants to subscribe for Shares from the Filer.

11. Initially, the Shares subscribed for will be held in the Temporary Classic FCPE and the Canadian Participants will receive Units in the Temporary Classic FCPE. Following the completion of the Employee Share Offering, the Temporary Classic FCPE will be merged with the Principal Classic FCPE (subject to the approval of the supervisory board of the FCPEs and the French AMF). Units of the Temporary Classic FCPE held by Canadian Participants will be replaced with Units of the Principal Classic FCPE on a *pro rata* basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic FCPE (such transaction being referred to as the "**Merger**").

12. Any dividends paid on the Shares held in the Classic FCPE will be contributed to the Classic FCPE and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued.

13. At the end of the Lock-Up Period, a Canadian Participant may (i) request the redemption of his or her Units in the Classic FCPE in consideration for a cash payment equal to the then market value of the underlying Shares, or (ii) continue to hold his or her Units in the Classic FCPE and request the redemption of those Units at a later date in consideration for a cash payment equal to the then market value of the underlying Shares. Subject to certain changes in the regulations of the Classic FCPE which may be made, a Canadian Participant may be permitted to request the redemption of his or her Units in the Classic FCPE in consideration for the underlying Shares (instead of a cash payment) at or after the end of the Lock-Up Period.

14. In the event of an early unwind resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of Units in the Classic FCPE in consideration for a cash payment equal to the then market value of the Shares held by the Classic FCPE corresponding to such Units.

15. An FCPE is a limited liability entity under French law. The Classic FCPE's portfolio will consist almost entirely of Shares of the Filer and may, from time to time, also include cash in respect of dividends paid on the Shares which will be reinvested in Shares, and cash or cash equivalents pending investments in Shares and for the purposes of Unit redemptions.

16. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions.

17. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Classic FCPE is limited to purchasing Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and investing available cash in cash equivalents.

18. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Classic FCPE. The Management Company's activities do not affect the underlying value of the Shares. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of the other Jurisdictions.

19. Shares issued in the Employee Share Offering will be deposited in the Principal Classic FCPE and/or the Temporary Classic FCPE, as applicable, through CACEIS Bank France (the "**Depositary**"), a large French commercial bank subject to French banking legislation. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each of the Principal Classic FCPE and the Temporary Classic FCPE to exercise the rights relating to the securities held in its respective portfolio.

20. All management charges relating to the Classic FCPE will be paid from the assets of the Classic FCPE or by the Filer, as provided in the regulations of the Classic FCPE.

21. Participation in the Employee Share Offering is voluntary, and the Canadian Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

22. The total amount invested by a Canadian Employee in the Employee Share Offering cannot exceed 25% of his or her estimated gross annual remuneration.

23. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or the Units.

24. The Shares are not currently listed for trading on any stock exchange in Canada and the Filer has no intention to have the Shares so listed. As there is no market for the Shares in Canada, and none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with the rules and regulations of, a foreign stock exchange outside of Canada.

25. Canadian Employees may consult an information package on the Employee Share Offering in the French or English language, according to their preference, which will include a summary of the terms of the Employee Share Offering and a description of Canadian income tax consequences of subscribing for and holding the Units and redeeming Units at the end of the Lock-Up Period. The information package will be available through a link that will be emailed to Canadian Employees; physical copies will be provided where delivery by e-mail is not feasible.

26. Canadian Participants may also consult the Filer's annual report on Form 20-F filed with the United States Securities and Exchange Commission as well as the *French Document de Référence* filed with the French AMF in respect of the Shares and a copy of the rules of each FCPE (which are analogous to company by-laws). Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares generally.

27. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement at least once per year.

28. There are approximately 1,734 employees resident in Canada, with the greatest number resident in Ontario (approximately 1,288), and the remainder in the other Jurisdictions who represent, in the aggregate, less than 2% of the number of employees in the Sanofi Group worldwide.

**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 Offering Relief is granted provided that the prospectus requirements of the Legislation will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision unless the following conditions are met:

(a) the issuer of the security

(i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

(b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

(i) did not own, directly or indirectly, more than 10% of the outstanding securities of the class or series, and

(ii) did not represent in number more than 10% of the total number of owners, directly or indirectly, of securities of the class or series; and

(c) the first trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

### 2.1.9 Calloway Real Estate Investment Trust

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the prospectus requirement to distributions that are steps in a proposed reorganization of a fund – proposed reorganization intended to ensure fund will satisfy the definition of "real estate investment trust" for purposes of tax law – proposed reorganization does not require unitholder approval and has been approved by the fund's trustees as being in the best interests of the fund – proposed transaction does not change unitholders' ownership of the fund nor does it change the assets and liabilities of the fund on a consolidated basis – fund unitholders are not making an investment decision in respect of the fund – relief subject to certain conditions.

**Applicable Legislative Provisions**

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

**November 1, 2013**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CALLOWAY REAL ESTATE INVESTMENT TRUST**
**(the "Filer")**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Prospectus Requirement shall not apply to the following distributions that are steps in the proposed reorganization (the **Proposed Transaction**) of the Filer:

(a) the distribution by the Filer to the unitholders of the Filer of units of MFT (the **MFT Units**); and

(b) the distribution by MFT of the units of the Filer (the **Filer Units**) to the Filer and unitholders of the Filer in satisfaction of the redemption price for the MFT Units.

(collectively, the **Exemption Sought**).

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

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

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

In this decision, the following additional terms have the following meanings:

**"NI 41-101"** means National Instrument 41-101 – *General Prospectus Requirements*;

**"OSA"** means the *Securities Act* (Ontario);

**"Prospectus Requirement"** means the provision of subsection 53(1) of the OSA, and the equivalent provisions of the securities legislation in the non-principal jurisdictions and the general prospectus requirements stipulated in NI 41-101, that prohibits a person or company from trading in a security unless the person or company satisfies the requirements of section 53 of the OSA and NI 41-101; and

**"Tax Act"** means the *Income Tax Act* (Canada).

**Representations**

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

1. The Filer is a mutual fund trust within the meaning of the Tax Act which was established to, among other things, invest directly and indirectly in income producing rental properties in Canada and other investments.

2. The principal office of the Filer is located at 700 Applewood Crescent, Suite 200, Vaughan, Ontario.

3. The book value of the assets of the Filer on a consolidated basis under International Financial Reporting Standards (**IFRS**) as of June 30, 2013 was approximately $6.84 billion. The assets of the Filer consist primarily of the directly or indirectly held beneficial interests in 117 commercial shopping mall properties located in Canada.

4. Under the terms of the amended and restated declaration of trust dated May 10, 2012 governing the Filer, as it may be further amended and restated from time to time (the **Declaration of**

**Trust**), Filer may issue an unlimited number of Filer Units and special voting units of the Filer (the **Special Voting Units**).

5. All Filer Units are of the same class with equal rights and privileges. Each Filer Unit represents an equal fractional undivided beneficial interest in the Filer and all Filer Units participate pro rata in any distributions by the Filer and, in the event of termination or winding-up of the Filer, in the net assets of the Filer remaining after satisfaction of all liabilities. Each Filer Unit is redeemable at the option of the holder, is transferable, fully paid and non-assessable and entitles the holder thereof to one vote at all meetings of unitholders of the Filer for each Filer Unit held.

6. Special Voting Units entitle the holder of an exchangeable security to such number of votes at meetings of unitholders as is equal to the number of Filer Units into which such exchangeable security (other than an exchangeable security owned by the Filer or any subsidiary of the Filer) is then exchangeable or convertible for. For greater certainty, holders of Special Voting Units are not entitled, by virtue of their holding of Special Voting Units, to distributions of any nature whatsoever from the Filer nor do they have any beneficial interest in any assets of the Filer on termination or winding-up of the Filer. Special Voting Units are not transferable without consent of the Filer and are automatically redeemed and cancelled upon the exercise or conversion of such exchangeable security. Special Voting Units are not listed on any stock exchange.

7. The Filer Units are traded on the Toronto Stock Exchange (**TSX**) under the symbol CWT.UN. The closing trading price of the Filer Units on the TSX on September 13, 2013 was $24.69, representing a market capitalization for the Filer of approximately $2,840,341,304 at that date.

8. The Filer Units are widely held by the public other than Mitchell Goldhar (the **Investor**), who owns more than 10% of the Filer Units and Special Voting Units. To the knowledge of the trustees of the Filer, no other person beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the issued and outstanding Filer Units.

9. The Investor beneficially owns or controls a number of the outstanding Filer Units which, together with the securities he beneficially owns or controls which are exchangeable at his option for Filer Units at no additional consideration and the associated Special Voting Units, represent approximately a 20.88% voting interest in the Filer. Provided that the Investor owns more than 20% of the Filer Units, the Investor is entitled to be issued additional Special Voting Units such that the Investor controls 25% of the voting rights in the Filer. The Investor is being treated identically to all other unitholders in the Proposed Transaction.

10. The Filer owns all of the issued and outstanding units of Calloway Holdings Trust (**Sub Trust**), an unincorporated open-ended trust established under the laws of the Province of Alberta.

11. Sub Trust qualifies as a “unit trust” pursuant to paragraph 108(2)(a) of the Tax Act and was formed to, among other things, invest in securities of other entities. It currently owns securities of Calloway GP Inc. (**GP Inc.**), Calloway LP II Inc. (**GP II Inc.**), Calloway GP III Inc. (**GP III Inc.**), Calloway Limited Partnership (**LP**), Calloway Limited Partnership II (**LP II**) and Calloway Limited Partnership III (**LP III**).

12. Sub Trust has at least one trustee who is resident in Canada.

13. Under the terms of the declaration of trust of Sub Trust, Sub Trust may issue an unlimited number of units of Sub Trust (the **Trust Units**). Each Trust Unit represents an equal undivided beneficial interest in any distribution by Sub Trust, whether of income, net realized capital gains or other amounts, and in the event of termination or winding-up of Sub Trust, in the net assets of Sub Trust remaining after satisfaction of all liabilities. Each Trust Unit is redeemable at the option of the holder and entitles the holder thereof to one vote at all meetings of holders of Trust Units.

14. The book value of the assets of Sub Trust on a consolidated basis under IFRS as of June 30, 2013 was approximately $1.95 billion. Sub Trust currently owns cash, all of the issued and outstanding Class A units of LP (the **LP Class A Units**), Class A units of LP II (the **LP II Class A Units**) and Class A units of LP III (the **LP III Class A Units**) and all of the issued and outstanding shares of GP Inc., GP II Inc. and GP III Inc.

15. Each of LP, LP II and LP III have limited partners in addition to Sub Trust; however, such limited partners own a different class of limited partnership units than Sub Trust (the other limited partners own Class B, C, D or E units, as applicable).

16. Each of LP, LP II and LP III holds a portfolio of assets that consists principally of real property.

17. The Proposed Transaction is being undertaken in order to ensure that the Filer continues to qualify as a “real estate investment trust” under the Tax Act. The steps of the Proposed Transaction are set out in Paragraphs 12 to 25 below.

18. All amounts owed by Sub Trust to LP, LP II, LP III or the Filer or amounts owed by LP, LP II, LP III or

the Filer to Sub Trust (the **Intercompany Amounts**) will be satisfied in full by the payment of cash, or alternatively, by the issuance of additional securities (Trust Units, LP Class A Units, LP II Class A Units or LP III Class A Units, as applicable), having a fair market value equal to the Intercompany Amount at issue. Following such payment or issuance, all Intercompany Amounts will be settled and extinguished.

19. A Canadian resident third party settlor will settle a trust to be formed under the laws of the Province of Alberta (**MFT**) with a nominal cash contribution in exchange for one MFT Unit.

20. The Filer will subscribe for MFT Units for nominal cash consideration. The initial MFT Unit that will be issued to the third party settlor, as described in Paragraph 13, will be repurchased by MFT for an amount equal to the cash received from the third party settlor such that the Filer will be the sole unitholder of MFT.

21. Pursuant to the declaration of trust of MFT, MFT will be authorized to issue an unlimited number of MFT Units with the following terms and conditions:

    (a) Each MFT Unit will represent an equal undivided interest in MFT;

    (b) Each MFT Unit will participate pro-rata in any distributions;

    (c) Each MFT Unit will participate pro-rata in the net assets of MFT in the event of termination or winding-up of MFT;

    (d) Each MFT Unit will entitle the holder thereof to one vote at all meetings of holders of MFT Units;

    (e) Each MFT Unit will be redeemable at the option of MFT for any amount equal to the fair market value of the MFT Unit. The redemption price will be payable in cash or Filer Units; and

    (f) Each MFT Unit will be redeemable at the option of the holder at fair market value. The redemption price will be payable in cash or Filer Units.

22. The declaration of trust of MFT will provided that the only undertaking of MFT will be activities described in paragraph 132(6)(b) of the Tax Act and its terms will be substantially the same as the terms of the declaration of trust of SubTrust. The trustee of MFT will be an individual resident in Canada and will not be a director of any of GP Inc. GP II Inc. or GP III Inc.

23. Pursuant to an agreement to be entered into between Sub Trust and MFT, immediately prior to the point in time at which the transfer of assets described in Paragraph 21 will occur (the **Transfer Time**), Sub Trust will transfer all of the cash, LP Class A Units, LP II Class A Units, LP III Class A Units and the shares of GP Inc., GP II Inc. and GP III Inc. it owns to MFT for no consideration.

24. Following the transfer described in Paragraph 17, the Filer will own all of the Trust Units and all of the MFT Units and will continue to indirectly hold all of the cash that was previously held by Sub Trust, the issued and outstanding LP Class A Units, LP II Class A Units, LP III Class A Units and all of the issued and outstanding shares of GP Inc., GP II Inc. and GP III Inc. by reason of its ownership of all of the MFT Units. Sub-Trust will then be wound-up.

25. The Filer will distribute a certain number of its MFT Units acquired in Paragraph 14 to all of the unitholders of the Filer on a pro-rata basis as a distribution of capital so that MFT can qualify as a mutual fund trust for purposes of the Tax Act. MFT will remain as a subsidiary of the Filer after such distribution until its winding up described in Paragraph 25 below. It is expected that less than 3% of the MFT Units will be distributed to unitholders of the Filer and that the MFT Units distributed per Filer Unit will represent a value of less than $0.70 per outstanding Filer Unit.

26. The provisions in the Declaration of Trust in respect of the consolidation of Filer Units will be amended to provide for the immediate consolidation in Paragraph 24 of Filer Units issued in connection with the Reorganization under paragraph 22. The trustees are authorized to make such amendment to the Declaration of Trust.

27. Also at the Transfer Time:

    (a) MFT will transfer all of the cash, LP Class A Units, LP II Class A Units, LP III Class A Units and the shares of GP Inc., GP II Inc. and GP III Inc. it acquired in Paragraph 14 to the Filer; and

    (b) as consideration for the transfer, the Filer will issue Filer Units to MFT having an aggregate fair market value equal to the aggregate fair market value of the assets transferred to the Filer. At the Transfer Time, MFT will have no material outstanding liabilities and the only material assets of MFT will be cash, all of the issued and outstanding LP Class A Units, LP II Class A Units, LP Class III A Units and all of the issues and outstanding shares of GP Inc., GP II Inc. and GP III Inc.

28. Immediately after the Transfer Time, MFT will redeem all of the issued and outstanding MFT Units held by the Filer and the unitholders of the Filer, except for one MFT Unit which the Filer will continue to hold until the winding-up of MFT described in Paragraph 25. MFT will satisfy the redemption price for such MFT Units by transferring the Filer Units acquired in Paragraph 21 to the Filer and unitholders of the Filer. No consideration other than the Filer Units will be received by the Filer or the unitholders of the Filer on the redemption of the MFT Units. The Filer Units that will be received by the Filer upon the redemption of the MFT Units will be cancelled upon receipt.

29. The MFT Units and the Filer Units issuable in the Proposed Transaction will not be posted for trading on any stock exchange.

30. Immediately after the transactions described in Paragraph 22, pursuant to the terms of the Declaration of Trust, the outstanding Filer Units held by the unitholders of the Filer will be consolidated on a basis such that the number of Filer Units outstanding following such consolidation will be equal to the number of Filer Units outstanding immediately before the Proposed Transaction. The unitholders of the Filer will not receive, and shall not be entitled to receive, any proceeds as a consequence of the consolidation.

31. Subsequent to the filing of the necessary elections under the Tax Act in respect of the Proposed Transaction, MFT will be wound up. The one MFT Unit held by the Filer will be cancelled on the wind-up for no consideration.

32. The Proposed Transaction does not require the approval of unitholders of the Filer.

33. The Proposed Transaction has been approved by the trustees of the Filer as being in the best interest of the unitholders of the Filer.

34. The Proposed Transaction does not change the unitholders' ownership of the Filer nor does it change the assets or liabilities of the Filer on a consolidated basis.

35. There will not be any Canadian tax payable by unitholders of the Filer in respect to the Proposed Transaction other than the immaterial amount of withholding tax that will be payable by non-resident unitholders of the Filer on the distribution of MFT Units. The Filer will pay and remit to the Receiver General, on behalf of each unitholder of the Filer that is non-resident, an amount equal to the amount required by the Tax Act to be withheld on behalf of non- resident unitholders of the Filer.

36. The Proposed Transaction will be described to unitholders of the Filer through a press release but is not anticipated to be reflected in a material change report as the Proposed Transaction does not constitute a material change.

**Decision**

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

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

(a) The MFT Units that are distributed by the Filer to the unitholders of the Filer in the Proposed Transaction shall be immediately redeemed by MFT in accordance with the terms of the MFT Units in exchange for Filer Units then held by MFT;

(b) The Filer Units that are issued to unitholders of the Fund as a result of the redemption of the MFT Units are immediately consolidated without payment of consideration such that the number of Filer Units to be held by each unitholder of the Filer immediately after the Proposed Transaction will be equal to the number of Filer Units held immediately before the Proposed Transaction;

(c) The total number of Filer Units outstanding before and after the Proposed Transaction shall be the same so that the Proposed Transaction does not change the unitholders' ownership of the Filer; and

(d) The MFT Units and the Filer Units to be issued will not be posted for trading on any stock exchange and each of the MFT Units and Filer Units to be issued as part of the Proposed Transaction will only be outstanding for a moment in time, and in any event not beyond one day.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

### 2.1.10 CML HealthCare Inc. – s. 1(10)

**Headnote**

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

**Ontario Statutes**

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

November 6, 2013

CML HealthCare Inc.
60 Courtneypark Dr. West, Unit #1
Mississauga, Ontario L5W 0B3

Dear Sirs/Mesdames:

**Re: CML HealthCare Inc. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Nunavut and the Yukon Territory (the Jurisdictions) that the Applicant is not a reporting issuer**

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Kathryn Daniels"
Deputy Director, Corporate Finance
Ontario Securities Commission

### 2.1.11 IA Clarington Investment Inc. et al.

**Headnote**

Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger – Approval required because this merger does not meet the criteria for pre-approved reorganizations and transfers in Regulation 81-102 – Continuing Fund has different investment objectives than Terminating Fund provided with timely and adequate disclosure regarding the Proposed Merger.

**Applicable Legislative Provisions**

Regulation 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6.

**[Translation]**

**October 3, 2013**

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

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF**
**APPLICATION IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**IA CLARINGTON INVESTMENT INC.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**IA CLARINGTON ENERGY CLASS**
**(the Terminating Fund)**

**AND**

**IN THE MATTER OF**
**IA CLARINGTON CANADIAN LEADERS CLASS**
**(the Continuing Fund)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer on behalf of the Terminating Fund, for a decision under the securities legislation of the Jurisdictions (the **Legislation**) approving the merger of the Terminating Fund into the Continuing Fund (the **Proposed Merger**) pursuant to paragraph 5.5(1)(b) of *Regulation 81-102 respecting Mutual Funds* (c.V-1.1, r.39) (**Regulation 81-102**) (the **Approval 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, Yukon Territory and Nunavut; 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) and Regulation 11-102 have the same meaning if used in this decision unless otherwise defined.

**Representations**

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

The Filer

1. The Filer is a corporation established under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, whose head office is located at 1080 Grande Allée West blvd, Québec city, Québec, G1K 7M3.

2. The Filer is a wholly-owned subsidiary of Industrial Alliance Insurance and Financial Services Inc., a public company listed on the Toronto Stock Exchange.

3. The Filer is duly registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador and as a portfolio manager in each of the provinces of Canada.

4. The Filer is acting as the investment fund manager for the Terminating Funds and the Continuing Funds (together, the **Funds**) under a Master Management Agreement dated August 28, 2000, as amended.

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

The Funds

6. Each of the Funds is a separate class of shares of Clarington Sector Fund Inc., a mutual fund

corporation incorporated under the laws of Ontario.

7. The Funds are reporting issuers under applicable securities legislation of each province and territory of Canada.

8. Shares of the Funds are distributed under a simplified prospectus. The simplified prospectus is governed by *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*.

9. The net asset value for each series of the Funds is calculated on a daily basis, each day that the Toronto Stock Exchange is open for trading.

10. The Funds are not in default of securities legislation in any province or territory of Canada.

The Proposed Merger

11. The board of directors of the Filer and the board of directors of Clarington Sector Fund Inc. approved the Proposed Merger on July 31, 2013.

12. On August 1st 2013, the Funds issued a press release and filed on August 2, 2013, a material change report with respect to the Proposed Merger.

13. On August 14, 2013, the Autorité des marchés financiers issued a receipt for the amendment to the simplified prospectus of the Terminating Fund that includes information relating to the Proposed Merger.

14. In accordance with *Regulation 81-107 Independent Review Committee for Investment Funds*, the Filer presented the terms of the Proposed Merger to the Independent Review Committee of the Funds (the IRC) for its recommendation. Further to reasonable inquiry, the IRC recommended the Proposed Merger, subject to the approval of the securityholders and the Decision Makers, on the basis that the Proposed Merger would achieve a fair and reasonable result for the Funds (the **IRC's Conclusion**).

15. The approval by the Decision Makers of the Proposed Merger is required because the Proposed Merger does not satisfy all of the conditions for pre-approved reorganizations and transfers as set out in section 5.6 of Regulation 81-102. In particular, the Proposed Merger does not satisfy the requirement set out in subparagraph 5.6(1)(a)(ii) of Regulation 81-102, namely because a reasonable person would not consider the fundamental investment objectives of the Terminating Fund and those of the Continuing Fund to be substantially similar.

16. Except for the condition stated above, the Proposed Merger meets all of the other conditions for pre-approved reorganizations and transfers under section 5.6 of Regulation 81-102.

17. As required by subsection 5.1(f) of Regulation 81-102, securityholders of the Terminating Fund will be asked to approve the Proposed Merger at a meeting to be held on September 25, 2013 (the **Meeting**).

18. On September 25, 2013, the securityholders of the Terminating Fund approved the Proposed Merger.

19. As required by section 5.4 of Regulation 81-102, a notice of meeting, a proxy solicitation and information circular (the **Circular**) was sent to securityholders of the Terminating Fund not less than 21 days before the date of the Meeting and was filed on the *System for Electronic Document Analysis and Retrieval* (SEDAR) on September 3, 2013.

20. The Circular sent to the securityholders of the Terminating Fund in accordance with paragraph 5.6(1)(f) of the Regulation 81-102 and sets out:

    (a) the steps that will be taken to effect the Proposed Merger, which will occur on or about the close of business on October 4, 2013, or such later date as may be determined by the Filer (the **Merger Date**);

    (b) the material differences between the Terminating Fund and the Continuing Fund;

    (c) income tax disclosure as it relates to the impact of the implementation of the Merger;

    (d) prominently, the various ways in which securityholders can obtain the most recent simplified prospectus, annual information form, fund facts, interim and annual financial statements and management reports of fund performance of the Funds; and;

    (e) the IRC's Conclusion.

20. Prior to the date of the Proposed Merger, the Terminating Fund will sell in an orderly manner the securities of its portfolio that do not meet the investment objectives and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash in an higher proportion than what is suitable in order to achieve its investment objectives.

21. Following the Proposed Merger, the securityholders of the Terminating Fund will become securityholders of the Continuing Fund. As such, they will receive shares in the same series of shares of the Continuing Fund.

22. As soon as reasonably possible following the Merger Date, the Terminating Fund will be wound up and terminated.

23. No sales charges, redemption fees or other fees or commissions will be payable by securityholders of the Terminating Fund in connection with the Proposed Merger.

24. The Filer will pay for the costs of the Proposed Merger. These costs consist mainly of brokerage charges associated with the Proposed Merger related trades that occur both before and after the Merger Date and legal fees and fees related to reporting to the securityholders and with respect of the applicable regulatory requirements.

25. Securityholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund at any time up to the close of business on the Merger Date.

**Decision**

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

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

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

### 2.1.12 Canada Mortgage Acceptance Corporation

**Headnote**

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

**Applicable Legislative Provisions**

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

**November 7, 2013**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CANADA MORTGAGE ACCEPTANCE CORPORATION**
**(the "Applicant")**

**DECISION**

**Background**

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

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

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

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

**Interpretation**

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

**Representations**

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

1. The Applicant is a corporation governed by the *Business Corporations Act* (Ontario) with its registered office located at 66 Wellington Street West, Suite 5300, Toronto Dominion Bank Tower, Toronto, Ontario, M5K 1E6.

2. As of the date of this Decision, the authorized share capital of the Applicant consists of an unlimited number of common shares and an unlimited number of two classes of preferred shares. As of the date of this Decision, one common share in the share capital of the Applicant (the "**Common Share**") was outstanding. In addition, as of the date of this Decision, $358,918.29 of Class G mortgage pass-through certificates, Series 2006-C5 (the "**Class G Certificates**") and a Class R residual mortgage pass-through certificate, Series 2006-C5 (the "**Residual Certificate**" and together with the Class G Certificates, the "**Pass-Through Certificates**"), each issued by the Applicant, are outstanding. The Class G Certificates were offered and sold to investors under a short form prospectus dated November 22, 2006. As of the date of this Decision, the Pass-Through Certificates were held by three certificateholders. The Applicant has no other securities outstanding, including debt securities.

3. The Applicant is a reporting issuer in each of the Jurisdictions and is thus subject to continuous disclosure requirements under the Legislation, except that the Applicant, pursuant to previous decision documents, is exempted, on certain terms and conditions, from certain continuous disclosure requirements under the Legislation (e.g., the requirement to file interim and annual financial statements).

4. The Applicant is applying for a decision that it is not a reporting issuer in all of the Jurisdictions in which it is currently a reporting issuer.

5. 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.

6. It is impractical, inefficient and costly for the Applicant to remain a reporting issuer with only three securityholders, as the Common Share and the Residual Certificate are each held by the same entity. In addition, the Applicant anticipates that final distributions of monetary sums in accordance with the terms and conditions of the Pass-Through Certificates will be made by the end of this year.

7. None of the Applicant's securities, including debt securities, are traded 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.

8. The Applicant does not currently intend to seek public financing by an offering of its securities in Canada.

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

10. The Applicant is not in default of any of its obligations as a reporting issuer under the Legislation, except for the obligation to file its interim management discussion and analysis for the interim period ended June 30, 2013 and related certificates for the interim period ended June 30, 2013 (collectively, the "**Filings**"), all of which became due on August 29, 2013.

11. The Applicant has not surrendered its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (the "**BC Instrument**") in order to avoid the ten day waiting period under the BC Instrument.

12. The Applicant is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is in default of its obligations to file the Filings and because it is a reporting issuer in British Columbia.

**Decision**

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

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

"James Turner"
VICE-CHAIR
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

### 2.1.13 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from s. 13.5(2)(b) of NI 31-103 to permit inter-fund and *In specie* transfers between mutual funds, closed end funds, pooled funds and managed accounts – inter-fund trades will comply with conditions in subsection 6.1(2) of NI 81-107 including IRC approval or client consent – trades involving exchange-traded securities are permitted to occur at last sale price as defined in the Universal Market Integrity Rules – relief also subject to pricing and transparency conditions – inter-fund trades will comply with conditions in s. 6.1(2) of NI 81-107.

**Applicable Legislative Provisions**

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5, 15.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, ss. 6.1(2), 6.1(4).

**October 31, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**DECISION**

**Background**

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

(a) granting an exemption from the prohibitions in section 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**) which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an associate of a responsible person, or from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit:

(i) a Public Fund (as defined below) to purchase securities from or sell securities to any Public Fund or any Pooled Fund (as defined below);

(ii) a Pooled Fund to purchase securities from or sell securities to another Pooled Fund or a Public Fund;

(iii) a Managed Account (as defined below) to purchase securities from or sell securities to a Pooled Fund or a Public Fund;

(iv) the transactions listed in (i) to (iii) (each an **Inter-Fund Trade**) to be executed at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the **Last Sale Price**) in lieu of the closing sale price (the **Closing Sale Price**) contemplated by the definition of "current market price of the security" in section 6.1(1)(a)(i) of NI 81-107 (as defined below) on that trading day, where the securities involved in the Inter-Fund Trade are exchange-traded securities (which term shall include Canadian and foreign exchange-traded securities);

((i), (ii), (iii) and (iv) are collectively the **Inter-Fund Trading Relief)** and

(v) *In specie* subscriptions and redemptions by:

(A) Managed Accounts in the Public Funds and Pooled Funds; and

(B) Pooled Funds in the Public Funds and Pooled Funds

(collectively, the ***In specie* Transfer Relief**)

(b) to revoke and replace the Current Relief (as defined below) and the GCIC Relief (as defined below) (the **Revocation Relief**)

(the Inter-Fund Trading Relief, *In specie* Transfer Relief and Revocation Relief are collectively the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(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 each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

**Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 (as defined below) and NI 81-107 have the same meaning if used in this decision, unless otherwise defined.

**Closed-End Fund** means collectively, the Existing Closed-End Funds and the Future Closed-End Funds;

**Existing NI 81-102 Fund** means each NI 81-102 Fund, being a mutual fund that is a reporting issuer and subject to NI 81-102 of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Existing Fund** means collectively, the Existing Public Funds and the Existing Pooled Funds;

**Existing Managed Account** means each existing fully managed account managed by the Filer or an affiliate of the Filer for a client that is not a responsible person;

**Existing Pooled Fund** means each existing Pooled Fund, being an investment fund that is not a reporting issuer of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Existing Closed-End Fund** means each existing Closed-End Fund, being an investment fund that is a reporting issuer and is not a mutual fund and not subject to NI 81-102 of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Existing Public Fund** means each Existing NI 81-102 Fund or Existing Closed-End Fund;

**Filer**, means the Filer or an affiliate of the Filer, for purposes of paragraphs 5, 7, 11, 12, 14, 15, 18, 19, 20, 21, 22, 23, 24, 26, 27 and 28 of the representations, and in the decision.

**Funds** means collectively, the Public Funds and the Pooled Funds;

**Future Funds** means collectively, the Future Public Funds and the Future Pooled Funds;

**Future Closed-End Fund** means each Closed-End Fund, being an investment fund that is a reporting issuer and is not a mutual fund and not subject to NI 81-102 of which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser in the future;

**Future Managed Account** means each fully managed account that will be managed by the Filer or an affiliate of the Filer for a client that is not a responsible person in the future;

**Future Pooled Fund** means each Pooled Fund, being an investment fund that is not a reporting issuer of which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser in the future;

**Future Public Fund** means each Future NI 81-102 Fund and/or Future Closed-End Fund of which the Filer or an affiliate of the Filer will act as manager or portfolio adviser in the future;

**Inter-Fund Trading Prohibition** means section 13.5(2)(b) of NI 31-103;

***In specie* Transfer** means causing a Managed Account or a Pooled Fund to deliver securities to a Pooled Fund or Public Fund in respect of the purchase of securities of the Pooled Fund or Public Fund by the Managed Account or Pooled Fund, or to receive securities from the investment portfolio of a Pooled Fund or Public Fund in respect of a redemption of securities of the Pooled Fund or Public Fund by the Managed Account or Pooled Fund;

**Last Sale Price** has the same meaning as in the Universal Market Integrity Rules;

**Managed Accounts** means the Existing Managed Accounts and the Future Managed Accounts;

**Managed Account Agreements** means the investment management agreements between clients and the Filer or an affiliate of the Filer;

**NI 81-102** means National Instrument 81-102 *Mutual Funds*;

**NI 81-102 Funds** means the Public Funds that are subject to NI 81-102 and are reporting issuers;

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

**Pooled Funds** means, collectively, the Existing Pooled Funds and the Future Pooled Funds;

**Public Funds** means, collectively, the Existing Public Funds and the Future Public Funds; and

**TSX** means the Toronto Stock Exchange.

**Representations**

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

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario. The head office of the Filer is in Toronto, Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

3. Each of the Public Funds and Pooled Funds is or will be established under the laws of the Province of Ontario or of Canada as investment funds that are (a) open-ended mutual fund trusts, (b) open-ended mutual fund corporations, or (c) closed-ended limited partnerships and/or closed-ended trusts.

4. Each of the NI 81-102 Funds is or will be subject to the provisions of NI 81-102. The securities of each of the NI 81-102 Funds and the other Public Funds (being the closed-ended limited partnerships and/or closed-ended trusts) are or will be qualified for distribution pursuant to simplified prospectuses and annual information forms or long form prospectuses, as the case may be, that have been prepared or will be prepared and filed in accordance with the securities legislation of each of the Jurisdictions. The securities of the Pooled Funds are or will be qualified for distribution on a private placement basis pursuant to an offering memorandum.

5. The investment management agreement or the documentation in respect of a Managed Account does or will contain the authorization of the client for the Filer to purchase securities from, or to sell securities to, another Fund.

6. Each of the Public Funds is or will be a reporting issuer in each of the Jurisdictions. The Pooled Funds will not be reporting issuers.

7. The Filer is, or will be, the manager, trustee (where applicable), principal distributor and registrar of the Funds. The Filer and/or sub-advisors, including a related sub-advisor, may be the portfolio manager(s) of the Funds.

8. Certain of the Public Funds and Pooled Funds are "associates" of the Filer.

9. The Filer and each of the Public Funds and the Pooled Funds are not in default of securities legislation in any of the Jurisdictions.

10. The Filer is currently compliant with and acting in reliance on NI 81-107 and has established independent review committees (each, an **IRC**) for the Existing Public Funds and the Existing Pooled Funds.

11. The Filer will establish IRCs for the Future Public Funds and for the Future Pooled Funds all in accordance with the requirements of NI 81-107.

12. The mandate of the IRC of a Pooled Fund, among other things, will include approving Inter-Fund Trades between the Pooled Fund and another Pooled Fund, an NI 81-102 Fund, a Public Fund and/or a Managed Account. The IRC of the Pooled Funds will be composed by the Filer in accordance with the requirements of section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107. Further the IRC of the Pooled Funds will not approve Inter-Fund Trades between a Pooled Fund, another Pooled Fund, a NI 81-102 Fund or other Public Fund and/or a Managed Account unless it has made the determination set out in section 5.2(2) of NI 81-107.

13. Purchases and sales of securities involving NI 81-102 Funds or other Public Funds will be referred to the IRC of NI 81-102 Funds or Public Funds, as the case may be, under section 5.2(1) of NI 81-107 and will be subject to the requirements of section 5.2(2) of NI 81-107.

14. The Filer has established policies and procedures to enable the Public Funds and the Pooled Funds to engage in Inter-Fund Trades.

15. When the Filer engages in an Inter-Fund Trade which involves the purchase and sale of securities between Funds, it will generally follow the following procedures or other procedures approved by the applicable IRC:

    (a) the Filer will deliver the trade instructions in respect of a purchase or sale of a security by a Fund (Fund A) to a trader on a trading desk with a registered dealer;

    (b) the Filer will deliver the trade instructions in respect of a purchase or sale of a security by another Fund (Fund B) to a trader on a trading desk with a registered dealer;

    (c) the trader on the trading desk will be required to execute the trade on a timely basis as an Inter-Fund Trade between Fund A of the relevant Fund on the one hand, and Fund B of the other Fund on the other hand, at the Last Sale Price of the security prior to execution of the trade or at the Closing Sale Price, as instructed by the portfolio manager, as the case may be; and

    (d) the trader on the trading desk will advise the portfolio manager for Fund A and Fund B of the price at which the Inter-Fund Trade occurred.

16. The Filer wishes to be able to permit any Fund to engage in Inter-Fund Trades with another Fund or with a Managed Account. Different sections of NI 31-103, NI 81-102 and NI 81-107 impose different prohibitions and exceptions on different types of Funds with respect to Inter-Fund Trades. The Filer may desire to cause:

    (a) an NI 81-102 Fund to engage in an Inter-Fund Trade with (i) another NI 81-102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund;

    (b) a Closed-end Fund to engage in an Inter-Fund Trade with (i) another Closed-end Fund, (ii) an NI 81-102 Fund or (iii) a Pooled Fund;

    (c) a Pooled Fund to engage in an Inter-Fund Trade with (i) another Pooled Fund, (ii) a Closed-end Fund or (iii) an NI 81-102 Fund; and

    (d) a Managed Account to engage in an Inter-Fund Trade with (i) an NI 81- 102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund.

17. The Filer has determined that it would be in the interests of the NI 81-102 Funds, the Public Funds, the Pooled Funds and the Managed Accounts to receive the Inter-Fund Trading Relief.

18. The Filer is able to rely upon the exemption in section 6.1(4) of NI 81-107 which grants Inter-Fund Trading Relief only in connection with Inter-Fund Trades between Public Funds. An exemption for Inter-Fund Trades involving Pooled Funds and Managed Accounts is not provided for in section 6.1(4) of NI 81-107. Inter-Fund Trades involving only Public Funds will be conducted in accordance with the exemption codified under section 6.1(4) of NI 81-107.

19. The Filer considers that it would be in the bests interests of the Funds if an Inter-Fund Trade could be made at the last sale price, as defined in the Universal Market Integrity Rules (**UMIR**) created by the Investment Industry Regulatory Organization of Canada (as defined above, the **Last Sale Price**), prior to the execution of the trade since this will result in the trade being done at the price which is closest to the price at the time the decision to make the trade is made.

20. The Filer provides discretionary portfolio management services to clients pursuant to Managed Account Agreements. Based on the value of the assets of the clients and depending on the allocation of a client's assets to a particular asset class, the Filer either manages the client's assets on a segregated account basis or on a pooled basis.

21. Pursuant to its Managed Account Agreements with its clients, the Filer has full authority to provide its portfolio management services, including investing clients in mutual funds for which the Filer is the portfolio manager and for changing those funds as the Filer determines in accordance with the mandate of the clients.

22. The Filer may wish to or otherwise be required to deliver securities held in a Managed Account or a Pooled Fund to a Pooled Fund or Public Fund in respect of a purchase of units or shares of the Pooled Fund or Public Fund (**Fund** Securities), and may wish to or otherwise be required to receive securities from a Pooled Fund or Public Fund in respect of a redemption of Pooled Fund or Public Fund Securities by a Managed Account or a Pooled Fund.

23. As the Filer will be the trustee of the Pooled Funds or Public Funds which are organized as trusts, each such Pooled Fund or Public Fund will be an 'associate' of the Filer and accordingly, absent the grant of the *In specie* Transfer Relief, the Filer would be precluded by the provisions of section 13.5(2)(b)(ii) of NI 31-103 from effecting the In-Specie Transfers. As the Filer is a registered adviser which is or will be the manager and portfolio manager of the Pooled Funds or Public Funds and is or will be the portfolio manager of the Managed Accounts, absent the grant of the *In specie* Transfer Relief, the Filer would be precluded by the provisions of section 13.5(2)(b)(iii) of NI 31-103 from effecting the *In specie* Transfers.

24. Effecting *In specie* Transfers of securities between the Managed Accounts and Pooled Funds, and the Pooled Funds or Public Funds will allow the Filer to manage each asset class more effectively and reduce transaction costs for the Managed Account or Pooled Fund client and the Pooled Fund or Public Fund. For example, *In specie* Transfers reduce market impact costs, which can be detrimental to the Managed Accounts or Pooled Fund clients and/or Pooled Funds or Public Fund(s). *In specie* Transfers also allow a portfolio manager to retain within its control institutional-size blocks of securities that otherwise would need to be broken and re-assembled.

25. The only cost which will be incurred by a Pooled Fund or Public Fund or Managed Account for an *In specie* Transfer is a nominal administrative charge levied by the custodian of the Pooled Fund or Public Fund in recording the trades and any commission charged by the dealer executing the trade.

26. The Filer will obtain the prior specific written consent of the relevant Managed Account client before it engages in any *In specie* Transfers in connection with the purchase or redemption of securities of the Pooled Funds or Public Funds for the Managed Account.

27. The Filer, as manager of the Pooled Funds or Public Funds, will value the securities transferred under an *In specie* Transfer on the same valuation day on which the purchase price or redemption price of the Fund Securities of a Pooled Fund or Public Fund is determined. With respect to the purchase of Fund Securities of a Pooled Fund or Public Fund, the securities transferred to a Pooled Fund or Public Fund under an *In specie* Transfer in satisfaction of the purchase price of those Fund Securities will be valued as if the securities were portfolio assets of the Pooled Fund or Public Fund, as contemplated by section 9.4(2)(b)(iii) of NI 81-102. With respect to the redemption of Fund Securities of a Pooled Fund or Public Fund, the securities transferred to a Managed Account in satisfaction of the redemption price of those Fund Securities will have a value equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price of the Fund Securities of the Pooled Fund or Public Fund, as contemplated by section 10.4(3)(b) of NI 81-102.

28. *In specie* Transfers will be subject to (i) compliance with the written policies and procedures of the Filer respecting *In specie* Transfers that are consistent with applicable securities legislation, and (ii) the oversight of the Filer's Compliance Department, to ensure that the transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to the Pooled Fund or Public Fund and the Managed Account, uninfluenced by considerations other than the best interests of the Pooled Fund or Public Fund and Managed Account. The results of the oversight and review by the Filer's Compliance Department will be submitted in the form of a report to the Filer's board of directors on a quarterly basis.

29. The valuation of any illiquid securities which would be the subject of an In-Specie Transfer will be carried out according to the Filer's policies and procedures for the fair valuation of portfolio securities, including illiquid securities (**FV Procedures**). The Filer's internal valuation team (**Valuation Team**) monitors and determines fair value according to the

applicable FV Procedures and a valuation committee, consisting of senior employees, must review and approve or reject any valuation recommendations provided by the Valuation Team. The FV Procedures have received the positive recommendation of the NI 81-102 Fund's IRC. Any valuation of private securities, including illiquid securities are subject to review by the Funds' auditors. If any illiquid securities are the subject of In-Specie Transfer, the illiquid securities would be transferred on a pro rata basis. The Funds generally invest in liquid securities. The Filer will not cause any Fund to engage in an *In specie* Transfer, if illiquid securities represent more than an immaterial portion of the portfolio of the applicable Fund or Managed Account.

30. The Application has been submitted by the Filer in connection with a proposed internal reorganization of BNS's asset management business (the *Reorganization*).

31. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC Ltd. (**GCIC**), WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

32. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer as a separate division of the Filer.

33. The Reorganization does not involve an amalgamation.

34. Under an Order dated September 19, 2008, the Principal Regulator granted GCIC relief that is substantially the same as the Inter-Fund Trading Relief (the **GCIC Relief**). However, the GCIC Relief gave relief from section 118(2)(b) of the *Securities Act* (Ontario) (the Act) and section 115(6) of the Regulation to the Act, which provisions have been repealed and replaced by sections 13.5(2)(b)(ii) and (iii) of NI 31-103.

35. Under an Order dated October 30, 2009, the Principal Regulator granted the Filer relief from sections 13.5(2)(b)(ii) and (iii) of NI 31-103 to permit *In specie* subscriptions and redemptions of mutual funds by separately managed accounts where the Filer is also the portfolio manager of the mutual funds (the **Current Relief**).

36. The Current Relief is given to the funds named in the Current Relief and any other investment funds "established in the future" for which the Filer is the manager and portfolio manager and accordingly may not extend to the Funds in existence and managed by GCIC at the date of the Current Relief following the Reorganization.

37. Unlike the Current Relief, the GCIC Relief does not permit *In specie* purchases and redemptions. The GCIC Relief is in respect of portfolio trades between all different combinations of public funds (both NI 81-102 Funds and Closed-End Funds), pooled funds and managed accounts. The Filer also seeks relief to permit *In specie* purchases and redemptions in connection with investments by the Pooled Funds in the Public Funds and in other Pooled Funds.

38. Furthermore, the Filer is not able to rely on the GCIC Relief following the Reorganization since the terms of that relief do not permit it to flow through to the Filer.

39. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief and to replace the Current Relief and the GCIC Relief with the Inter-Fund Trading Relief and the *In specie* Transfer Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Inter-Fund Trading Relief is granted provided that the following conditions are satisfied for the Inter-Fund Trades:

(i) the Inter-Fund Trade is consistent with the investment objective of the Public Fund, the Pooled Fund or the Managed Account;

(ii) the Filer refers the Inter-Fund Trade to the IRC in the manner contemplated by section 5.1 of NI 81-107 and the Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 in respect of any standing instructions an IRC provides in connection with the Inter-Fund Trade;

(iii) in the case of an Inter-Fund Trade between Funds:

(A) the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of section 5.2(2) of NI 81-107; and

(B) the Inter-Fund Trade complies with paragraphs (c) to (g) of section 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of section 6.1(2) of NI 81-107 in respect of exchange-traded securities, the current market price of the securities may be the Last Sale Price.

(iv) in the case of an Inter-Fund Trade between a Managed Account and a Fund:

(A) the IRC of the Fund approved the Inter-Fund Trade in respect of such Fund in accordance with the terms of section 5.2(2) of NI 81-107;

(B) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and

(C) the Inter-Fund Trade complies with paragraphs (c) to (g) of section 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of section 6.1(2) in respect of exchange-traded securities, the current market price of the security may be the Last Sale Price.

(c) the *In specie* Trading Relief is granted provided that:

(i) if the transaction is the purchase of Fund Securities of a Public Fund or a Pooled Fund by a Managed Account:

(A) in respect of the In-Specie Trading Relief as it applies to purchases of a Public Fund or a Pooled Fund,

(I) the Filer, as manager of the Public Fund, obtains the approval of the applicable IRC of the Public Fund in respect of an In-Specie Transfer in accordance with the terms of s. 5.2 of NI 81-107; and

(II) the Filer, as manager of the Public Fund, and the applicable IRC, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an In-Specie Transfer;

(B) the Filer obtains the prior written consent of the client of the relevant Managed Account before it engages in any *In specie* Transfers in connection with the purchase of Fund Securities of the Public Fund or Pooled Fund;

(C) the Public Fund or Pooled Fund would at the time of payment be permitted to purchase the securities of the Managed Account;

(D) the securities are acceptable to the Filer as portfolio manager of the Public Fund or Pooled Fund and consistent with the Public Fund's or Pooled Fund's investment objectives;

(E) the value of the securities sold to the Public Fund or Pooled Fund is at least equal to the issue price of the Fund Securities of the Public Fund or Pooled Fund for which they are payment, valued as if the securities were portfolio assets of that Public Fund or Pooled Fund;

(F) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Public Fund or Pooled Fund and the value assigned to such securities; and

(G) the Public Fund or Pooled Fund keeps written records of all *In specie* Transfers during the financial year of the Public Fund or Pooled Fund, reflecting details of the securities delivered

to the Public Fund or Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(ii) if the transaction is the redemption of Fund Securities of a Public Fund or a Pooled Fund by a Managed Account:

(A) in respect of the *In specie* Transfer Relief as it applies to redemptions of a Public Fund or a Pooled fund:

(I) the Filer, as manager of the Public Fund, obtains the approval of the applicable IRC of the Public Fund in respect of an In-Specie Transfer in accordance with the terms of section 5.2 of NI 81-107; and

(II) the Filer, as manager of the Public Fund, and the applicable IRC, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an In-Specie Transfer;

(B) the Filer obtains the prior written consent of the client of the relevant Managed Account to the payment of redemption proceeds in the form of an *In specie* Transfer;

(C) the securities are acceptable to the Filer as portfolio manager of the Managed Account and consistent with the Managed Account's investment objectives;

(D) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per Fund Security of the Public Fund or the Pooled Fund used to establish the redemption price;

(E) the holder of the Managed Account has not provided notice to terminate its Managed Account Agreement with the Filer;

(F) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and

(G) the Public Fund or the Pooled Fund keeps written records of all *In specie* Transfers during the financial year of the Public Fund or the Pooled Fund, reflecting details of the securities delivered by the Public Fund or the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(iii) the Filer does not receive any compensation in respect of any sale or redemption of Fund Securities of a Public Fund or a Pooled Fund and, in respect of any delivery of securities further to an *In specie* Transfer, the only charge paid by the Managed Account, if any, is the commission charged by the dealer executing the trade;

(iv) if the transaction is the purchase of Fund Securities of a Public Fund by a Pooled Fund:

(A) the Filer, as manager of the Public Fund, obtains the approval of the IRC of the Public Fund in respect of an In-Specie Transfer in accordance with the terms of section 5.2 of NI 81-107;

(B) the Filer, as manager of the Public Fund, and the applicable IRC, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an *In specie* Transfer;

(C) the Public Fund would at the time of payment be permitted to purchase those securities;

(D) the securities are acceptable to the Filer as portfolio manager of the Public Fund, and consistent with the Public Fund's investment objectives;

(E) the value of the securities is at least equal to the issue price of the Fund Securities of the Public Fund for which they are payment, valued as if the securities were portfolio assets of that Public Fund; and

(F) each of the Public Fund and the Pooled Fund will keep written records of an In-Specie Transfer in a financial year of a Public Fund, reflecting details of the securities delivered to the Public Fund or the Pooled Fund, and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(v) if the transaction is the redemption of Fund Securities of a Public Fund by a Pooled Fund:

(A) the Filer, as manager of the Public Fund, obtains the approval of the IRC of the Public Fund in respect of the *In specie* Transfer in accordance with the terms of section 5.2 of NI 81-107;

(B) t he Filer, as manager of the Public Fund, and the applicable IRC, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an In-Specie Transfer;

(C) the securities are acceptable to the portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;

(D) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per Fund Securities used to establish the redemption price of the Public Fund; and

(E) each of the Public Fund and the Pooled Fund will keep written records of an In-Specie Transfer in a financial year of the Public Fund or the Pooled Fund, reflecting details of the securities delivered by the Public Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(vi) if the transaction is the purchase of Fund Securities of a Pooled Fund by a Pooled Fund:

(A) the Pooled Fund would at the time of payment be permitted to purchase those securities;

(B) the securities are acceptable to the Filer as portfolio manager of the Pooled Fund, and consistent with the Pooled Fund's investment objectives;

(C) the value of the securities is at least equal to the issue price of the Fund Securities of the Pooled Fund for which they are payment, valued as if the securities were portfolio assets of that Pooled Fund; and

(D) each Pooled Fund will keep written records of an In-Specie Transfer in a financial year of a Pooled Fund, reflecting details of the securities delivered to the Pooled Fund, and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(vii) if the transaction is the redemption of Fund Securities of a Pooled Fund by a Pooled Fund:

(A) the securities are acceptable to the portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;

(B) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per Fund Securities used to establish the redemption price of the Pooled Fund; and

(C) each Pooled Fund will keep written records of an In-Specie Transfer in a financial year of the Pooled Fund, reflecting details of the securities delivered by the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and

(viii) the Filer does not receive any compensation in respect of any sale or redemption of units of a Public Fund or a Pooled Fund and, in respect of any delivery of securities further to an In-Specie Transfer, the only charge paid by the Pooled Fund or the Public Fund is the commission charged by the dealer executing the trade.

This decision is effective on the Completion Date.

"Darren McKall"
Investment Funds Branch
Ontario Securities Commission

### 2.1.14 First National AlarmCap Income Fund – s. 1(10)(a)(ii)

**Headnote**

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

**Applicable Legislative Provisions**

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

**Citation:** First National AlarmCap Income Fund, Re, 2013 ABASC 508

November 7, 2013

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

**Attention: Melissa Smith**

Dear Madam:

**Re: First National AlarmCap Income Fund (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Ontario, Québec and New Brunswick (the Jurisdictions) that the Applicant is not a reporting issuer**

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Make**r) 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 and that the Applicant’s status as a reporting issuer is revoked.

"Denise Weeres"
Manager, Legal
Corporate Finance

### 2.1.15 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from s. 4.2(1) of NI 81-102 to permit interfund trading between mutual funds, pooled funds and closed-end funds managed by the same manager and its affiliate – Relief subject to conditions, including IRC approval and pricing requirements – inter-fund transfers will comply with conditions in s.6.1(2) of NI 81-107.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 4.2(1), 4.3(1), 4.3(2), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.1(2).

**October 31, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**AND**
**IN THE MATTER OF**

**THE FUNDS**
**(as defined below)**

**DECISION**

**Background**

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

(a) for an exemption from the prohibition in section 4.2(1) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) to permit the NI 81-102 Funds (as defined below) to purchase debt securities from or sell debt securities to a Pooled Fund (as defined below) or a Closed-End Fund (as defined below), (each purchase or sale, an **Inter-Fund Trade**) (the I**nterfund Trading Relief**); and

(b) to revoke and replace the GCIC Relief (as defined below) (the **Revocation Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(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 each of the other provinces and territories of Canada (together with Ontario, the Jurisdictions).

**Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 and NI 81-107 have the same meaning if used in this decision, unless otherwise defined.

**Closed-End Funds** means collectively, the Existing Closed-End Funds and the Future Closed-End Funds;

**Existing NI 81-102 Fund** means each NI 81-102 Fund being a mutual fund that is a reporting issuer and subject to NI 81-102, of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Existing Closed-End Fund** means each existing Closed-End Fund, being an investment fund that is a reporting issuer and is not a mutual fund and not subject to NI 81-102, of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Existing Pooled Fund** means each existing Pooled Fund, being an investment fund that is not a reporting issuer, of which the Filer or an affiliate of the Filer acts as manager and/or portfolio adviser;

**Funds** means the NI 81-102 Funds, the Closed-End Funds and the Pooled Funds;

**Future Closed-End Fund** means each Closed-End Fund being an investment fund that is a reporting issuer and is not a mutual fund and not subject to NI 81-102, of which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser in the future;

**Future NI 81-102 Fund** means each NI 81-102 Fund being a mutual fund that is a reporting issuer and subject to NI 81-102, of which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser in the future,;

**Future Pooled Fund** means each Pooled Fund being an investment fund that is not a reporting issuer, of which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser in the future,;

**Inter-Fund Trading Prohibition** means section 4.2(1) of NI 81-102;

**NI 81-102 Funds** means collectively, the Existing NI 81-102 Funds and the Future NI 81-102 Funds;

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

**Pooled Funds** means collectively, the Existing Pooled Funds and the Future Pooled Fund;

**Section 4.2(1) Relief** means the exemptive relief from section 4.2(1) of NI 81-102, which prohibits an NI 81-102 Fund from engaging in Inter-Fund Trades with a Closed-End Fund and a Pooled Fund to permit NI 81-102 Funds to engage in Inter-Fund Trades with a Closed-End Fund or a Pooled Fund; and

**TSX** means the Toronto Stock Exchange.

**Representations**

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

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario. The head office of the Filer is in Toronto, Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

3. The Application has been submitted by the Filer in connection with a proposed internal reorganization of BNS's asset management business (the **Reorganization**).

4. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC Ltd. (**GCIC**), WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

5. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer as a separate division of the Filer.

6. The Reorganization does not involve an amalgamation.

7. Under a decision dated September 12, 2008, the Ontario Securities Commission granted GCIC relief that is substantially the same as the Interfund Trading Relief (the **GCIC Relief**).

8. The Filer is not able to rely on the GCIC Relief following the Reorganization since the terms of that relief do not permit it to flow through to the Filer.

9. Each of the Closed-End Funds, the NI 81-102 Funds and the Pooled Funds is or will be established under the laws of the Province of Ontario or of Canada as investment funds that are (a) open-ended mutual fund trusts, (b) open-ended mutual fund corporations, or (c) closed-ended limited partnerships and/or closed-ended trusts.

10. Each of the NI 81-102 Funds are or will be subject to the provisions of NI 81-102. The securities of each of the NI 81-102 Funds and the Closed-End Funds (being the closed-ended limited partnerships and/or closed ended trusts) are or will be qualified for distribution pursuant to simplified prospectuses and annual information forms or long form prospectuses, as the case may be, that have been prepared or will be prepared and filed in accordance with the securities legislation of each of the Jurisdictions. The securities of each of the Pooled Funds are or will be qualified for distribution on a private placement basis pursuant to an offering memorandum, and will not be reporting issuers. The Closed-End Funds and the Pooled Funds are not currently subject to NI 81-102.

11. Each of the NI 81-102 Funds and the Closed-End Funds is or will be a reporting issuer in each of the Jurisdictions.

12. A Fund's reliance on the Interfund Trading Relief will be compatible with its investment objectives and strategies.

13. The Filer or an affiliate of the Filer is, or will be, the manager and/or portfolio adviser of the Funds.

14. Certain of the Closed-End Funds, the NI 81-102 Funds and the Pooled Funds are or will be "associates" of the Filer.

15. The Filer and each of the Funds are not in default of securities legislation in any of the Jurisdictions.

16. The mandate of the independent review committee (**IRC**) of a Pooled Fund or a Closed-End Fund, among other things, includes approving Inter-Fund Trades between the Pooled Fund or the Closed-End Fund and an NI 81-102 Fund or between a Pooled Fund and a Closed-End Fund. The IRC of the Pooled Funds and the Closed-End Funds was composed by GCIC in accordance with the requirements of section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107. Further, the IRC of the Pooled Funds and the Closed-End Funds will not approve Inter-Fund Trades between a Pooled Fund or a Closed-End Fund and a NI 81-102 Fund or between a Pooled Fund and a Closed-End Fund unless it has made the determination set out in section 5.2(2) of NI 81-107.

17. If the IRC of a Pooled Fund or a Closed-End Fund becomes aware of an instance where the Filer or an affiliate of the Filer, as manager of the Pooled Fund or the Closed-End Fund , did not comply with the terms of this decision or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Pooled Fund or the Closed-End Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the Pooled Fund or Closed-End Fund is organized.

18. Purchases and sales of securities involving NI 81-102 Funds will be referred to the IRC of the NI 81-102 Funds under section 5.2(1) of NI 81-107 and will be subject to the requirements of section 5.2(2) of NI 81-107.

19. GCIC has established policies and procedures which will be adopted by the Filer following the Completion Date of the Reorganization to enable the NI 81-102 Funds, the Pooled Funds or the Closed-End Funds to engage in Inter-Fund Trades.

20. The Filer has determined that it would be in the interests of the NI 81-102 Funds to be able to purchase securities from or sell securities to a Closed-End Fund or to a Pooled Fund. An exemption currently exists in section 4.3(1) of NI 81-102 to permit the NI 81-102 Funds to interfund trade listed equity securities with the Closed-End Funds and/or the Pooled Funds. The NI 81-102 Funds, however, are unable to rely upon the exemption from section 4.2(1) of NI 81-102 for inter-fund trades in debt securities codified in subsection 4.3(2) of NI 81-102 because it would only apply where funds on both sides of the interfund trade are mutual funds governed by NI 81-107. The Pooled Funds are not subject to NI 81-107 and the Closed-End Funds, although subject to NI 81-107, are not mutual funds. The NI 81-102 Funds are

also unable to rely on the exemption in section 4.3(1) of NI 81-102 because debt securities are typically not subject to public quotations as required by section 4.3(1) of NI 81-102.

21. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief and the Interfund Trading Relief to replace the GCIC Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Interfund Trading Relief is granted provided that the following conditions are satisfied for Inter-Fund Trades:

(i) the IRC of the NI 81-102 Fund has approved the transaction in respect of the NI 81-102 Fund under section 5.2 of NI 81-107;

(ii) the IRC of the Closed-End Fund or the Pooled Fund has approved the transaction in respect of the Closed-End Fund or Pooled Fund under section 5.2 of NI 81-107; and

(iii) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.

This decision is effective on the Completion Date.

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

### 2.1.16 1832 Asset Management L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.3(f) and 2.3(h) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest in silver, subject to certain conditions, including a 10% limit on aggregate direct and indirect exposure to gold and silver.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.4(f) and (h), 19.1.

**October 31, 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**
**1832 ASSET MANAGEMENT L.P.**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the existing and future mutual funds for which the Filer or an affiliate of the Filer acts as manager and that (i) are subject to National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) (other than Dynamic Strategic Resource Class, Dynamic Precious Metals Fund, money market funds as defined in NI 81-102 and the funds that obtained the First Prior Relief (as defined below)) and (ii) have investment strategies that permit investments in Silver (as defined below) (the existing funds and the future funds, respectively, together the **Funds** and each a **Fund**) for:

(a) a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from the restrictions contained in sections 2.3(f) and 2.3(h) of NI 81-102 (the **Silver Relief**) to permit each Fund to invest up to 10% of its net assets, taken at the market value thereof at the time of investment, in silver, Permitted Silver Certificates (as defined below) and specified derivatives the underlying interest of which is silver on an unlevered basis (collectively, **Silver**); and

(b) a decision to revoke and replace the Second Prior Relief (as defined below) (the **Revocation Relief**).

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

(a) the Ontario Securities Commission (the **Principal Regulator**) 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 each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

**Interpretation**

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

**"First Prior Relief"** means the relief granted in the June 12, 2008 decision *Goodman & Company, Investment Counsel Ltd. (Re)*, (2008), 31 OSCB 6245 whereby fourteen mutual funds managed by GCIC Ltd. (**GCIC**) obtained relief to invest up to 5% of the net assets of each fund, taken at the market value thereof at the time of investment, in each of silver and platinum.

**"Second Prior Relief"** means the relief granted in the January 26, 2012 decision *Goodman & Company, Investment Counsel Ltd. (Re)*, (2012), 35 OSCB 1122 whereby each of the existing and future mutual funds managed by GCIC (other than money market funds and the funds that obtained the First Prior Relief) obtained relief to invest up to 10% of the net assets of each fund, taken at the market value thereof at the time of investment, in each of silver, Permitted Silver Certificates and specified derivatives the underlying interest of which is silver on an unlevered basis.

**"Prior Relief"** means collectively the First Prior Relief, the Second Prior Relief, the relief issued to Dynamic Strategic Resource Class in the November 11, 2011 decision *Goodman & Company, Investment Counsel Ltd. (Re)*, (2011), 34 OSCB 12241 and the relief issued to Dynamic Precious Metals Fund in the August 6, 1993 decision *Re Dynamic Precious Metals Fund*.

**Representations**

This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds:

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by The Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada, and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

3. Each of the Funds is or will be an open-ended mutual fund trust or corporation established under the laws of the Province of Ontario or of Canada. The securities of each of the Funds are or will be qualified for distribution in the Jurisdictions pursuant to simplified prospectuses and annual information forms prepared and filed in accordance with the Legislation.

4. The Filer or an affiliate of the Filer is, or will be, the manager of the Funds.

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

6. Each Fund that relies on the Silver Relief will be permitted in accordance with its investment objectives and investment strategies to invest in Silver.

7. The Filer intends to invest in gold and silver as a defensive strategy in adverse market, economic, political or other circumstances. The Filer considers precious metals to be a viable alternative to holding cash or cash equivalents in such markets. The Filer has advised that permitting the investments in silver, along with gold, will permit the portfolio manager of each Fund additional flexibility to increase gains for the Fund in certain market conditions, which may have otherwise caused the Fund to have significant cash positions and therefore deter from its ability to achieve its investment objective of providing long-term capital appreciation and value.

8. The markets for gold and silver are highly liquid, and there are no liquidity concerns that should lead to a conclusion that investments in gold and silver need to be prohibited.

9. The Filer believes that the potential volatility or speculative nature of silver (or the equivalent in certificates or specific derivatives of which the underlying interest is silver) is no greater than that of gold or of equity or debt securities of issuers in which the Funds' invest and, in the portfolio context of the Funds, can provide additional diversification to the Funds.

10. In this decision, silver certificates (**Permitted Silver Certificates**) that the Funds invest in will be certificates that represent silver that is: (i) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate; (ii) of a minimum fineness of 999 parts per 1,000; (iii) held in Canada; (iv) in the form of either bars or wafers; and (v) if not purchased from a bank listed in Schedule I, II or III of the *Bank Act* (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a province or territory of Canada.

11. An investment by a Fund in Silver represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

12. Any investment by a Fund in Silver will be held under the custodianship of one custodian that satisfies the requirements of Part 6 of NI 81-102.

13. Prior to its investing in Silver, the simplified prospectus for each of the Funds will disclose (i) in the Investment Strategy section the fact that the Fund has obtained relief to invest in Silver, and (ii) the risk associated with the Fund's investment in Silver.

14. If the Filer or an affiliate of the Filer determines that the investment in gold and/or Silver (including gold, permitted gold certificates, silver, Permitted Silver Certificates and specified derivatives the underlying interest of which is gold or silver) represents a material change for any Existing Fund, the Filer or the affiliate of the Filer will comply with the material change obligations for that Fund.

15. The Application has been submitted by the Filer in connection with a proposed internal reorganization of BNS's asset management business (the **Reorganization**).

16. The Reorganization is structured as an internal consolidation of the asset management business currently conducted by certain affiliated BNS entities, namely, GCIC, WaterStreet Family Capital Counsel Inc. and CPA Securities Inc. – each of which is wholly-owned directly or indirectly by BNS – into the Filer. Under the Reorganization, the asset management business conducted by GCIC at the time of the Reorganization will be transferred to the Filer. The closing date of the Reorganization is November 1, 2013 (the **Completion Date**).

17. If the Reorganization is completed as contemplated, GCIC will cease to carry on registrable business and will have its various registrations under the Legislation revoked. Thereafter, the business of GCIC will be carried on by the Filer as a separate division of the Filer.

18. The Reorganization does not involve an amalgamation.

19. Under an order dated January 26, 2012, the Principal Regulator granted the Second Prior Relief which is substantially the same as the Silver Relief.

20. The Filer is not able to rely on the Second Prior Relief following the Reorganization since the terms of that relief do not permit it to flow through to the Filer.

21. Except for the Second Prior Relief, the Revocation Relief has no impact on the Prior Relief.

22. Accordingly, as of the Completion Date, the Filer is seeking the Revocation Relief to revoke and replace the Second Prior Relief and will require the Silver Relief.

**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:

(a) the Revocation Relief is granted; and

(b) the Silver Relief is granted provided that:

(i) the investment by a Fund in Silver is in accordance with the fundamental investment objectives of the Fund; and

(ii) a Fund does not purchase gold, permitted gold certificates, silver, Permitted Silver Certificates, or enter into specified derivatives the underlying interest of which is gold or silver if, immediately after the transaction, more than 10% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of gold, permitted gold certificates, silver, Permitted Silver Certificates and underlying market exposure of specified derivatives linked to gold or silver.

This decision is effective on the Completion Date.

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

### 2.1.17 Sandstorm Gold Ltd. and Premier Royalty Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application from subsidiary (Subco) of parent company (Parent) for a decision under section 13.1 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) exempting Subco from the requirements of NI 51-102, for a decision under section 8.6 of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (MI 52-109) exempting Subco from the requirements of MI 52-109; for a decision under section 10.1 of National Instrument 55-104 Insider Reporting Requirements and Exemptions (NI 55-104) exempting the insider of Subco from the insider reporting requirements; for a decision under section 121(2)(a)(ii) of the Securities Act (Ontario) exempting the insiders of Subco from the insider reporting requirements of the Act; and for a decision under section 6.1 of National Instrument 55-102 System for Electronic Disclosure by Insiders exempting the insiders of Subco from the requirement to file an insider profile – Subco is a wholly-owned subsidiary of Parent – Subco is a reporting issuer and has warrants outstanding – Warrants entitle holder to acquire common shares of Parent – Warrants do not qualify as "designated exchangeable securities" under exemption in section 13.3 of NI 51-102 – relief granted on conditions substantially similar to the conditions contained in section 13.3 of NI 51-102.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 107, 121(2)(a)(ii).
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1, 13.3.
Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 4.5.
National Instrument 55-102 System for Electronic Disclosure by Insiders, s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1.

**November 8, 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**
**SANDSTORM GOLD LTD.**
**(SANDSTORM),**
**PREMIER ROYALTY INC.**
**(PREMIER, AND TOGETHER WITH SANDSTORM, THE FILERS)**

**DECISION**

**Background**

The securities regulatory authority in Ontario (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that:

- Premier be exempt from the continuous disclosure obligations under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements);
- Premier be exempt from the requirements for certification of disclosure in annual and interim filings under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) (the Certification Requirements);
- the insiders of Premier be exempt from the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (NI 55-102) in respect of securities of Premier (the Insider Profile Requirement); and

- the insiders of Premier be exempt from the insider reporting requirements under National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and related Legislation in respect of securities of Premier (the Insider Reporting Requirements)

(collectively, the Exemption Sought)

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

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

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

(c) the decision is the decision of the principal regulator and evidences that decision of the securities regulatory authority or regulator in each of the other 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. For greater certainty, references to Premier shall be read to include its successor entities.

**Representations**

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

**Premier**

2. Premier was incorporated as an Ontario corporation on May 10, 2007, was amalgamated on July 1, 2013 with Premier Royalty Corporation, and continues to exist under the *Business Corporations Act* (Ontario) (the OBCA).

3. The head office of Premier is located at 95 Wellington Street West, Suite 925, P.O. Box 43, Toronto, ON, M5J 2N7.

4. Premier is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

5. Premier is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) (NI 13-101).

6. The authorized share capital of Premier consists of an unlimited number of common shares (the Premier Shares). As of October 4, 2013, there were 78,427,236 Premier Shares issued and outstanding.

7. Premier currently has outstanding eight classes of warrants to purchase Premier Shares (collectively, the Premier Warrants):

   (a) **The Aberdeen Warrants**: 3,884,849 warrants to purchase Premier Shares at an exercise price of $1.75 per Premier Share on or prior to December 4, 2014 pursuant to a warrant certificate dated December 4, 2012 issued to Aberdeen International Inc.;

   (b) **The Broker Warrants**: 750,000 broker warrants to purchase Premier Shares at an exercise price of $2.00 per Premier Share on or prior to January 17, 2015 issued to certain underwriters in connection with a prospectus offering by Premier;

   (c) **The Class II December 2016 Warrants**: 8,691,004 warrants to purchase Premier Shares at an exercise price of $2.00 per Premier Share, pursuant to the terms of a warrant indenture dated as of December 4, 2012 between Premier, Premier Royalty Corporation and Valiant Trust Company;

   (d) **The Class II October 2014 Warrants**: 1,457,500 warrants to purchase Premier Shares at an exercise price of $2.00 per Premier Share on or prior to October 7, 2014;

   (e) **The December 2016 Warrants**: 4,788,712 warrants issued and 616,406 warrants issuable (pursuant to the exercise of the October 2014 Warrants) to purchase Premier Shares at an exercise price of $2.00 per Premier

Share on or prior to December 4, 2016, all pursuant to the terms of a warrant indenture dated as of December 4, 2012 between Premier and Valiant Trust Company;

(f) **The Golden Arrow Warrants**: 1,000,000 warrants to purchase Premier Shares at an exercise price of $2.52 per Premier Share on or prior to November 9, 2014 pursuant to a warrant certificate dated as of December 4, 2012 issued to Golden Arrow Inc.;

(g) **The October 2014 Warrants**: 1,643,750 warrants to purchase Premier Shares and December 2016 Warrants at an exercise price of $2.00 per Premier Share and 0.375 of a December 2016 Warrant, on or prior to October 7, 2014, all pursuant to the terms of an amended and restated warrant indenture dated as of December 4, 2012 between Premier and Valiant Trust Company; and

(h) **The Yamana Warrants**: 500,000 warrants to purchase Premier Shares at an exercise price of $2.50 per Premier Share on or prior to February 28, 2016 pursuant to a warrant certificate dated February 28, 2013 issued to Yamana Gold Inc..

8. Premier currently has options (the Premier Options) outstanding to purchase an aggregate of 2,873,333 Premier Shares.

9. The Premier Shares were listed on the TSX under the symbol "NSR" and the October 2014 Warrants were listed on the TSX under the symbol "NSR.WT".

**Sandstorm**

10. Sandstorm was incorporated under the *Business Corporations Act* (British Columbia) on March 23, 2007 as "Sandstorm Resources Ltd." It changed its name to Sandstorm Gold Ltd. on February 17, 2011.

11. Sandstorm's head, registered and records office is located at Suite 1400, 400 Burrard Street, Vancouver, BC, V6C 3A6.

12. Sandstorm is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

13. Sandstorm is an electronic filer under NI 13-101.

14. The authorized share capital of Sandstorm consists of an unlimited number of common shares (the Sandstorm Shares). As of October 4, 2013, there were issued and outstanding (i) 99,879,343 Sandstorm Shares (on a post-closing basis); (ii) 3,570,500 options to purchase an aggregate of 3,570,500 Sandstorm Shares; (iii) 57,068,826 warrants to purchase an aggregate of 11,413,765 Sandstorm Shares with an expiry date of April 23, 2014 (the Sandstorm 2009 Warrants); (iv) 19,662,599 warrants to purchase an aggregate of 3,932,520 Sandstorm Shares with an expiry date of October 19, 2015 (the Sandstorm 2010 Warrants); and (v) 5,002,500 warrants to purchase an aggregate of 5,002,500 Sandstorm Shares with an expiry date of September 7, 2017 (the Sandstorm 2012 Warrants).

15. The Sandstorm Shares are listed on the TSX under the symbol "SSL" and on the NYSE MKT under the symbol "SAND", the Sandstorm 2009 Warrants are listed on the TSX under the symbol "SSL.WT", the Sandstorm 2010 Warrants are listed on the TSX under the symbol "SSL.WT.A" and the Sandstorm 2012 Warrants are listed on the TSX under the symbol "SSL.WT.B".

**The Plan of Arrangement**

16. Sandstorm and Premier entered into an arrangement agreement dated August 14, 2013, as amended and restated on August 26, 2013 with effect as of August 14, 2013, (the Arrangement Agreement), pursuant to which all of the outstanding Premier Shares not already owned by Sandstorm were to be acquired by Sandstorm by way of a plan of arrangement under the OBCA (the Plan of Arrangement) that was effective on October 4, 2013. Pursuant to the Plan of Arrangement, in exchange for each Premier Share, Sandstorm will issue 0.145 of a Sandstorm Share (the Share Consideration).

17. Following the effective time of the Plan of Arrangement, the Premier Warrants and the Premier Options, will remain outstanding as warrants or options of Premier that, upon exercise, will entitle the holder thereof to receive the Share Consideration for each Premier Warrant or Premier Option exercised.

18. On August 30, 2013, Premier obtained an interim order from the Ontario Superior Court of Justice (Court) specifying certain requirements and procedures for a special meeting of the Premier Shareholders for the purpose of approving the Plan of Arrangement (the Premier Meeting).

19. On September 30, 2013, Premier Shareholders approved the Plan of Arrangement with an affirmative vote of 99.95% of the votes validly cast at the Premier Meeting, and with an affirmative vote of 99.80% of the votes validly cast in respect of the minority approval of the Plan of Arrangement under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

20. On October 3, 2013, Premier received final approval of the Court for the Plan of Arrangement.

21. The Plan of Arrangement was completed on October 4, 2013.

22. Under the Plan of Arrangement, among other things, Sandstorm acquired all of the issued and outstanding Premier Shares not already owned by Sandstorm in exchange for the payment to Premier Shareholders of the Share Consideration.

23. As a result of the Plan of Arrangement Premier became a wholly-owned subsidiary of Sandstorm.

24. Following the effective time of the Plan of Arrangement, Premier remained a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. Consequently, Premier is required to comply with the Continuous Disclosure Requirements, the Certification Requirement and the Insider Reporting Requirement.

25. Each holder of a Premier Warrant outstanding immediately before the effective time of the Plan of Arrangement, became entitled to receive upon the subsequent exercise of such holder's Premier Warrant in accordance with its terms, in lieu of each Premier Share (and in certain cases warrants of Premier) and to which such holder was theretofore entitled, the Share Consideration.

26. Each holder of a Premier Option outstanding immediately before the effective time of the Plan of Arrangement became entitled to receive upon the subsequent exercise of such holder's Premier Option in accordance with its terms, in lieu of each Premier Share which such holder was theretofore entitled, the Share Consideration.

27. On September 19, 2013, the TSX approved the listing of up to a maximum of an additional 8,328,534 Sandstorm Shares issued or to be issued as a result of the Plan of Arrangement (including those Sandstorm Shares to be issued on the exercise of Premier Options and Premier Warrants).

28. Sandstorm has reserved 25,589,148 Sandstorm Shares for issuance upon the exercise of the outstanding Premier Options and Premier Warrants.

29. In connection with the Plan of Arrangement, Premier mailed to the Premier Shareholders a management information circular (Circular) containing information on the Plan of Arrangement and Premier and prospectus-level disclosure of the business and affairs of Sandstorm, a copy of which has been posted on SEDAR under Premier's profile.

30. Premier provided the holders of all Premier Warrants that would remain outstanding following the effective time of the Plan of Arrangement with prior notice of the Plan of Arrangement and the impact on the Premier Warrants.

31. On October 9, 2013 the Premier Shares and the October 2014 Warrants were delisted from the TSX.

32. The October 2014 Warrants were relisted by TSX as warrants of Sandstorm under the symbol SSL.WT.C on October 10, 2013. The only Premier Warrants that are listed for trading on a published market are the October 2014 Warrants.

33. Pursuant to either supplemental indentures or the Arrangement Agreement, Sandstorm explicitly assumed the obligation to issue the Share Consideration upon exercise of the Premier Warrants and the Premier Options.

34. As a result of the Plan of Arrangement, the only securities of Premier that are held by persons other than Sandstorm are the Premier Options and the Premier Warrants, all of which are exercisable into Sandstorm Shares.

35. Premier cannot rely on the exemption available in s. 13.3 of NI 51-102 for issuers of exchangeable securities because the Premier Warrants and the Premier Options are not "designated exchangeable securities" as defined in NI 51-102; none of the holders of the Premier Warrants or the Premier Options will have voting rights in respect of Sandstorm, in their capacity as warrantholders or optionholders, respectively.

36. Neither the warrant indentures nor the certificates governing the Premier Warrants specifically require Premier or any successor to deliver to holders of Premier Warrants any continuous disclosure materials of Premier or any successor.

37. Each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer.

38. Premier has no intention of accessing the capital markets in the future by issuing any further securities to the public and has no intention of issuing any securities to the public other than those that are outstanding on the effective time of the Plan of Arrangement.

39. It is information relating to Sandstorm, and not to Premier, that is of primary importance to holders of Premier Warrants and Premier Options as each of these securities is exercisable into Sandstorm Shares; in addition, as Premier is a wholly-owned subsidiary of Sandstorm, Sandstorm will consolidate Premier with Sandstorm for the purposes of financial statement reporting; as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements would not be meaningful or of any significant benefit to the holders of the Premier Warrants or Premier Options and would impose a significant cost on Sandstorm.

**Decision**

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

1. The decision of the Decision Maker under the Legislation is that the Continuous Disclosure Requirements do not apply to Premier provided that:

   (a) Sandstorm is the beneficial owner of all of the issued and outstanding voting securities of Premier;

   (b) Sandstorm is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;

   (c) Premier does not issue any securities, and does not have any securities outstanding other than:

      (i) the Premier Warrants;

      (ii) the Premier Options;

      (iii) securities issued to and held by Sandstorm or an affiliate of Sandstorm;

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

      (v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106);

   (d) Premier files in electronic format:

      (i) if Sandstorm is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by Sandstorm and setting out where those documents can be found in electronic format; or

      (ii) copies of all documents Sandstorm is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Sandstorm of those documents with a securities regulatory authority or regulator;

   (e) Sandstorm concurrently sends to all holders of Premier Warrants and Premier Options all disclosure materials that would be required to be sent to holders of similar warrants or options of Sandstorm in the manner and at the time required by securities legislation;

   (f) Sandstorm complies with securities legislation in respect of making public disclosure of material information on a timely basis; and

(g) Sandstorm immediately issues in Canada and files any news release that discloses a material change in its affairs.

2. The further decision of the Decision Maker under the Legislation is that the Certification Requirements do not apply to Premier provided that:

(a) Premier is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);

(b) Premier files in electronic format under its SEDAR profile either: (i) copies of Sandstorm's annual certificates and interim certificates at the same time as Sandstorm is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on Sandstorm's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) Premier is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Premier and Sandstorm are in compliance with the conditions set out in paragraph 1 above.

3. The further decision of the Decision Maker under the Legislation is that the Insider Reporting Requirements do not apply to any insider of Premier in respect of securities of Premier provided that:

(a) if the insider is not Sandstorm;

(i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Premier before the material facts or material changes are generally disclosed; and

(ii) the insider is not an insider of Sandstorm in any capacity other than by virtue of being an insider of Premier;

(b) Sandstorm is the beneficial owner of all of the issued and outstanding voting securities of Premier;

(c) if the insider is Sandstorm, the insider does not beneficially own any Premier Warrants other than securities acquired through the exercise of the Premier Warrants and not subsequently traded by the insider or those beneficially owned as of the closing of the Plan of Arrangement;

(d) Sandstorm is a reporting issuer in a designated Canadian jurisdiction;

(e) Premier has not issued any securities, and does not have any securities outstanding, other than:

(i) the Premier Warrants;

(ii) the Premier Options;

(iii) securities issued to and held by Sandstorm or an affiliate of Sandstorm;

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

(v) securities issued under exemptions from the registration requirement and prospectus requirement in Section 2.35 of NI 45-106; and

(f) Premier is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Premier and Sandstorm are in compliance with the conditions set out in paragraph 1 above.

As to the Exemption Sought (other than from the statutory Insider Reporting Requirements):

“Sonny Randhawa”
Manager, Corporate Finance

As to the Exemption Sought from the statutory Insider Reporting Requirements:

“Vern Krishna”
Commissioner
Ontario Securities Commission

“Sarah Kavanagh”
Commissioner
Ontario Securities Commission

### 2.1.18 Mineral Deposits Limited

**Headnote**

Subsection 1(10) of the Securities Act – Application by a reporting issuer for an order that it is not a reporting issuer – To the knowledge of the reporting issuer, and based on diligent enquiry, residents of Canada (i) do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the reporting issuer worldwide, and (ii) do not directly or indirectly comprise more than 2% of the total number of shareholders of the Filer worldwide – Issuer is subject to Australian securities law and requirements of the ASX – Issuer has provided notice through a press release that intended to submit an application to cease to be a reporting issuer in Ontario.

**Applicable Legislative Provisions**

Securities Act (Ontario), s. 1(10)(a)(ii).

**October 29, 2013**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**MINERAL DEPOSITS LIMITED**
**(THE "FILER")**

**DECISION**

**Background**

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

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

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

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and 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 a company established under the Australian *Corporations Act 2001* (Commonwealth).

2. The registered and head office of the Filer is located at Level 17, 530 Collins Street, Melbourne Victoria 3000 Australia.

3. The Filer has no operations, employees or offices in Canada.

4. The Filer is an Australian based mining company in the business of finding, mining and processing mineral sands resources. The Filer owns 50% of TiZir Limited which owns the Grande Côte Mineral Sands Project in Senegal, West Africa and an ilmenite upgrading facility in Tyssedal, Norway.

5. The Filer's ordinary shares have been listed on the ASX since March 10, 1997.

6. The Filer is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Jurisdictions**"), and its outstanding ordinary shares were listed for trading on the Toronto Stock Exchange ("**TSX**") and currently are listed on the Australian Securities Exchange ("**ASX**").

7. The Filer became a reporting issuer in the Jurisdictions upon the completion of its initial Canadian public offering pursuant to a final prospectus dated December 12, 2007.

8. The Filer qualifies as a "designated foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to designated foreign issuers under Part 5 of National Instrument 71-102.

9. The capital structure of the Filer is composed of an unlimited number of ordinary shares, without par value. As of June 28, 2013, 83,538,786 shares were issued and outstanding and 250,000 unvested performance rights over ordinary shares were on issue. There is no exercise price pertaining to the performance rights and all expire on 31 August 2016.

10. The TSX has confirmed that the ordinary shares were delisted from the TSX at the close of trading on June 29, 2012. Following the delisting from the TSX, the Filer's Canadian share register was closed on July 27, 2012.

11. The Filer is not eligible for the simplified procedure pursuant to CSA Staff Notice 12-307 and BC Instrument 11-502 is not available as its securities are traded on a marketplace in Australia.

12. Residents of Canada do not, directly or indirectly, beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide. The due diligence conducted by the Filer in support of the foregoing representation is as follows:

    a) The share register analysis was conducted based on an extract of the register of members of the Filer dated June 28, 2013. As of this date there were 83,538,786 ordinary shares on issue and outstanding and administered on a single Australian share register. The register extract consisted of all shareholdings of greater than or equal to 50,000 shares and contained a total of 37 registered securityholders which made up 94.62% of the total share capital on issue.

    b) In order to undertake the analysis, tracing notices pursuant to section 672A(1)(a) of the *Corporations Act, 2001* ("the **Act**") were issued by Orient Capital Pty Ltd ("**Orient Capital"**) as the Filer's duly appointed Agent. A direction under section 672 of the Act obligates the recipient of the tracing notice to disclose underlying beneficial ownership/relevant interest information to the issuer. The tracing notices were served on registered (direct) securityholders (irrespective of domicile) recognised as a custodian, nominee or broker ("**Custodian**") holding, requesting disclosure of underlying beneficial ownership/relevant interest details of the total shares held under their custody. On receipt of the disclosure information from the registered holders, subsequent tracing notices pursuant to section 672A(1)(b) of the Act were issued to disclosed (indirect) entities (irrespective of domicile) requesting underlying beneficial ownership/relevant interest details and total shares held under their custody. This process continued until the ultimate beneficial owner/relevant interest holders were identified. As a result of this process on both direct and indirect Canadian-based securityholders, Canadian-based securityholders were identified and the Canadian holder report was compiled. The report illustrates the beneficial owners or investment managers domiciled in Canada.

    c) In cases where a Canadian domiciled Custodian was not in a position to disclose the name and address details of the beneficial owner/relevant interest holders under their custody due to the Canadian Privacy Laws, Orient Capital obtained a generic breakdown of the number of beneficial holders under custody together with total shares held by each securityholder together with the respective Canadian state of domicile in which the securityholder resides. One Canadian Custodian holding 300 shares (0.00036% of the Filer's issued capital) would not provide the generic breakdown. In this case, it was assumed that their full custody position was held on behalf of a Canadian-based securityholder with the state of domicile being the location of the Custodian.

d) From the analysis of the top 37 registered holders, 24 registered holders representing 77,781,627 shares were identified to hold on behalf of multiple underlying holders. From this analysis, 64 holders were identified as Canadian domiciled beneficial owners representing 215,359 shares. 413 non-Canadian beneficial owners were identified holding 77,566,268 shares.

e) Shareholdings outside of the top 37 registered holders holding shares less than or equal to 50,000 make up 5.38% of the issued share capital. This balance of shares was assumed to consist of holdings of a retail nature. These shareholdings were made up either of shares beneficially owned by the person(s) named on the register of members or by predominantly Australian domiciled private client brokers and non-responding or non-queried Custodians that typically hold on behalf of domestic retail clients.

(i) Of the first group: a total of 2,383 registered holders (including joint holders and private companies) were identified holding 5,430,039 shares. For the purpose of ascertaining domicile of these holdings, the address on the register was taken as the resident address of the securityholder, and on this basis was only reflected in the Canadian holder report if the registered address of the securityholder was in Canada. Two of these holders had a registered address in Canada representing a combined total of 8,000 shares. 2,381 non-Canadian registered holders were identified holding 5,422,039 shares.

(ii) Of the private client brokers and non-responding or non-queried non-North American Custodians that hold on behalf of domestic retail clients, 30 registered holders were identified representing 327,120 shares. All 30 are boutique Australian or New Zealand investment firms. Based on their domicile and the size of their securityholdings, Canadian ownership is considered to be highly unlikely. For these reasons, these holders were classified as non-Canadian owners.

(iii) A further category was identified, that of non-Canadian beneficial owners with potential for multiple underlying holders identified through serving notices on the top 37 holders. This category arises due to the circumstances under which specialist Australian registry analysis service providers issue notices to Custodians to assess underlying ownership. This category represents beneficial owners that potentially hold for multiple entities identified through notices served on registered holders listed at point (d) above, but not issued further notices to investigate additional underlying holdings due to the nature of investor practices; namely, that such intermediaries (domestic banks and brokers) hold on behalf of domestic retail clients and so the likelihood that such banks/brokers resident outside of North America own on behalf of Canadian underlying holders is negligible. For these reasons, these holders were classified as non-Canadian owners. There were 48 intermediary holders (domestic banks and brokers) in this category. One of these holders, representing 120 shares, was identified as having a North American address and this individual holder has been categorised as Canadian. The shares represented by the remaining 47 non-Canadian intermediary holders (2,025,655 shares) are included at point (d) above.

(iv) The analysis conducted found that as at June 28, 2013, 67 residents of Canada directly and indirectly held 223,479 Ordinary shares representing 0.27% of the issuer's outstanding securities, distributed by province as follows:

| Jurisdiction | Number of securityholders | Number of ordinary shares held | Percentage of issued capital |
|---|---|---|---|
| Alberta | 11 | 3,635 | 0.0043 |
| British Columbia | 6 | 8,470 | 0.0101 |
| Manitoba | 1 | 200 | 0.0002 |
| Newfoundland & Labrador | 1 | 50 | 0.0000 |
| Nova Scotia | 3 | 182 | 0.0002 |
| Ontario | 38 | 204,402 | 0.2447 |
| Quebec | 5 | 6,270 | 0.0075 |
| Saskatchewan | 1 | 150 | 0.0002 |
| North America | 1 | 120 | 0.0001 |
| **Total** | **67** | **223,479** | **0.2675** |

f) The 250,000 unvested performance rights over ordinary shares on issue are held by three individual holders, none of whom are Canadian or residents of Canada.

13. Residents of Canada do not, directly or indirectly, comprise more than 2% of the total number of securityholders of the issuer worldwide. The due diligence conducted by the Filer in support of the foregoing representation is as follows:

a) As at June 28, 2013 there were 2,437 registered holders on the Filer's register of members. A majority of the Filer's securities are held indirectly through Custodians. A reliable estimate of total worldwide direct and indirect holders is difficult to determine and is an undertaking dependent on a wider application of the process described under representation 12 above.

b) While it is difficult to reliably estimate the total number of holders of the issuer worldwide the Filer can reliably estimate the level of Canadian ownership based on the total register of members. In this instance, 64 Canadian beneficial holders are represented by 4 Custodians and there are an additional 2 resident Canadians holding securities directly, giving a total of 6 directly registered holders with Canadian ownership. Including the non-responding Custodian with a North American address representing 120 shares (therefore deemed to only represent 1 holder), then there are a total of 7 directly registered holders with Canadian ownership. Consequently, the level of Canadian ownership based on the total register of members is 0.29% (or 7 out of 2,437 registered members). The Filer believes this is the most accurate and reliable manner to assess Canadian ownership.

c) Alternatively, the following can be represented. It is known that there were:

(i) 64 Canadian domiciled beneficial owners identified through query notices on the top 37 holders. These beneficial owners are represented by 4 registered Custodians, representing 215,359 shares. The ratio of registered Custodians to beneficial holders is approximately 1:16.

(ii) 413 non-Canadian domiciled beneficial owners identified through query notices on the top 37 holders. These beneficial owners are represented by 20 registered Custodians, representing 77,566,258 shares. The ratio of registered Custodians to beneficial holders is approximately 1:21.

(iii) 2 directly registered Canadian domiciled owners, representing 8,000 shares.

(iv) 2,381 directly registered non-Canadian domiciled owners (including joint-owners and private companies), representing 5,422,039 shares.

(v) 79 non-responding and non-queried Custodians with the potential for further underlying ownership which is unknown and therefore must be estimated. The breakdown of this category is as follows:

(A) 1 beneficial owner with a North American address holding 120 shares. Due to such a small parcel of shares it is assumed that this holding was beneficially held by 1 owner and held by a Canadian beneficial owner.

(B) 30 registered Custodians with potential underlying ownership. All 30 are boutique Australian or New Zealand investment firms. Based on their domicile and the size of their securityholdings, Canadian investment is considered to be highly unlikely and, as such, all 30 are deemed to be non-Canadian holders. The Filer has conservatively estimated that these Custodians are individual owners. These Custodians represent 327,120 shares.

(C) 48 beneficial owners with potential underlying ownership. This category arises due to the circumstances under which specialist Australian registry analysis service providers issue notices to Custodians to assess underlying ownership. This category represents beneficial owners that potentially hold for multiple entities identified through notices served on registered holders listed at point (c)(ii) above, but not issued further notices to investigate additional underlying holdings due to the nature of investor practices; namely, that such intermediaries (domestic banks and brokers) hold on behalf of domestic retail clients and so the likelihood that such banks/brokers resident outside of North America own on behalf of Canadian underlying holders is negligible. Of these, 1 beneficial owner holding a parcel of 120 shares was identified as having a North American address. Therefore, for the purposes of this exercise the Filer has assumed that this beneficial owner was Canadian and included this beneficial holder at point (A) above. The remaining 47 beneficial owners were classified as non-Canadian domiciled beneficial owners with potential for underlying ownership.

Generating a representative level of underlying beneficial ownership for these 47 non-Canadian beneficial owners can be estimated in two ways: a proportional share-ownership method and a ratio method.

Using the proportional share-ownership method: the Filer has conservatively assumed that each underlying indirect beneficial owner holds the average amount of shares identified in categories (c)(iii) and (c)(iv) above, being 5,430,029 shares over 2,383 holders for an average of 2,278 shares per holder. Consequently, it is estimated that there are an additional 916 non-Canadian beneficial owners.

Using the ratio method: by applying the most conservative underlying holder ratio identified in points (c)(i) and (c)(ii) above (being a ratio of approximately 1:16) to these 47 intermediaries, it is estimated that there are an additional 752 non-Canadian beneficial owners. Less conservatively, if the average ratio of points (c)(i) and (c)(ii) is applied (being a ratio of 24:477 or approximately 1:20) to these 47 intermediaries, then it is estimated that there are an additional 934 non-Canadian beneficial owners.

d) Based on the above breakdown and applying the proportional share-ownership method, Canadian ownership is 1.76% of the total number of securityholders of the issuer worldwide (67 divided by 3,807).

e) Based on the above breakdown and applying the most conservative ratio method, Canadian ownership is 1.84% of the total number of securityholders of the issuer worldwide (67 divided by 3,643). Applying the less conservative average ratio method, Canadian ownership is 1.75% of the total number of securityholders of the issuer worldwide (67 divided by 3,825).

14. In order to determine that it meets the 2% test of the modified approach in CSA Staff Notice 12-307, the Filer has, over a period of time, reviewed (i) share register analysis reports produced by Orient Capital bimonthly; (ii) share ownership and share count analysis reports produced by Orient Capital, and (iii) Geographical Analysis Reports prepared by Broadridge.

- Prior to delisting from the TSX and closing its Canadian share register, the Filer confirmed through Computershare (Australia and Canada), Broadridge analysis and Orient Capital analysis that Canadian residents did not own more than 2% of the Filer's shares, directly or indirectly, or comprise more than 2% of the Filer's security holders worldwide. As at April 30, 2012 the number of shares held by Canadians, or residents of Canada, whether through the Australian share register or in Canada, beneficially and of record, was 1,034,523 shares representing 1.24% of the total outstanding shares.

- Analysis conducted since that time and via the process disclosed in representation number 12 and number 13 above illustrates the continued decline of Canadian ownership.

15. The Filer files continuous disclosure reports under Australian securities laws and is listed on the ASX. Such continuous disclosure reports are available to Canadian securityholders on the Filer's website at www.mineraldeposits.com.au and on the ASX website at www.asx.com.au.

16. The Filer has not taken steps to create a market for the ordinary shares and, in particular, has not conducted a prospectus offering in Canada since the initial offering in 2007, and has not privately placed any ordinary shares in Canada in the last 12 months. The Filer has no future plans to raise equity financing by private or public offering in Canada.

- The Filer only attracted a de minimis number of Canadian investors and the daily average volume of trading of the ordinary shares in the 12 months prior to delisting from the TSX on June 29, 2012 was approximately 1,912 ordinary shares per day, which accounted for approximately 0.8% of the Filer's worldwide daily trading volumes. In contrast, the average daily volume on the ASX for the same period represented approximately 237,170 ordinary shares per day.

17. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not intend to have its securities, listed, traded or quoted on such marketplace in Canada. The Filer has not maintained a listing for the ordinary shares on a Canadian marketplace or exchange for the last 12 months.

- The TSX confirmed that the ordinary shares of the Filer were delisted from the TSX at the close of trading on June 29, 2012. Following the delisting from the TSX, the Filer's Canadian share register was closed on July 27, 2012.

- Securityholders on the Canadian share register were given up to four weeks from the date the Filer delisted on the TSX to transfer their holdings to Australia if they had a preferred holding format. Securityholders who did not make a transfer during such period were advised that an automatic transfer would occur after the four week period ended on July 27, 2012. Prior to the July 27, 2012 deadline, 10 securityholders voluntarily transferred to the Australian share registry and 15 securityholders were automatically transferred by the Canadian transfer agent after this date. These securityholders included all holders on the Canadian register and not just Canadian residents. To date, no securityholder has expressed concern to the Filer regarding this transfer.

18. The Filer has provided advance notice to Canadian resident securityholders in a press release issued on June 13, 2012 that it intends to apply to the relevant securities commission in Canada for an order that it is not a reporting issuer.

19. The Filer undertakes to concurrently deliver to its Canadian securityholders all disclosure that it would be required under Australian securities law or exchange requirements to deliver to Australian resident securityholders.

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

21. The Filer is not in default of any reporting requirements or other requirement of the ASX.

22. The Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Commission granting the Decision Sought.

**Decision**

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

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

“Vern Krishna”
Commissioner
Ontario Securities Commission

“James D. Carnwath”
Commissioner
Ontario Securities Commission

### 2.1.19 Brookfield Infrastructure Partners L.P.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer wants to put in place a credit support issuer structure, but is unable to rely on the exemption for credit support issuers in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirement, audit committee requirements and corporate governance requirements – Relief also granted from short form prospectus requirements, incorporation by reference requirement, earnings coverage requirements and subsidiary credit supporter requirements – Filer unable to rely on exemption for credit support issuers in applicable securities legislation since Filer only owns 70.5% of an intermediate holding entity (a limited partnership) that indirectly owns the voting securities of each Issuer – When the characteristics of the limited partnership units of the holding limited partnership (including that the majority are held by the parent) are viewed together with a voting agreement, control and direction of the holding limited partnership is held by the Filer as if the Filer beneficially owned all the outstanding voting securities of holding limited partnership – Filer unable to rely on the exemption since the Issuer proposes to issue convertible preferred shares that are convertible into other preferred shares of the Issuer – Relief subject to conditions, including conditions relating to minority interest in holding limited partnership.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, ss. 107, 121(2)(a)(ii).
National Instrument 44-101 Short Form Prospectus Distributions , s. 8.1.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1, 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c), 3.1.

**November 5, 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**
**BROOKFIELD INFRASTRUCTURE PARTNERS L.P.**
**(THE FILER)**

**DECISION**

**Background**

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

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

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

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

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

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

(f) the CDN Pref Issuer (as defined below) from the qualification requirements (the **Qualification Requirements**) of Part 2 of National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**), such that the CDN Pref Issuer is qualified to file a prospectus in the form of a short form prospectus;

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

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

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

in each case to accommodate: (a) the issuance by the Debt Issuers (as defined below) of debt securities guaranteed by the Guarantors (as defined below); (b) the issuance by the CDN Pref Issuer of preferred shares guaranteed by the Guarantors; and (c) an internal reorganization of the Filer (the **Reorganization**) as more particularly described below (collectively, the **Exemption Sought**).

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

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

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

**Interpretation**

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

**Representations**

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

***The Filer***

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

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

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

4. The Filer's sole asset is an approximate 70.5% limited partnership interest in Brookfield Infrastructure L.P. (the **Holding LP**), a Bermuda exempted limited partnership that was established on August 17, 2007.

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

6. The Filer, the Holding LP and the Holding Entities (as defined below) except New US Holdco have retained Brookfield Asset Management Inc. (together with its subsidiaries other than the Filer and its subsidiaries, **Brookfield**) and its related entities to provide management, administrative and advisory services under a master services agreement. Following the Reorganization, New US Holdco will also retain Brookfield for the provision of such services by becoming a party to the master services agreement.

7. The Filer is not in default of any requirement of the Legislation or equivalent legislation in any of the Jurisdictions.

8. In connection with an offering of debt securities by the Debt Issuers, the Filer applied for and was granted substantially the same exemptive relief as the Exemption Sought pursuant to a June 26, 2012 decision document (the **2012 Decision**).

***The Reorganization***

9. Pursuant to the Reorganization, the Holding LP will incorporate a new subsidiary under the laws of the State of Delaware (**New US Holdco**).

10. New US Holdco will be authorized to issue 500,000 common shares initially and one preferred share (the **New US Holdco Preferred Share**). The Holding LP will own all of the common shares of New US Holdco. An indirect wholly-owned subsidiary of Brookfield will own the New US Holdco Preferred Share, which will have an aggregate value of US$5 million. The New US Holdco Preferred Share will be redeemable for cash at the option of New US Holdco, subject to certain limitations, and because of certain US tax implications, will be entitled to vote (one vote per share). The New US Holdco Preferred Share will not be an equity security as such term is defined in the Act. The issuance of the New US Holdco Preferred Share will be exempt from the requirements of MI 61-101 because the fair market value of that share will be less than 25% of the market capitalization of the Filer.

11. New US Holdco will own all of the issued and outstanding voting securities of Brookfield Infrastructure Corporation, currently a corporation incorporated under the laws of the State of Delaware, which will be converted to a Delaware limited liability company named Brookfield Infrastructure LLC in connection with the Reorganization (**US Holdco**). All of the issued and outstanding voting securities of US Holdco are currently owned by the Holding LP. In connection with the conversion, all of the issued and outstanding preferred shares of US Holdco will be converted into common shares of US Holdco.

12. Following the Reorganization, New US Holdco will execute a guarantee and become a guarantor of the Securities (as defined below) and US Holdco will continue to be a guarantor of the Existing Debt Securities (as defined below) pursuant to the existing guarantee to which it is a party.

13. Following the Reorganization, the Filer will no longer satisfy the conditions of the 2012 Decision because a party other than the Filer, Brookfield, the Infrastructure General Partner (as defined below) and the Holding LP will have a direct ownership of the voting securities of US Holdco.

***The Issuers and the Holding LP***

14. The Debt Issuers have issued $400 million aggregate principal amount of debt securities (the **Existing Debt Securities**) guaranteed by the Filer, the Holding LP and each of the Holding Entities except New US Holdco. The Debt Issuers may, subject to market conditions, issue additional debt securities (the **New Debt Securities**, and together with the Existing Debt Securities, the **Debt Securities**), any new series of which will be guaranteed by the Filer, the Holding LP and each of the Holding Entities except US Holdco.

15. The Existing Debt Securities were jointly issued, and any New Debt Securities will be jointly issued, by Brookfield Infrastructure Finance ULC, an Alberta unlimited liability company (the **CDN Debt Issuer**), Brookfield Infrastructure Finance LLC, a Delaware limited liability company (the **US Issuer**), Brookfield Infrastructure Finance Pty Ltd, a proprietary company limited by shares incorporated in Australia (the **AUS Issuer**) and Brookfield Infrastructure Finance Limited, a Bermuda corporation (the **BRM Issuer**, together with the CDN Debt Issuer, the US Issuer and the AUS Issuer, the **Debt Issuers**), each an entity that is in effect an indirect subsidiary of the Filer.

16. Brookfield Infrastructure Preferred Equity Inc. (the **CDN Pref Issuer**, and together with the Debt Issuers, the **Issuers**) will be an issuer of preferred shares (the **Preferred Shares** and together with the Debt Securities, the **Securities**), which will be guaranteed by the Filer, the Holding LP and each of the Holding Entities except US Holdco. No Preferred Shares are currently outstanding.

17. The Issuers were formed under the laws of their respective jurisdictions in May 2012 prior to the filing of a preliminary short form prospectus for an offering of Securities and are currently reporting issuers in all of the Jurisdictions and not in default of any requirement of the Legislation or equivalent legislation in any of the Jurisdictions.

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

19. Following the Reorganization, the Holding LP will own all of the common shares of all the Holding Entities except US Holdco and Brookfield will own all of the preferred shares of all the applicable Holding Entities (the **Holdco Preferred Shares**). New US Holdco will own all of the common shares of US Holdco. The Holdco Preferred Shares will be redeemable for cash at the option of the Holding Entities, subject to certain limitations, and, except for the New US Holdco Preferred Share, will not be entitled to vote, except as required by law. The Holdco Preferred Shares will not be equity securities as such term is defined in the Act.

20. All of the outstanding voting securities of each Issuer are held directly or indirectly by the respective Holding Entity that is its parent.

21. The Filer owns approximately 70.5% of the outstanding limited partnership interest in the Holding LP with the remaining limited partnership interest held by Brookfield. The limited partnership units of the Holding LP held by Brookfield are subject to a redemption-exchange mechanism pursuant to which Brookfield has the right to require that the Holding LP redeem all or a portion of its limited partnership units of the Holding LP for a cash amount equal to the fair market value of one Unit multiplied by the number of limited partnership units of the Holding LP to be redeemed. In connection with the redemption, the Filer has the right to purchase all the limited partnership units of the Holding LP to be redeemed in exchange for Units on a one for one basis.

22. The Managing General Partner has a 0.01% general partnership interest in the Filer and acts as the general partner of the Filer and Brookfield Infrastructure GP L.P. (the **Infrastructure General Partner**) has an approximate 0.5% general partnership interest in the Holding LP and acts as the general partner of the Holding LP.

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

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

25. On completion of the Reorganization, the Filer, the Holding LP and the Holding Entities will be "credit supporters" (as defined in NI 51-102).

26. Each of the Issuers operates as a financing company and has no significant assets or liabilities unrelated to the Securities and does not have any ongoing business operations of its own.

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

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

defined below) as designated credit support securities and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to designated credit support securities, in accordance with the terms and conditions of the decision.

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

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

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

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

33. The Issuers have filed a short form base shelf prospectus dated July 12, 2012 in each of the Jurisdictions, in reliance upon section 2.4 of NI 44-101 and National Instrument 44-102 – *Shelf Distributions* (**NI 44-102**), which qualifies for distribution to the public C$750,000,000 of Securities. Any future prospectus will be prepared pursuant to the short form procedures contained in NI 44-101 and, if applicable, NI 44-102 and will comply with the requirements set out in Form 44-101F1 and, if applicable, NI 44-102, other than the Prospectus Disclosure Requirements.

34. The Debt Securities are governed by a trust indenture dated as of October 10, 2012 among the Debt Issuers and Computershare Trust Company of Canada, as trustee, as supplemented (the **Indenture**). Under the terms of the Indenture, the Debt Issuers are jointly and severally liable for the Debt Securities.

35. Following the Reorganization, the Filer, the Holding LP and each of the Holding Entities (other than US Holdco with respect to any new series of Securities) will, and other subsidiary entities (as defined in MI 61-101) of the Holding LP (collectively with the Filer, the Holding LP and each of the applicable Holding Entities, the **Guarantors**) may provide full and unconditional joint and several guarantees (collectively, the Guarantees) of the payments to be made by the Issuers in respect of the Debt Securities, the Preferred Shares and the Resulting Preferred Shares (if applicable), as stipulated in agreements governing the rights of holders of the Debt Securities, the Preferred Shares and the Resulting Preferred Shares (if applicable), that result in the holders of such securities being entitled to receive payment from the Guarantors within 15 days of any failure by the Issuers to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in NI 51-102.

***Offering of Securities***

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

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

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

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

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

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

    (f) the prospectus disclosure required by Item 11 of Form 44-101F1 will be addressed by incorporating by reference the Filer's public disclosure documents referred to in paragraph 36(e) above; and

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

37. Prior to issuing any New Debt Securities:

    (a) the Filer will provide its Guarantee in respect of the New Debt Securities; and

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

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

**Decision**

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

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

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

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

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

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

        (i) the Voting Agreement remains in force with the terms described in paragraph 24 above and the Voting Agreement is disclosed in the Filer's AIF (as defined in NI 51-102),

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

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

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

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

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

        (vii) other than the New US Holdco Preferred Share owned by Brookfield, the issued and outstanding voting securities of the Holding Entities and the Issuers are 100% owned, directly or indirectly, by their respective parent companies or entities,

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

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

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

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

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

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

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

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

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

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

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

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

(i) designated credit support securities,

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

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

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

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

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

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

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

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

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

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

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

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

   (c) the Issuers remain, so long as any of the Securities issued to the public remain outstanding, electronic filers under National Instrument 13-101 — *System for Electronic Document Analysis and Retrieval* (**SEDAR**),

   (d) the Issuers continue to maintain profiles on SEDAR,

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

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

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

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

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

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

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

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

   (h) the Issuers and the Filer, as applicable, comply with paragraphs 36, 37 and 38 above, as applicable,

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

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

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

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

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

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

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

James D. Carnwath"
Commissioner
Ontario Securities Commission

### 2.1.20 Canadian Capital Auto Receivables Asset Trust III – 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).

November 12, 2013

Canadian Capital Auto Receivables Asset Trust III
320 Bay Street, 11th Floor
Toronto, ON M5H 4A6

Attention: Jude Shawera,
Senior Manager, Asset Securitization –
Corporate Treasury,
Royal Bank of Canada
155 Wellington Street West, 14th Floor
Toronto, ON M5V 3K7

Dear Sirs/Mesdames:

**Re: Canadian Capital Auto Receivables Asset Trust III (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Kathryn Daniels"
Deputy Director, Corporate Finance
Ontario Securities Commission

### 2.1.21 Tamarack Acquisition 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:** Tamarack Acquisition Corp., Re, 2013 ABASC 513

November 12, 2013

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street SW
Calgary, AB T2P 5H1

Attention: Kelsey Armstrong

Dear Madam:

**Re: Tamarack Acquisition Corp. (formerly Sure Energy Inc.) (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Denise Weeres"
Manager, Legal
Corporate Finance

## 2.2 Orders

### 2.2.1 Vincenzo (Vincent) Sirianni – ss. 127(1), 127(10)

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

**AND**

**IN THE MATTER OF**
**VINCENZO (VINCENT) SIRIANNI**

**ORDER**
**(Subsections 127(1) and 127(10))**

**WHEREAS** on June 25, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Vincenzo (Vincent) Sirianni (the "Respondent" or "Sirianni");

**AND WHEREAS** on June 24, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

**AND WHEREAS** in November 2011, Sirianni entered into a Statement of Admissions and Joint Recommendation as to Sanction with the Alberta Securities Commission (the "ASC");

**AND WHEREAS** the Respondent is subject to an order dated December 8, 2011 made by the ASC that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act (the "ASC Order");

**AND WHEREAS** on July 9, 2013, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

**AND WHEREAS** Staff filed written submissions, a hearing brief and a brief of authorities;

**AND WHEREAS** Sirianni did not appear and did not file any materials;

**AND WHEREAS** I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

**IT IS HEREBY ORDERED THAT:**

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sirianni cease permanently, except that this order does not preclude Sirianni from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;

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

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

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

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

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

(g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Sirianni resign any positions that he holds as a director or officer of an investment fund manager; and

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Sirianni be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

**DATED** at Toronto this 5th day of November, 2013.

"James E. A. Turner"

### 2.2.2 Systematech Solutions Inc. et al. – s. 127(1)

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

**AND**

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

**ORDER**
**(Subsection 127(1) of the Securities Act)**

**WHEREAS** on October 31, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations dated October 31, 2012, filed by Staff of the Commission ("Staff"), to consider whether it is in the public interest to make certain orders against Systematech Solutions Inc., ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively the "Respondents");

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

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

**AND WHEREAS** on December 11, 2012, Staff advised that it provided electronic disclosure to counsel for the Respondents on November 21, 2012;

**AND WHEREAS** on December 11, 2012, the Commission extended a temporary cease trade order with respect to the Respondents until the conclusion of the proceeding, including the sanctions hearing, if any, and ordered that a confidential pre-hearing conference take place on February 20, 2013;

**AND WHEREAS** on December 13, 2012, the Commission issued an Amended Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the Act in connection with the Statement of Allegations dated October 31, 2012 and counsel for the Respondents has advised that he accepted service of the Amended Notice of Hearing;

**AND WHEREAS** on February 20, 2013, a confidential pre-hearing conference was held and Staff and counsel for the Respondents appeared before the Commission and made submissions;

**AND WHEREAS** on February 20, 2013, the Commission ordered that: (i) the hearing on the merits will start on November 4, 2013 at 10:00 a.m. and continue on November 6, 7, 8, 11, 12, 13, 14, 15 and 18, 2013; and (ii) another confidential pre-hearing conference will take place on September 4, 2013 at 10:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties;

**AND WHEREAS** on August 21, 2013, the Commission ordered on the consent of the parties that: (i) the confidential pre-hearing conference be adjourned from September 4, 2013 at 10:00 a.m. to September 12, 2013 at 2:00 p.m.;

**AND WHEREAS** on September 12, 2013, a confidential pre-hearing conference was held and Staff and counsel for the Respondents appeared before the Commission and made submissions and the Commission ordered that another confidential pre-hearing conference take place on October 15, 2013 at 2:00 p.m.;

**AND WHEREAS** on October 15, 21 and 28, 2013, confidential pre-hearing conferences were held and Staff and counsel for the Respondents appeared before the Commission and made submissions and the Commission scheduled further dates for confidential pre-hearing conferences;

**AND WHEREAS** on October 28, 2013, the confidential pre-hearing conference continued and Staff and counsel for the Respondents appeared before the Commission and requested that an adjournment motion be scheduled for October 30, 2013 at 2:00 p.m.;

**AND WHEREAS** on October 30, 2013, the parties attended before the Commission and requested that the adjournment motion be adjourned and that the November 4 and 6, 2013 hearing dates be vacated, and the Commission ordered that the adjournment motion was adjourned *sine die* and the hearing dates of November 4 and 6, 2013 were vacated;

**AND WHEREAS** on November 5, 2013, the parties attended before the Commission and requested that the hearing dates of November 7 and 8, 2013 be vacated;

**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 hearing dates of November 7 and 8, 2013 are vacated.

**DATED** at Toronto this 5th day of November, 2013.

"Christopher Portner"

**2.2.3 Ground Wealth Inc. et al. – ss. 127(1), (7) and (8)**

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

**AND**

**IN THE MATTER OF**
**GROUND WEALTH INC., MICHELLE DUNK,**
**ADRION SMITH, JOEL WEBSTER,**
**DOUGLAS DEBOER, ARMADILLO ENERGY INC.,**
**ARMADILLO ENERGY, INC.,**
**and ARMADILLO ENERGY, LLC**
**(aka ARMADILLO ENERGY LLC)**

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

**WHEREAS** the Ontario Securities Commission (the "**Commission**") issued a temporary order on July 27, 2011 (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**") that:

1. Pursuant to paragraph 2 **of subsection 127(1) of the Act, all trading in the securities of Armadillo Energy Inc. ("the** Armadillo Securities") shall cease;

2. Pursuant to paragraph 2 of subsection 127(1) of the Act, Armadillo Energy Inc. ("**Armadillo Texas**"), Ground Wealth Inc. ("**GWI**"), Paul Schuett ("**Schuett**"), Doug DeBoer ("**DeBoer**"), James Linde ("**Linde**"), Susan Lawson ("**Lawson**"), Michelle Dunk ("**Dunk**"), Adrion Smith ("**Smith**"), Bianca Soto ("**Soto**") and Terry Reichert ("**Reichert**") (collectively, the "Respondents to the Temporary Order") shall cease trading in all securities; and

3. Pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

**AND WHEREAS** on August 11, 2011, the Commission held a hearing to consider whether it was in the public interest to extend the Temporary Order, and heard submissions from Staff of the Commission ("**Staff**") and counsel to the Respondents to the Temporary Order;

**AND WHEREAS** on August 11, 2011, the Commission extended the Temporary Order to February 13, 2012 (the "**Amended Temporary Order**") on the same terms and conditions as provided for in the Temporary Order; provided that the Temporary Order shall not prevent a Respondent from trading for the Respondent's own account, solely through a registered dealer or a registered dealer in a foreign jurisdiction (which dealer must be given a copy of the Amended Temporary Order), in (a) any "exchange traded security" or "foreign exchange traded security" within the meaning of National Instrument 21-101, provided the Respondent does not own beneficially or exercise control or direction over more than 5 per cent of the voting or equity securities of the issuer of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer; and provided the Respondent provides Staff with the particulars of the accounts in which such trading is to occur before any trading in such accounts occurs;

**AND WHEREAS** on February 8, 2012, the Commission held a hearing to consider whether it was in the public interest to extend the Amended Temporary Order pursuant to subsections 127(7) and 127(8) of the Act, and heard submissions from Staff and from counsel to the Respondents to the Temporary Order;

**AND WHEREAS** on February 8, 2012, the Commission extended the Amended Temporary Order to August 8, 2012 (the "**February 2012 Temporary Order**") on the following terms:

1. Pursuant to paragraph 2 of subsection 127(1) of the Act, all trading in the Armadillo Securities shall cease;

2. Pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents to the Temporary Order shall cease trading in Armadillo Securities and/or in securities of a nature similar to Armadillo Securities, which are securities evidencing an interest in the production of barrels of oil still in the ground; and

3. This Order shall not prevent Staff from applying to the Commission for a variation of this Order if Staff considers that doing so is in the public interest;

**AND WHEREAS** on August 2, 2012, the Commission held a hearing to consider whether it was in the public interest to extend the February 2012 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act, and heard submissions from Staff and from counsel to the Respondents to the Temporary Order;

**AND WHEREAS** on August 2, 2012, the Commission extended the February 2012 Temporary Order until February 4, 2013, and ordered that the matter return before the Commission on February 1, 2013;

**AND WHEREAS** on February 1, 2013, the Commission held a hearing to consider whether it was in the public interest to further extend the February 2012 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act;

**AND WHEREAS** on February 1, 2013, Staff appeared, made submissions and requested that the

February 2012 Temporary Order be extended against GWI, Armadillo Texas, DeBoer, Dunk and Smith only;

**AND WHEREAS** on February 1, 2013 Staff advised that they would be initiating proceedings in this matter under section 127 of the Act shortly and would not be naming Schuett, Linde, Lawson, Soto or Reichert as respondents;

**AND WHEREAS** on February 1, 2013, counsel to the Respondents to the Temporary Order did not appear, but email correspondence setting out his position and advising that he did not oppose the extension of the February 2012 Temporary Order to March 6, 2013 was filed by Staff;

**AND WHEREAS** on February 1, 2013, the Commission extended the February 2012 Temporary Order to March 6, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith and ordered that a further hearing be held before the Commission on March 5, 2013 (the "**February 2013 Temporary Order**");

**AND WHEREAS** on February 1, 2013, the Commission issued a Notice of Hearing (the "**Notice of Hearing**") pursuant to sections 127 and 127.1 of the Act, in relation to a Statement of Allegations filed by Staff on February 1, 2013 (the "**Statement of Allegations**") naming as respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, as well as Joel Webster ("**Webster**"), Armadillo Energy, Inc., a Nevada company ("**Armadillo Nevada**") and Armadillo Energy LLC, an Oklahoma company ("**Armadillo Oklahoma**") (collectively, the "**Respondents**");

**AND WHEREAS** on March 5, 2013, a hearing was held to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act, and a concurrent hearing was held in relation to the Notice of Hearing;

**AND WHEREAS** on March 5, 2013, Staff appeared, made submissions and advised that Smith, GWI, Dunk and Armadillo Nevada had been successfully served with the Notice of Hearing and the Statement of Allegations, but that Staff required additional time to serve the Notice of Hearing and the Statement of Allegations on Webster, DeBoer, Armadillo Texas and Armadillo Oklahoma;

**AND WHEREAS** on March 5, 2013, counsel to GWI and Dunk appeared, made submissions and did not oppose the extension of the February 2013 Temporary Order; Smith appeared personally but made no submissions; and Webster, DeBoer, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear;

**AND WHEREAS** on March 5, 2013, the Commission continued the February 2013 Temporary Order to April 9, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, and adjourned the proceeding in relation to the February 2013 Temporary Order to April 8, 2013;

**AND WHEREAS** on April 8, 2013, a hearing was held to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act, and a concurrent hearing was held in relation to the Notice of Hearing;

**AND WHEREAS** on April 8, 2013, Staff appeared, made submissions and filed the Affidavit of Stephen Carpenter, sworn March 27, 2013;

**AND WHEREAS** Staff also filed materials confirming that (a) GWI, Dunk, Smith, Webster, DeBoer, Armadillo Texas and Armadillo Nevada were served with the Notice of Hearing and the Statement of Allegations, and that Armadillo Oklahoma was an inactive company, and (b) disclosure was being prepared and that Staff estimated that eight weeks would be required to complete production of the electronic disclosure briefs;

**AND WHEREAS** on April 8, 2013, counsel to GWI, Dunk and DeBoer appeared, made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice, and also advised that he had been in contact with Smith and that Smith also did not oppose the further extension of the February 2013 Temporary Order;

**AND WHEREAS** counsel to GWI, Dunk and DeBoer also advised that his clients did not oppose an eight week adjournment of the proceeding in relation to the Notice of Hearing without prejudice, and that Smith also did not oppose the requested adjournment;

**AND WHEREAS** on April 8, 2013, Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear;

**AND WHEREAS** on April 8, 2013, Schuett, Linde, Lawson, Soto and Reichert were no longer respondents to the February 2013 Temporary Order and were not respondents to the proceeding initiated by the Notice of Hearing;

**AND WHEREAS** on April 8, 2013, the remaining respondents to the February 2013 Temporary Order, being GWI, Armadillo Texas, DeBoer, Dunk and Smith, were all respondents to the proceeding initiated by the Notice of Hearing;

**AND WHEREAS** on April 8, 2013, the Commission ordered that:

1. The February 2013 Temporary Order be extended to June 7, 2013, or until further order of the Commission, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

2. A further hearing in relation to the February 2013 Temporary Order be held on June 6, 2013;

3. The hearing in relation to the Notice of Hearing be adjourned to June 6, 2013; and

4. Any further notices or orders in this matter shall proceed under a single style of cause of the proceeding initiated by the February 1, 2013 Notice of Hearing, being "IN THE MATTER OF GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER, DOUGLAS DeBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC. and ARMADILLO ENERGY LLC.";

**AND WHEREAS** on June 6, 2013, a hearing was held to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act, and a concurrent hearing was held in relation to the Notice of Hearing;

**AND WHEREAS** Staff appeared, made submissions and filed the Affidavit of Stephen Carpenter, sworn May 22, 2013, and advised that disclosure was prepared and available for delivery to all the Respondents, upon their signing of an undertaking in such terms suitable to protect the personal and private information contained in the disclosure brief;

**AND WHEREAS** at the hearings, Staff provided counsel to GWI, Dunk and DeBoer with three copies of the electronic disclosure brief;

**AND WHEREAS** counsel to GWI, Dunk and DeBoer made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice;

**AND WHEREAS** Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear;

**AND WHEREAS** the Commission advised the parties that it expected to set the dates for a hearing on the merits at the next appearance on this matter;

**AND WHEREAS** on June 6, 2013, the Commission ordered that:

1. The hearing in relation to the Notice of Hearing be adjourned to a pre-hearing conference to be held on August 20, 2013 at 10:00 a.m.;

2. The hearing in relation to the February 2013 Temporary Order be adjourned to August 20, 2013 at 10:30 a.m.; and

3. The February 2013 Temporary Order against the Respondents be extended to August 22, 2013;

**AND WHEREAS** on August 20, 2013, a confidential pre-hearing conference was held, followed by a public hearing to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act;

**AND WHEREAS** Staff appeared and made submissions and counsel to GWI, Dunk and DeBoer appeared, made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice;

**AND WHEREAS** Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearings;

**AND WHEREAS** after hearing the submissions of Staff and counsel to GWI, Dunk and DeBoer, the Commission deferred setting the dates for a hearing on the merits and advised the parties that it expected to set such dates at the next appearance on this matter;

**AND WHEREAS** on August 20, 2013 the Commission ordered that:

1. The pre-hearing conference be adjourned and shall continue on October 1, 2013 at 10:00 a.m.;

2. The hearing in relation to the extension of the February 2013 Temporary Order be adjourned and shall continue on October 1, 2013, at 10:30 a.m.; and

3. The February 2013 Temporary Order be extended to October 3, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

**AND WHEREAS** on September 20, 2013, the Registrar of the Commission received a written request on behalf of counsel to GWI, Dunk and DeBoer, requesting an adjournment of the next appearances on this matter (the "**Adjournment Request**");

**AND WHEREAS** Staff and counsel to GWI, Dunk and DeBoer agreed that the next pre-hearing conference be rescheduled to October 11, 2013 and the February 2013 Temporary Order be extended to October 16, 2013;

**AND WHEREAS** Armadillo Texas, Armadillo Nevada and Smith were provided with an opportunity to object to the Adjournment Request and did not do so;

**AND WHEREAS** Staff submitted that Armadillo Oklahoma and Webster could not be served;

**AND WHEREAS** on September 30, 2013, the Commission ordered that:

1. The pre-hearing conference scheduled for October 1, 2013 at 10:00 a.m. be adjourned and shall continue on October 11, 2013 at 10:00 a.m.;

2. The hearing in relation to the extension of the February 2013 Temporary Order scheduled for October 1, 2013 at 10:30 a.m. be adjourned and shall continue on October 11, 2013 at 10:30 a.m.; and

3. The February 2013 Temporary Order be extended to October 16, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

**AND WHEREAS** on October 11, 2013, a confidential pre-hearing conference was held, followed by a public hearing to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act;

**AND WHEREAS** Staff appeared and made submissions and counsel to GWI, Dunk and DeBoer appeared, made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice;

**AND WHEREAS** Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearings;

**AND WHEREAS** after hearing the submissions of Staff and counsel to GWI, Dunk and DeBoer, the Commission deferred setting the dates for a hearing on the merits and advised the parties that it expects to set such dates at the next appearance on this matter;

**AND WHEREAS** on October 11, 2013, the Commission ordered that:

1. The pre-hearing conference be adjourned and shall continue on November 5, 2013, at 2:30 p.m.;

2. The hearing in relation to the extension of the February 2013 Temporary Order be adjourned and shall continue on November 5, 2013, at 3:00 p.m.; and,

3. The February 2013 Temporary Order be extended to November 8, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

**AND WHEREAS** on October 31, 2013, the Commission issued an Amended Notice of Hearing and Staff filed an Amended Statement of Allegations, which amended the title of this proceeding by replacing the name "Armadillo Energy LLC" with "Armadillo Energy, LLC (aka Armadillo Energy LLC)" (collectively, "Armadillo Oklahoma", as defined above);

**AND WHEREAS** on November 5, 2013, a confidential pre-hearing conference was held, followed by a public hearing to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act;

**AND WHEREAS** Staff appeared and made submissions and counsel to GWI, Dunk and DeBoer appeared, made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice;

**AND WHEREAS** Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearings;

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

**IT IS HEREBY ORDERED** that:

1. The pre-hearing conference is adjourned and shall continue on January 15, 2014 at 10:00 a.m.;

2. A motion requested by Staff will be heard at a confidential hearing on February 6, 2014 at 10:00 a.m.;

3. The hearing on the merits shall commence on April 14, 2014 at 10:00 a.m. and shall continue until May 7, 2014, save and except for April 16, 17, 18 and 22 and May 6, 2014 (the "**Merits Hearing**"); and

4. The February 2013 Temporary Order is extended as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, to two days following the conclusion of this proceeding, including the issuance of the Commission's decision on sanctions and costs should a sanctions hearing be required following the conclusion of the Merits Hearing in this matter.

**DATED** at Toronto this 5th day of November, 2013.

"Mary Condon"

**2.2.4 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al.**

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

**AND**

**IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS, IVAN CAVRIC AND
PRIMEQUEST CAPITAL CORPORATION**

**ORDER**

**WHEREAS** on November 30, 2007, a Notice of Hearing was issued by the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") with respect to a Statement of Allegations issued by Staff of the Ontario Securities Commission ('Staff") on November 29, 2007, to consider whether MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons, Ivan Cavric and Primequest Capital Corporation (collectively, the "Respondents") breached the Act and acted contrary to the public interest;

**AND WHEREAS** on March 25, 2006 an Amended Statement of Allegations was issued by Staff, and on April 14, 2009 an Amended Amended Statement of Allegations was issued by Staff;

**AND WHEREAS** the Commission conducted the hearing on the merits in this matter with respect to the Respondents on May 7, 8, 11, 13, June 10, 11, 12, 22, 26, September 3, 4, and October 7, 2009;

**AND WHEREAS** the Commission issued its Reasons and Decision on the merits in this matter on February 2, 2011 (the "Merits Decision");

**AND WHEREAS** the Commission conducted a motion hearing on November 2, 2011 addressing the issue of the composition of the Sanctions and Costs Hearing Panel (the "Motion");

**AND WHEREAS** the Commission issued its Reasons and Decision on the Motion on December 6, 2011 (the "Motion Decision");

**AND WHEREAS** on January 3, 2012, the Respondents filed a Notice of Appeal with respect to the Motion Decision, and on February 24, 2012, the Respondents filed an Application to Divisional Court for Judicial Review of the Motion Decision;

**AND WHEREAS** on December 17, 2012, the Divisional Court heard the Application for Judicial Review and rendered its decision that the Application for Judicial Review is premature;

**AND WHEREAS** on September 5 and 13, 2013, confidential pre-hearing conferences were held before the Commission to discuss procedural issues and scheduling the Sanctions and Costs hearing;

**AND WHEREAS** on September 24, 2013, the Commission ordered that:

1. The confidential pre-hearing conference will continue on October 17, 2013 at 10:00 a.m. or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties; and

2. The Sanctions and Costs hearing in this matter will commence on November 28, 2013 at 10:00 a.m. and, if necessary, continue on November 29, 2013 at 10:00 a.m.;

**AND WHEREAS** on October 17, 2013, a confidential pre-hearing conference was held before the Commission to discuss procedural issues;

**AND WHEREAS** on November 7, 2013, a confidential pre-hearing conference was held before the Commission to discuss procedural issues;

**AND WHEREAS** the Commission considers it in the public interest to make this order;

**IT IS ORDERED** that:

1. the confidential pre-hearing conference will continue on November 20, 2013 at 9:00 a.m. or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties, if necessary; and

2. if the parties determine that such confidential pre-hearing conference is no longer necessary, the parties shall notify the Office of the Secretary by 4:30 p.m. on November 18, 2013 to vacate the November 20, 2013 confidential pre-hearing conference.

**DATED** at Toronto this 7th day of November, 2013.

"Vern Krishna"

### 2.2.5 Iplayco Corporation Ltd. – s. 1(11)(b)

**Headnote**

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

**Statutes Cited**

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

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

**AND**

**IN THE MATTER OF**
**IPLAYCO CORPORATION LTD.**

**ORDER**
**(Clause 1(11)(b))**

**UPON** the application (the "**Application**") of Iplayco Corporation Ltd. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 1(11)(b) of the Act deeming the Issuer to be a reporting issuer for the purposes of Ontario securities law;

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

**AND UPON** the Issuer having represented to the Commission as follows:

1. The Issuer was incorporated in Alberta on July 27, 1999 under the name "Diversiflow Corporation Ltd." The Issuer changed its name to "Iplayco Corporation Ltd." effective May 18, 2006.

2. The Issuer's head office is located at Suite 215, 27353 – 58th Crescent, Langley, British Columbia V4W 3W7.

3. The Issuer's authorized share capital is an unlimited number of common shares (the "**Common Shares**") without par value and an unlimited number of preferred shares (the "**Preferred Shares**") with special rights and restrictions attached. As at September 30, 2013, the Issuer had 10,220,187 Common Shares issued and outstanding. There are no Preferred Shares issued.

4. The Issuer became a reporting issuer under the *Securities Act* (British Columbia) (the "**BC Act**") on June 19, 2000. The Issuer became a reporting issuer under the *Securities Act* (Alberta) (the "**Alberta Act**") on June 19, 2000.

5. The Issuer is not in default of any requirements of the BC Act or the Alberta Act.

6. The Issuer is not on the list of defaulting issuers maintained pursuant to the BC Act or pursuant to the Alberta Act.

7. The continuous disclosure materials filed by the Issuer under the BC Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**").

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

9. The Issuer's Common Shares trade on the TSX-V under the symbol "IPC".

10. The Issuer is not in default of any of the rules, regulations or policies of the TSX-V.

11. Pursuant to the policies of the TSX-V, a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "significant connection to Ontario" (as defined in the policies of the TSX-V) and, upon becoming aware

that it has a significant connection to Ontario, promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

12. The Issuer has determined that it has a significant connection to Ontario in that over 20% of the Issuer's Common Shares are held by persons resident in Ontario.

13. There have been no penalties or sanctions imposed against the Issuer by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority and the Issuer has not entered into a settlement agreement with a Canadian securities regulatory authority.

14. No director or officer the Issuer, nor, to the knowledge of the Issuer and its directors and officers, any shareholder of the Issuer holding sufficient securities of the Issuer to materially affect the control of the Issuer has:

    (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or

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

15. None of the Issuer, any director or officer of the Issuer, nor, to the knowledge of the Issuer and its directors and officers, any shareholder of the Issuer holding sufficient securities of the Issuer to materially affect the control of the Issuer is or has:

    (a) been the subject of any known ongoing or concluded investigation by: (i) a Canadian securities regulatory authority; or (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

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

16. None of the Issuer's directors or officers, nor, to the knowledge of the Issuer and its directors and officers, any shareholder of the Issuer holding sufficient securities of the Issuer to materially affect the control of the Issuer, has been at the time of such event, a director or officer of any other issuer which is or has:

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

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

17. The Issuer will remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 Fees no later than two business days from the date hereof.

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

**IT IS HEREBY ORDERED** pursuant to subsection 1(11)(b) of the Act that the Issuer be deemed to be a reporting issuer for the purposes of Ontario securities law.

**DATED** at Toronto on this 5th day of November, 2013.

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

### 2.2.6 Systematech Solutions Inc. et al. – s. 127(1)

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

**AND**

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

**ORDER**
**(Subsection 127(1) of the Securities Act)**

**WHEREAS** on October 31, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations dated October 31, 2012, filed by Staff of the Commission ("Staff"), to consider whether it is in the public interest to make certain orders against Systematech Solutions Inc., ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively the "Respondents");

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

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

**AND WHEREAS** on December 11, 2012, Staff advised that it provided electronic disclosure to counsel for the Respondents on November 21, 2012;

**AND WHEREAS** on December 11, 2012, the Commission extended a temporary cease trade order with respect to the Respondents until the conclusion of the proceeding, including the sanctions hearing, if any, and ordered that a confidential pre-hearing conference take place on February 20, 2013;

**AND WHEREAS** on December 13, 2012, the Commission issued an Amended Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the Act in connection with the Statement of Allegations dated October 31, 2012 and counsel for the Respondents has advised that he accepted service of the Amended Notice of Hearing;

**AND WHEREAS** on February 20, 2013, a confidential pre-hearing conference was held and Staff and counsel for the Respondents appeared before the Commission and made submissions;

**AND WHEREAS** on February 20, 2013, the Commission ordered that: (i) the hearing on the merits will start on November 4, 2013 at 10:00 a.m. and continue on November 6, 7, 8, 11, 12, 13, 14, 15 and 18, 2013; and (ii) another confidential pre-hearing conference will take place on September 4, 2013 at 10:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties;

**AND WHEREAS** on August 21, 2013, the Commission ordered on the consent of the parties that: (i) the confidential pre-hearing conference be adjourned from September 4, 2013 at 10:00 a.m. to September 12, 2013 at 2:00 p.m.;

**AND WHEREAS** on September 12, 2013, a confidential pre-hearing conference was held and Staff and counsel for the Respondents appeared before the Commission and made submissions and the Commission ordered that another confidential pre-hearing conference take place on October 15, 2013 at 2:00 p.m.;

**AND WHEREAS** on October 15, 21 and 28, 2013, confidential pre-hearing conferences were held and Staff and counsel for the Respondents appeared before the Commission and made submissions and the Commission scheduled further dates for confidential pre-hearing conferences;

**AND WHEREAS** on October 28, 2013, the confidential pre-hearing conference continued and Staff and counsel for the Respondents appeared before the Commission and requested that an adjournment motion be scheduled for October 30, 2013 at 2:00 p.m.;

**AND WHEREAS** on October 30, 2013, the parties attended before the Commission and requested that the adjournment motion be adjourned and that the November 4 and 6, 2013 hearing dates be vacated, and the Commission ordered that the adjournment motion was adjourned sine die and the hearing dates of November 4 and 6, 2013 were vacated;

**AND WHEREAS** on November 5, 2013, the parties attended before the Commission and requested that the hearing dates of November 7 and 8, 2013 be vacated and the Commission ordered that those dates be vacated;

**AND WHEREAS** on November 7, 2013, the parties attended before the Commission and requested that the hearing dates of November 11, 12, 13, 14, 15 and 18, 2013 be vacated;

**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 hearing dates of November 11, 12, 13, 14, 15 and 18, 2013 are vacated.

**DATED** at Toronto this 7th day of November, 2013.

“Christopher Portner”

### 2.2.7 Eda Marie Agueci et al. – Rules 1.4 and 1.6(2) of the OSC Rules of Procedure

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

**AND**

**IN THE MATTER OF**
**EDA MARIE AGUECI, DENNIS WING,**
**SANTO IACONO, JOSEPHINE RAPONI,**
**KIMBERLEY STEPHANY, HENRY FIORILLO,**
**GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA,**
**IAN TELFER, JACOB GORNITZKI and**
**POLLEN SERVICES LIMITED**

**ORDER**
**(Rules 1.4 and 1.6(2) of the Commission's**
**Rules of Procedure (2012), 35 O.S.C.B. 10071)**

**WHEREAS** 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 February 7, 2012 against Eda Marie Agueci ("Agueci") , Dennis Wing ("Wing"), Santo Iacono ("Iacono"), Josephine Raponi ("Raponi"), Kimberley Stephany ("Stephany"), Henry Fiorillo ("Fiorillo"), Giuseppe (Joseph) Fiorini ("Fiorini"), John Serpa ("Serpa"), Jacob Gorntizki ("Gornitzki") (collectively, the "Individual Respondents"), Pollen Services Limited (together with the Individual Respondents, the "Respondents") and Ian Telfer;

**AND WHEREAS** on September 20, 2013, the Commission approved a settlement agreement between Staff and Ian Telfer;

**AND WHEREAS** on September 26, 2013, Staff filed an Amended Statement of Allegations against the Respondents;

**AND WHEREAS** following consideration of a preliminary motion, the merits hearing commenced on September 30, 2013, has continued over the course of 22 hearing dates, is ongoing and is currently scheduled to continue up to and including December 20, 2013 (the "Merits Hearing");

**AND WHEREAS** the panel is of the view that further dates are required for the Merits Hearing and invited the parties to make submissions on availability in 2014;

**AND WHEREAS** on November 1, 2013, Staff and counsel from various firms acting on behalf of Gornitzki, Wing, Iacono, Fiorillo and Fiorini, respectively, appeared and made submissions;

**AND WHEREAS** on November 1, 2013, counsel from various firms acting on behalf of Raponi, Stephany and Serpa, respectively, participated via teleconference and made submissions and counsel for Raponi advised the panel of availability for counsel acting on behalf of Agueci;

**AND WHEREAS** the Commission has considered the submissions of the parties and relevant factors including:

(i) the importance of securing a just and expeditious determination of the important matters in issue;

(ii) availability of counsel and the fact that many of the Respondents have indicated that they will not be participating in the evidentiary portion of the merits hearing, but would participate if there was a non-suit motion;

(iii) at least four of the Individual Respondents are considering bringing non-suit motions; and

(iv) the availability of the Commission and the panel;

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

**IT IS HEREBY ORDERED** that:

1. Staff shall have until not later than December 12, 2013 to complete the evidentiary portion of its case for the Merits Hearing, including read-ins permitted by our oral ruling of October 1, 2013;

2. Each Individual Respondent shall disclose by December 16, 2013 at 10:00 a.m. whether he or she will undertake to testify at the Merits Hearing;

3. Staff's read-ins of excerpts of compelled testimony for the Individual Respondents who have not undertaken to testify shall begin on December 16, 2013 at 1:00 p.m.;

4. Notice of Motion of a non-suit, if any, and any filings required by Rule 3.2 of the Commission's Rules of Procedure, shall be filed and served electronically by January 3, 2014 at 4:00 p.m.;

5. Any Response to a non-suit motion shall be filed and served electronically by January 7, 2014 at 4:00 p.m.;

6. Any Reply to the non-suit motion Response, shall be filed and served electronically by January 9, 2014 at 4:00 p.m.;

7. Non-suit motions, if any, shall be heard on January 15 and 16, 2014 from 10:00 a.m. to 4:00 p.m.;

8. The Merits Hearing shall continue January 15, 16, 17, 20, 21, 22, 23, 24, 27, 30, 31, February 3, 4, 5, 6, 7, and March 3, 4, 5, 6, 7, 2014;

9. Staff's written closing submissions for the Merits Hearing shall be filed and served electronically by March 25, 2014 at 4:00 p.m.;

10. The Respondents' written closing submissions for the Merits Hearing shall be filed and served electronically by April 11, 2014 at 4:00 p.m.; and

11. The panel shall hear oral closing submissions of all participating parties in the Merits Hearing on April 28, 29 and 30, 2014 from 10:00 a.m. to 4:30 p.m.

**DATED** at Toronto this 8th day of November, 2013.

"Edward P. Kerwin"

"Anne Marie Ryan"

"Deborah Leckman"

### 2.2.8 Assignment of Certain Powers and Duties of the Ontario Securities Commission – s. 6(3)

**Headnote**

Amended and Restated Assignment of Certain Powers and Duties of the Ontario Securities Commission.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 6(3).

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

**AND**

**IN THE MATTER OF**
**THE ASSIGNMENT OF CERTAIN POWERS AND DUTIES OF THE ONTARIO SECURITIES COMMISSION**

**ASSIGNMENT**
**[Subsection 6(3)]**

**WHEREAS:**

A. On July 3, 2012, pursuant to subsection 6(3) of the Act, the Ontario Securities Commission (the "Commission") issued an assignment (the "July 3, 2012 Assignment") assigning certain of its powers and duties under the *Securities Act* (Ontario) (the "Act") to each "Director" as that term is defined in subsection 1(1) of the Act, acting individually;

B. The Commission considers it desirable to amend and restate the July 3, 2012 Assignment by adding a new paragraph 2(b.1) where the Commission assigns its powers and duties under clauses 21(5)(a) and 21.2(3) 2 of the Act but only in certain limited circumstances as described in that paragraph;

**NOW THEREFORE:**

1. The July 3, 2012 Assignment is revoked, without prejudice to the effectiveness of any lawful exercise prior to the date of this revocation of the powers and duties assigned thereby, and is hereby replaced with the following amended and restated assignment (the "Assignment").

2. Pursuant to subsection 6(3) of the Act, the Commission assigns to each Director, acting individually, the powers and duties vested in or imposed on the Commission by:

   (a) clauses 21(5)(a), 21(5)(b), 21.0.1(a) and 21.0.1(b) of the Act but only:

      (i) with respect to the review and decision regarding information filed in Form 21-101F1 or Form 21-101F2 or the exhibits thereto, and

      (ii) where such information relates to matters that do not raise significant regulatory or public interest concerns and do not introduce a novel feature to the capital markets;

   (b) clauses 21(5)(e), 21.0.1(c) and subsections 21.1(4), 21.2(3) and 21.2.1(3) of the Act, but only in respect of by-laws, rules, regulations, policies, procedures, interpretations or practices that

      (i) do not raise significant regulatory or public interest concerns and,

      (ii) where they relate to an exchange, a quotation and trade reporting system, an alternative trading system or a clearing agency, do not introduce a novel feature to the capital markets;

   (b.1) clauses 21(5)(a) and 21.2(3) 2 of the Act, but only in respect of matters requiring approval under the terms and conditions of a Commission order recognizing an exchange or a clearing agency that

      (i) do not raise significant regulatory or public interest concerns and,

      (ii) do not introduce a novel feature to the capital markets;

(c) subsection 62(5) of the Act;

(d) section 74 of the Act, but only in respect of orders that a person or company is not subject to section 53 of the Act in connection with solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* for securities to be issued pursuant to an over-allotment option granted to an underwriter by an issuer or a selling securityholder of an issuer;

(e) subclause 1(10)(a)(ii) of the Act but only in respect of a reporting issuer:

(i) whose outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario and fewer than 51 securityholders in total worldwide,

(ii) whose securities, including debt securities, are not 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*,*

(iii) that is not in default of any of its obligations as a reporting issuer, and

(iv) that will not be a reporting issuer in any jurisdiction of Canada immediately following the Director making an order that the reporting issuer is not a reporting issuer;

(f) clause 1(11)(b) of the Act, in the circumstances described in Parts 2 and 3 of Ontario Securities Commission Policy 12-602 *Designating an Issuer in Certain Other Canadian Jurisdictions as a Reporting Issuer in Ontario*;

(g) paragraph 1 of subsection 127(1) of the Act, provided the making of the order under subsection 127(1) of the Act is not contested on its merits and is only in respect of suspending the registration of:

(i) a registrant that has, in the opinion of the Director, acted contrary to the public interest and consents to such suspension; and

(ii) a registrant that has filed an application to surrender the registrant's registration pursuant to section 30 of the Act and has also consented to the suspension of the registrant's registration;

(h) paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act and subsections 127(2), (3), (5), (7), (8) and (9) of the Act, provided that the making of the order under subsections 127(1), (7) or (8) of the Act is not contested on its merits and is only in respect of

(i) trading, generally or by a person or company identified in the cease trade order, or acquisition, by a particular person or company identified in the cease trade order, in or of securities of a reporting issuer that has failed to file, as applicable,

(A) comparative annual financial statements or interim financial reports containing the statements and the notes required by National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") or by National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("NI 71-102"),

(B) an auditor's report issued in connection with comparative annual financial statements required by NI 51-102**,** and NI 71-102,

(C) an AIF, MD&A, information circular, or business acquisition report (all as defined by NI 51-102 and by NI 71-102) containing information for each of the content items required by NI 51-102 and the applicable form, by Part 5 of National Instrument 52-110 *Audit Committees*, or by NI 71-102,

(D) a report on reserves data and other oil and gas information as required by National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* ("NI 51-101") containing information for each of the content items required by NI 51-101 and Form 51-101F2,

(E) a technical report as required by National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("NI 43-101") containing information for each of the content items required by NI 43-101 and Form 43-101F1, or

(F) certification of filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

within the time period prescribed by Ontario securities law;

(ii) trading, generally or by a person or company identified in the cease trade order, or acquisition, by a particular person or company identified in the cease trade order, in or of securities of a reporting issuer that has acknowledged in writing that comparative annual financial statements or interim financial reports filed with the Commission were not prepared in accordance with generally accepted accounting principles, including, but not limited to, where an issuer has advised the Commission or staff in writing, or has publicly announced, that it intends to restate such financial statements;

(iii) trading, generally or by a person or company identified in the cease trade order, or acquisition, by a particular person or company identified in the cease trade order, in or of securities of a reporting issuer that has filed its financial statements accompanied by an auditor's report prepared by a public accounting firm that is, as of the date of the auditor's report, not a participating audit firm as defined by National Instrument 52-108 *Auditor Oversight*, or is not in compliance with any restrictions or sanctions imposed by the Canadian Public Accountability Board;

(i) subsection 140(2) of the Act in the circumstances described in clauses (b), (c) and (j) of section C of Ontario Securities Commission Policy 13-601 *Public Availability of Material Filed Under the Securities Act*;

(j) section 144 of the Act to:

(i) revoke or vary any decision made by a Director under authority assigned to him or her by the Commission pursuant to this Assignment or a predecessor Assignment, including another decision made under section 144 of the Act, but only if at the time of revoking or varying such decision the Director would have been authorized to make the decision being varied or revoked, or

(ii) vary any order made by the Commission under section 127 of the Act to the extent necessary to permit transfers of securities as contemplated by Section 3.2 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*,

provided that a person or company directly affected by a decision of a Director made pursuant to this Assignment may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after the mailing of the notice of the decision, request and be entitled to a hearing and review of such decision by the Commission.

3. The Executive Director of the Commission shall from time to time determine which one or more other Directors, in each case acting alone, should, as an administrative matter, exercise each of the powers or perform each of the duties assigned by the Commission in paragraph 2 above, each of which powers may also be exercised and performed by the Executive Director, acting alone.

4. No person or company shall be required to inquire as to the authority of a member of the staff of the Commission to sign a decision pursuant to this Assignment in the capacity of a Director, and a decision purporting to be signed pursuant to this Assignment by a member of the staff of the Commission in the capacity of a Director shall be conclusively deemed to have been signed by a Director authorized by this Assignment without proof of such authority.

5. This Assignment does not preclude the Commission from itself exercising or performing any of the assigned powers or duties.

**DATED** this 25th day of October, 2013.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

### 2.2.9 CNSX Markets Inc. – s. 144

**Headnote**

Section 144 – application to vary and restate order recognizing CNSX Markets Inc. as an exchange.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144.

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

**AND**

**IN THE MATTER OF**
**CNSX MARKETS INC.**

**ORDER**
**(Section 144 of the Act)**

**WHEREAS** the Ontario Securities Commission (Commission) issued an order dated May 7, 2004, and varied on September 9, 2005, June 13, 2006, May 16, 2008, varied and restated on July 6, 2010, and varied on June 22, 2012, recognizing the Canadian Trading and Quotation System Inc. (CNQ), which later changed its name to CNSX Markets Inc. (CNSX), as an exchange pursuant to section 21 of the Act (Recognition Order);

**AND WHEREAS** an application has been made to the Commission requesting that the Commission issue an order varying the Recognition Order;

**AND WHEREAS**, based on the application and the representations made to the Commission by CNSX, the Commission has determined that it is not prejudicial to the public interest to vary the Recognition Order pursuant to section 144 of the Act;

**IT IS ORDERED**, pursuant to section 144 of the Act, that the Recognition Order is varied and restated as follows:

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

**AND**

**IN THE MATTER OF**
**CNSX MARKETS INC.**

**RECOGNITION ORDER**
**(Section 21 of the Act)**

**WHEREAS** the Commission issued an order dated May 7, 2004, and varied on September 9, 2005, June 13, 2006, May 16, 2008, varied and restated on July 6, 2010, and varied on June 22, 2012, recognizing the Canadian Trading and Quotation System Inc. (CNQ), which later changed its name to CNSX Markets Inc. (CNSX), as an exchange pursuant to section 21 of the Act (Recognition Order);

**AND WHEREAS** CNSX also operates the Alternative Market facility, Pure Trading (Pure):

**AND WHEREAS** an application has been made to the Commission requesting that the Commission issue an order varying the Recognition Order;

**AND WHEREAS** the Commission has received certain representations and undertakings from CNSX in connection with the application;

**AND WHEREAS** the Commission considers the proper operation of an exchange as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of the exchange be dealt with appropriately;

**AND WHEREAS** CNSX will continue to comply with National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

**AND WHEREAS** the Commission considers it appropriate to set out in this order the terms and conditions of CNSX's continued recognition as a stock exchange, which terms and conditions are set out in Schedule A;

**AND WHEREAS** CNSX has agreed to the terms and conditions set out in Schedule A;

**AND WHEREAS** the Commission considers that the continued recognition of CNSX as an exchange, subject to the terms and conditions set out in Schedule A, is in the public interest;

**THE COMMISSION HEREBY** continues to recognize CNSX as an exchange pursuant to section 21 of the Act, subject to the terms and conditions set out in Schedule A.

**DATED** May 7, 2004, as varied on September 9, 2005, June 13, 2006, May 16, 2008, as varied and restated on July 6, 2010, as varied on June 22, 2012, and as varied and restated on November 5, 2013.

## SCHEDULE A

## TERMS AND CONDITIONS

### 1. SHARE OWNERSHIP RESTRICTIONS

1.1 Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10%, or such other percentage as may be prescribed by the Commission, of any class or series of voting shares of CNSX.

1.2 The articles of CNSX shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

### 2. CORPORATE GOVERNANCE

2.1 CNSX's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules, policies and other similar instruments (Rules) of CNSX, namely, the board of directors (Board), are such as to ensure a proper balance between the interests of the different entities desiring access to the facilities of CNSX (CNSX Dealers) and companies seeking to be listed on CNSX (CNSX Issuers), and a reasonable number and proportion of directors are "independent" in order to ensure diversity of representation on the Board. An independent director is a director that is not:

(a) an associate, director, officer or employee of a CNSX Dealer;

(b) an officer or employee of CNSX or its affiliates;

(c) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of CNSX; or

(d) a person who owns or controls, directly or indirectly, over 10% of CNSX.

In particular, CNSX will ensure that at least fifty per cent (50%) of its directors are independent. In the event that at any time CNSX fails to meet such requirement, it will promptly remedy such situation.

2.2 Without limiting the generality of the foregoing, CNSX's governance structure provides for:

(a) fair and meaningful representation on its Board, in the context of the nature and structure of CNSX, and any governance committee thereto and in the approval of Rules;

(b) appropriate representation of independent directors on any CNSX Board committees; and

(c) appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of CNSX generally.

### 3. FITNESS

3.1 In order to ensure that CNSX operates with integrity and in the public interest, CNSX will take reasonable steps to ensure that each person or company that owns or controls, directly or indirectly, more than 10% of CNSX and each officer or director of CNSX is a fit and proper person and the past conduct of each person or company that owns or controls, directly or indirectly, more than 10% of CNSX and each officer or director of CNSX affords reasonable grounds for belief that the business of CNSX will be conducted with integrity.

### 4. CONFLICTS OF INTEREST AND CONFIDENTIALITY

4.1 For the purposes of this section 4 of Schedule A, "significant shareholder" means a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class of voting shares of CNSX.

4.2 CNSX shall establish, maintain and require compliance with policies and procedures that:

(a) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the operation of the marketplace or the services it provides including, but not limited to, the following:

(i) conflicts of interest or potential conflicts of interest that arise from the involvement of any partner, director, officer or employee of a significant shareholder in the management or oversight of the exchange operations or regulation functions of CNSX and the services and products it provides,

(ii) conflicts of interest or potential conflicts of interest that arise from any interactions between CNSX and a significant shareholder where CNSX may be exercising discretion that involves or affects the significant shareholder either directly or indirectly, and

(iii) conflicts of interest or potential conflicts of interest that arise between the regulation functions and the business activities of CNSX, particularly with respect to the conflicts of interest or potential conflicts of interest that arise between the CNSX issuer regulation functions and the business activities of CNSX; and

(b) provide for the confidential treatment of information regarding exchange operations, regulation functions, a CNSX Dealer or CNSX Issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of exchange operations or regulation functions, which will include a requirement that any such information:

(i) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding exchange operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and

(ii) not be used to provide an advantage to the significant shareholder or its affiliated entities.

4.3 CNSX shall establish, maintain and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or affiliated entity on CNSX.

4.4 CNSX shall require each CNSX Dealer that is a significant shareholder or an affiliated entity of a significant shareholder to disclose the CNSX Dealer's relationship with CNSX to:

(a) clients whose orders might be, and clients whose orders have been, routed to CNSX; and

(b) entities for whom the CNSX Dealer is acting or proposing to act as underwriter in connection with the issuance of securities to be listed on CNSX.

4.5 CNSX shall regularly review compliance with the policies and procedures established in accordance with paragraphs 4.2(a) and (b) and 4.3 and shall document each review, and any deficiencies, and how those deficiencies were remedied. A report detailing review(s) conducted shall be provided to the Commission on an annual basis.

4.6 The policies established in accordance with paragraphs 4.2(a) and (b) and 4.3 shall be made publicly available on the website of CNSX.

**5. FAIR AND APPROPRIATE FEES**

5.1 Any and all fees imposed by CNSX will be equitably allocated. Fees will not have the effect of creating barriers to access and must be balanced with the criterion that CNSX will have sufficient revenues to satisfy its responsibilities.

5.2 CNSX's process for setting fees will be fair, appropriate and transparent.

**6. ACCESS**

6.1 CNSX's requirements will permit all properly registered dealers that are members of a recognized SRO and satisfy access requirements established by CNSX to access the facilities of CNSX.

6.2 Without limiting the generality of the foregoing, CNSX will:

(a) establish written standards for granting access to CNSX Dealers trading on its facilities;

(b) not unreasonably prohibit or limit access by a person or company to services offered by it; and

(c) keep records of:

(i) each grant of access including, for each CNSX Dealer, the reasons for granting such access, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**7. FINANCIAL VIABILITY**

7.1 CNSX will maintain sufficient financial resources for the proper performance of its functions.

7.2 CNSX will deliver to Commission staff its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days after the commencement of each fiscal year. Such financial budget should include monthly projected revenues, expenses and cash flows.

7.3 CNSX shall calculate monthly the following financial ratios:

(a) a current ratio, being the ratio of current assets to current liabilities;

(b) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (or earnings before interest, taxes, stock based compensation, depreciation and amortization) for the most recent 12 months; and

(c) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the audited financial statements of CNSX.

7.4 CNSX will report quarterly (along with the financial statements required to be delivered pursuant to section 12.1) to Commission staff the monthly calculations for the previous quarter of the financial ratios as required to be calculated under section 7.3.

7.5 Depending on the results of the calculations under section 7.3, CNSX may be required to provide additional reporting as set out below.

(a) If CNSX determines that it does not have, or anticipates that, in the next twelve months, it will not have:

(i) a current ratio of greater than or equal to 1.1/1,

(ii) a debt to cash flow ratio of less than or equal to 4.0/1, or

(iii) a financial leverage ratio of less than or equal to 4.0/1,

it will immediately notify Commission staff of the above ratio(s) that it is not maintaining, the reasons, along with an estimate of the length of time before the ratio(s) will be maintained.

(b) Upon receipt of a notification made by CNSX pursuant to paragraph (a), the Commission or its staff may, as determined appropriate, impose terms or conditions on CNSX, which may include any of the terms and conditions set out in paragraphs 7.6(b) and (c).

7.6 If CNSX's current ratio, debt to cash flow ratio or financial leverage ratio falls below the levels outlined in subparagraphs 7.5(a)(i), (ii) and (iii) above for a period of more than three months, CNSX will:

(a) immediately deliver a letter advising Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation;

(b) deliver to Commission staff, on a monthly basis, within 30 days of the end of each month:

(i) unaudited monthly financial statements and a status update on any pending capital raising transaction(s) including the amount, terms and name(s) of individuals/entities that have committed to providing funding and their commitment,

(ii) a comparison of the monthly revenues and expenses incurred by CNSX against the projected monthly revenues and expenses included in CNSX's most recently updated budget for that fiscal year,

(iii) for each revenue item whose actual was significantly lower than its projected amount, and for each expense item whose actual was significantly higher than its projected amount, the reasons for the variance, and

(iv) a calculation of the current ratio, debt to cash flow ratio and financial leverage ratio for the month;

(c) prior to making any type of payment to any director, officer, related company or shareholder that is in excess of the amount included in the most recent annual financial budget delivered to Commission staff, demonstrate to the satisfaction of Commission staff that it will have sufficient financial resources to continue its operations after the payment; and

(d) adhere to any additional terms or conditions imposed by the Commission or its staff, as determined appropriate, on CNSX,

until such time as CNSX has maintained each of its current ratio, debt to cash flow ratio and financial leverage ratio at the levels outlined in subparagraphs 7.5(a)(i), (ii) and (iii) for a period of at least 6 consecutive months.

**8. REGULATION**

8.1 CNSX will maintain its ability to perform its regulation functions including setting requirements governing the conduct of CNSX Dealers and CNSX Issuers and disciplining CNSX Dealers and CNSX Issuers, whether directly or indirectly through a regulation services provider.

8.2 CNSX will continue to retain the Investment Industry Regulatory Organization of Canada (IIROC) as a regulation services provider to provide certain regulation services which have been approved by the Commission. CNSX will provide to the Commission, on an annual basis, a list outlining the regulation services performed by IIROC and the regulation services performed by CNSX. All amendments to those listed services are subject to the prior approval of the Commission.

8.3 CNSX will provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report will be in such form as may be specified by the Commission from time to time.

8.4 CNSX will perform all other regulation functions not performed by its regulation services provider.

8.5 Management of CNSX (including the President) will at least annually assess the performance by its regulation services provider of its regulation functions and report to the Board, together with any recommendations for improvements. CNSX will provide the Commission with copies of such reports and will advise the Commission of any proposed actions arising therefrom.

8.6 CNSX will provide the Commission with the information set out in Appendix B, as amended from time to time.

**9. CAPACITY AND INTEGRITY OF SYSTEMS**

9.1 CNSX will maintain, in accordance with prudent business practice, reasonable controls to ensure capacity, integrity requirements and security of its technology systems.

**10. PURPOSE OF RULES**

10.1 CNSX will establish Rules that are necessary or appropriate to govern and regulate all aspects of its business and affairs.

10.2 More specifically, CNSX will ensure that:

(a) the Rules are designed to:

(i) ensure compliance with securities legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, and

(v) provide for appropriate discipline;

(b) the Rules do not:

(i) permit unreasonable discrimination among CNSX Issuers and CNSX Dealers, or

(ii) impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation; and

(c) the Rules are designed to ensure that its business is conducted in a manner so as to afford protection to investors.

**11. RULES, RULE-MAKING AND FORM 21-101F1**

11.1 CNSX will comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto set out in Appendix C, as amended from time to time.

**12. FINANCIAL STATEMENTS**

12.1 CNSX will file unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements within 90 days of each year end.

**13. DISCIPLINARY POWERS**

13.1 CNSX will have general disciplinary and enforcement provisions in its Rules that will apply to any person or company subject to its regulation.

13.2 CNSX will ensure, through IIROC and otherwise, that any person or company subject to its regulation is appropriately sanctioned for violations of the Rules. In addition, CNSX will provide notice to the Commission of any violations of securities legislation of which it becomes aware in the ordinary course of its business.

**14. DUE PROCESS**

14.1 CNSX will ensure that its requirements relating to access to its facilities, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of giving notice, giving parties an opportunity to be heard or make representations, keeping records, giving reasons and providing for appeals of its decisions.

**15. ISSUER REGULATION**

15.1 CNSX will ensure that only the issuers set out in Appendix D, as amended from time to time, are eligible for listing on CNSX.

15.2 CNSX may, in accordance with the requirements for qualification for trading on Pure set out in its Rules, designate certain listed securities as eligible for trading on Pure without approving such securities for an additional listing.

15.3 CNSX has and will continue to ensure that it has sufficient authority over its CNSX listed issuers.

15.4 CNSX will carry out appropriate review procedures to monitor and enforce listed issuer compliance with the Rules.

15.5 CNSX will amend its Policies and Forms, from time to time, at the request of the Director, Corporate Finance, to reflect changes to the disclosure requirements of Ontario securities law.

**16. CLEARING AND SETTLEMENT**

16.1 The Rules will impose a requirement on CNSX Dealers to have appropriate arrangements in place for clearing and settlement through a clearing agency recognized by the Commission under the Act.

**17. MARKETPLACE REGULATORY REQUIREMENTS**

17.1 CNSX will comply with the requirements set out in National Instrument 21-101 *Marketplace Operation* and in National Instrument 23-101 *Trading Rules*.

**18. OUTSOURCING**

18.1 In any material outsourcing of any of its business functions to a third party, CNSX will proceed in accordance with industry best practices. Without limiting the generality of the foregoing, CNSX will:

(a) establish and maintain policies and procedures that are approved by its Board for the evaluation and approval of such material outsourcing arrangements;

(b) in entering into any such material outsourcing arrangement:

(i) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by CNSX, and

(ii) execute a contract with the service provider addressing all significant elements of such arrangement, including service levels and performance standards;

(c) ensure that any contract implementing such material outsourcing arrangement that is likely to impact on CNSX's regulation functions provide for CNSX, its agents and the Commission to be permitted to have access to and to inspect all data and information maintained by the service provider that CNSX is required to share under section 19.2 or that is required for the assessment by the Commission of the performance of CNSX of its regulation functions and the compliance of CNSX with the terms and conditions in this Schedule A; and

(d) monitor the performance of the service provided under such material outsourcing arrangement.

**19 PROVISION OF INFORMATION**

19.1 CNSX shall promptly provide the Commission, on request, any and all data, information and analyses in the custody or control of CNSX or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(a) data, information and analyses relating to all of its or their businesses; and

(b) data, information and analyses of third parties in its or their custody or control.

19.2 CNSX shall share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, other recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

## APPENDIX A

## CRITERIA FOR RECOGNITION

### PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

#### 1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

### PART 2 GOVERNANCE

#### 2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

### 2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

## PART 3 ACCESS

### 3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

## PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

### 4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

## PART 5 RULES AND RULEMAKING

### 5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

## PART 6 DUE PROCESS

### 6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

## PART 7 CLEARING AND SETTLEMENT

### 7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

## PART 8 SYSTEMS AND TECHNOLOGY

### 8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

## PART 9 FINANCIAL VIABILITY

### 9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## PART 10 FEES

### 10.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

### 11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

## APPENDIX B

## REPORTING OBLIGATIONS

### 1. Quarterly Reporting on Exemptions or Waivers Granted

On a quarterly basis, CNSX will submit to the Commission a report summarizing all exemptions or waivers granted pursuant to the rules, policies or other similar instruments (Rules) to any CNSX Dealer or CNSX Issuer during the period. This summary should include the following information:

(a) The name of the CNSX Dealer or CNSX Issuer;

(b) The type of exemption or waiver granted during the period;

(c) The date of the exemption or waiver; and

(d) A description of CNSX staff's reason for the decision to grant the exemption or waiver.

### 2. Quarterly Reporting on Listing Applications

On a quarterly basis, CNSX will submit to the Commission a report containing the following information:

(a) The number of listing applications filed;

(b) The number of listing applications that were accepted;

(c) The number of listing applications that were rejected and the reasons for rejection, by category;

(d) The number of listing applications that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category;

(e) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change;

(f) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were accepted;

(g) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were rejected and the reasons for rejection, by category;

(h) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category.

In each of the foregoing cases, the numbers shall be broken down by industry category and in any other manner that a Director of the Commission requests.

### 3. Notification of Suspensions and Disqualifications

If a CNSX Issuer has been suspended or disqualified from qualification for listing, CNSX will immediately issue a notice setting out the reasons for the suspension and file this information with the Commission.

### 4. General

CNSX will continue to comply with the reporting obligations under the Automation Review Program.

## APPENDIX C

## PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

### 1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

### 2. Definitions

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(f) *Rule* includes a rule, policy and other similar instrument of the Exchange.

(g) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(h) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or

(ii) in Staff's view, has an impact on the Exchange's market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

### 3. Scope

(a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

### 4. Board Approval

(a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

**5. Waiving or Varying the Protocol**

(a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

**6. Materials to be Filed and Timelines**

(a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:

(i) a cover letter that, together with the notice for publication filed under paragraph 6(a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;

(E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;

(F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;

(G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;

(H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;

(I) a discussion of any alternatives considered; and

(J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 6(a)(i) above, except that the following may be excluded from the notice:

(A) supporting analysis required under subparagraph 6(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;

(B) the information on systemic risk required under subparagraph 6(a)(i)(E) above;

(C) the information on the internal governance processes followed required under subparagraph 6(a)(i)(G) above;

(D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 6(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and

(E) the discussion of alternatives required under subparagraph 6(a)(i)(I) above.

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will file the materials set out in subsection 6(a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will file with Staff the following materials:

(i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will file the materials set out in subsection 6(d) by the earlier of

(i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

**7. Review by Staff of notice and materials to be published for comment**

(a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a refiling of the notice and materials.

(b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 8.

**8. Publication of a Public Interest Rule or Significant Change Subject to Public Comment**

(a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**9. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within

(i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and

(ii) seven business days from the date of filing of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 9(a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 6 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 9(g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 9(f),

(i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;

(ii) if comments received through the public comment process raise significant public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

**10. Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

(a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

**11. Effective Date of a Fee Change, Public Interest Rule or Significant Change**

(a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website; and

(iii) the date designated by the Exchange.

**12. Significant Revisions and Republication**

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 12(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

**13. Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.

(c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 9(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

**14. Effective Date of a Housekeeping Rule or Housekeeping Change**

(a) Subject to subsections 14(c) and 14(d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 14(e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections 14(c) and 14(d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 6(c) and 6(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

**15. Immediate Implementation of a Public Interest Rule or Significant Change**

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 15(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 6.

**16. Review of a Public Interest Rule or Significant Change Implemented Immediately**

(a) A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 15 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 9, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

**17. Application of Section 21 of the *Securities Act* (Ontario)**

(a) The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol

## APPENDIX D

## ELIGIBLE ISSUERS

1. Subject to section 2 below, only an issuer that:

   (a) is a reporting issuer or the equivalent in a jurisdiction in Canada; or

   (b) is proposing to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements under clause 73(1)(a) of the Act; or

   (c) is proposing to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements under clause 73(1)(b) of the Act; and

   (d) is not in default of any requirements of securities legislation in any jurisdiction in Canada,

   is eligible for listing. However, if an issuer is eligible for listing under paragraph (b) or (c) above, CNSX may only list debt securities of the issuer that are contemplated by those paragraphs unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.

2. An issuer that is a reporting issuer in a jurisdiction in Canada but is not considered eligible under the Rules due to the process by which it became a reporting issuer, is ineligible for listing unless it:

   (a) files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada; and

   (b) is not in default of any requirements of securities legislation in any jurisdiction in Canada.

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# Chapter 3

# Reasons: Decisions, Orders and Rulings

**3.1 OSC Decisions, Orders and Rulings**

**3.1.1 Vincenzo (Vincent) Sirianni – ss. 127(1), 127(10)**

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

**AND**

**IN THE MATTER OF**
**VINCENZO (VINCENT) SIRIANNI**

**REASONS AND DECISION**
**(Subsections 127(1) and 127(10) of the Act)**

**Decision:** November 5 , 2013

Panel: James E. A. Turner – Vice-Chair

Counsel: Harald Marcovici – For Staff of the Commission

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**REASONS FOR DECISION**

## I. OVERVIEW

[1] This was a hearing (the "**Hearing**") conducted in writing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) 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 an order imposing market conduct restrictions against Vincenzo (Vincent) Sirianni (the "**Respondent**" or "**Sirianni**").

[2] A Notice of Hearing in this matter was issued by the Commission on June 25, 2013 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on June 24, 2013. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On July 9, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff's application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

***Facts***

[6] In November 2011, Sirianni entered into a Statement of Admissions and Joint Recommendation as to Sanction with the Alberta Securities Commission (the "**ASC**") (the "**Joint Statement"**).

[7] Sirianni is subject to an order made by the ASC dated December 8, 2011 (the "**ASC Order**") that imposes sanctions, conditions, restrictions or requirements on him.

[8] In its findings on liability dated December 8, 2011 (the "**Findings**"), a panel of the ASC (the "**ASC Panel**") found that Sirianni engaged in illegal distributions of securities contrary to subsection 110(1) of the Alberta *Securities Act*, R.S.A. 2000, c. S-4 (the "**ASA**"). The ASC Panel also found that Sirianni made materially misleading or untrue statements, contrary to section 92(4.1) of the ASA, and that Sirianni perpetrated a fraud, contrary to section 93(b) of the ASA.

[9] The conduct for which Sirianni was sanctioned occurred between July and December 2010 (the "**Material Time**").

[10] During the Material Time, Sirianni was a resident of Calgary, Alberta. Sirianni registered the trade name Explora Energy ("**Explora**"), a non-existent entity purported to carry on business as an oil and gas production company.

[11] Staff relies on subsection 127(10)4 of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (see paragraph [15] of these reasons).

[12] These are my reasons for the market conduct restrictions I impose pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

**II. FINDINGS OF THE ALBERTA SECURITIES COMMISSION**

[13] In its reasons, the ASC Panel found the following:

(a) Sirianni illegally distributed securities of Explora without filing a prospectus and without an available prospectus exemption, contrary to section 110(1) of the ASA;

(b) Sirianni made statements that he knew were materially misleading or untrue and would reasonably be expected to have a significant effect on the market price or value of the Explora securities, contrary to section 92(4.1) of the ASA; and

(c) Sirianni engaged or participated in conduct relating to the Explora securities that he knew would perpetrate a fraud on investors, contrary to section 93(b) of the ASA.

***The ASC Order***

[14] The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon Sirianni:

(a) pursuant to subsections 198(l)(b) and (c) of the ASA, Sirianni cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that [the ASC Order] does not preclude him from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of [the ASC Order]) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;

(b) pursuant to subsections 198(l)(d) and (e) of the ASA, Sirianni resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and is permanently prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager;

(c) pursuant to subsection 198(l)(e.3) of the ASA, Sirianni is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

(d) pursuant to section 199 of the ASA, Sirianni pay an administrative penalty of $180,000; and

(e) pursuant to section 202(1) of the ASA, Sirianni pay $9,000 towards the cost of the investigation.

## III. ANALYSIS

### A. SUBSECTION 127(10) OF THE ACT

[15] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.
>
> 5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[16] The ASC Order makes Sirianni subject to an order of the ASC that imposes sanctions, conditions, restrictions or requirements on him, within the meaning of paragraph 4 of subsection 127(10) of the Act.

[17] Based on the terms of the Joint Statement, it is apparent that Sirianni agreed with the ASC to be made subject to sanctions, conditions, restrictions or requirements, thereby satisfying the threshold criteria set out in paragraph 5 of subsection 127(10) of the Act.

[18] Based on the findings in paragraphs 16 and 17 of these reasons, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so.

[19] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 ("***Euston Capital***"), the Commission concluded that subsection 127(10) can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

> … we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.
>
> (*Euston Capital*, *supra*, at para. 26)

[20] I therefore find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the ASC Order and the Joint Statement.

[21] I must determine whether, based on the ASC Order, the market conduct restrictions proposed by Staff would be in the public interest. An important consideration is that the respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if the conduct occurred in Ontario. (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 ("***JV Raleigh***"))

### B. SUBMISSIONS OF STAFF

[22] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondent consistent with the sanctions imposed by the ASC pursuant to the ASC Order.

[23] Staff requests the following sanctions against Sirianni:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by him cease permanently, except that this order does not preclude him from trading in or purchasing mutual funds or exchange-traded

funds through a registrant (who has first been given a copy of the decision of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;

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

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

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

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

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

(g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, he resign any positions that he holds as a director or officer of an investment fund manager; and

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, he be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

[24] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based solely on the evidence before me, which consists of the ASC Order and the Joint Statement.

**D. SHOULD AN ORDER BE IMPOSED?**

[25] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[26] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act are restrictions on fraudulent and unfair market practices and procedures.

[27] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[28] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[29] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets. (*JV Raleigh*, *supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27)

[30] In imposing the market conduct restrictions in this matter, I am relying on the ASC Order. In my view, it is not appropriate in doing so to revisit or second-guess the ASC's findings.

[31] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions against the Respondent in the public interest.

## E. THE APPROPRIATE RESTRICTIONS

[32] In determining the nature and duration of the appropriate market conduct restrictions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the Respondent's conduct and breaches of the ASC Act;

(b) the harm to investors;

(c) whether or not the restrictions imposed may serve to deter the Respondent from engaging in similar abuses of Ontario investors and Ontario capital markets; and

(d) the effect any Ontario restrictions may have on the ability of the Respondent to participate without check in Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[33] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against Sirianni:

(a) the Respondent was found by a panel of the ASC to have breached Alberta securities law and to have perpetuated a fraud on investors;

(b) the conduct for which the Respondent was sanctioned in the ASC Order would constitute a contravention of Ontario securities law if it had occurred in Ontario, specifically contraventions of subsections 53(1), 126.2(1) and section 126.1 of the Act.

[34] In my view, there are no mitigating factors or circumstances.

[35] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco*, *supra*, at para. 26).

[36] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 ("***McLean***") the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the British Columbia Securities Commission has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest. (*McLean*, *supra*, at paras. 28-29).

[37] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean*, *supra*, as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines*, *supra*, at para. 31).

[38] The Commission held in *Elliott, Re* that "subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest."

(*Elliott, Re* (2009), 23 OSCB 6931 at para. 24 ("***Elliott***"))

[39] While the Commission may rely on the findings of the other jurisdiction, it must then satisfy itself that an order is necessary to protect the public interest in Ontario:

> The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.
>
> (*Elliott*, *supra*, at para. 27)

[40] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required a direct connection of the misconduct to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

[41] Staff submits that the market conduct restrictions imposed in the ASC Order are appropriate to the misconduct by the Respondent and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondent, substantially similar to those imposed by the ASC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondent.

[42] It should be noted that under the ASC Order, Sirianni is permitted to "trade and purchase mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan for the benefit of one or more of Sirianni, his spouse and his children" (the "**Carve out**"). I am prepared to impose market conduct restrictions subject to the Carve out in order to mirror the ASC Order.

[43] Sirianni admitted to breaching two of the cornerstones of the regulatory framework of the ASA: engaging in illegal distribution of securities and making materially misleading or untrue statements.

[44] Sirianni further admitted to perpetrating a fraud on investors. In its findings, the ASC Panel noted the following in respect of Sirianni's conduct:

> Sirianni's misconduct has harmed identifiable investors financially and has understandably shaken their confidence in the integrity of our capital market. His actions have also harmed the reputation of Alberta's capital market and have jeopardized investor confidence in the integrity of that market.
>
> (*ASC Decision* at paras. 3-4 and 6-7)

[45] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on Sirianni:

(a) trading in any securities by Sirianni cease permanently, except that this order does not preclude him from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the Income Tax Act (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;

(b) any exemptions contained in Ontario securities law do not apply to Sirianni permanently;

(c) Sirianni resign any positions that he holds as a director or officer of an issuer;

(d) Sirianni be prohibited permanently from becoming or acting as an officer or director of an issuer;

(e) Sirianni resign any positions that he holds as a director or officer of a registrant;

(f) Sirianni be prohibited permanently from becoming or acting as an officer or director of a registrant;

(g) Sirianni resign any positions that he holds as a director or officer of an investment fund manager; and

(h) Sirianni be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

## IV. CONCLUSION

[46] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" hereto.

**DATED** at Toronto this 5th day of November, 2013.

"James E. A. Turner"

**Schedule "A"**

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

**AND**

**IN THE MATTER OF**
**VINCENZO (VINCENT) SIRIANNI**

**ORDER**
**(Subsections 127(1) and 127(10))**

**WHEREAS** on June 25, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Vincenzo (Vincent) Sirianni (the "Respondent" or "Sirianni");

**AND WHEREAS** on June 24, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

**AND WHEREAS** in November 2011, Sirianni entered into a Statement of Admissions and Joint Recommendation as to Sanction with the Alberta Securities Commission (the "ASC");

**AND WHEREAS** the Respondent is subject to an order dated December 8, 2011 made by the ASC that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act (the "ASC Order");

**AND WHEREAS** on July 9, 2013, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

**AND WHEREAS** Staff filed written submissions, a hearing brief and a brief of authorities;

**AND WHEREAS** Sirianni did not appear and did not file any materials;

**AND WHEREAS** I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

**IT IS HEREBY ORDERED THAT:**

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sirianni cease permanently, except that this order does not preclude Sirianni from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;

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

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

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

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

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

(g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Sirianni resign any positions that he holds as a director or officer of an investment fund manager; and

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Sirianni be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

**DATED** at Toronto this 5th day of November, 2013.

"James E. A. Turner"

### 3.1.2 York Rio Resources Inc. et al. – s. 127

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

**AND**

**IN THE MATTER OF**
**YORK RIO RESOURCES INC., BRILLIANTE BRASILCAN RESOURCES CORP., VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ, PETER ROBINSON, ADAM SHERMAN, RYAN DEMCHUK, MATTHEW OLIVER, GORDON VALDE AND SCOTT BASSINGDALE**

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

**Hearing:** **March 21, 22, 23, 24 and 28, 2011**
**April 5, 2011**
**May 2 and 3, 2011**
**June 6, 8, 9, 10, 13, 14, 15, 16 and 17, 2011**
**July 20, 21, 22, 26 and 27, 2011**
**August 3, 9, 11, 12, 19 and 22, 2011**
**September 21 and 28, 2011**
**November 1, 2011**
**December 19 and 21, 2011**
**December 25 and 27, 2011 (Written Submissions)**

**Decision:** March 25, 2013

| | | | |
|---|---|---|---|
| **Panel:** | Vern Krishna, QC | – | Commissioner and Chair of the Panel |
| | Edward P. Kerwin | – | Commissioner |
| **Appearances:** | Hugh Craig<br>Cameron Watson<br>Carlo Rossi | – | For Staff of the Commission |
| | Victor York | – | Self-represented |
| | George Schwartz | – | Self-represented |

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## REASONS AND DECISION

## I. INTRODUCTION

[1] This proceeding arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") dated March 2, 2010, in relation to a Statement of Allegations, also dated March 2, 2010, filed by Staff of the Commission ("**Staff**") against York Rio Resources Inc. ("**York Rio**"), Brilliante Brasilcan Resources Corp. ("**Brilliante**"), Victor York ("**York**"), Robert Runic ("**Runic**"), George Schwartz ("**Schwartz**"), Peter Robinson ("**Robinson**"), Adam Sherman ("**Sherman**"), Ryan Demchuk ("**Demchuk**"), Matthew Oliver ("**Oliver**"), Gordon Valde ("**Valde**") and Scott Bassingdale ("**Bassingdale**").

[2] On November 5, 2010, the Commission approved a settlement agreement between Staff and Robinson (*Re Robinson* (2010), 33 O.S.C.B. 10434). On June 6, 2011, the Commission approved a settlement agreement between Staff and Sherman (*Re Sherman* (2011), 34 O.S.C.B. 6560). York Rio, Brilliante, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale are referred to collectively in these reasons, as the "**Respondents**").

**A. The Allegations**

[3] Staff alleges that York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale (together, the "**York Rio Respondents**") engaged in the illegal distribution of York Rio securities that raised approximately $18 million from May 10, 2004 to October 21, 2008 (the "**Material Time**"). Staff alleges that the York Rio Respondents contravened subsections 25(1)(a) and 53(1) and section 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), contrary to the public interest. Staff alleges that York, Runic, Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act, contrary to the public interest. Staff also alleges that York, Runic and Schwartz, being directors and/or officers of York Rio, authorized, permitted or acquiesced in the contraventions of the Act by York Rio or its salespersons, representatives or agents, contrary to section 129.2 of the Act and contrary to the public interest.

[4] Staff alleges that Schwartz, by trading in York Rio securities, breached the Commission's temporary cease trade order made against him on May 1, 2006 in relation to another matter, *Re Euston Capital Corp. and Schwartz* (2006), 29 O.S.C.B. 3920, which was extended from time to time and remained in effect during the latter thirty months of the Material Time ("**Euston**" and the "**Euston Order**"), contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

[5] Staff alleges that Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale (together, the "**Brilliante Respondents**") engaged in the illegal distribution of Brilliante securities that raised approximately $150,000 from January 17, 2007 to October 21, 2008. Staff alleges that the Brilliante Respondents contravened subsections 25(1)(a) and 53(1) and section 126.1(b) of the Act, contrary to the public interest. Staff alleges that Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act, contrary to the public interest. Staff also alleges that York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of the Act by Brilliante or its salespersons, representatives or agents, contrary to section 129.2 of the Act and contrary to the public interest.

**B. Temporary Orders**

1. Temporary Cease Trade Orders

[6] As stated above, Schwartz was subject to the Euston Order, which, amongst other things, ordered him to cease trading in all securities, during the latter thirty months of the Material Time.

[7] On October 21, 2008, the Commission issued a temporary cease trade order that the trading of Brilliante securities shall cease and that Brilliante, York Rio, and their representatives, including Brian Aidelman ("**Aidelman**"), Jason Georgiadis ("**Georgiadis**"), Richard Taylor ("**Taylor**", later admitted to be an alias for Runic) and York shall not trade in any securities. On November 14, 2008, the order was amended to allow a personal RRSP trading carve-out for York, Aidelman, Georgiadis and Taylor. The order, as amended, was extended from time to time, and on October 15, 2010, it was extended until the completion of the York Rio hearing, subject to any further order by the Commission.

2. Freeze Orders

[8] Approximately $5 million worth of assets has been frozen by orders of the Commission and the British Columbia Securities Commission (the "**BCSC**").

[9] On October 21, 2008, pursuant to subsection 126(1) of the Act, the Commission issued freeze directions to financial institutions in relation to accounts allegedly associated with the proceeds of the sale of York Rio securities (the "**York Rio Proceeds**") and the proceeds of the sale of Brilliante securities (the "**Brilliante Proceeds**") (together, the "**Proceeds**"), including accounts in the name of Brilliante, Munket Capital Holdings Inc. ("**Munket**"), of which York is the sole director and signatory, and 2180353 Ontario Inc. ("**2180353**"), of which Georgiadis, who is York's nephew, is the sole director and signatory, and these freeze directions have been continued by court order, pursuant to subsection 126(5) of the Act, from time to time. On January 21, 2009, the Commission issued a freeze direction in relation to an account in the name of Demchuk's mother, and that freeze direction was continued in respect of a specific amount, which was transferred to a separate account, on March 18, 2009, pending further court order.

[10] On July 7, 2009, pursuant to subsections 126(1) and (4) of the Act, the Commission ordered a Certificate of Direction to be registered on title of a certain property in Aurora that is allegedly associated with Runic's involvement in the sale of York Rio and Brilliante securities (the "**Aurora Property**"), and the Certificate of Direction has been continued from time to time.

[11] In early 2009, the BCSC issued several freeze orders, pursuant to section 151 of the *Securities Act* of British Columbia, relating to approximately $4 million of assets held by Robert Palkowski ("**Palkowski**") and Palkowski & Company Law Corporation ("**Palkowski Law**") and others, in accounts associated with York Rio, Brilliante, York, Runic, Superior Home Building Systems Inc. (formerly known as Anyphone Communications Inc. ("**Superior Home**" or "**Anyphone**"), British Holdings Corporation ("**British Holdings**"), NatWest Holding Company Inc. ("**NatWest**"), Wayne Koch ("**Koch**"), Koch & Associates or Koch, Roberts & Associates, Inc. ("**Koch Inc.**") and other entities which are allegedly associated with the Proceeds.

**C. Pre-Hearing Motions**

[12] Schwartz and York brought two motions prior to the commencement of the Merits Hearing. In December 2010, they moved for an order staying or adjourning this proceeding (the "**York Rio Proceeding**"), and a proceeding in relation to Uranium308 Resources Inc., Michael Friedman ("**Friedman**"), Schwartz, Robinson and Shafi Khan (the "**Uranium308 Proceeding**"), on the following grounds:

1. they claimed that there is a reasonable apprehension of bias due to (a) the Commission's multifunctional structure and (b) a separate panel of the Commission's approval of settlement agreements with other respondents in these matters, which contain agreed facts; and

2. they claimed that the Commission does not have jurisdiction to make an order against them pursuant to s. 127 of the Act because they are not participants in Ontario's capital markets.

[13] They requested an order:

(a) staying these proceedings; or, in the alternative;

(b) adjourning these matters to be heard before the Canadian Securities Tribunal, once it is in a position to adjudicate these proceedings; or, in the further alternative;

(c) appointing interim non-members to adjudicate these proceedings.

[14] Commissioner Carnwath dismissed the motion with reasons issued on December 15, 2010 (*Re Uranium308 Resources Inc. et al. and York Rio Resources Inc. et al.* (2010), 33 O.S.C.B. 12028) (the "**Stay Motion**" and the "**Stay Decision**").

[15] In February 2011, Schwartz and York moved for an adjournment of the merits hearings in the York Rio Proceeding and the Uranium308 Proceeding in order to allow Schwartz to appeal the Stay Decision to the Divisional Court (the "**Adjournment Motion**"). Commissioner Condon, as she then was, dismissed the Adjournment Motion with reasons issued on March 30, 2011 (*Re Uranium308 Resources Inc. et al. and York Rio Resources Inc. et al.* (2011), 34 O.S.C.B. 4097) (the "**Adjournment Decision**").

[16] On the first day of the Merits Hearing, Schwartz stated that he had abandoned his appeal of the Stay Decision.

[17] However, in his written closing submissions, Schwartz reiterated his motion for a stay of proceedings pending establishment of an independent tribunal, and York adopted his submissions on this point. In our view, the matter is *res judicata*, having been decided by Commissioner Carnwath in the Stay Decision, and we find no further need to address it in these reasons.

**D. The Merits Hearing**

[18] The Merits Hearing started on March 21, 2011 and continued for 33 days, ending on December 21, 2011. York and Schwartz attended and participated throughout the Merits Hearing. Schwartz was the only Respondent to testify. Oliver appeared on the first day, but stated, through counsel, that he would not participate in the Merits Hearing thereafter. Runic, Demchuk, Valde and Bassingdale did not appear or participate.

[19] Schwartz filed post-hearing written submissions on December 25 and 27, 2011 in relation to the Bias Motion.

**E. Failure to attend the Merits Hearing**

[20] Throughout the proceeding, Staff provided a number of Affidavits of Service as evidence that they served or attempted to serve 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* (2012), 35 O.S.C.B. 10071 (the "**Rules**").

[21] At the commencement of the Merits Hearing, Staff provided the Affidavit of Service of Charlene Rochman ("**Rochman**"), sworn March 21, 2011. At our request, Staff provided an additional Affidavit of Service of Rochman, sworn March 23, 2011. Staff also described its attempts to serve Runic and Bassingdale, as well as Demchuk and Valde, as set out in Affidavits of Service filed previously in the proceeding: Affidavits of Service of Kathleen McMillan, sworn April 9, 2010 and July 21, 2010, and an Affidavit of Service of Rochman, sworn January 6, 2011.

[22] Staff attempted to serve Runic at his parents' address, which was the address given on his driver's licence, which Staff obtained from the Ministry of Transportation, but his parents refused to accept service. Staff made numerous attempts to serve Runic at the Aurora Property, which is associated with him, and where Staff alleges that he resided at the time. Staff located Runic by April 5, 2011 (the sixth day of the Merits Hearing). Staff conducted a compelled examination of Runic, who was assisted by counsel, pursuant to section 13 of the Act, on April 20 and May 4, 2011. Runic was served with notice of the Merits Hearing through counsel, but did not appear or participate.

[23] Staff conducted a compelled examination of Demchuk, pursuant to section 13 of the Act, on December 16, 2008. On March 8, 2010, Staff personally served Demchuk at his workplace, which Demchuk had identified as his address for service, with the Notice of Hearing, the Statement of Allegations, the March 3, 2010 order, and a covering letter giving the date, time and location of the next appearance. Demchuk appeared before the Commission, representing himself, at the second appearance on April 12, 2010. He left his job shortly afterwards, and when Staff attempted to serve him at his parents' address, they were informed that he was travelling. Staff's subsequent attempts to serve him at his parents' address and the email address he had provided during his compelled examination were unsuccessful.

[24] Staff conducted a compelled examination of Valde, pursuant to section 13 of the Act, on January 13, 2009. Staff made several attempts to serve Valde at the address given on his driver's licence, which Staff obtained from the Ministry of Transportation. At his compelled examination, Valde confirmed this was his home address. Staff's attempts to serve Valde were unsuccessful.

[25] Staff made numerous unsuccessful attempts to serve Bassingdale at the address given on his driver's licence, which Staff obtained from the Ministry of Transportation. Staff was unable to locate Bassingdale for purposes of compelled examination and Bassingdale did not appear or participate in the Merits Hearing.

[26] Having reviewed the Affidavits of Service submitted by Staff, we were satisfied that Staff had made reasonable attempts to serve Runic, Demchuk, Valde and Bassingdale, in accordance with Rule 1.5. We note, as well, that the Notice of Hearing and Statement of Allegations, and all subsequent orders and decisions in this matter, have been posted on the Commission's website. We are prepared to validate service in these circumstances, in accordance with Rule 1.5.3(3).

[27] The Notice of Hearing included the caution that if any party failed to attend the hearing, the hearing would proceed in their absence and they would not be entitled to any further notice of the proceeding. Accordingly, pursuant to section 7 of the SPPA and Rule 7.1, we found that we were authorized to proceed with the hearing without further notice to Runic, Demchuk, Oliver, Valde and Bassingdale.

**F. The Search Warrant Motions**

[28] On October 21, 2008, Staff conducted a search of offices located at 1315 Finch Avenue, West, Suite 501, Toronto (the "**Finch Location**"), pursuant to a search warrant that was issued under section 158 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the "**POA**") on October 16, 2008 (the "**Search Warrant**").

[29] In motions brought by Schwartz (on March 28, 2011) and York (on April 15, 2011), after the commencement of the Merits Hearing. Schwartz and York argued that the seizure of materials relating to York Rio (the "**York Rio Materials**") was not authorized by the Search Warrant, which authorized a search of the Premises for things and materials related to CD Capital Ltd., operating as Brilliante, York, Aidelman, Georgiadis and Taylor. The Search Warrant identified a long list of "things to be searched for" pertaining to Brilliante at the Premises. It was based on the Information to Obtain a Warrant ("**ITO**") prepared by Staff Investigator Wayne Vanderlaan ("**Vanderlaan**").

[30] The ITO did not identify things and materials pertaining to York Rio as "things to be searched for" at the Premises. Schwartz and York submitted that at the time Vanderlaan swore the ITO, he had reason to believe that things and materials relating to York Rio would be found at the Premises but deliberately omitted this from the ITO. Therefore, Schwartz and York submitted that the seizure of York Rio Materials was illegal, unfair and contrary to the public interest. They requested an order terminating the Merits Hearing or alternatively, excluding the seized York Rio Materials from the evidence (the "**Search Warrant Motions**").

[31] We gave oral rulings and issued orders dismissing the Search Warrant Motions on April 5, 2011 ((2011), 34 O.S.C.B. 4109) (Schwartz) and on May 5, 2011 ((2011), 34 O.S.C.B. 5455) (York), and issued written reasons for our decisions on June 1, 2011 ((2011), 34 O.S.C.B. 6545) (the "**Search Warrant Decision**").

[32] The conduct of the Search Warrant Motions by Schwartz and York resulted in delays in the Merits Hearing.

[33] Although Schwartz brought his Search Warrant Motion some two and a half years after the Search Warrant was executed on October 28, 2008 and a year after Staff provided its initial disclosure, which included the Search Warrant and the ITO, in March 2010, he sought leave to bring the motion without notice, pursuant to Rule 3.8 (the "**Schwartz Motion**"). On March 29, 2011, we were advised that York wished to join the Schwartz Motion, but York withdrew this request the next day (March 30, 2011).

[34] Staff opposed the Schwartz Motion as untimely, amongst other things.

[35] Our ruling is described at paragraph 15 of the Search Warrant Decision, as follows:

> Because Schwartz was self-represented at the hearing, we waived the time limits set out in Rule 3.8, as permitted by Rule 1.6(2) of the Rules. Rather than refusing to hear the Schwartz Motion, as permitted by Rule 3.9 of the Rules, we adjourned the Merits Hearing to allow Schwartz and Staff to file and serve their respective materials pursuant to the Rules. We invited Staff to file and serve, by 5:00 p.m. on March 30, 2011, a Memorandum of Fact and Law addressing the question: "what is the effect (in terms of admissibility of evidence) of not including reference to York Rio in paragraph 1 of the Warrant, which reference was subsequently included in the related detention orders?" (the "**Question**"). We invited Schwartz to file and serve, by 3:30 p.m. on April 1, 2011, a Memorandum of Fact and Law addressing the Question. We set down April 5, 2011 for oral argument on the Question.

[36] On March 30, 2011, Staff filed and served a Memorandum of Fact and Law and a Brief of Authorities, and Schwartz filed and served a Memorandum of Fact and Law on April 1, 2011. On April 5, 2011, Staff and Schwartz gave oral submissions on the Schwartz Motion. York attended at the hearing on April 5, 2011, confirmed that he was not joining the motion and declined an opportunity to speak to it. We gave an oral ruling dismissing the Schwartz Motion on the same day, with reasons to follow.

[37] This was not the end of the matter, for reasons described at paragraphs 18-27 of the Search Warrant Decision. On April 15, 2011, ten days after we issued our order dismissing the Schwartz Motion, York filed and served a Notice of Motion seeking the same remedies as the Schwartz Motion and on very similar grounds (the "**York Motion**"). York provided a Memorandum of Fact and Law and stated that he would rely on Schwartz's motion materials. Staff objected on the basis, amongst other reasons, that the York Motion was untimely and was virtually identical to the Schwartz Motion, which had been dismissed. Our ruling is set out at paragraph 23 of the Search Warrant Motion, as follows:

> The York Motion is untimely, having been brought without advance notice after we had given York several opportunities to join the Schwartz Motion and after we gave our oral ruling in the Schwartz Motion. However, we decided to consider the York Motion, because York was self-represented at the hearing and in the interests of judicial economy.

[38] When the hearing resumed on May 2, 2011, York stated that he was not prepared to speak to the York Motion. "To ensure that York had an opportunity to prepare for and speak to the York Motion, we agreed to adjourn the York Motion until 10:30 a.m. on May 3, 2011." (Search Warrant Decision, paragraph 24)

[39] On May 3, 2011, York gave brief oral submissions. We gave him an opportunity to give evidence in support of the York Motion, but he declined. Staff relied on its written submissions. We dismissed the York Motion by order issued on May 5, 2011, with reasons to follow. The York Motion added nothing of substance to the Schwartz Motion.

[40] In the Search Warrant Decision, we found that: (i) Schwartz's rights were not engaged by the seizure of the York Rio Materials from the Finch Location and accordingly he lacked standing to bring the Schwartz Motion; (ii) there was no evidence to support the assertions by Schwartz and York that Staff's seizure of the York Rio Materials from the Finch Location was illegal or improper, or that Schwartz and York have been prejudiced or their rights have been infringed as a result of the seizure of the York Rio Materials; and (iii) there was no reason to stay the proceeding or exclude the York Rio Materials from the evidence on the basis of fairness or the public interest. We concluded that it was in the public interest to continue the Merits Hearing and to admit the York Rio Materials into evidence.

**G. The Exclusion of Evidence Motion**

[41] On June 16, 2011 (day 16 of the Merits Hearing), Schwartz asked that a time and date be scheduled for the hearing of a motion to exclude from the evidence admitted at the Merits Hearing his compelled evidence and any other compelled evidence obtained by Staff in its investigation of him, and an order that the compelled evidence admitted at the Merits Hearing be sealed

by the Commission, to ensure it is not disclosed to any police force (the "**Exclusion of Evidence Motion**"). York took no part in the Exclusion of Evidence Motion.

[42] After raising the issue on June 16, 2011, Schwartz did not pursue the Exclusion of Evidence Motion. When the Panel asked about it on July 20, 2011, Schwartz said he could not proceed until he had finished cross-examining Vanderlaan. Vanderlaan's testimony, including cross-examination on whether the investigation was administrative or criminal in nature, was completed on July 27, 2011.

[43] On August 10, 2011, Schwartz filed and served another request that a time and date be scheduled for the hearing of the Motion. At the start of the hearing on August 11, 2011, we scheduled August 22, 2011 for the hearing of the Exclusion of Evidence Motion and directed Schwartz to file his Notice of Motion by Friday, August 12, 2011, in accordance with Rule 3.2. On the morning of August 12, 2011, Schwartz advised that he would not be able to file and serve his Notice of Motion that day, but could do so by Monday, August 15, 2011. As Schwartz and Staff agreed that the requested extension would not require an adjournment of the August 22, 2011 motion hearing, we granted Schwartz's request, in accordance with Rule 1.6(2).

[44] We heard the submissions of Schwartz and Staff on the Exclusion of Evidence Motion on August 22, 2011 and November 1, 2011.

[45] When the Merits Hearing resumed on September 21, 2011, we invited Schwartz and Staff to provide additional written submissions, in respect of the Exclusion of Evidence Motion, on *R. v. Wilder* (2001), 53 O.R. (3d) 519, a decision of the Ontario Court of Appeal ("***Wilder***"), by September 28, 2011 (Schwartz) and September 30, 2011 (Staff). Schwartz filed and served his supplementary submissions in respect of the *Wilder* decision on September 27, 2011. When the Merits Hearing resumed on September 28, 2011, Staff asked for an opportunity to give oral submissions on *Wilder*, and this was scheduled for November 1, 2011. We gave York an opportunity to telephone Schwartz from the hearing room to ask whether he intended to supplement his written submissions with oral argument. Schwartz stated, through York, that he did not wish to do so. The next day (September 29, 2011), Schwartz sent an email to the Panel through the Office of the Secretary and copied to Staff, stating that he had "by error thought the oral submission [*sic*] were to be made this Friday, which is a religious holiday to me. I did not know until a subsequent discussion with Mr. York that they in fact were scheduled for November 1". He asked for "15 or 20 minutes on November 1" to make his oral submissions. The Panel, having considered the matter, granted the request the next day by email from the Office of the Secretary, allowing Schwartz 15 minutes on November 1, 2011 to offer any additional comments that he wished to make and giving Staff a brief opportunity to reply.

[46] We issued an order dismissing the Exclusion of Evidence Motion on November 8, 2011 ((2011), 34 O.S.C.B. 11376), and issued our reasons on December 22, 2011 ((2011), 35 O.S.C.B. 99) (the "**Exclusion of Evidence Decision**"). In the Exclusion of Evidence Decision, we found that: (i) the York Rio Proceeding is an administrative proceeding, not a quasi-criminal or criminal proceeding, and does not involve penal liability; (ii) a respondent's compelled evidence, obtained pursuant to section 13 of the Act, is admissible against him in an administrative proceeding; (iii) a respondent's compelled evidence is not admissible against him in a quasi-criminal or criminal proceeding; and (iv) there was no basis for holding an in camera hearing with respect to the reading-in of the compelled evidence or for sealing the compelled evidence.

[47] Schwartz returned to this issue in his written closing submissions, and York incorporated Schwartz's submissions by reference.

[48] We have nothing further to add to the Exclusion of Evidence Decision.

[49] Schwartz's conduct of the Exclusion of Evidence Motion resulted in delays in the Merits Hearing (see paragraphs 16-22 of the Exclusion of Evidence Decision).

**H. The Bias Motion**

[50] On December 19, 2011, Staff made its brief closing argument, relying mainly on its written submissions, dated November 24, 2011. Commissioner Kerwin asked for amplification of several points, including a breakout of the dollars raised from the respective "boiler rooms" or offices that operated at the five locations identified by Staff as listed in a chart labelled "Boiler Room Timeline" set forth in Staff's written submissions. Staff counsel provided Supplemental Submissions in response to the Panel's questions on December 21, 2011, the final day of the hearing.

[51] In the interim, Schwartz filed "Amended Submissions on the Merits" by email on December 20, 2011. In three paragraphs in an attachment to an email, Schwartz submitted that Commissioner Kerwin's use of the phrase "boiler rooms" proved actual bias and a predisposition to conclude that the Respondents were engaged in illegal "boiler room" activities, as alleged. Schwartz submitted that the hearing should be dismissed because the Panel had been fatally compromised.

[52] Schwartz did not appear on December 21, 2011 to argue what was essentially a bias motion. York attended, but stated that he was not part of the motion.

[53] Staff submitted that there was no proper motion before the Panel, noting that Schwartz, having brought two motions prior to the commencement of the Merits Hearing and two further motions during the Merits Hearing, should be familiar with the procedure for bringing a motion pursuant to Rule 3.

[54] As we had done on several previous occasions during the Merits Hearing, we were prepared to waive or vary the Commission's procedural rules in order to ensure that Schwartz, who was self-represented, had a full and fair opportunity to be heard. We ruled that Schwartz should file any bias motion by January 5, 2012.

[55] We did not receive a notice of motion, motion record, memorandum of fact and law or brief of authorities, as required by Rule 3. However, on December 25, 2011, Schwartz filed, by email, "Supplemental Submissions on the Merits", in which he provided additional submissions on bias. In reaching our decision on bias, we considered Schwartz's written submissions of December 20 and December 25, 2011, and Staff's oral submissions on December 21, 2011.

[56] The test for reasonable apprehension of bias was recently addressed by the Commission in *Re Norshield* (2009), 32 O.S.C.B. 1249, at paragraphs 53-58, as follows:

> The reasonable apprehension of bias test has been considered by the Supreme Court of Canada on numerous occasions. It is well established that because of the difficulty in determining actual bias, courts and administrative tribunals should concern themselves with the question of whether or not a reasonable apprehension of bias exists, and not whether actual bias exists.
>
> Lord Hewart C.J. famously expressed another reason why the test of a reasonable apprehension of bias is preferred:
>
> > [it] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
> >
> > (*R. v. Sussex Justices, Ex parte McCarthy* (1923), [1924] 1 K.B. 256 (K.B.) at p. 259)
>
> The manner in which the test should be applied was set out by Mr. Justice de Grandpré in dissent in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394 ("*Committee for Justice and Liberty*"), and has been referenced with approval by the Supreme Court of Canada on numerous occasions:
>
> > … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information … [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly".
>
> The Supreme Court of Canada had another opportunity to elaborate upon and apply the reasonable apprehension of bias test in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 ("*Newfoundland Telephone*") and *R. v. R.D.S.*, [1997] 3 S.C.R. 484 ("R.D.S."); as well as in other cases.
>
> In *Newfoundland Telephone*, above at para. 22, Mr. Justice Cory stated that procedural fairness:
>
> > … cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.
>
> Further, Mr. Justice Cory pointed out that the conduct of members of administrative boards which are primarily adjudicative in nature, must be such that there can be no reasonable apprehension of bias with regard to their decision, similar to the standard applicable to the courts (see *Newfoundland Telephone*, *above* at para. 27).

[57] On appeal, the Divisional Court upheld the Commission decision, applying the well-established test:

> The test to establish bias is well-known. It does not require a finding of actual bias. The issue to be determined is whether the comments made would cause a reasonable person, who is informed of the facts, to conclude that the OSC had pre-judged the conduct of the appellants and that they did not and would not receive an impartial hearing.
>
> (*Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685, at paragraph 26)

[58] We are not satisfied that Commissioner Kerwin's use of the term "boiler rooms" in the context of a request for additional submissions from Staff in respect of offices listed in a chart labelled "Boiler Room timeline" set forth in Staff's written submissions would cause a reasonable person, informed of the circumstances, to conclude that Commissioner Kerwin had pre-judged the Respondents' conduct or that they would not receive an impartial hearing.

[59] Schwartz's submissions are directed, in part, to the "innumerable references to boiler rooms" in Staff's disclosures and submissions. There is no question that Staff characterized the York Rio and Brilliante offices as "boiler rooms" in its opening statement and accompanying slide-deck at the Merits Hearing on the first day, and in written submissions at the close of the hearing. Throughout the Merits Hearing, the term "boiler room" was used repeatedly by Staff counsel and by Vanderlaan in his testimony, and Schwartz and York used the term in their cross-examination of Vanderlaan and other witnesses. However, only the reference by Commissioner Kerwin on December 19, 2012 in requesting a breakout of dollars raised by office location led to an objection by Schwartz.

[60] We are not bound by Staff's submissions or by the characterization of alleged conduct by any party or witness.

[61] It was Staff's written submissions, and in particular a chart labelled "Boiler Room Timeline" at page 8 of Staff's written submissions that formed the immediate context for Commissioner Kerwin's reference to "boiler rooms" in his request for additional Staff submissions, including a breakout of the amounts raised from the five locations identified as office locations on the chart submitted by Staff. Staff's chart identified, for each of the locations associated with York Rio and Brilliante, the period of activity and the individuals associated with the location. What the Panel sought from Staff was a further synthesis of Staff's submissions with respect to the amount, source and use of investor funds raised at each location. In our view, a reasonable observer, informed of the circumstances, could not reasonably conclude that in seeking clarification of Staff's submissions, Commissioner Kerwin or the Panel had pre-judged the case or determined the outcome. Throughout the Merits Hearing, the Panel made it abundantly clear that this matter would be decided based on the evidence and submissions provided by the parties.

## II. THE RESPONDENTS

### A. The Individual Respondents

[62] Each of York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale (the "Individual Respondents") is, or was, during the Material Time, a resident of Ontario.

[63] Staff filed certified statements, pursuant to section 139 of the Act ("Section 139 Certificates"), with respect to the registration status of the Individual Respondents. Based on Staff's Section 139 Certificates, which were uncontroverted, we find that none of the Individual Respondents has ever been registered with the Commission in any capacity.

[64] For the reasons given below, we find that Runic used the names "Richard Turner" ("**Turner**"), "Taylor" and "John Taylor" in relation to his involvement with York Rio and Brilliante, Demchuk used the name "Simon McKay" ("**McKay**") when selling York Rio securities and "Andrew Sutton" ("**Sutton**") when selling Brilliante securities, Oliver used the name "Mark Roberts" ("**Roberts**") when selling York Rio securities and "Bill Hastings" ("**Hastings**") when selling Brilliante securities, Valde used the name "Doug Bennett" ("**Bennett**") when selling York Rio securities and "Don Wade" ("**Wade**") when selling Brilliante securities, and Bassingdale used the name "Gavin Myles" ("**Myles**") when selling York Rio securities and "Brent Gordon" ("**Gordon**") when selling Brilliante securities.

### B. The Corporate Respondents

[65] Staff filed Corporation Profile Reports obtained from the Ontario Ministry of Consumer and Business Services, which indicate that York Rio was incorporated in Ontario on May 10, 2004, and that York was listed as its President and sole director. We heard evidence that York was the co-founder of York Rio, along with Richard Jbeily ("**Jbeily**"), who was Chair of York Rio until September 2005, when he and York parted ways.

[66] Staff filed Corporation Profile Reports indicate that Brilliante was incorporated in Ontario on January 19, 2007, and that Aidelman was listed as its sole director. We heard evidence that Aidelman is the former son-in-law of York and was named as the President of Brilliante.

[67] Staff filed Section 139 Certificates indicating that neither York Rio nor Brilliante has ever been a registrant, reporting issuer or filer of a preliminary prospectus or prospectus. We accept this evidence, which was uncontroverted.

## III. THE ISSUES

[68] The issues before us are as follows:

### A. York Rio

1. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale trade in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest?

2. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale distribute York Rio securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest?

3. Did York, Runic, Demchuk, Oliver, Valde and Bassingdale make prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest?

4. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale engage in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest?

5. Did York, Runic and Schwartz, being directors and/or officers of York Rio, authorize, permit or acquiesce in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest?

6. Did Schwartz trade in York Rio securities while he was prohibited from trading in securities by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest?

### B. Brilliante

1. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale trade in Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest?

2. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale distribute Brilliante securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest?

3. Did Demchuk, Oliver, Valde and Bassingdale make prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest?

4. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale engage in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest?

5. Did York and Runic, being directors and/or officers of Brilliante, authorize, permit or acquiesce in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest?

## IV. SUMMARY OF FINDINGS

### A. York Rio

[69] For the reasons given, we find that:

1. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

2. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale distributed York Rio securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

3. York, Demchuk, Oliver and Valde made prohibited representations contrary to subsection 38(3) of the Act and contrary to the public interest;

4. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale engaged or participated in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;

5. York, Runic and Schwartz, being directors and/or officers of York Rio, authorized permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest; and

6. Schwartz traded in York Rio securities while prohibited from trading in securities by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

B. Brilliante

[70] For the reasons given, we find that:

1. Brilliante, York, Runic, Demchuk, Valde and Bassingdale traded in Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

2. Brilliante, York, Runic, Demchuk, Valde and Bassingdale distributed Brilliante securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

3. Valde and Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;

4. Brilliante, York, Runic, Demchuk, Valde and Bassingdale engaged or participated in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

5. York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

## V. THE LAW

### A. The Commission's Mandate

[71] The Commission's mandate is found in section 1.1 of the Act, which states that the purposes of the Act are to provide protection to investors from unfair, improper or fraudulent practices; and to foster fair and efficient capital markets and confidence in capital markets.

[72] Section 2.1 of the Act states that in pursuing the purposes of the Act, the Commission shall have regard to the following fundamental principles:

... .

2. The primary means for achieving the purposes of the Act are:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

**B. The Standard of Proof**

[73] Staff must prove its allegations on the balance of probabilities (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671, ("***Re Sunwide***") at paragraphs 26 to 28, applying *F. H. v. McDougall*, [2008] S.C.J. No. 54 (S.C.C.) ("***F.H. v. McDougall***")). This is the civil standard of proof. The Panel must scrutinize the evidence with care and be satisfied whether it is more likely than not that the allegations occurred (*F.H. v. McDougall, above*, at paragraph 49).

**C. Evidence**

1. Hearsay Evidence

[74] We accept that hearsay evidence is admissible in administrative proceedings before the Commission, pursuant to subsection 15(1) of the SPPA, which states:

> 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.

[75] The Commission's approach to hearsay evidence was summarized in Re Sunwide in the following statement:

> Although hearsay evidence is admissible under the SPPA, 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).
>
> (*Re Sunwide*, above, at paragraph 22)

2. Transcripts of Compelled Examination

[76] Through Vanderlaan, Staff introduced into evidence the transcripts of compelled examination of all of the Individual Respondents, except for Bassingdale, who could not be located. In Re Boock (2010), 33 O.S.C.B. 1589, at paragraphs 108-109, the Commission held that a transcript of a respondent's compelled examination, obtained pursuant to section 13 of the Act, is admissible against that respondent as part of Staff's case, subject to the Panel's discretion as to the weight to be given that evidence. In this case, we have considered, as part of Staff's case, the transcripts of the compelled examinations of York, Runic, Demchuk, Oliver and Valde, none of whom testified at the Merits Hearing.

[77] Staff did not, however, attempt to rely on the compelled examination of any Individual Respondent, which is hearsay evidence, to support its allegations against any other Individual Respondent. We accept that it would be inappropriate to do so, particularly in this case, given the conflicting evidence we received from the various Individual Respondents about the roles played by other Individual Respondents, and the inherent unreliability of such statements. Accordingly, we have relied on admissions made by each of the Individual Respondents in their compelled examinations, but we have disregarded their testimony that is inculpatory of other Individual Respondents.

[78] With respect to Schwartz, who testified at the Merits Hearing, we have considered only his testimony at the Merits Hearing.

3. Credibility

[79] In cross-examination, York and Schwartz challenged the credibility of a number of Staff's witnesses. For example, they challenged Jbeily's testimony about steps purportedly taken by York Rio to acquire an interest in a company that held mining rights in Brazil. Schwartz challenged the testimony of Friedman and Robinson about his role in the trades of York Rio securities, and gave contrary evidence when he testified. York challenged the testimony of Aidelman, Ungaro and McDonald about his role in the trades of Brilliante securities.

[80] We also heard evidence about the current and former friendships, working relationships and family connections between various Individual Respondents and non-Respondent witnesses. For example, Aidelman is York's former son-in-law, Georgiadis is his nephew, Ungaro is York's friend and McDonald is Ungaro's daughter.

[81] When weighing the conflicting testimony of the witnesses in this case, we have considered whether the evidence is in harmony with the preponderance of probabilities disclosed by the facts and circumstances in this case.

4. The B.C. Witnesses

[82] At the outset of the Merits Hearing, we issued an order under section 152 of the Act authorizing Staff to apply to the Ontario Superior Court of Justice for an order appointing the Panel to take the evidence outside of Ontario of Koch and Palkowski (together, the "**B.C. Witnesses**") for use in the Merits Hearing, and providing for the issuance of a letter of request directed to the British Columbia Supreme Court (the "**B.C. Court**") requesting the issuance of such process as is necessary to compel the B.C. Witnesses to attend before the Panel to give testimony on oath or otherwise and to produce documents and things relevant to the subject matter of this proceeding. As a result of the adjournment of the Merits Hearing, another section 152 order was issued on May 10, 2011. Koch and Palkowski challenged the summonses that were issued by the B.C. Court, and ultimately, Staff chose not to pursue the matter.

**D. The Registration Requirement: Subsection 25(1)a) of the Act**

[83] Staff alleges that each of the Respondents traded in securities without registration in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

1. The Registration Requirement

[84] At the Material Time, subsection 25(1)(a) of the Act stated:

> **25(1)** – No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer

[85] As stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Re Limelight***"):

> The requirement that an individual be registered in order to trade in securities is an essential element of the regulatory framework with the purpose of achieving the regulatory objectives of the Act. Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Re Limelight*, above, at paragraph 135)

2. Trades and Acts in Furtherance of Trades

[86] The terms "trade" and "trading" are broadly defined in subsection 1(1) of the Act, and include, in clauses (a) and (e) of the definition, "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing".

[87] The Commission has adopted a contextual approach to determining whether a respondent engaged in acts in furtherance of a trade. Ultimately, the question is whether a respondent's conduct has "a sufficiently proximate connection to an actual trade":

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.
>
> (*Re Costello* (2003), 26 O.S.C.B. 1617, at paragraph 47)

[88] The Commission's approach was reaffirmed in *Re Limelight*:

> In determining whether a person or company has engaged or participated in acts in furtherance of a trade, the Commission has taken "a contextual approach" that examines "the totality of the conduct and the setting in which the acts have occurred." The primary consideration is, however, the effect of the acts on investors and potential investors. The Commission considered this issue in *Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 ["***Re Momentas***"], at paras. 77-80, noting that "acts directly or indirectly in furtherance of a trade" include (i) providing promotional materials, agreements for signature and share certificates to investors, and (ii) accepting money; a completed sale is not necessary. In our view, depositing an investor cheque in a bank account is an act in furtherance of a trade.
>
> (*Re Limelight*, above, at paragraph 131. See also, for example, *Re Sabourin* (2009), 32 O.S.C.B. 2707 ("***Re Sabourin***") at paragraphs 54-63)

[89] In *Re Momentas*, the Commission reviewed the jurisprudence and set out the following examples of conduct found to constitute acts in furtherance of trades:

a. providing potential investors with subscription agreements to execute;

b. distributing promotional materials concerning potential investments;

c. issuing and signing share certificates;

d. preparing and disseminating materials describing investment programs;

e. preparing and disseminating forms of agreements for signature by investors;

f. conducting information sessions with groups of investors; and

g. meeting with individual investors.

(*Re Momentas*, above, at paragraph 80)

[90] Receiving consideration for the sale of securities has also been found to constitute an act in furtherance of trades (*Re Momentas*, above, at paragraphs 87-88; *Re Lett* (2004), 27 O.S.C.B. 3215 ("***Re Lett***"), at paragraph 85; *Re Limelight*, above, at paragraphs 131 and 133).

[91] Setting up a website that offers securities to investors has been found to constitute an act in furtherance of a trade (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603, at paragraph 45). Where a website is designed to excite the reader about the company's prospects, the material on the website is considered an advertisement or solicitation for investors to purchase the company's shares. Accordingly, a person who provides that content is engaging in an act in furtherance of a trade (*Re American Technology Exploration Corp.*, (1998) L.N.B.C.S.C. 1 (B.C.S.C.)).

[92] Solicitation or direct contact with investors is not required (*Re Lett*, above, at paragraphs 48-51 and 64; *Re Allen* (2005), 28 O.S.C.B. 8541, at paragraph 85).

**E. The Prospectus Requirement: Subsection 53(1) of the Act**

[93] Staff alleges that each of the Respondents distributed securities without a prospectus, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[94] "Distribution" is defined in subsection 1(1) of the Act to mean, amongst other things, "a trade in securities of an issuer that have not been previously issued."

[95] At the start of the Material Time in May 2004, subsection 53(1) of the Act read as follows:

> 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 where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[96] Effective December 20, 2006, subsection 53(1) of the Act was amended to read:

> 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 where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.
>
> (S.O. 2006, c. 33, Sch. Z.5, s. 2)

[97] The amended provision remains in effect. The amendment makes no difference to our analysis and conclusions.

[98] As the Commission held in Re Limelight, the prospectus requirement is fundamental to the protection of the investing public:

> The requirement to comply with section 53 of the *Securities Act* is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at page 5590), "there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares."
>
> (*Re Limelight*, above, at paragraph 139)

**F. The Accredited Investor Exemption**

[99] Once Staff has established that a respondent traded without registration and distributed securities without a prospectus, the onus shifts to the respondent to establish the availability of an exemption from the registration and prospectus requirements (see, for example, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, at paragraphs 83-84; *Re Limelight*, above, at paragraph 142; and *Re Al-tar* (2010), 33 O.S.C.B. 5535 ("***Re Al-tar***")).

[100] In this case, securities of York Rio and Brilliante were purportedly traded only to accredited investors, and York and Schwartz rely on the accredited investor exemption in their submissions.

1. Registration and Prospectus Exemptions

[101] Throughout the Material Time, Ontario securities law provided an exemption from the registration and prospectus requirements for trades and distributions to accredited investors.

[102] In May 2004, the accredited investor exemption was set out in section 2.3 of OSC Rule 45-501 – *Exempt Distributions* ("**OSC Rule 45-501**"). Clauses (m), (n) and (t) of the definition of "accredited investor" in s. 1.1 of OSC Rule 45-501 included three categories that are relevant to this matter:

> ...
>
> (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000; ("**Net Financial Assets**" and the "**Net Financial Assets Test**");
>
> (n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year; ("**Net Income**" and the "**Net Income Test**");

...

(t) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least $5,000,000 as reflected in its most recently prepared financial statements; ("**Net Business Assets**" and the "**Net Business Assets Test**")

...

[103] On September 14, 2005, these provisions were replaced by substantially similar provisions in National Instrument 45-106, *Prospectus and Registration Exemptions* ("**NI 45-106**"), and a new net assets test was added to the accredited investor definition. The relevant provisions (clauses (j), (k), (l) and (m)), which remained unchanged through October 2008, are as follows:

...

(j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000;

(k) an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;

(l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000; ("**Net Assets**" and the "**Net Assets Test**");

...

(m) a person, other than an individual or investment fund, that has net assets of at least $5,000,000 as shown on its most recently prepared financial statements;

2. The Net Financial Assets Test

[104] "Financial assets" in OSC Rule 45-501 was defined as follows:

"financial assets" means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the Act;

[105] The definition is substantially similar in NI 45-106, which defines "financial assets" to mean:

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation.

[106] Schwartz submits that the Net Financial Assets Test includes the value of real property. He relies on clause (b) of the definition of "security" in the Act, which says that "security" includes "any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company". He submits that a document evidencing ownership of real or personal property is a "document constituting evidence of title to or interest in the ... property ... of any person or company" and is therefore a security.

[107] The Net Assets Test, which was added in NI 45-106, is not limited to financial assets and is set at a much higher level than the Net Financial Assets Test – $5 million rather than $1 million – because the Net Assets Test requires consideration of all of the investor's total assets minus the investor's total liabilities, such that the calculation of total assets would include the value of an investor's principal residence, and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the investor's principal residence. In contrast, the Net Financial Assets Test is intended to measure an investor's net assets that are generally liquid or relatively easy to liquidate, and to exclude the value of real property that is a principal residence. It is a well-established principle of statutory interpretation that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the

intention of Parliament" (R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), at pp. 1-21; *Re Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27, at paragraph 21; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, at paragraph 26). In the context of the two qualifying tests for accredited investor status (the Net Assets Test and the Net Financial Assets Test) an investor's principal residence is not within the definition of "financial assets" set out in OSC Rule 45-501 and NI 45-106.

3. The Seller's Responsibility for Compliance

[108] The York Rio and Brilliante subscription agreements required the investor to certify that he or she was an accredited investor. We heard from eight York Rio investors during the Merits Hearing (the "**Investor Witnesses**"), and Schwartz cross-examined each of them about whether they understood that York Rio or Brilliante would be relying on their accredited investor certification. He submits that the Investor Witnesses "were vague, confused, imprecise, dismissive and generally unconcerned with what they may have said in their initial qualifying contacts or what they certified to the Respondents", and that they did not take seriously the certification provision of the subscription agreements but treated it as "boilerplate verbiage" they had seen in other legal documents.

[109] We do not accept this submission, which inappropriately attempts to put the burden of compliance on the investor. At the opening of the Material Time, section 3.1 of the Companion Policy to OSC Rule 45-501 ("**OSC Rule 45-501CP**") described the seller's due diligence obligations as follows:

> It is the seller's responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller's reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect.

[110] Reasonable diligence demands that the seller conduct a serious factual inquiry in good faith before accepting a prospective subscription, which includes a duty to look behind the boilerplate language of a subscription agreement, and to make reasonable inquiries to determine whether a prospective investor qualifies as an accredited investor under the Net Income Test, Net Financial Assets Test or Net Assets Test, the Net Business Assets Test, or other relevant categories.

[111] For the reasons given below, we find that several of the Investor Witnesses were never asked about their financial circumstances, and others were misinformed about the accredited investor exemption prior to receiving the subscription agreement.

4. Market Intermediary

[112] The accredited investor exemption from the registration requirement is not available to a market intermediary (OSC Rule 45-501, section 3.4; NI 45-106, section 2.43(1)(b)).

[113] "Market intermediary" is defined in subsection 204(1) of O. Reg. 1015, R.R.O. 1990, as amended ("**Regulation 1015**") to include "a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, ... "

[114] In *Re Momentas*, the Commission held that an issuer may be a market intermediary, if a "significant part" of its business is selling its own securities, even if the issuer is involved in more than one business (*Re Momentas*, above, at paragraphs 56-57). In determining the "business purpose" of the issuer, the Commission considered the source of its revenue, the composition of its workforce, and the nature of its expenditures (*Re Momentas*, above, at paragraphs 57-63). The Commission stated: "a key consideration for us is the degree to which management's activities and the proceeds of the offering were allocated to the raising of capital as opposed to being invested in the company's stated business activities" (*Re Momentas*, above, at paragraph 54).

[115] In *Re Lett*, the Commission held that the respondents were market intermediaries because "a substantial part" of their time was spent on the high yield program, and investors deposited and the respondents accepted monies for the purpose of the high yield program (*Re Lett,* above, at paragraph 68; see also *Re Allen*, above, at paragraphs 78-83).

[116] For the reasons given below, we find that York Rio and Brilliante were market intermediaries and therefore the accredited investor exemption from the registration requirement was not available with respect to the sale of York Rio or Brilliante securities.

5. Exempt Distribution Reports

[117] An issuer that relies on a prospectus exemption, including the accredited investor exemption, is required to file a Report of Exempt Distribution in Form 45-106F1 ("Exempt Distribution Report") in the jurisdiction where the distribution occurs no later than 10 days after the distribution (OSC Rule 45-501, s. 7.5, NI 45-106, s. 6.1).

**G. Prohibited Representations: Subsection 38(3) of the Act**

[118] Staff alleges that York, Runic, Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act in respect of York Rio securities, contrary to the public interest, and that Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act in respect of Brilliante securities, contrary to the public interest.

[119] At the Material Time, subsection 38(3) of the Act stated:

> Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
>
> (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[120] As there was no suggestion in this case that either of the exemptions set out in clauses (a) and (b) of subsection 38(3) is applicable, the issue is whether a Respondent, "with the intention of effecting a trade in a security", made "any representation, written or oral, that such security will be listed on any stock exchange listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system".

**H. Fraud: Section 126.1(b) of the Act**

[121] Staff alleges that each of the Respondents engaged or participated in securities fraud, contrary to section 126.1(b) of the Act and contrary to the public interest.

[122] Section 126.1(b) of the Act is as follows:

> A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> ...
>
> (b) perpetrates a fraud on any person or company.

[123] Section 126.1(b) was proclaimed into law on December 31, 2005, and therefore does not apply to conduct during the first 20 months of the Material Time (from May 2004 to December 2005). Accordingly, our reasons concerning Staff's fraud allegations against the Respondents pertain only to the period from January 1, 2006 to October 21, 2008.

[124] Section 126.1(b) of the Act was first considered by the Commission in *Re Al-tar*, above, and the Commission set out the following statement of the law at paragraphs 214-221 of that decision:

> Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

The term fraud is not defined in the Act. Due to the recent introduction of the fraud provision in the Act, there are no decisions from the Commission interpreting this provision. However, we can draw out guidance and principles from criminal and administrative law jurisprudence and decisions from other securities commissions.

The British Columbia Court of Appeal addressed the application of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the "BC Act") in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("*Anderson*"). The Supreme Court of Canada denied leave to appeal the *Anderson* decision ([2004] S.C.C.A. No. 81).

In *Anderson*, the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 ("*Théroux*"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud as follows at paragraph 27:

> ... the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Section 126.1 of the Act has the identical operative language as the fraud provision in the British Columbia Act. In interpreting the fraud provision in the British Columbia Act and with respect to the mental element, the British Columbia Court of Appeal in *Anderson* stated at paragraph 26 that:

> … [the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind. ... Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions. [emphasis in original]

The British Columbia Court of Appeal in *Anderson* further explained at paragraph 29 that:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

The British Columbia Court of Appeal approach to the legal test in the context of securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act.

[125] The Commission has adopted substantially the same analysis in a number of subsequent decisions which were provided by Staff, including *Re Lehman Cohort* (2010), 33 O.S.C.B. 7041 ("***Re Lehman Cohort***"), at paragraphs 86-100; *Re Global Partners* (2010), 33 O.S.C.B. 7783 ("***Re Global Partners***"), at paragraphs 238-245; and *Re Borealis International Inc.* (2011), 34 O.S.C.B. 777 ("***Re Borealis***"), at paragraphs 65-67.

## I. Directors and Officers: Section 129.2 of the Act

[126] Staff alleges that York, Runic and Schwartz, being directors and/or officers of York Rio, authorized, permitted or acquiesced in the contraventions of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest, and that York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

[127] Section 129.2 of the Act states:

> For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order had been made against the company or person under section 127.

[128] For an individual respondent to be deemed non-compliant under section 129.2, Staff must establish (i) that the individual respondent was a "director or officer" of a company or person other than an individual, (ii) that the company or person other than an individual has not complied with Ontario securities law, and (iii) that the individual respondent "authorized, permitted or acquiesced in" the non-compliance.

[129] "Director" is defined in subsection 1(1) of the Act to mean "a director of a company or an individual performing a similar function or occupying a similar position for any person".

[130] "Officer", with respect to an issuer or registrant, is defined in subsection 1(1) of the Act to mean:

> (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).

[131] The leading decision on the meaning of "authorized, permitted or acquiesced in" is *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 [in] the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Re Momentas*, above, at paragraph 118)

## J. Breach of Euston Order: Subsection 122(1)(c) of the Act

[132] Subsection 122(1)(c) of the Act makes it an offence to contravene Ontario securities law. Subsection 1(1) of the Act defines "Ontario securities law" to mean the Act, the regulations, and, "in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject". The Euston Order was a decision of the Commission to which Schwartz was subject, and Staff alleges that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading York Rio securities while the Euston Order prohibited him from doing so.

## VI. THE EVIDENCE

### A. Staff's Evidence

1. Overview

[133] Staff called 20 witnesses at the Merits Hearing: two Staff investigators; two former respondents in this matter who settled (Robinson and Sherman); eight individuals who were not respondents but had knowledge of York Rio or Brilliante (Aidelman, Jeffrey Brown ("**Brown**"), Friedman, Georgiadis, Bernadine Hoyme ("**Hoyme**"), Jbeily, McDonald and Ungaro; and the eight Investor Witnesses.

2. Staff Investigators

[134] We heard evidence from two Staff investigators: Vanderlaan, a senior investigator with the Commission, who was the primary investigator assigned to the York Rio and Brilliante investigations, and Albert Ciorma ("**Ciorma**"), a Certified Management Accountant, who prepared account profiles and summaries showing the source and use of funds that flowed through York Rio and Brilliante.

[135] Vanderlaan testified that his primary focus, since he started with the Commission in August 2007, has been "boiler room" investigations. He testified that a boiler room "is a group of people that get together to establish some sort of an office where they will usually conduct telephone solicitations to sell people stock on the phone, and in the vast majority of cases there's nothing behind the stock in that there are no assets, and there's assurances made to the investor about certain aspects of the business of the company that's being sold but in fact there is no business and the money is merely taken from the investor and put right in the pockets of the people who are selling the investment". Vanderlaan testified that the characteristics of a boiler room include initial cold-calls by "qualifiers", whose job is to solicit initial interest, which will be followed up with a brochure sent to the prospective investor, and a follow-up call from a salesperson based on the information provided by the qualifier. After the investor's initial investment, a "loader" may contact the investor to attempt to solicit an additional and higher investment. Other characteristics of boiler rooms include the use of aliases, sales scripts and virtual offices, the use of couriers to collect investor cheques, and websites that include pirated content. Investments offered by boiler rooms are often characterized as private placements offered to accredited investors, but without complying with the criteria for accredited investor status.

[136] Vanderlaan's testimony extended over nine days of the Merits Hearing. He testified about the early stages of the investigation; the search of the Finch Location and the materials seized; the Corporation Profile Reports, Section 139 Certificates and Exempt Distribution Reports in relation to York Rio and Brilliante; the York Rio and Brilliante websites and emails; the locations from which York Rio and Brilliante securities were sold; the sales scripts; and accredited investor information provided to investors. In addition, Staff introduced the compelled examinations through Vanderlaan.

[137] Vanderlaan and Ciorma also testified about non-respondent companies that were associated with the Respondents; the flow of funds from York Rio and Brilliante investors to the Respondents and associated individuals and companies; and the use of the Proceeds.

(a) *The early stages of the investigation*

[138] On March 22, 2011, the second day of the Merits Hearing, Vanderlaan began his testimony by describing the early stages of the investigation, the execution of the Search Warrant at the Finch Location on October 21, 2008 and the material seized during the Search. His evidence was then interrupted to accommodate the scheduling of other Staff witnesses on March 23 and 24, 2011. Vanderlaan did not resume his testimony until June 9, 2011.

[139] In the meantime, Schwartz and York brought the Search Warrant Motions, which we dismissed in oral rulings on April 5 (Schwartz) and May 5 (York), with written reasons issued on June 1, 2011. A detailed summary of Vanderlaan's testimony about the early stages of the investigation was included in the Search Warrant Decision, at paragraphs 54 and 55.

[140] As a result of his early investigation, Vanderlaan formed the view that a "boiler room" was operating out of the Finch Location.

(b) *The search of the Finch Location and the materials seized*

[141] Vanderlaan testified that Staff seized about ten boxes of materials as a result of the search of the Finch Location on October 21, 2008, including a computer and emails taken from it. Vanderlaan's testimony about the things seized is included in the Search Warrant Decision, at paragraphs 56-59.

[142] Vanderlaan testified that documents relating to York Rio and Brilliante were seized, including: newsletters, corporate profiles, company information sheets and business plans for York Rio and Brilliante; lead lists; lead cards; handwritten client

information notes; multiple scripts for use by qualifiers and salespersons; tip sheets for qualifiers; questionnaires relating to accredited investor status, entitled "Accreditation Information", most of which give incorrect information; subscription agreements; print-outs of emails between investors and Respondents, including York, and York Rio and Brilliante salespersons; sales order logs; and file folders containing names that were later determined to be aliases for York Rio and Brilliante salespersons.

[143] As a result of the search and review of the materials seized, Vanderlaan formed the view that both York Rio and Brilliante securities were being sold from the Finch Location, and that York Rio, which had been running since 2004, was now being shut down and that the focus of securities sales was being transferred to Brilliante in 2008.

(c) *Corporation Profile Reports, Section 139 Certificates and Exempt Distribution Reports*

(i) York Rio

[144] Vanderlaan testified that the Corporation Profile Report for York Rio indicates that York Rio was incorporated in Ontario on May 10, 2004, and that York was listed as its President and sole director. On October 28, 2008, one week after the execution of the Search Warrant, a Change Notice was registered, giving the name of another person as director. Vanderlaan testified that he visited the address given for the new director and learned that no one by that name had ever lived there. A prior report, produced on July 18, 2008, listed York as the director. The registered office address for York Rio was determined to be the residential address of York's mother, and the mailing address reported for York Rio (a suite at 965 Bay Street, Toronto ("**965 Bay**")) was York's former residential address. In summary, York was the sole reported director and officer of York Rio during the Material Time.

[145] Vanderlaan testified that Staff's Section 139 Certificates for York Rio indicate that York Rio has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed or obtained a receipt for a preliminary prospectus or prospectus.

[146] Vanderlaan testified that York Rio filed three Exempt Distribution Reports in Ontario, dated September 21, 2005, January 25, 2006 and April 25, 2006, which were certified to be true by York, who signed as President of York Rio. They indicate that York Rio, which is not a reporting issuer, distributed a total of approximately 1.7 million common shares, purporting to rely on the accredited investor exemption, and raised a total of approximately $2.7 million from investors in Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and the United States. In each report, under "Commissions & finder's fees", the notation is "N/A".

[147] At about the same time, York Rio also filed Exempt Distribution Reports with securities regulators in British Columbia, Alberta, Saskatchewan and Manitoba, in each case purporting to rely on the accredited investor exemption. For example, the September 21, 2005 Exempt Distribution Report which was filed in Ontario was also filed with the Alberta Securities Commission ("**ASC**"); this was the first of the Exempt Distribution Reports that York Rio filed with the ASC. Each of the Exempt Distribution Reports indicates that common shares of York Rio were distributed to Alberta purchasers under the accredited investor exemption, and is signed and certified by York as President of York Rio. As stated above, under "Commissions & finder's fees", the notation is "N/A". Similarly completed Exempt Distribution Reports were filed with the ASC until June 20, 2008.

[148] York Rio took a different approach to the "Commissions & finder's fees" question from July to September 2008.

[149] In the Exempt Distribution Reports filed from July 7, 2008 to October 15, 2008, under "Commissions & finder's fees", the typed notation "N/A" is crossed out and replaced with various handwritten notes – "Consulting fees (72%) [illegible] Anyphone Communication, 5140 Yonge Street, Toronto, ON" (July 7, 2008), "Consulting fees paid directly by cheque to Anyphone Communications, 5140 Yonge Street, Toronto Ont." (July 31, 2008), "Only consulting fees paid by cheque to Anyphone Communications, 5140 Yonge Street, Toronto" (August 13, 2008 to September 14, 2008, "only consulting fees paid, no commission" (October 3, 2008), and "consulting fees only" (October 15, 2008).

[150] A similar pattern is found in York Rio's Exempt Distribution Reports filed with the BCSC. In the Exempt Distribution Reports filed from January 1, 2007 to June 20, 2008, "N/A" is typed in the "Commissions & finder's fees" field. In the Exempt Distribution Reports filed from August 13, 2008 to September 15, 2008, it is replaced by a handwritten note stating that consulting fees only were paid to Anyphone Communications.

(ii) Brilliante

[151] Vanderlaan testified that the Corporation Profile Report for Brilliante indicates that Brilliante was incorporated in Ontario on January 19, 2007, with Aidelman listed as its sole director.

[152] Vanderlaan also testified that Staff's Section 139 Certificates for Brilliante indicate that it has never been a registrant with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed a prospectus or preliminary prospectus with the Commission or received a receipt for a prospectus from the Director.

(d) *The York Rio and Brilliante Websites and Emails*

[153] Vanderlaan testified that his investigation of Brilliante began in the summer of 2008, after he was contacted by a Brilliante investor who forwarded an email from Brilliante that linked to the Brilliante website – www.brillianteresources.com. The Brilliante website identified Aidelman as the President of Brilliante.

[154] Vanderlaan testified that much of the content of the Brilliante website was copied from Wikipedia and from a government of Brazil website about a different mine. Staff alleges that the Brilliante website included a number of misrepresentations, including the following:

- "We are a junior open pit uranium mine, that has the claim to a mining right of a 24,000 hectare site."
- "The existing investment of $5,000,000 USD by the corporation was used to acquire the physical property, secure the exploration rights and bring Brilliante to its present day status."
- Aidelman is listed as President and is represented to have a "Batchelor [sic] of Commerce, background in sedimentary geology at University of Utah, and has had extensive background and knowledge in Australia at the Alligator Rivers Region uranium mining sites."

[155] Vanderlaan's investigation, beginning with his review of the Brilliante website, indicated that Brilliante and York Rio were linked:

- The Brilliante website was registered to McDonald, who was identified as the Vice-President of York Rio on the York Rio website.
- Both websites were registered to 965 Bay, which was the same address that was given as the corporate mailing address on York Rio's Corporation Profile Report.
- The geologist named on the Brilliante website, Daniel Pasin ("**Pasin**"), was also named as the geologist for York Rio on the York Rio website.
- The Brilliante website listed an address of 20 Bay Street, 11th Floor, Toronto ("**20 Bay**"), which is a virtual office operated by Rostie Group Business Centres ("**Rostie**"). The account application form, which was obtained from Rostie, indicated that the account was in the name of Brilliante and Aidelman and that McDonald had opened it by email. Aidelman was listed as having an email address associated with York ("**York's Email Address**"). Vanderlaan learned later that York had initially opened the file, but the name on the file had later been changed to Aidelman. The billing address Rostie had for Brilliante was a suite at 44 Charles Street West, Toronto ("**44 Charles**"), which was York's more recent residential address.
- A March 22, 2007 email was sent from York's Email Address to an email address associated with York Rio – investorrelations@yrresources.com. York's Email Address was also listed on the Rostie documents relating to Brilliante.
- A March 26, 2007 email from York's Email Address to an email address associated with McDonald ("**McDonald's Email Address**") had the subject line, "start putting everything together for the Brilliante company so we can have it on the web", and its text stated "I'd like to have this put together as soon as is practical given your schedule and the need for the website to be in place for potential investors. Thanks, Victor York."
- Emails received by Brilliante investors were traced to the Finch Location, which was leased to Georgiadis, who listed "Richard Taylor" as his partner on the lease application, dated June 24, 2008. Vanderlaan later determined that Georgiadis was York's nephew and "Richard Taylor" was an alias used by Runic. The lease application listed the business as a call centre.

[156] Vanderlaan testified that he was aware of York Rio and believed that Brilliante was created as a natural progression of the York Rio activities and that York Rio was being shut down and Brilliante was been activated in the late summer of 2008.

[157] The York Rio website – www.yorkrio.com and www.yrresources.com – identified York as the President of York Rio, Ungaro as Vice President Sales and Marketing and McDonald as Vice President Research and Development. Pasin is identified as York Rio's geological engineer, and Jorge Valente ("**Valente**") is identified as York Rio's geologist.

[158] Vanderlaan testified that the York Rio website included a number of claims which Staff alleges are misrepresentations, including that:

- York Rio had already started the mining and production of diamonds in Brazil;
- "[i]n July 2004, York-Rio purchased 90% ownership of Nova Mineração Limitada, which owns the mineral rights to the claim ... and further obtained an "Exploration License";
- the claim is stated to be located on the Rio Paranaiba, which borders the states of Goias and Minas Gerais in Brazil; and
- photographs on the website include photographs of dredging on the Rio Paranaiba, and a close-up of someone's hands holding a raw diamond.

(e) *The York Rio and Brilliante Business Plans*

[159] Vanderlaan testified about copies of the York Rio and Brilliante business plans that were seized from the Finch Location (the "**York Rio Business Plan**" and the "**Brilliante Business Plan**").

[160] The York Rio Business Plan lists York as President, Ungaro as Vice President Sales and Marketing, McDonald as Vice President Research and Development, Pasin as Geological Engineer and Valente as Geologist; William Farrage ("**Farrage**") is named as providing accounting services. The York Rio Business Plan includes the following statements:

- We have purchased a Brazilian mineral company (Nova Mineração Limitada) that has the claim to an alluvial mining right of a 727 hectare (1795 acre) site.
- The existing investment of US$600,000 by the corporation was used to acquire the physical property, secure the exploration rights and bring York-Rio to its present day status.

[161] The Brilliante Business Plan lists Aidelman as President, Theodore G. George as Executive Vice President Exploration and Corporate Development and Pasin as Geological Engineer; Farrage is named as providing accounting services. Contacts listed are 20 Bay (the Rostie address) and investorrelations@brillianteresources.com (email). The Brilliante Business Plan includes the following statements:

- We are a junior open pit uranium mine, that has the claim to a mining right of a 8,500 hectare (21,000 acre) site.
- The existing investment of US $875,000 by the corporation was used to acquire the physical property, secure the exploration rights and bring Brilliante to its present day status.

[162] Vanderlaan testified that he had examined the net income projections figures contained in the York Rio Business Plan and the Brilliante Business Plan and observed that they are "exactly identical" (Hearing Transcript, June 9, 2011, p. 72, ll. 10-11). According to the York Rio and Brilliante Business Plans, both issuers are projected to earn net income of US $12,615,140 (year 1), US $13,097,500 (year 2), US $16,870,200 (year 3) and US $16,808,200 (year 4). The total projected expenditures for York Rio and Brilliante are US $345,500.

(f) *The sales scripts*

[163] Vanderlaan testified about various sales scripts seized from the Finch Location. One handwritten Brilliante script contained in a notebook found at the Finch Location stated: "Hello, my name is Pamela Riley and I'm calling from Brilliante Resources. We spoke back in 2006 regarding an investment opportunity by the name Blue Pearl Mining. Back then we were at $0.60/share, but in 2007, Thompson Creek Metals, the same people who brought you Blue Pearl, went up to $25/share on the TSX." Vanderlaan testified that Blue Pearl Mining, which later became Thompson Creek Metals Company Inc. ("**Thompson Creek**"), were real companies that did do well, and their names were often used to drive boiler room sales. Similar representations about Blue Pearl and Thompson Creek, and about Aurelian Resources, were found in various scripts relating to Brilliante that were seized from the Finch Location.

[164] York Rio scripts followed a similar pattern. One script stated: "I don't know if you remember, it's been about two years since we last spoke. Back then I brought you an investment opportunity called 'Aurelian Resources Inc.' It's a Canadian mining

firm. I brought you that as a private offering back in March of 2005 at $2.75 per share. This went on to open on the TSX Venture in Dec. 2005 and is currently trading in around the $30 range... . I am more confident with 'York Rio Resources' than I was with 'Aurelian Resources'." Another similar York Rio script claimed that Aurelian Resources Inc. ("**Aurelian**") had been offered to the prospective investor at $2.75, and "hit a high of $43 ..., which is considered a blockbuster in terms of profit".

[165] Another York Rio script, called "The Close (Own Paper)" states:

- "I am a venture capitalist. I look at about 40-60 proposals every year from companies all over the globe and Canada ... ";
- "I make my money when the companies make money, because I don't receive a salary. I only get shares as payment for my services"

[166] Similar claims were made in a Brilliante script.

[167] A York Rio script entitled "Cancer Pitch" states that a long-term client needs to sell his York Rio options because his wife, to whom he has been married for 39 years, has breast cancer and he is taking her to Germany for treatment; the prospective investor is then offered 800,000 York Rio shares at $0.375 per share.

[168] Another York Rio script, entitled "Load A, Call 1", which was apparently used to sell additional York Rio shares to existing investors, states "Mine stripping began 3 weeks ago and presently we are extracting anywhere from 1 carat to 69 carat diamonds right out of the ground. These diamonds are going directly to the wholesalers." The same script states that York Rio is being courted by three different companies in respect of a buyout.

(g) *Accredited investor information provided to investors*

[169] Although the York Rio subscription agreements seized from the Finch Location and provided by the Investor Witnesses set out the Net Financial Assets Test and the Net Income Test correctly, investors were misled by qualifiers and salespersons who misrepresented the qualifying tests for accredited investor status.

[170] For example, the documents seized from the Finch Location included multiple copies of a questionnaire entitled "Accreditation Information", which was apparently intended to be used by qualifiers and salespersons who spoke to investors by phone. The questionnaire misstated the Net Financial Assets Test by representing that an investor could qualify based on combined net worth (with a spouse) of $1 million, "meaning your home, automobiles, everything!". Similar misrepresentations are found in several scripts seized from the Finch Location.

[171] The Net Financial Assets Test for accredited investor status requires the investor to have, alone or with a spouse, net assets of $1 million or more, excluding the investor's principal residence, amongst other things. The Net Assets Test, which includes an investor's principal residence, requires net worth of at least $5 million, alone or with a spouse.

[172] Copies of the Brilliante subscription agreement seized from the Finch Location require the prospective investor to complete a Representation Letter for Accredited Investors, appended to the subscription agreement, which certifies that the investor is an accredited investor under NI 45-106. The Representation Letter states the Net Income Test and the Net Financial Assets Test correctly, but also incorrectly sets out an additional qualifying test for accredited investor status: "The Subscriber, either alone or with a spouse, has net assets of at least $200,000".

(h) *The flow of funds*

[173] Vanderlaan and Ciorma testified about the investigation into the flow of funds into and out of the York Rio and Brilliante bank accounts and the accounts associated with the Respondents. Their evidence was based on the Corporation Profile Reports for York Rio and Brilliante and other companies associated with the flow of funds, banking records obtained by summons, and the compelled examinations of various witnesses.

[174] Ciorma created account profiles, indicating the account holders and signatories for each of the various bank accounts through which investor funds flowed in this matter ("**Account Profiles**'), and a financial analysis of each of those accounts, showing the source and use of funds ("**Account Summaries**"), based on bank statements that he and Vanderlaan obtained from the various financial institutions. A Flow of Funds Chart was created based on Ciorma's Account Summaries.

3. Witnesses Called by Staff

(a) *Jbeily*

[175] Jbeily and York were the co-founders of York Rio. Until late August or early September 2005, Jbeily was Chairman of York Rio. York remained President and CEO throughout the Material Time. Jbeily testified about the creation of York Rio, the attempt to secure property and mining rights in Brazil, and his expulsion from the company in September 2005. On cross-examination of Jbeily, York and Schwartz challenged his testimony that York Rio had never completed the purchase of the mining claim.

(b) *Ungaro*

[176] Ungaro did not have an office at any of the York Rio locations, but performed administrative functions for York Rio and Brilliante, at York's direction, from her home, including receiving the signed subscription agreements and investor cheques, sending out letters to investors, sending information to Capital Transfer Agency, and keeping records for York Rio. She testified that York reimbursed her for her work by giving her cash, paying some of her expenses and taking her and McDonald on vacation.

(c) *McDonald*

[177] McDonald testified that she was involved in putting together the York Rio website and materials, based on instructions and content that were provided, initially by York and Jbeily, then, after Jbeily's ouster, by York and Runic. She also prepared the Brilliante website and materials, based on content that was provided by Aidelman and York. She testified that York reimbursed her for her work by giving her cash and cheques, paying some of her expenses and taking her and Ungaro on four trips.

(d) *Brown*

[178] In 2003, Brown began working with McDonald to develop the York Rio website. He testified about his communications with McDonald, the instructions he received from York, including providing usernames and passwords for investors to gain access to the York Rio Investors' Lounge. He also testified that he was paid by personal cheque from York. Brown also testified that he worked with McDonald to develop the Brilliante website, on McDonald's instructions, in 2008.

(e) *Robinson*

[179] Robinson, a former respondent, was registered with the Commission from 1989 to 1992 when he worked for Gordon-Daly Grenadier Securities, a broker-dealer. His registration ceased two years after leaving the firm and he has not been registered with the Commission or any other securities regulator since then.

[180] In November 2010, the Commission approved settlement agreements between Robinson and Staff in relation to York Rio and in relation to *Re Global Energy Group, Ltd.* (2010), 33 O.S.C.B. 10427, *Re Uranium 308 Resources Inc.* (2010), 33 O.S.C.B. 10441, and *Re Robinson and Platinum International Investments Inc.* (2010), 33 O.S.C.B. 10450.

[181] Robinson testified that he began selling York Rio securities from the Eglinton Location in around November 2005, and he continued to work as a York Rio salesperson when the office moved to the Sheppard Location in late 2005 or early 2006. He testified that he stopped selling York Rio securities in June of 2007.

[182] Robinson testified about the sales operation at the Eglinton and Sheppard Locations, and about the roles played by York, Runic and Schwartz. On cross-examination, Schwartz challenged Robinson on his testimony that Schwartz "probably" ran the sales operation at the Eglinton and Sheppard Locations.

(f) *Friedman*

[183] Friedman, who has never been registered with the Commission or any other securities regulator, testified that he began working with York Rio in an administrative role near the end of 2005 at the Eglinton Location, and continued to do so when the sales operation moved to the Sheppard Location in the summer of 2006.

[184] On September 30, 2010, Friedman entered into a settlement agreement with Staff in relation to his involvement in another matter, *Re Uranium308* (2010) 33, O.S.C.B. 9481.

[185] Friedman testified about the sales operation at the Eglinton and Sheppard Locations and about the roles played by York, Runic, and especially Schwartz, who ran the sales operation, according to Friedman. Schwartz disputed Friedman's testimony on this point.

(g) *Aidelman*

[186] Aidelman, who has never been registered with the Commission or any other securities regulator, testified that although he is registered as the sole director of Brilliante, his role was minimal, and that York was in charge of the incorporation and operation of Brilliante and controlled the Brilliante Account. York challenged his testimony.

(h) *Georgiadis*

[187] Georgiadis, who has never been registered with the Commission or any other securities regulator, testified that York introduced him to Runic. Georgiadis worked with Runic at the Yonge Location starting in June 2007. He played an administrative role that included giving investor cheques to York and receiving cheques from York to be given to Runic. In July 2008, he incorporated 2180353, which was used to flow York Rio investor funds from the York Companies (defined at paragraph 303 below) through to the Runic Companies (defined at paragraph 307 below). He testified that the sales operation moved from the Yonge Location to the Finch Location over the long weekend at the beginning of August 2008. When the sale of Brilliante securities began at the Finch Location in the summer of 2008, Georgiadis continued to play the same role as he had in the sale of York Rio securities. He testified about the sales operation at the Yonge and Finch Locations and about the roles played by Runic and York.

(i) *Sherman*

[188] Sherman, a former respondent, has never been registered with the Commission or any other securities regulator. He testified that in June or July of 2007, he was hired by Runic to sell York Rio securities at the Yonge Location, and he continued to do so at the Finch Location until the execution of the Search Warrant in October 2008. Sherman sold additional York Rio securities to existing York Rio investors, and received a commission of up to 10% of the proceeds of the sale. He used the alias "Jason Sebrook" ("**Sebrook**").

[189] In June 2011, just before he testified at the Merits Hearing, the Commission approved a settlement agreement between Sherman and Staff.

[190] Sherman testified about the sales operation at the Yonge and Finch Locations, and about the roles played by Runic and York.

(j) *Hoyme*

[191] Hoyme testified that Runic hired her to perform administrative tasks, including acting as the receptionist at the Yonge Location in July 2007, and she continued to do that work at the Finch Location until the execution of the search warrant on October 21, 2008. She testified about the sales operation at the Yonge and Finch Locations, about the transition from York Rio to Brilliante, and about the roles played by Runic and Georgiadis.

4. The Investor Witnesses

(a) *Investor One*

[192] In March 2008, Investor One, a resident of Alberta, purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000. He was contacted by York Rio salespersons who identified themselves as "Maryanne Marler", "Tom Parker" ("**Parker**"), "Jack Baker" ("**Baker**"), "Sebrook" (Sherman), and "Ron Reid" ("**Reid**"). After the Temporary Order was issued, Investor One contacted York.

[193] Investor One is a management consultant specializing in information technology. He has an undergraduate commerce degree. He has never been registered to sell securities or other financial products, and describes himself as a moderately knowledgeable investor. He testified that he has earned a gross income of more than $200,000 a year for nine or ten years. His income, combined with his wife's income, would exceed $300,000 gross, but potentially not net. He and his wife have a diversified portfolio, including stocks and land investments (REITs) exceeding $1 million.

[194] We find that Investor One was probably an accredited investor.

(b) *Investor Two*

[195] Investor Two, a resident of British Columbia, purchased 50,000 York Rio securities, at $0.55 per share, for a total cost of $27,500, in April 2008, and purchased another 320,000 York Rio shares, this time at $0.375 per share, for a total cost of $120,000 in June 2008. He testified that it was a York Rio salesperson who identified himself as "Mark Roberts" (Oliver) who solicited these sales. In July 2008, "Roberts" called again, this time offering additional shares at $0.25 per share. Investor Two testified that he asked to speak to York because what "Roberts" was telling him seemed "unusual". Investor Two testified that

York resolved his concerns, and accordingly, he purchased another 400,000 York Rio securities, at $0.25 per share, for a total cost of $100,000. Investor Two invested a total of approximately $247,500 in York Rio.

[196] Investor Two acknowledged that he signed the York Rio subscription agreement, stating that he was an accredited investor. However, he testified that he was not familiar with the term "accredited investor" in 2008 and "Roberts" never asked him about his income or assets. He testified that in 2008, he owned his house, which was worth approximately $600,000, and financial assets of approximately $400,000, including the approximately $250,000 he invested in York Rio securities. His income at the time, and for the previous five years, was approximately $50,000-$75,000 range.

[197] We find that Investor Two was not an accredited investor.

(c) *Investor Three*

[198] Investor Three, an investor in Manitoba, testified that he and his company, XYZ Co., invested approximately $800,000-$850,000 in York Rio. Investor Three was contacted initially by Robinson and another salesperson in late 2004, but "Sebrook" (Sherman) also called him to solicit sales of York Rio securities in September 2008. Investor Three met York, along with Robinson, at a Toronto restaurant to discuss potential investment in the company, and Investor Three later spoke to York on the phone.

[199] Investor Three has a background in civil engineering, and he has never been registered to sell securities. He is self-employed through XYZ Co. In 2005, when Investor Three first invested in York Rio, XYZ Co. was worth about $2 million. We find that XYZ Co. was not an accredited investor. We were given no evidence about Investor Three's net income, net financial assets or net assets.

[200] We did not receive sufficient evidence to determine whether Investor Three was an accredited investor.

(d) *Investor Four*

[201] Investor Four, an investor in Saskatchewan, purchased 33,334 York Rio securities in June 2007, at $0.75 per share, for a total cost of $25,000. A York Rio salesperson who identified himself as "Kevin Crawford" solicited this sale. In July 2007, "Sebrook" (Sherman) contacted Investor Four, who bought another 50,000 York Rio securities at $0.39 per share, for a total cost of $19,500. "Sebrook" called Investor Four again in February 2008, and offered him shares at $0.39 per share. Investor Four purchased an additional 25,000 York Rio securities for a total cost of $9,750, bringing Investor Four's total investment to $54,250. In the fall of 2008, after being contacted by the Commission, Investor Four spoke to York by telephone.

[202] Investor Four is self-employed, and has never been registered to sell securities. He testified that at the time of his investments in York Rio, he did not qualify as an accredited investor under the Net Financial Assets Test, the Net Income Test or the Net Assets Test. He testified that he was asked if he was an accredited investor, but was told that he would qualify if he earned $60,000 a year, which he did.

[203] We find that Investor Four was not an accredited investor.

(e) *Investor Five*

[204] Investor Five, an investor in Alberta, made three purchases of York Rio securities for a total cost of $55,000. In November 2007, after being contacted by "Baker", Investor Five purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000. In February 2008, "Roberts" (Oliver) contacted Investor Five and persuaded him to invest another $25,000, purchasing 45,455 shares at $0.55 per share. In September 2008, "Roberts" called Investor Five again, and, as a result, Investor Five purchased another 80,000 York Rio securities, at $0.25 per share, for a total cost of $20,000.

[205] Investor Five acknowledged that he had signed the York Rio subscription agreement, indicating that he was an accredited investor. When questioned by Staff as to whether "Roberts" or "Baker" had asked him if his financial assets, excluding real property, exceeded $1 million, and whether his net income, before taxes, exceeded $200,000, a year, Investor Five answered "yes" and testified that he answered both questions in the affirmative.

[206] We find that Investor Five was probably an accredited investor, based on his evidence.

(f) *Investor Six*

[207] Investor Six, an investor in Ontario, invested $10,000 in York Rio, at $1.50 per share, through Jack Shkoury ("**Shkoury**"), who identified himself as York Rio's President, International Sales. Investor Six phoned York to explain her concerns about the share certificate she received, which listed three of her family members as owners, rather than beneficiaries, of the shares.

[208] Investor Six is a nurse, earning less than $200,000 per year, and in 2005, her husband, who has now retired, was working as a municipal parking enforcement officer. Investor Six and her husband also earned rental income of approximately $12,000 per year in 2005. Investor Six testified that her net annual income, considered together with her husband's net annual income, fell short of $300,000.

[209] Turning to the Net Financial Assets Test, Investor Six testified that she and her husband owned their family home, which was worth about $750,000, as well as a rental property worth about $225,000 and a cottage worth about $275,000. In response to questions asked by Schwartz in cross-examination, Investor Six agreed that she and her husband owned real property that was likely worth $1 million, net of debts. But Schwartz's questions incorrectly assumed that Net Financial Assets include an investor's principal residence. We find that Investor Six does not satisfy the Net Financial Assets Test.

[210] Investor Six testified that she did not read the York Rio subscription agreement word for word because "even if you go sign a mortgage at the bank, they say, you sign here, you sign there. That's what I did." (Hearing Transcript, July 21, 2011, p. 35, ll. 8-10). She testified that Shkoury never explained what an accredited investor is, no one pointed out the Certification of Investor Accreditation to her, and she paid no attention to it.

[211] We find that Investor Six was not an accredited investor.

(g) *Investor Seven*

[212] In May 2007, Investor Seven, an investor in Alberta, purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000, through a York Rio salesperson who identified himself as "Bennett" (Valde). About a month later, "Bennett" called Investor Seven and told him that he was moving on, but "Sebrook" would be calling him in the future. In June 2007, Investor Seven was contacted by "Sebrook", and purchased another 6,667 shares of York Rio, at $0.55 per share, for a total cost of $3,666.85. Investor Seven made his third and final investment in York Rio in March 2008, again at "Sebrook's" solicitation, purchasing 60,000 York Rio securities, at $0.25 per share, for a total cost of $15,000, bringing Investor Seven's total investment in York Rio to approximately $29,000.

[213] Investor Seven testified that neither "Bennett" nor "Sebrook" asked him about his personal financial circumstances. He completed a two year technical course at college, and currently works as an air field coordinator and quality control manager for an oil company. He testified that in 2007, his average annual income was from $200,000-$400,000. In 2006, he was still an employee and earned approximately $110,000, and he probably earned about $100,000 in 2005. He and his wife separated in 2003 and divorced in 2006. His Net Financial Assets in 2005-2006 came to approximately $20,000 cash plus $150,000 in an RRSP, and his net worth, including his principal residence, came to approximately $600,000. We note that although Investor Seven's income exceeded $200,000 in 2007, his income did not reach that threshold in the two most recent calendar years, and therefore did not qualify as an accredited investor under the Net Income Test.

[214] At Investor Seven's request, as indicated on the York Rio subscription agreements, the York Rio shares he purchased were registered in the name of a numbered company that he owns with his mother. He testified that he started the company in the fall of 2005, his mother is the main shareholder, and he is a part shareholder and the manager of the company. Investor Seven estimated that the company had a net worth of $150,000 in 2007.

[215] We find that the numbered company was not an accredited investor under paragraph (m) of the definition of "accredited investor" when the York Rio securities were purchased.

[216] We find that neither Investor Seven nor the numbered company he owns with his mother qualified as an accredited investor at the time of the purchase of York Rio securities.

(h) *Investor Eight*

[217] Investor Eight, an investor in Ontario, bought 10,000 York Rio securities, at US $1.50 per share, for a total cost of CDN $18,607.50, through Shkoury.

[218] Investor Eight testified that he was never asked about his income or assets before he purchased York Rio securities.

[219] Investor Eight testified that he is self-employed and has no designations or experience in the financial markets. He described his level of investment knowledge in 2005 as "just learning". In 2005, his Net Income was approximately $30,000-$35,000 and he owned Net Financial Assets of approximately $40,000.

[220] On cross-examination, Schwartz questioned Investor Eight as to whether his mother, who is named as the principal on the York Rio subscription agreement he signed, was an accredited investor. Investor Eight explained that he added his mother's name because he was still living at home. We accept his testimony that his mother is not an accredited investor.

[221] We find that Investor Eight was not an accredited investor.

(i) *Summary of the Investor Witnesses' Evidence*

[222] For the reasons given above, we find that at least five of the Investor Witnesses (Investors Two, Four, Six, Seven and Eight) were not accredited investors, four of the Investor Witnesses (Investors Two, Six, Seven and Eight) were not asked about their financial circumstances, and at least one of the Investor Witnesses (Investor Four) was misled about the qualifications for accredited investor status.

[223] The Investor Witnesses gave similar descriptions of the York Rio sales process. With the exception of Investor Six, who met Shkoury at a real estate open house, and Investor Eight, who met Shkoury through a colleague, each of the Investor Witnesses was contacted by a York Rio salesperson who made a number of representations in order to solicit a sale of York Rio securities. Additional sales were solicited in follow-up calls, often by a different salesperson. The salespersons' representations included prohibited representations that York Rio securities would be listed on a stock exchange and fraudulent misrepresentations about York Rio's purported mining operation. For example:

- In the summer of 2007, "Parker" told Investor One that the York Rio mine was in production, and had been pulling 1-69 carat diamonds out of the ground for over three weeks, and that the plan was for York Rio to go public within months. "Parker" also told Investor One that York Rio had already raised $49 million, and planned to raise another $15 million in private financing before going public. Investor One did not invest at that time, but testified that he "took the bait" when "Baker" called him in February 2008 and made "a hard sell sales pitch explaining that it was now or never, that they were about to take York Rio public and now is my opportunity to make some money". In mid-June 2008, "Sebrook" told Investor One that York Rio was in negotiations for sale to a European company, that the negotiations were 85% complete, that the merged company was likely soon to be listed on the Frankfurt Exchange, and that he was busy lining up market makers to ensure there would be an increase in the share price. In September 2008, "Reid" told Investor One that the first deal had fallen through, but there was now a different "imminent" deal with a European company.

- Investor Three testified that he was told – by Robinson, Sebrook, another salesperson and York – that York Rio would be going public, initially in New York, but later this changed to Frankfurt. He was told that there were talks about a buyout by another company, but when that fell through, York Rio was on its way to going public again. Investor Three also testified that he was encouraged to make additional investments by the representation on the York Rio website that the company had acquired more land, was already mining diamonds and was about to pay a dividend.

- When "Sebrook" offered Investor Four additional shares at $0.39 per share, he explained that the reason the price had been reduced from the $0.75 per share that Investor Four had initially paid was that a shareholder in Calgary had bought these shares at $0.39 per share and needed to sell them because he was going through a divorce. Investor Four was also told that the mine was already producing diamonds, that millions of dollars of diamonds had already been sold, and that the money raised was being used to buy equipment and continue mining operations. Investor Four was told that York Rio would be going public in late 2008 or early 2009. Initially, he was told it would be listed on the Toronto Stock Exchange, then NASDAQ, and finally the Frankfurt Stock Exchange. He was told that the securities would be "double digit Euro" when the company went public, and that York Rio was talking to a private company about a buyout before going public. He was also told that once York Rio went public, he would have an opportunity to invest in Brilliante, a uranium mine, which was going to be their next investment.

- Investor Six testified that Shkoury told her York Rio was probably going to open on the New York Stock Exchange and that there was a German company that was interested in buying it.

- Investor Seven testified that in May 2007, he was told, among other things, that York Rio wanted to go public on the Frankfurt exchange and start at €1.50 per share. In February 2008, "Sebrook" told him that York Rio was very close to being listed on the Frankfurt exchange, and there would be a takeover bid for no less than €3 per share. "Sebrook" told him that they were selling the shares at $0.25 per share at that time because they wanted to sell the last million shares before going public. He also told Investor Seven that he and York were very excited about the next development, a "uranium play". On October 3, 2008, "Sebrook" called Investor Seven to tell him that York Rio had been halted because of a private takeover with a huge diamond mine in the Brazil property, that the deal would be finalized in January of the new year. After hearing that York Rio had been cease traded, Investor Seven called "Sebrook", who told him not to worry about it because the investigation concerned Brilliante, another company York Rio shared office space with.

- Shkoury told Investor Eight that York Rio was a start-up mining company that was in the process of getting permits to mine diamonds in Brazil, and that the company intended to get listed on NASDAQ.

[224] Each of the Investor Witnesses testified that after completing the subscription agreement, they would arrange to have it couriered to York Rio, along with their investment cheque, as instructed by a York Rio salesperson. Each of the Investor Witnesses received a York Rio share certificate and welcome letter, both signed by York, as well as instructions for gaining access to the Investors Lounge portal on the York Rio website.

[225] Some of the Investor Witnesses received additional letters signed by York – for example:

- A letter dated November 1, 2004 referred to "[o]ur goal to have a NASDAQ listed stock".
- A letter with the heading "Exciting News" announced a 4:1 share split effective May 11, 2006.
- A letter, dated August 1, 2007, started out by saying "We have very good news! In the last newsletter, we indicated that York-Rio would be applying for a listing on the Frankfurt stock exchange" and describing steps the company had purportedly taken to move forward. The letter enclosed a US share certificate for the same number of shares purchased by the investor, which would replace the no longer valid Canadian certificate, and would be 'the only certificate recognized once we receive the listing at the Frankfurt exchange."

[226] None of the Investor Witnesses was made aware that 70% of the money raised by the sale of York Rio shares went to sales commissions. For example:

- Investor Two testified that no one explained the commission structure to him, and he would not have invested if he had known that 70% of all proceeds went to commission as that would not have seemed a reasonable use of the money.
- Robinson told Investor Three that he was being paid in York Rio shares, and made no mention of commission payments. "Sebrook" told him he was being paid in York Rio shares and was not receiving commission. Investor Three testified that he would never have invested if he had known that approximately 70% of the money raised was going to commissions.
- Investor Four testified that he asked several times how the salespeople were being paid, and whether they were on commission, and he was told that they were being paid in York Rio shares only and were not paid on commission. He testified that it would have made "a big difference" to him if he had known the salespeople were paid on commission.
- Investor Five testified that neither "Roberts" nor "Baker" told him they were paid a 20% commission, and if they had, he "would have thought more about" his investment, because it would mean they were selling the security "because they were putting money in their own pocket", not "because it was a good stock".

[227] None of the Investor Witnesses received any return on their investment or any repayment of their purchase price.

**B. The Respondents' Evidence**

1. Overview

[228] Schwartz was the only Individual Respondent to testify at the Merits Hearing. York called two witnesses: Farrage, who was York Rio's accountant or bookkeeper, and Kenneth Helowka ("**Helowka**"), an employee at 965 Bay, York's former residence.

2. Schwartz

[229] Schwartz testified over four days of the Merits Hearing, including a lengthy cross-examination by Staff. He testified about the role he and others played at the Eglinton and Sheppard Locations, claiming that he and Debrebud did not trade or engage in acts in furtherance of trades in York Rio securities, but acted only in the role of a "paymaster" on an "outsourced" or independent contractor basis. He also testified about the source and use of funds that flowed through the Debrebud Account.

[230] Schwartz's evidence is discussed in detail at paragraphs 483-496 below.

3. Farrage

[231] Farrage testified about York Rio's corporate income tax return for the year ended July 31, 2005 (the "**2005 Tax Return**"), which he prepared, and about his work with York Rio in subsequent years. He also testified about Jbeily's role in York Rio, stating, for example, that Jbeily refused to provide supporting documentation for payments he authorized for travel expenses. Farrage's characterization of Jbeily's role conflicted with Jbeily's evidence and tended to support the position of York

and Schwartz about the ouster of Jbeily from York Rio. We find, however, that Farrage's evidence did not support the position of York and Schwartz that York Rio was a legitimate mining start-up.

4. Helowka

[232] Helowka testified about information he provided to Vanderlaan relating to York's residency at 965 Bay. York submits that Helowka's testimony refutes a statement Vanderlaan made in his diary as to the reason for the termination of York's tenancy.

[233] This has no bearing on the issues before us and therefore we find Helowka's testimony to be irrelevant.

## VII. THE INVESTMENT SCHEMES

### A. The Business of York Rio and Brilliante

1. The Positions of the Parties

[234] Staff alleges that although the York Rio Respondents promoted York Rio by representing that its business purpose was to operate a diamond mine in Brazil, there was no mine, there were no diamonds, and York Rio had never acquired mining rights. Staff relied on Jbeily's evidence about the steps taken by York Rio to purchase 90% of Nova Mineração Limitada ("**Nova**") in 2004 and 2005 (the "**Nova Transaction**"), on York's admissions during his compelled examination, on documentary evidence, including the two agreements entered into by York Rio and Nova in July 2004 and March 2005, and on evidence that only a minimal percentage of the York Rio Proceeds was spent on purported mining purposes.

[235] York and Schwartz attempted to undermine Jbeily's credibility, and alleged that Jbeily misappropriated $100,000 that was to be used towards the Nova Transaction. However, they were unable to rebut his testimony that York Rio had never completed the Nova Transaction.

[236] Staff alleges that although the Brilliante Respondents promoted Brilliante by representing that its business purpose was to operate a uranium mine in Brazil, there was no mine, and Brilliante was intended to facilitate the continued sale of worthless securities as the sale of York Rio securities was wound down in mid-2008. We heard no evidence to rebut the evidence relied on by Staff.

2. The Evidence

(a) *Jbeily*

[237] Jbeily began his evidence by testifying about his involvement in his family's diamond mining interests in Brazil through Dourados Mineracao ("**Dourados**"), a Brazilian company incorporated by his uncle, Francois Khouri ("**Khouri**"), and Khouri's wife, Elaine Prado Cury ("**Cury**"). Jbeily was the sole directing mind of Brinton Mining Group Inc. ("**Brinton**"), a company he incorporated in Ontario and Nevada, which owned 98 percent of Dourados. According to Jbeily, this structure was necessary because Brazilian law does not allow a foreign entity to own mineral rights, though it does allow a joint venture.

[238] Dourados was involved in dredging on the Rio Paranaiba in Brazil, but wanted to move away from dredging and find land to make a claim to the Brazilian government for mineral rights. Jbeily and Khouri located suitable land in the Rio Preto region and made a claim. Jbeily explained that the process for obtaining government approval for a mining claim is a lengthy process in Brazil, involving many permits from various authorities. One requirement made by the Brazilian government was that a survey be done by an approved geologist selected from a list. Jbeily testified that he chose Valente from that list because he trusted his integrity as a geologist.

[239] Jbeily testified that early open pit exploration at the Rio Preto site between 2001 and 2003 produced some samples with indications of diamonds and some diamonds. By 2004, the infrastructure was already in place, including a power source, and Brinton had obtained a preliminary and temporary licence. But Jbeily needed more financing to obtain the remaining licences and buy equipment.

[240] Jbeily testified that in 2004, he was introduced to York by Dikram Khatcherian ("**Khatcherian**"), who was involved in marketing investments in precious gemstones. Jbeily and York discussed the financing of Brinton. York suggested taking Brinton public, but Jbeily wanted to keep Brinton private or work on a joint venture.

[241] Jbeily told York about a neighbouring claim in the Rio Paranaiba region (straddling the boundary between the Brazilian states of Goias and Minas Gerais) that was for sale for US $300,000. Jbeily proposed that a new company be created to develop that claim, as Brinton had done with the Rio Preto claim, with the idea that eventually Brinton and York Rio could

merge. York agreed, and they incorporated York Rio in May 2004, with Jbeily as Chair and York as President and CEO. York's role was to raise capital; Jbeily's was to run the Brazilian operation.

[242] Jbeily and York were each to own 50% of York Rio, York would hold half of his 50% in trust for Shkoury, his friend, and Jbeily would hold half of his 50% in trust for Khatcherian. Jbeily testified that they were issued 10 million shares each. He did not pay any consideration for his shares and believes that York did not put any money in either.

[243] Jbeily testified that the Langstaff Location was chosen for York Rio's office because he lived nearby. York Rio's accountant would be Farrage, who was well known to York and had an office near the Langstaff Location.

[244] Jbeily testified that he and York agreed that the York Rio bank account would be held at a branch of the Scotiabank downtown, where York was known, and he and York were to be the signatories on the account. He recalled that the only money in the account at the start-up was approximately $20,000 from Shkoury. Jbeily testified that he and York agreed that York Rio would purchase 90% of a new Brazilian company, Nova, which would be controlled by Khouri and Cury, its directors.

[245] Jbeily testified that in June or July of 2004, he went to Brazil with a cheque from Khatcherian for $100,000, payable to Khouri, and he told Khouri that York Rio was committed to buying 90% of Nova for $300,000.

[246] While in Brazil, Jbeily signed a contract dated July 22, 2004 on behalf of York Rio. Khouri and Cury signed on behalf of Nova. Titled "Private Contract of Commitment for the Purchase and Sale of Mineral Assets", the contract stated that York Rio had paid US $225,000 towards the US $300,000 purchase price, and would pay the remaining US $75,000 to complete the purchase within 40 days (the "**July 2004 Contract**").

[247] On March 21, 2005, another contract was signed by the same parties (the "**March 2005 Contract**"). Jbeily testified that the March 2005 Contract was entered into because the July 2004 Contract had not been fulfilled. Jbeily testified that the purpose of the March 2005 Contract was to incorporate Nova and commit to injecting capital into it by December 31, 2005, as required by Brazilian law. Jbeily testified that the remaining payment owing under the March 2005 Contract was never paid.

[248] In the summer of 2005, Jbeily found that he had been locked out of the York Rio Account on which he and York were signatories. He approached Farrage about York Rio's finances, but Farrage said he had been instructed by York not to speak to him. He got the same response when he approached the transfer agent for a shareholder list. Jbeily wrote to the bank demanding that they stop processing cheques or funds transfers without both signatures. According to Jbeily, York paid an angry visit to him.

[249] Jbeily wrote to York on August 8, 2005, asking that a meeting be held on September 6, 2005 to discuss why the purchase of the claim had not been completed, why a lot of shares were being sold without notice to Jbeily, and why he had been denied access to the bank account, the accountant and the transfer agent.

[250] When Jbeily went to the Langstaff Location on September 6, 2005, he found the doors locked. York opened the door, told him to collect his things, and presented him with a lawyer's letter. This was the last time Jbeily was at the Langstaff Location.

[251] Jbeily contacted his own lawyer, who responded by letter, requesting a meeting to attempt to resolve the issues. This was turned down by York's lawyer, who also advised that Jbeily's name had been removed from York Rio's Corporation Profile Report.

[252] Jbeily testified that to his knowledge, York Rio had no assets in September 2005, when he was locked out of the company. Jbeily has never received documents authorizing the issuance of shares and has never received shareholder lists. He did not recall seeing York Rio's financial statements for the year ending July 31, 2004, or the letter dated September 2, 2005.

(b) *Farrage*

[253] Farrage, who was York's witness, has an ICIA (Industrial Commercial Institutional Accounting) designation, which he testified is a British designation similar to a Certified General Accountant ("**CGA**"). On cross-examination, he conceded that he is not a CGA, a Certified Management Accountant or a Chartered Accountant.

[254] Farrage has known York since they met at the Canada Revenue Agency ("**CRA**") in 1992 or 1993. He testified that he was a CRA auditor for 10 years, then left to establish his own firm, Olive Tree Accounting, which was incorporated in August 1996. The Olive Tree office was almost next door to the York Rio office at the Langstaff Location. Farrage testified that he has been York Rio's accountant since York Rio was incorporated in May 2004 and continues to have the retainer.

[255] Through Farrage, York introduced York Rio's 2005 Tax Return, which was certified as accurate by York, in his capacity as director of York Rio, on July 17, 2008. Farrage testified he prepared the 2005 Tax Return in its entirety, and that it was filed

electronically. The 2005 Tax Return indicates that York Rio reported no revenue, no profit and no taxable income in 2004 or 2005.

[256] On September 21, 2011, when Farrage gave his evidence in chief, he testified that he did not have the original Notice of Assessment from CRA. We stated that this would be required if the 2005 Tax Return were to be given any weight, and directed that it be provided by September 28, 2011. We also ruled that Staff's cross-examination of Farrage would be adjourned until November 1, 2011, to allow Farrage to obtain the Notice of Assessment from the CRA and allow Staff time to review it. The Notice of Assessment was not produced by September 28, 2011, and had still not been produced on November 1, 2011, when Farrage returned for cross-examination. We ruled that the Notice of Assessment must be produced by November 18, 2011. It was not produced by then or at any other time.

[257] Turning to the Balance Sheet Information (Schedule 100) on the 2005 Tax Return, Farrage testified that the entry for $479,707 under "Mining Rights", on the asset side of the balance sheet, represented the fund transfers to Brazil to purchase the mining rights from Jbeily's uncle (Khouri). He could not explain the difference between that figure and the entry for mining rights in the prior year ($68,366), though he said that he understood that at least $300,000 had been sent to Brazil to complete the Nova Transaction, and other amounts may have been given to Jbeily. Farrage testified that he prepared the balance sheet based on the books and records and income statements of York Rio. He also testified that he and York met with Jbeily in order to confirm that the transfers were made, but Jbeily did not provide supporting documents, apart from the July 2004 Contract. Farrage testified that he had seen cancelled cheques or bank drafts adding up to US $225,000, the down payment specified in the July 2004 Contract, and had seen bank drafts to support the balance sheet item of $479,707, but he no longer has these documents because they were provided to Staff through his former counsel.

[258] Farrage also testified that Jbeily refused to provide documentation for travel and other expenses which he instructed Farrage to enter as business expenses, or for his substantial withdrawals from the company, and that he instructed Farrage to make payments that were not, in Farrage's view, commensurate with services provided.

[259] Farrage has continued to be York Rio's accountant since 2005, when Jbeily left the company, but he testified that York Rio has not filed any income tax returns after 2005, and the receipts he received from York between 2005 and 2008 mainly related to York Rio's legal expenses. In 2008, York Rio filed an incomplete income tax return in order to receive a GST rebate, but Farrage was not asked to prepare unaudited financial statements or income tax returns between 2005 and 2008. Farrage testified that there was no change in York Rio's share capital reported after 2005 because he was receiving no further documentation. In fact, York Rio has never had any revenue, apart from the gain on foreign exchange. The information from the 2005 balance sheet was simply rolled over in subsequent tax years because he did not have enough documentation to verify how the company was being run, and there was not much activity to report.

[260] The 2005 Tax Return indicates that, as of the July 31, 2005 fiscal year end, York held 100% of York Rio's common shares, and there were no preferred shares; there is no reference to Jbeily owning any shares. Farrage testified that he was not aware that anyone else owned any York Rio shares at that time.

[261] Farrage testified that he was not aware that York Rio had received over $16 million from August 24, 2005 to May 19, 2009 and had never seen receipts for the approximately $2.5 million paid by York Rio during the same period for York's Visa payments (including three payments for travel expenses of approximately $20,000 for a trip to Nassau, Bahamas), York's vehicle expenses (totalling approximately $344,000), payments of approximately $17,000 to Ungaro, approximately $166,000 of personal care expenses, approximately $18,000 for pet care and approximately $171,000 paid to various stores.

[262] Farrage could not recall whether he saw any documentation to support the $1,245,623 entry for common shares on the Schedule 100 of the 2005 Tax Return (Nov. 1:65). Nor could he explain why the 2005 Tax Return indicates that York Rio owned mining rights of only $68,366 prior to the end of the 2004 tax year (July 31, 2004), when the July 2004 Contract indicates the cost of the mining rights was US $300,000, US $225,000 having already been paid, and US $75,000 due to be paid by August 24, 2004. Farrage could not explain why the 2005 Tax Return does not reference assets of mining rights worth US $225,000 in 2005, he could not explain the reported $479,707 in mining rights in 2005, and he acknowledged that he was not aware whether the transaction had been completed.

(c) *York*

[263] York did not testify at the Merits Hearing. In his compelled examination and in his written submissions at the Merits Hearing, he claimed that Jbeily had misappropriated some of the money that was intended for the acquisition of Nova. However, York also claimed that the purchase of Nova was completed. York was unable to provide a coherent or credible account as to the status of the Nova Transaction.

[264] We place significant weight on York's admission, during his compelled examination, that York Rio had never acquired the 90% interest in Nova and that he had known this by September 2005:

Q. Was the 90 percent, percentage in this company, was it fully paid for by York Rio?

A. On paper, yeah.

Q. But in reality you're saying [Jbeily] kept some money and didn't fully pay for it, is that what you're saying?

A. Yeah.

Q. Okay. So in effect this 90 percent interest was never really acquired by York Rio?

A. Well, in reality, yes, that would be correct.

Q. When did you come to that realization?

A. Between the early spring of 2005 and – the early spring of 2005 and Labour Day 2005.

(Transcript of compelled examination of York, January 15, 2009, pp. 83-84)

[265] In his compelled examination, York admitted that, despite representations and photographs on the York Rio website showing dredge-mining on the Rio Paranaiba, York Rio was not involved in dredging and the site depicted was Brinton's claim, not the site that York Rio planned to mine.

[266] York claims that the 30% of investor funds that remained after the payment of Schwartz's consulting fee was sufficient to fund York Rio's exploratory and development work. However, in his compelled examination, he admitted that York Rio was not a revenue-producing company, never had a working mine, never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey. He admitted that he was unaware of the whereabouts of any mining licences or geologists' reports, or any other documents that would support his testimony about steps taken by York Rio to develop a mine in Brazil, and could not say how much money was sent to Brazil to develop the mine.

3. Discussion

[267] Farrage was not an impartial witness. His concern about Jbeily's travel expenses and other payments Jbeily may have received, contrasted with his inability to recall or explain the basis for certain entries in the 2005 Tax Return, his testimony that he was not provided with documentation for subsequent years, and his lack of awareness of York Rio's approximately $18 million in share subscriptions or of millions of dollars of payments to or for the benefit of York or his friends and family during and after the 2005 tax year. We did not find Farrage to be a credible witness.

[268] However, we are also not persuaded by Jbeily's characterization of his role in the creation of York Rio and his testimony about the reasons for his ouster from the company.

[269] For example, Jbeily testified that he was unaware of funds being raised from the general public while he was involved with York Rio, and testified that he never received the July 5, 2004 letter from a lawyer enclosing a draft subscription agreement for his review; the letter was directed to his attention at his home address, but he testified he did not recognize the fax number. Jbeily provided no written or other evidence to corroborate his testimony that he objected to the sale of York Rio securities to the general public.

[270] Similarly, Jbeily identified pages from the York Rio website, dated Feb. 13, 2008, which included claims that in July 2004, York-Rio purchased 90% ownership of Nova, and that York-Rio had secured its first project. He testified that in July 2004, what York Rio had was an agreement to purchase 90% of Nova, which had a claim. On cross-examination by Schwartz, Jbeily testified that he had brought this issue to York's attention many times while these claims were on the website. Again, Jbeily could not corroborate his testimony with any written or other evidence that he raised these issues during the period when he was Chairman of York Rio.

[271] Nor does Jbeily recall a September 2, 2005 letter to him from York's lawyer, which included particulars of (alleged) misappropriation of York Rio assets and demanded that Jbeily immediately resign as a director of York Rio and repay misappropriated expenses, or the letters subsequently exchanged from September to December 2005 between York's lawyer and Jbeily's lawyer. We do not believe that Jbeily did not recall this exchange of correspondence.

[272] We find that Jbeily's testimony as a whole reflected a selective inability to recall communications that may raise questions about his own conduct. This undermined his credibility as a witness in this matter. However, the main point of Jbeily's testimony was that York Rio never completed the purchase of the 90% interest in Nova which would have secured the mining

rights. Although York and Schwartz vigorously disputed Jbeily's evidence on this point, it was not rebutted by Farrage or by any other credible evidence.

[273] In our view, compelling evidence that York Rio had not completed the Nova Transaction comes from the July 2004 Contract, which states that York Rio had paid US $225,000 and that the remaining payment of US $75,000 remained due, from the March 2005 contract, which states that an amount remained to be paid, and from York's admission in his compelled examination that he knew by Labour Day of 2005 that York Rio had not completed the Nova Transaction.

[274] For the reasons given below, we accept Staff's evidence that York Rio raised approximately $1.8 million from May 1, 2004 to August 31, 2005, and raised another approximately $16 million from September 1, 2005 to October 21, 2008 (a total of approximately $18 million during the Material Time). Of the approximately $16 million raised by the sale of York Rio securities after September 1, 2005, approximately $2.75 million went to Debrebud, approximately $9.2 million went to Runic and the Runic Companies, and approximately $4.1 million went to York and the York Companies, leaving only a small amount for York Rio's purported mining operations. We find that only a minimal amount – at most 2.7% of the York Rio Proceeds and likely much less – was spent on mining-related expenses. We find there is ample evidence that almost all of York Rio's activities related to the sale of its own securities, and that very little, if any, activity was directed towards York Rio's purported mining purposes.

4. Findings and Conclusions

[275] We find that there is no evidence that York Rio had any viable business assets or any legitimate business operations, and therefore York Rio securities had no value. York Rio, whose sole business was to issue its own worthless securities, was a complete sham.

[276] We find that Brilliante was even more clearly a complete sham. Although Brilliante purported to have a uranium claim in Brazil, and claimed to have invested US $875,000 in the mine, these claims were false. In fact, Brilliante had no mining assets and its only activity was the sale of its own securities. There is no evidence that it had any viable business assets or any legitimate business operations, and there is a great deal of evidence that the Brilliante share issue was designed solely to raise more capital in the fall of 2008 when the York Rio operation reached the point where it began to attract or might be likely to attract regulatory attention.

**B. The York Rio and Brilliante Sales Locations**

[277] We heard evidence that York Rio securities were sold from five locations during the Material Time:

- 2900 Langstaff Road, in Woodbridge Ontario (the "**Langstaff Location**") from April 2004 to September 2005;
- 181 Eglinton Avenue East in Toronto, Ontario (the "**Eglinton Location**") from the spring of 2005 to the summer of 2006;
- 500 Sheppard Avenue East, in North York, Ontario (the "**Sheppard Location**") from the summer of 2006 to the summer of 2007;
- Yonge and Cummer, in North York, Ontario (the "**Yonge Location**") from January 2007 to July 2008; and
- the Finch Location from August 2008 to October 21, 2008.

[278] We also heard evidence that Brilliante securities were sold from the Finch Location from August 2008 to October 21, 2008.

[279] Staff characterizes York Rio and Brilliante as "boiler room" operations, and relies on *Re Manning*, in which the Commission accepted the following definition of a "boiler room" contained in U.S. jurisprudence:

> "Boiler Room" activity consists essentially of offering to customers securities of certain issuers in large volume by means of an intensive selling campaign through numerous salesmen by telephone or direct mail, without regard to the suitability to the needs of the customer, in such a manner as to induce a hasty decision to buy the security being offered without disclosure of the material facts about the issuer.
>
> *Re E.A. Manning Ltd.* (1995), 18 O.S.C.B. 5317, at page 26, appeal dismissed [1996] O.J. No. 3414 (Ont. Div. Ct.) ("***Re Manning***")

[280] In *Re Manning*, the boiler room operation consisted of a three-level sales force: qualifiers, openers and loaders. Qualifiers cold-called members of the public who were identified using the Yellow Pages of the telephone book, and, using a

prepared script, asked the prospect whether he would like to receive the "Manning Letter", a promotional document. If the prospect agreed, the "lead" would be passed on to an "opener", who would attempt to make an initial sale of securities from inventory, using high pressure sales tactics and without any regard to the needs or circumstances of the prospect. After the initial sale, "loaders" made additional calls to persuade investors to buy as many securities as possible and to convince them not to resell the securities already purchased. (*Re Manning*, above, at pages 22-25).

[281] We heard evidence that York Rio and Brilliante securities were sold using a very similar process, which we find was a "boiler room" operation, characterized by the following:

- neither York Rio nor Brilliante had any viable business assets or any legitimate business operations, and their securities were worthless;
- the sole business of York Rio and Brilliante was the sale of their own securities;
- at each location, the sales process followed the pattern described in *Re Manning*, involving qualifiers, openers (or salespersons) and loaders;
- the administrative assistant and all qualifiers, salespersons and loaders (apart from Robinson), used an alias when communicating with investors by phone or email, and, if involved in the sale of both York Rio and Brilliante securities, most used two different aliases;
- qualifiers cold-called members of the public who were named in contact lists used to sell other securities (for example, Robinson testified that the Euston contact lists were also used to sell York Rio securities) or found in business directories and other resources;
- using a prepared script, the qualifiers attempted to elicit interest in receiving information about York Rio or Brilliante;
- the sales scripts contained many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that the caller had been involved in the successful IPO of a well-known legitimate mining company and that York Rio was already producing diamonds of 1 to 69 carats;
- if a prospect expressed interest, promotional material would be mailed out, or the prospect would be referred to the York Rio or Brilliante website, where the York Rio Summary Business Plan or Brilliante Summary Business Plan, as well as newsletter updates and other information would be found;
- the York Rio website and the Brilliante website contained many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that York Rio had purchased 90% ownership of Nova, which owns the mining rights, and had already started the mining and production of diamonds in Brazil and that Brilliante had a mining claim to a 24,000 hectare site and had already invested US $5 million to acquire the property, secure the exploration rights and bring Brilliante to its current status;
- a prospect's contact information would be passed on to the person in charge of the office, who would distribute the lead to a salesperson;
- the salesperson would make repeated calls to the prospect, using a prepared script, to effect a sale of securities;
- scripts contained multiple misrepresentations intended to effect a sale of securities, including statements that York Rio and Brilliante had operating mines, that the salesperson had previously been involved in a successful public offering of a well-known legitimate mining company; and that York Rio was in negotiations with a European mining company that was publicly listed or would be publicly listed on the Frankfurt Exchange, or that York Rio intended to become publicly listed on the Frankfurt Exchange;
- if a prospect expressed interest in buying securities, the salesperson or loader would ask the administrative assistant to send a subscription agreement to the investor, by courier, for the investor's signature, with the investor's contact information and the amount to be invested already filled in;
- the signed subscription agreement and the investor's cheque would be picked up by courier and delivered to a nearby postal box, and from there it would be picked up and delivered to the person in charge of the sales office; and

- the investor's contact information would then be passed on to a "loader", who would call the investor in order to effect additional sales, and several investor witnesses testified that they made subsequent purchases.

[282] The process for selling York Rio and Brilliante securities was similar to the sales process described in *Re Manning*, including the following characteristics:

- use of aliases by York Rio salespersons;
- high pressure sales tactics, including telling prospective investors, for example, that they were being offered York Rio sales at a discounted price because an existing York Rio investor is forced to sell or other special circumstances;
- use of sales scripts that included misrepresentations about York Rio's assets, the status of diamond production, and the qualifications and experience of salespersons and other persons who were represented as having a role in the company;
- misrepresenting the test for qualification as an accredited investor when communicating with prospective investors;
- failure to disclose to prospective investors that the salesperson was compensated by a commission of 20%, and in some cases, a misrepresentation that the salesperson was compensated only in securities of York Rio;
- filing incomplete and misleading Exempt Distribution Reports that relied on the accredited investor exemption, when it was not available, and failed to disclose the 70% fees paid to Schwartz and Runic; and
- prohibited representations about a pending initial public offering and potential merger.

[283] We find that the sale of York Rio securities from the Eglinton, Sheppard, Yonge and Finch Locations, and the sale of Brilliante securities from the Finch Location, bore all the characteristics of a "boiler room" operation.

**C. Reliance on the Accredited Investor Exemption**

1. Qualification as an Accredited Investor

[284] Once Staff established that York Rio and Brilliante securities were traded without registration and distributed without a prospectus, the evidentiary onus shifted to the Respondents to establish that a registration and prospectus exemption was available in respect of all of the trades of York Rio and Brilliante securities.

[285] We find that at least five of the eight Investor Witnesses, who invested in York Rio securities, were not accredited investors. The York Rio Respondents did not establish that York Rio securities were sold only to accredited investors.

[286] We received no evidence that any of the Brilliante investors was an accredited investor, and accordingly, the Brilliante Respondents also failed to satisfy the onus of establishing the availability of the exemption.

2. The Seller's Responsibility for Compliance

[287] Although the York Rio subscription agreement presented to the Investor Witnesses set out the Net Financial Assets Test and the Net Income Test correctly, at least four of the Investor Witnesses were not asked about their financial circumstances. Several of the Respondents testified that they believed the Net Financial Assets Test included the value of an investor's principal residence; and Schwartz mistakenly continued to assert, throughout the Merits Hearing, that an investor with net assets of $1 million, including their principal residence, was an accredited investor under the Net Financial Assets Test. Similar representations are found in scripts that were seized from the Finch Location. At least one of the Investor Witnesses was told, incorrectly, that an annual income of $60,000 would qualify him as an accredited investor. We find that the qualifying tests for accredited investor status were misrepresented to prospective York Rio investors.

[288] We are also not satisfied that the York Rio Respondents exercised reasonable diligence to ensure that York Rio securities were sold only to accredited investors. Indeed, Schwartz and York cross-examined the Investor Witnesses in an attempt to put the responsibility on them for their losses. In his testimony, Schwartz said, of the investors, "they're the ones who embezzled us because they should not have bought those securities in the first place". Ontario securities law puts the responsibility for compliance on the seller. It is no defence for the Respondents to argue, in effect, "you shouldn't have trusted us." We consider the disregard shown by the Respondents, especially Schwartz and York, for their obligations to investors to be a significant aggravating factor in the hearing of this case.

[289] The Brilliante Respondents presented no evidence that Brilliante securities were sold only to accredited investors or that they exercised reasonable diligence to ensure that Brilliante securities were sold only to accredited investors, and copies of the Brilliante subscription agreement seized from the Finch Location misrepresented the accredited investor test.

3. Market Intermediary

[290] Schwartz submits that York Rio was not a market intermediary and was in the business of mining, not in the business of dealing in securities. (Although Schwartz framed his submissions on this point in relation to the "business trigger test", which was introduced by amendments that took effect in September 2009, after the Material Time, we have considered his submissions in relation to the registration requirements as they existed at the Material Time.)

[291] For the reasons given below, we find that York Rio, through its employees, representatives and agents, was in the business of selling worthless securities in order to raise money for the personal use of the York Rio Respondents and other individuals associated with York Rio. We heard no reliable evidence that York Rio engaged in the mining activity for which it purported to be soliciting investments, and we find that only a minimal amount of the York Rio Proceeds – at most, 2.7%, and likely much less – was used for purported mining purposes. We find that the individuals and companies associated with York Rio were almost exclusively engaged in the business of selling securities. We find that York Rio was a market intermediary and therefore the accredited investor exemption from the registration requirement was not available in relation to the sales of York Rio securities.

[292] Although Schwartz's submissions were focussed entirely on York Rio, we also find, for the same reasons, that Brilliante was a market intermediary which cannot rely on the accredited investor exemption from the registration requirement.

**D. Directing Minds**

[293] York does not dispute that he was the President and CEO of York Rio and a director of York Rio throughout the Material Time. For the reasons given below, we find that York orchestrated the sale of York Rio securities and authorized the contraventions of the Act by York Rio. We also find, for the reasons given below, that York, not Aidelman, was the directing mind of Brilliante, orchestrated the sale of Brilliante securities, and authorized the contraventions of the Act by Brilliante throughout the Material Time.

[294] Schwartz does not dispute that his company, Debrebud, entered into an agreement with York in March 2005 to provide services for York Rio at the Eglinton Location and the Sheppard Location, in return for 70% of the York Rio Proceeds. His position is that Debrebud was a "paymaster" or "outsourced" agent for York Rio and that neither he nor Debrebud engaged in trades or acts in furtherance of trades. For the reasons given below, we find that Schwartz acted in the capacity of a director or officer of York Rio and engaged in trades or acts in furtherance of trades of York Rio securities from March 2005 to mid-2007.

[295] In January 2007, York entered into an agreement with Runic, who had worked with Schwartz at the Sheppard Location, that Runic would open a new office for the sale of York Rio securities, in return for at least 70% of the York Rio Proceeds. In the summer of 2007, York shifted all sales of York Rio securities from the Sheppard Location to the Yonge Location, controlled by Runic. In August 2008, the sales operation, run by Runic, moved from the Yonge Location to the Finch Location. The sale of York Rio securities continued at the Finch Location until the execution of the Search Warrant at the Finch Location on October 21, 2008.

[296] For the reasons given below, we find that Runic acted in the capacity of a director or officer of York Rio and engaged in trades or acts in furtherance of trades of York Rio securities at the Yonge Location and the Finch Location, and that he acted in the capacity of a director or officer of Brilliante and engaged in trades or acts in furtherance of trades of Brilliante securities at the Finch Location.

**E. The Flow of Funds**

[297] We accept Staff's evidence about the use of the funds received from York Rio and Brilliante investors.

1. The York Rio and Brilliante Proceeds

[298] From May 10, 2004 to August 2005, York Rio had a Canadian dollar account and a US dollar account at a branch of the Bank of Nova Scotia (the "**York Rio Scotiabank Accounts**"). York and Jbeily were the signing officers. The Account Summaries indicate that $700,140.32 and US $860,275.86 (approximately CDN $1.8 million) was received from investors and deposited into the York Rio Scotiabank Accounts from May 2004 to August, 2005.

[299] The York Rio Scotiabank Accounts were closed or inactive after September 1, 2005, when Jbeily was ousted from the company. York then opened new Canadian dollar and US dollar accounts for York Rio at a branch of TD Canada Trust (the

"**York Rio Accounts**"). York and Ungaro were the signing officers. The Account Summaries indicate that $15,931,378.33 and US $431,750.00 was received from investors and deposited into the York Rio Accounts from late August 2005 to May 2009.

[300] York Rio raised approximately $1.8 million from May 2004 to August 2005 and approximately $16 million from September 2005 to October 2008. In total, approximately $18 million was raised from York Rio investors during the Material Time.

[301] The York Rio Proceeds were transferred from the York Rio Accounts and flowed through a number of other accounts controlled by York, Schwartz and Runic during the Material Time. Almost all of the money raised from York Rio investors was used by the York Rio Respondents for their own personal benefit or the benefit of family and friends, and very little was spent on York Rio's purported mining purpose.

[302] All of the $160,000 raised from Brilliante investors in September and October 2008 was deposited into the Brilliante Account. Of this amount, $114,500 (approximately 72%) was transferred to two companies controlled by York. We received no evidence that any money was spent on Brilliante's purported mining purpose.

2. Companies Associated with the Flow of Funds

[303] Vanderlaan and Ciorma testified that, in addition to York Rio, York also controlled the following non-respondent companies and bank accounts during the Material Time (the "**York Companies**"), and York did not dispute this evidence:

- Big Brother and the Holding Company Inc. ("**Big Brother**") was incorporated on July 4, 2007. York was its sole director and the sole signatory on its bank account (the "**Big Brother Account**");
- Dude Productions Inc. ("**Dude**") was incorporated on September 29, 2008. York was its President and sole director, and the sole signatory on its bank account (the "**Dude Account**");
- Evason Productions Inc. ("**Evason**") was incorporated on August 31, 2006. York was its sole director and the sole signatory on its bank account (the "**Evason Account**"); and
- Munket Capital Holdings Inc. ("**Munket**") was incorporated on September 22, 2005. York was its sole director and the sole signatory on its bank account (the "**Munket Account**").

[304] Schwartz did not dispute Staff's evidence that he was the President of Debrebud Capital Corporation ("**Debrebud**") and the sole signatory on its bank account (the "**Debrebud Account**"). Debrebud was incorporated on September 22, 1999 and cancelled on June 7, 2008.

[305] Vanderlaan and Ciorma testified, and, in his compelled examination, Runic admitted, that he was the President and sole director of Superior Home, a British Columbia company that was incorporated on November 27, 1997 as Anyphone. Runic and the late Dorothy Siegel ("**Siegel**"), a friend of Runic's, were listed as signatories on the Superior Home bank account (the "**Superior Home Account**").

[306] Vanderlaan and Ciorma also testified that Runic instructed Koch to incorporate the following companies in British Columbia, which were controlled by Runic at the Material Time:

- 0795624 B.C. Ltd., which was incorporated on June 27, 2007, with Koch as its sole director ("**0795624**");
- Blue Star Consulting (0796249 B.C. Ltd.) ("**Blue Star**"), was incorporated on February 1, 2008. Koch was its sole director, and Koch and Siegel were the signing officers on its bank account (the "**Blue Star Account**"); and
- British Holdings was incorporated on September 26, 2008. Koch was its sole director, and Koch and Runic were the signatories on its bank account, which was opened on October 7, 2008 (the "**British Holdings Account**").

[307] Runic also admitted, in his compelled examination, that he asked Koch to incorporate NatWest for him, as well as 0795624, Blue Star and British Holdings, and that he controlled all these companies, as well as Superior Home (the "**Runic Companies**")

[308] Vanderlaan and Ciorma testified that Georgiadis incorporated two companies in Ontario that were associated with the flow of York Rio and Brilliante funds in September and October 2008:

- 2180353 was incorporated on July 28, 2008. Georgiadis was its sole director and the sole signatory on its bank account (the "**2180353 Account**"); and

- Vision Productions Inc. ("**Vision**") was incorporated on August 29, 2008. Georgiadis was its sole director and the sole signatory on its bank account (the "**Vision Account**") (together, the "**Georgiadis Companies**" and the "**Georgiadis Accounts**").

[309] Staff alleges that York controlled the Georgiadis Accounts.

3. The Flow of Funds during the Schwartz Period

[310] From May 4, 2005 to August 2, 2007 (the "**Schwartz Period**"):

- The York Rio Proceeds were deposited into the York Rio Accounts, which were controlled by York.

- York authorized payment from the York Rio Accounts of $2,750,748.59 (70% of the York Rio Proceeds) to Debrebud, which was controlled by Schwartz.

- The money received by Debrebud was used to pay the salaries and commissions of York Rio qualifiers and salespersons, including $470,781.58 to Superior Home, which was Runic's company. Payments from the Debrebud Account to or for the benefit of Schwartz and his family totalled approximately $889,000.

4. The Flow of Funds during the Runic Period

[311] From January 2007 to October 2008 (the "**Runic Period**"):

- The York Rio Proceeds were deposited into the York Rio Accounts.

- In a number of transactions, York authorized transfers of some of the York Rio Proceeds from the York Rio Accounts to the accounts of each of the other York Companies.

- York authorized transfers from the York Companies of 70% of the York Rio Proceeds to Superior Home. From the York Rio Proceeds, Superior Home received approximately $9,224,325.53, including approximately $470,781.58 from Debrebud and approximately $8,753,543.95 from York Rio and the York Companies.

- Runic authorized the transfer from the Superior Home Account of approximately $3.8 million to the Palkowski Account, and another $2.687 million to the Koch Account.

- Runic instructed Koch to transfer approximately $535,000 from the Koch Account to the trust account of a law firm in Richmond Hill in order to purchase the Aurora Property for Siegel. A lien for $525,000 was placed on the home by 0795624, which was controlled by Runic. Staff obtained a freeze order in relation to the Aurora Property on July 7, 2009.

- Approximately $2 million went to unexplained cash withdrawals, approximately $680,000 was used to pay salaries and commissions for York Rio qualifiers and salespersons, approximately $72,000 was spent on rent, and approximately $22,000 was paid to Runic by cheque.

[312] Runic admitted, with respect to NatWest and British Holdings, that "any monies that were deposited there were monies that were owed to me in respect to commissions that were paid out on behalf of York Rio and/or Brilliante that Jason had owed me from that Finch office and down the road they were to be used for other ventures." (Transcript of compelled examination, May 4, 2011, p. 441, lines 16-22).

[313] With respect to Brilliante, in September and October 2008:

- The $160,000 raised from Brilliante investors was deposited into the Brilliante Account, which was controlled by York, though Aidelman was nominally the President of the company and co-signatory on the account.

- York authorized the transfer of $114,500 (approximately 72% of the Brilliante Proceeds) from the Brilliante Account to the Munket Account ($95,750.00) and the Dude Account ($18,750.00), which he controlled.

- York authorized the further transfer of funds from the Munket Account to the 2180353 Account, which Georgiadis controlled, and the further transfer of funds from the Dude Account to the Vision Account, which

Georgiadis controlled. The Brilliante Proceeds and the York Rio Proceeds were commingled in the Munket and Dude Accounts and the Georgiadis Accounts.

- From the 2180353 Account, funds were transferred to the British Holdings Account, and from the Vision Account, funds were transferred to the NatWest Account, both of which were controlled by Runic through Koch.

5. Summary: Disposition of the York Rio Proceeds and the Brilliante Proceeds

[314] Approximately $18 million was raised as a result of the sale of York Rio securities and $160,000 was raised as a result of the sale of Brilliante securities during the Material Time.

[315] During the Schwartz Period, Debrebud received approximately $2.75 million (70% of the York Rio Proceeds). From this amount, Debrebud paid salaries to qualifiers and administrative staff and commissions for salespersons. “Openers” received 20% of the proceeds of an initial sale. The 20% commission for an additional sale to an existing York Rio investor was split between the opener who made the initial sale and the loader who made the subsequent sale. Approximately $889,000 was disbursed from the Debrebud Account to or for the benefit of Schwartz and his family. Another approximately $500,000 went for unexplained payments and cash withdrawals.

[316] During the Runic Period, the York Rio Proceeds were first deposited into the York Rio Account, then approximately 70% was flowed through the accounts of the York Companies (Big Brother, Dude, Evason and Munket), to the Superior Home Account (controlled by Runic). York authorized these transactions.

[317] The sale of Brilliante securities from the Finch Location raised a total of $160,000 from nine investors from September 11, 2008 to October 8, 2008. The Brilliante Proceeds were deposited into the Brilliante Account, and approximately 72% was flowed through the Dude Account and the Munket Account (controlled by York) to the 2180353 Account and the Vision Account (controlled by Georgiadis), and then to the Superior Home Account (controlled by Runic).

[318] Runic and the Runic Companies received approximately $9.2 million during the Runic Period, including approximately $470,781.58 received from the Debrebud Account and approximately $8,753,543.95 received from York Rio and the York Companies (approximately 70% of the York Rio Proceeds during the Runic Period and approximately 72% of the Brilliante Proceeds). From that amount, Runic authorized the transfer of approximately $3.8 million to Palkowski Law and approximately $2.7 million to Koch & Associates. Approximately $2 million went to unexplained cash withdrawals, approximately $680,000 was used to pay salaries and commissions for York Rio sales staff, approximately $72,000 was spent on rent, and approximately $22,000 was paid to Runic by cheque.

[319] Approximately $4.1 million of the York Rio Proceeds and the Brilliante Proceeds was retained by York and used for his personal benefit or the benefit of his friends and family.

[320] In summary, almost all of the approximately $18 million raised from York Rio and Brilliante investors was appropriated by the Respondents for their personal use. Only a minimal amount went to York Rio’s purported mining activity – at most, approximately 2.7% of the York Rio Proceeds, and likely much less. There is no evidence that any of the Brilliante Proceeds was spent on purported mining expenses.

## VIII. THE ROLE OF THE RESPONDENTS

### A. York Rio

1. The Allegations

[321] Staff alleges that York Rio:

- traded in its securities without registration, where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed its securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[322] We heard evidence that York Rio, which has never been registered with the Commission, traded in its own securities, through its employees, representatives or agents, contrary to subsection 25(1)(a) of the Act, and that York Rio distributed its securities, which had never before been issued, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest. The main points are as follows.

(a) *Section 139 Certificates*

[323] Vanderlaan testified that Staff's Section 139 Certificates for York Rio indicate that York Rio has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed a preliminary prospectus or prospectus with the Commission or received a receipt from the Director.

[324] Vanderlaan testified that York Rio filed a number of Exempt Distribution Reports in Ontario and other provinces in which it reported trades of its own previously unissued securities to named investors, purportedly relying on the accredited investor exemption.

(b) *Staff Investigators*

[325] Vanderlaan and Ciorma testified that approximately $18 million was raised from the sale of York Rio securities to investors.

[326] Vanderlaan testified about the contents of the York Rio website, the York Rio Business Plan, and the sales scripts that were used by York Rio qualifiers and salespersons.

[327] Vanderlaan testified that the documents seized from the Finch Location included a document entitled "Accreditation Information", which was a questionnaire to be used when qualifying York Rio investors, which misstated the Net Financial Assets Test, representing that an investor could qualify based on "combined net worth (with a spouse) of $1 million or more, "meaning your home, automobiles and everything", and that other documents found at the Finch Location contained similar misrepresentations.

(c) *Compelled Examinations*

[328] In their compelled examinations, Runic, Demchuk, Oliver and Valde admitted that they sold York Rio securities. Runic admitted that he sold York Rio securities from the Sheppard, Yonge and Finch Locations, and his admission was corroborated by Vanderlaan, Ciorma, Robinson, Sherman, Friedman, Georgiadis, and Hoyme. Demchuk admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Georgiadis and Hoyme. Oliver admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Sherman, Georgiadis, Hoyme, Investor Two and Investor Five. Valde admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Sherman, Georgiadis, Hoyme and Investor Seven.

(d) *Witnesses called by Staff*

[329] Robinson, a former York Rio salesperson, and Friedman, who worked in an administrative role, testified about the sale of York Rio securities at the Eglinton and Sheppard Locations.

[330] Georgiadis testified that he played an administrative role at the Yonge Location, including giving investor cheques to York and receiving cheques from York to be given to Runic. He testified that York Rio securities were sold at the Yonge and Finch Locations.

[331] Sherman, a former York Rio salesperson, testified that he started selling York Rio securities from the Yonge Location in July 2007 and continued to do so from the Finch Location until the execution of the search warrant in October 2008.

[332] Hoyme testified that she started working at the Yonge Location in July 2007, performing receptionist and administrative duties, and continued to do so at the Finch Location until the execution of the search warrant in October 2008. She testified about the sale of York Rio securities from the Yonge and Finch Locations.

[333] Ungaro testified about the administrative role she played, including receiving the signed subscription agreements and investor cheques, sending out letters to investors, sending information to the transfer agent, and keeping the records for York Rio.

[334] McDonald testified that she prepared the York Rio website and materials to be provided to investors, based on instructions and content she received from York.

[335] Brown testified that he did the technical development of the York Rio website, including the Investors' Lounge, based on instructions from York and McDonald.

(e) *Investor Witnesses*

[336] All eight Investor Witnesses testified about their purchases of York Rio securities from York Rio salespersons, including Sherman (Investor One, Investor Three, Investor Four and Investor Seven), Robinson (Investor Three), Oliver (Investor Two and Investor Five) and Valde (Investor Seven).

[337] Of the eight Investor Witnesses, at least five (Investor Two, Investor Four, Investor Six, Investor Seven and Investor Eight) clearly did not qualify as accredited investors. Four of these five (Investor Two, Investor Six, Investor Seven and Investor Eight) testified that they were not asked about their Net Income, Net Financial Assets or Net Assets; and the fifth (Investor Four) testified that he was told that an annual income of $60,000 would qualify him.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[338] York Rio relied on the accredited investor exemption from the registration and prospectus requirements. We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to trades of York Rio securities.

[339] Based on the evidence set out at paragraphs 323-337 above, we find that York Rio traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[340] As the York Rio securities had not been previously issued, we find that York Rio distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[341] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[342] The sale of York Rio securities bore the characteristics of a "boiler room" scheme. York Rio and its employees, representatives and agents:

- used aliases when communicating with investors and prospective investors;
- used high pressure sales tactics, including telling investors and prospective investors, for example, that they were being offered York Rio securities at a discounted price because an existing York Rio investor is forced to sell;
- prepared and used sales scripts that included misrepresentations about York Rio's assets, the status of diamond production, and the qualifications and experience of officers, salespersons and other persons who were represented as having a role in the company;
- misrepresented the test for qualification as an accredited investor when communicating with prospective investors;
- posted on the York Rio website many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that York Rio had purchased 90% ownership of Nova and had already started the mining and production of diamonds in Brazil, and made similar misrepresentations in promotional materials disseminated to investors and prospective investors;
- made misrepresentations in the York Rio Business Plan that were intended to effect a sale of securities, including claims that York Rio had purchased Nova and that an existing investment of US$600,000 had been used to acquire the physical property and exploration rights, and expenditure and net income projections that were identical to those made in the Brilliante Business Plan, and had no basis in reality;

- failed to disclose to investors and prospective investors that the salesperson was compensated by a commission of 20%, and in some cases, misrepresented that salespersons were compensated only in securities of York Rio;

- filed incomplete and misleading Exempt Distribution Reports that relied on the accredited investor exemption, when it was not available, and failed to disclose the 70% fees and commissions paid to Schwartz and Runic; and

- made prohibited representations about a pending initial public offering and potential merger.

[343] We find that York Rio never acquired mining rights in Brazil, had not commenced operations and had not produced any diamonds, contrary to the misrepresentations made in York Rio's promotional materials and misrepresentations made by York Rio salespersons. York Rio never earned any revenue from mining.

[344] We accept the evidence of Vanderlaan and Ciorma that approximately $18 million was raised as a result of the sale of securities of York Rio during the Material Time. Out of this amount, approximately $2.75 million (approximately 70% of the York Rio Proceeds) went to Debrebud during the Schwartz Period, and another approximately $9.2 million (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) went to Runic and the Runic Companies during the Runic Period. Approximately $4.1 million went to York or the York Companies.

[345] Contrary to the projected expenditures for mining development costs set out in York Rio's promotional materials, only a minimal amount went to York Rio's purported mining activity – at most, approximately 2.7% of the York Rio Proceeds, and likely much less. Instead, the York Rio Proceeds were used to pay the overhead expenses for the York Rio sales locations, including salaries for qualifiers and 20% commissions for salespersons. Investors were not told about the commission structure, and some of those who asked were told that York Rio salespersons were compensation in York Rio securities only. Several investors testified that they would not have invested had the commission structure been disclosed to them.

[346] After payment of commissions and other overhead expenses, most of the remaining money obtained from York Rio investors was appropriated by York, Runic and Schwartz for their personal use or for the benefit of their families, friends, and other individuals and companies associated with the Respondents.

[347] We find that York Rio perpetrated a fraudulent investment scheme whose purpose was to obtain money for the personal use of the York Rio Respondents and other individuals associated with York Rio and not to raise money to develop a diamond mine, as represented to York Rio investors. We find that York Rio securities were worthless and that the York Rio Investment Scheme was a sham. We find that the conduct of York Rio was contrary to the public interest. We find that York Rio engaged or participated in acts, practices or courses of conduct relating to York Rio securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

4. Conclusion

[348] We find that York Rio traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[349] We find that York Rio distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[350] We also find that York Rio engaged or participated in acts, practices or courses of conduct that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

**B. Brilliante**

1. The Allegations

[351] Staff alleges that Brilliante:

- traded in its securities without registration, where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

- distributed its securities without filing a prospectus or preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

- engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[352] We heard evidence that Brilliante, which has never been registered with the Commission, traded in its own securities, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act. We also heard evidence that Brilliante distributed its securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(a) *Section 139 Certificates*

[353] Staff provided Section 139 Certificates stating that Brilliante has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed any materials, including a prospectus or preliminary prospectus or received a receipt for a prospectus.

(b) *Staff Investigators*

[354] Vanderlaan testified that Brilliante had been incorporated in July 2007, but appears to have been inactive until August of 2008.

[355] Vanderlaan and Ciorma testified that from September 11, 2008 to October 8, 2008, nine members of the public invested $160,000 in Brilliante.

[356] Vanderlaan testified that the documents seized during the execution of the Search Warrant at the Finch Location indicated that the sale of York Rio securities was being shut down and that the focus of securities sales from the Finch Location was shifting to Brilliante in the summer of 2008.

[357] Vanderlaan and Ciorma testified that the Brilliante Account was opened in January 2007, with an opening deposit of $1,000 payable on the York Rio Account. Two more cheques on the York Rio Account were deposited into the Brilliante Account on December 13, 2007 ($250) and March 6, 2008 ($2,500). Between September 11, 2008 and October 8, 2008, cheques from nine investors, totalling $160,000, were deposited into the Brilliante Account. Investors were the only source of funds into the Brilliante account after September 11, 2008.

[358] Vanderlaan and Ciorma testified that funds flowed from the Brilliante Account to the accounts of the York Companies. From the Brilliante Account, $18,750 was transferred to the Dude Account (two cheques for $9,375 each, both dated October 2, 2008) and $95,750 was transferred to the Munket Account (five cheques issued between September 22 and October 20, 2008). In total, $114,500 (approximately 72% of the Brilliante Proceeds) was transferred from the Brilliante Account to the Dude Account and the Munket Account. From the Dude Account and the Munket Account, money was transferred to the 2180353 Account and the Vision Account, and from there to the British Holdings Account and the NatWest Account.

(c) *Compelled Examinations*

[359] Brilliante securities were sold by salespersons, including Runic, Demchuk and Valde, each of whom admitted in his compelled examination that he sold Brilliante securities. Based on Runic's admissions, we find that he ran the Brilliante sales operation at the Finch Location and engaged in trades or acts in furtherance of trades of Brilliante securities. Demchuk admitted that he sold Brilliante securities to one investor from the Finch Location, using the alias "Sutton", and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Georgiadis and Hoyme. Valde admitted that he sold Brilliante securities from the Finch Location, using the alias "Wade", and his admission was corroborated by the testimony of Vanderlaan, Ciorma, and Georgiadis.

(d) *Witnesses called by Staff*

[360] That the Brilliante investment scheme grew out of the York Rio scheme and was intended to replace it, was supported by the evidence of Georgiadis and Hoyme, who testified about the Brilliante sales operation at the Finch Location, Ungaro, who testified about her administrative role in Brilliante, and McDonald and Brown, who testified about the preparation of the Brilliante website and promotional materials. All these witnesses continued to play a similar role in relation to Brilliante that they had in relation to York Rio and their evidence indicates that the Brilliante sales operation was very similar to that of York Rio.

(e) *Investor Witnesses*

[361] Investor One testified that in June 2008, "Sebrook" (Sherman) called him to solicit an additional purchase of York Rio securities before York Rio went public, and also told him there would be an opportunity to invest in uranium. When Investor One spoke to York, after learning about the Temporary Order, York told him that the only connection between York Rio and Brilliante was that they were sharing office space, and that Brilliante had stolen York Rio's prospectus.

[362] Investor Seven testified that "Sebrook" told him that the Temporary Order related only to Brilliante, with which York Rio shared office space.

**3. Analysis**

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[363] We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to Brilliante.

[364] Based on the evidence set out at paragraphs 353-362 above, we find that Brilliante, which has never been registered with the Commission, traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[365] As the Brilliante securities had not been previously issued, we find that Brilliante distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[366] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[367] We find that Brilliante engaged or participated in a course of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest:

- There is no evidence that any of the $160,000 raised from Brilliante investors was spent for the purported mining purposes of Brilliante. Instead, approximately 72% of the Brilliante Proceeds flowed from the Brilliante Account, in which investor cheques were deposited, to the Munket Account and the Dude Account, which were controlled by York, and from there to the 2180353 Account and the Vision Account, which were controlled by Georgiadis, and from there to the British Holdings Account and the NatWest Account, which were controlled by Runic.

- Vanderlaan testified that much of the content of the Brilliante website was copied from Wikipedia and from a Brazilian government website about a different mine.

- The Brilliante website claimed that Brilliante had a 24,000 hectare mining claim in Brazil containing uranium and that US $5 million had been invested in the mine. There is no evidence that Brilliante engaged in any activity other than the sale and distribution of its own securities. Aidelman testified that the claims on the Brilliante website about his own qualifications and experience were false.

- The Brilliante Business Plan included many false statements, including claims that Brilliante had a mining claim for an 8,500 hectare site and that an initial investment of US $875,000 was used to acquire the physical property and secure the exploration rights. The expenditure and net income projections given in the Brilliante Business Plan are identical to those given in the York Rio Business Plan and had no basis in reality.

- Brilliante securities were sold by the same qualifiers and salespersons who had sold York Rio securities, but using different aliases. The Brilliante sales scripts that were seized from the Finch Location contained numerous misrepresentations that were intended to solicit sales of Brilliante securities, including claims that the caller (salesperson) had previously been involved in the initial public offering of another mining company.

[368] We find that Brilliante perpetrated a fraudulent investment scheme whose purpose was to obtain money for the personal use of the Brilliante Respondents and other individuals associated with Brilliante and not to raise money to develop a uranium mine, as represented to Brilliante investors. We find that Brilliante securities were worthless and that the Brilliante Investment Scheme was a sham.

[369] We find that Brilliante engaged or participated in a course of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[370] We find that Brilliante traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[371] We find that Brilliante distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[372] We also find that Brilliante engaged or participated in acts, practices or courses of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

**C. York**

1. The Allegations

[373] Staff alleges that York:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and
- being a director or officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

2. The Evidence: York's role in the York Rio Investment Scheme

[374] Staff's evidence about York's role in the York Rio Investment Scheme came from Vanderlaan and Ciorma, York's compelled examination, witnesses called by Staff (Robinson, Friedman, Georgiadis, Ungaro and McDonald), the five Investor Witnesses who spoke to York by telephone or in person – (Investor One, Investor Two, Investor Three, Investor Six and Investor Eight) and from Schwartz.

(a) *Section 139 Certificate*

[375] Staff provided a Section 139 Certificate stating that York has never been registered with the Commission in any capacity.

(b) *Staff Investigators*

[376] Vanderlaan and Ciorma provided evidence that York was the directing mind of York Rio and that he was actively involved in the sale of York Rio securities, including:

- the Corporation Profile Report for York Rio, shows York as the President and sole director of the company;
- the Exempt Distribution Reports filed by York Rio, and certified as true by York, who signed as the President of York Rio, indicate that York Rio relied on the accredited investor exemption in distributing its securities to investors, and most of the Exempt Distribution Reports indicate that no "Commissions & Finders' Fees" are paid, or that consulting fees only are paid; and

- the York Rio website, York Rio Business Plan and other promotional materials given to prospective York Rio investors with the intent of soliciting investments, and the York Rio subscription agreements, identify York as the President of the company.

[377] The Account Profiles and Account Summaries show that

- during the Schwartz Period, York authorized the transfer of approximately $2.75 million (approximately 70% of the York Rio Proceeds) from the York Rio Account to the Debrebud Account;
- during the Runic Period, York authorized the transfer of approximately $9.2 million, (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) from the York Rio Account to the Superior Home Account, either directly or by flowing the money through the accounts of the York Companies and the Georgiadis Companies; and
- approximately $4.1 million of the Proceeds was used by York for his personal benefit or the benefit of his family and friends, including the following payments, from the York Rio Accounts:
    - approximately $2,529,565.03 in credit card payments on York's credit cards;
    - approximately $477,789.08 in cash withdrawals;
    - approximately $344,459.19 for car payments;
    - approximately $170,619.34 paid to stores;
    - approximately $135,630.10 to telecommunications companies, including cell phone expenses;
    - approximately $116,165.75 for personal care;
    - approximately $18,497.23 for veterinary expenses; and
    - approximately US $115,958.60 to York personally.
- the Account Summaries for the York Rio Scotiabank Accounts indicate that another approximately $109,301.16 was disbursed to or for the benefit of York, including:
    - approximately $66,007.62 paid to York personally or in credit card payments on York's credit cards; and
    - approximately $43,293.54 for personal-related expenses, including payments to stores, telecommunications companies and for car payments and life insurance.
- York received additional amounts from the accounts of the other York Companies, including:
    - approximately $32,330.75 from the Dude Account for payments on York's credit cards;
    - approximately $26,868.04 from the Munket Account for car payments; and
    - approximately $22,429.98 from the YRR Holdings Account and $2,400.00 from the Munket Account in rental payments for York.

[378] The Account Summaries indicate that approximately $4.1 million of the York Rio Proceeds was disbursed to or for the benefit of York or his family and friends.

(c) *York's Compelled Examination*

[379] York did not testify at the Merits Hearing. In his compelled examination, which took place on January 5, January 28 and May 15, 2009, he made the following admissions and gave the following evidence about his involvement in the York Rio Investment Scheme:

- he has never been registered to sell securities;

- he has no education or experience in the mining industry;
- he and Jbeily incorporated York Rio in May 2004 to raise money to purchase a company that owned mining rights in Brazil;
- after York Rio moved into the Langstaff Location in mid-May 2004, York and others prepared a presentation package for investors and hired staff, including Ungaro, a friend, who was hired to keep records of the investor cheques and subscription agreements and the communications with the transfer agent, and Ungaro's daughter, McDonald, who was hired to create a website;
- he and others provided information for the York Rio website, which included an Investor Lounge portal on which Investor Updates were posted, and he had input into some of the Investor Updates;
- he believed [incorrectly] that an individual qualified as an accredited investor if he or she owned, alone or with a spouse, $1 million of unencumbered real estate;
- he and others would decide whether a prospective investor qualified;
- he participated in presentations to prospective investors at the Langstaff Location;
- between early spring 2005 and Labour Day 2005, he became aware that $400,000 of the $700,000 he claims he had transferred from the York Rio Accounts to complete the Nova Transaction had not been used for that purpose, and he knew, therefore, that the transaction had not been completed;
- the York Rio website was never corrected to reflect the failure of the Nova Transaction;
- he had final approval of the content on the website after September 2005;
- after September 2005, York Rio moved its bank accounts from the Scotiabank to TD Canada Trust, and he and Ungaro had signing authority on those accounts;
- after September 2005, he and Schwartz entered into an agreement that Schwartz to solicit accredited investors for York Rio in return for a 70% "consulting fee".
- he and Robinson met with Investor Three and his wife over lunch in Toronto;
- he ended the arrangement with Schwartz in July of 2007 and asked Runic, who had worked with Schwartz at the Sheppard Location, to open a sales office, in return for a fee of 70% of the proceeds of the sales;
- Georgiadis acted as his "eyes and ears" during the Runic Period;
- York Rio never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey;
- contrary to the claims on the York Rio website, York Rio did not do any dredging, and the dredging photographs on the York Rio website depicted Brinton's Rio Paranaiba site, not York Rio's site;
- York Rio "was not a revenue-producing company";
- he visited the Eglinton, Sheppard and Yonge Locations;
- he was aware that some representations made to prospective investors were not true, for example, the claim in a York Rio sales script that York Rio was producing diamonds of 1-69 carats; and
- he was aware that some salespersons were using aliases.

[380] York made the following admissions and gave the following evidence, during his compelled examination, about the disbursement of the York Rio Proceeds.

- he authorized payment of approximately $11 million of the York Rio Proceeds to Schwartz or Runic through Big Brother, Dude, Evason, Munket, and YRR Holdings Inc. (York's Companies) and through 2180353

(Georgiadis's company), including numerous cheques in small amounts flowed through different accounts in the same time period; and

- he authorized payments from York Rio to or for the benefit of Ungaro, McDonald and Aidelman, and to or for his own benefit, as alleged by Staff.

[381] As discussed at paragraphs 418-423 below, York admitted that he authorized the disbursement of approximately $4 million of the York Rio Proceeds to himself or others associated with the York Rio Investment Scheme. Although he claimed that many of these expenses were incurred for York Rio's business, he did not provide any documentation in support of that claim.

(d) *Witnesses called by Staff*

(i) Friedman

[382] Friedman worked as a York Rio salesperson at the Eglinton and Sheppard Locations during the Schwartz Period.

[383] Friedman testified that York did not have an office at the Eglinton Location or the Sheppard Location, but visited 2 or 3 times a week, on average. He testified that he observed cheques changing hands between York and Schwartz "many times", and added that if York did not visit the office in any week, generally it meant that no sales had been made. However, sometimes Friedman would deliver the subscription agreements and investor cheques to York at his home, and York would give him cheques for delivery to Schwartz.

[384] On cross-examination by York, Friedman agreed that he was not employed or paid by York Rio and that York did not hire him, did not hire any salespersons, did not choose the offices and did not write any scripts. He also agreed that York Rio did not have a parking space at the Eglinton Location or the Sheppard Location and did not appear in the lobby or any building directory or on anyone's name tag.

(ii) Robinson

[385] Robinson testified that he first met York at the Eglinton Location. York did not have an office there but he would visit once or twice a week to talk to Schwartz, and he would visit whenever a cheque came in.

[386] Robinson testified that in March or April of 2006, he and York met with Investor Three and his wife, who had flown in from Manitoba for the meeting, to talk about York Rio. Investor Three had already invested approximately $250,000 in York Rio and went on to make additional purchases. Robinson testified that York talked about York Rio at the meeting.

[387] Robinson testified in about June of 2007, York told him to stop selling York Rio securities to new investors from the Sheppard Location. This was at around the time York Rio moved its sales operation to the Yonge Location, run by Runic.

(iii) Georgiadis

[388] Georgiadis testified that in about June of 2007, York introduced him to "Turner" (Runic) who was in charge of the Yonge Location, and suggested that he work for Runic doing "investor relations" for York Rio. Initially, Georgiadis mailed out information packages to prospective investors and picked up the investor packages, including completed subscription agreements and investor cheques ("**Investor Packages**") from a virtual office near the Yonge Location.

[389] Georgiadis testified that he did not observe any transactions between "Turner" and York in the office, and said that York "mostly ... wouldn't come to the office". Eventually, Georgiadis began delivering cheques from "Turner" to York and from York to "Turner", usually visiting York at home or some other location outside of the office. Georgiadis testified that initially he delivered the Investor Packages from "Turner" to York and delivered cheques from York to "Turner", but later he went with Turner to meet with York for this purpose.

[390] Georgiadis appeared to be reluctant to recognize York's role in overseeing the sales operation at the Yonge Location and the Finch Location. He testified that York told him to do whatever "Turner" asked, and could not remember whether York had ever asked him for information about what was going on in the office. After refreshing his memory by reviewing the transcript of his compelled examination, he conceded "I was there sort of helping managing the office, but not really. It was never really a title, but I was there, I guess, as my uncle's eyes and ears." (Hearing Transcript, March 23, 2011, p. 69, ll. 19-22)

(iv) Sherman

[391] Sherman testified that he understood York to be the President of York Rio, and that he saw York in the Yonge Location and the Finch Location about six times over the approximately 14 months when Sherman was involved. He testified that Runic hired him, dictated scripts to him, instructed him, gave him contact lists and paid him, and that he relied on information Runic

provided about York Rio's purported mine and about the accredited investor exemption. On cross-examination by York, Sherman testified that York did not hire him, instruct him, pay him or provide him with information about York Rio's business.

(v) Ungaro

[392] Ungaro testified that she performed administrative functions for York Rio at York's direction, including receiving the Investor Packages, sending letters to investors, sending information to Capital Transfer Agency, and keeping records for York Rio.

[393] Ungaro testified that she did not have any kind of employment agreement with York or York Rio, or Schwartz or Debrebud. On an irregular basis, York would pay her rent, her Visa bill, her veterinary and medical expenses, including $25,000 for cosmetic surgery, her cell phone and for family vacations for her McDonald, as well as York's daughter and her children, and she drove York's cars (a Range Rover, a Mercedes and an Audi – she did not drive the Aston Martin). She estimated that York paid her bills of approximately $2,000-2,500 per month.

(vi) McDonald

[394] McDonald testified that York asked her to prepare a brochure, information package, and newsletters for the York Rio website in 2005 or 2006; there was no material available yet at that time. She also designed the Investors' Lounge portal. According to McDonald, it was Jbeily who provided the content in the beginning, though York also contributed. After Jbeily's departure, York instructed her to remove Jbeily's name from the York Rio website. From then on, York was in charge of York Rio, and her instructions came from York or from Runic, approved by York. McDonald identified the brochure, "Beyond Brilliance", which she prepared on instructions from Jbeily and York, and the York Rio Business Plan, which she prepared on instructions from York and Runic.

[395] McDonald testified that York paid her, on a project basis, by cheques payable on the York Rio Account, and she agreed with Staff's estimate that she received approximately $30,000 in total between 2005 and 2008. She testified that she also had the use of a Volvo that York leased for about $750 per month, which he paid for, and that York paid for her gas, rent, veterinary bills and vacations.

(vii) Brown

[396] Brown, who is a freelance web developer, testified that McDonald hired him to do the technical work involved in creating the York Rio website, based on content she provided. McDonald and York would email him with instructions for changes or updates to the York Rio website, and he created 300-400 usernames and passwords to allow new investors to access the Investor Lounge. Brown testified that he was paid approximately $10,000 for his work, paid by cheque on the York Rio Account.

(e) *The Investor Witnesses*

[397] Five of the Investor Witnesses spoke to York in relation to their purchases of York Rio securities. Although York cross-examined most of the Investor Witnesses, he did not challenge their evidence about what he had said to them, but instead focused on their reasons for signing the Certificate of Investor Accreditation.

(i) Investor One

[398] When Investor One and Investor Four called York Rio after the Temporary Order was issued, York returned their calls to reassure them that York Rio had a mine in Brazil and that it was, or would be, producing diamonds.

[399] Investor One asked why York Rio was still raising money if the mine was producing diamonds; he testified that York's response was "not yet, but soon". When Investor One asked if dividends were a possibility, as was stated in the newsletters, York said, "yes, they're a possibility". According to Investor One, York also told him that the Commission's allegations overlooked the cost of raising capital (20% of each dollar raised) and operational costs (50%); York claimed that the 70% commission paid on York Rio sales was not excessive. Investor One testified that he did not agree, and would not have invested if he had known that 70% was coming "off the top" for these costs. Finally, York also told Investor One that the only relationship between York Rio and Brilliante was that they were sharing office space, and that Brilliante had stolen York Rio's prospectus.

(ii) Investor Two

[400] Investor Two testified that York told him, in the summer of 2008, that York Rio was producing 30% gem quality and 70% industrial quality diamonds, that they were raising money in order to buy equipment to bring the mine to production level, that they had turned down a buy-out offer because they had discovered uranium deposits on the property and had decided to purchase nearby property where they had a uranium operation, and that they were going to take the company public

themselves. Investor Two invested another $100,000 in York Rio following this conversation with York. Investor Two testified that neither York nor "Roberts" (who had initially contacted him) told him that 70% of the York Rio Proceeds went in commissions to Debrebud and Superior Home, and if they had, he would not have invested because that would not have been a "reasonable use of the money".

(iii) Investor Three

[401] Investor Three, who invested approximately $800,000 in York Rio between 2005 and 2008, testified that York told him in October 2008 that he would be flying to Germany the following month to arrange for York Rio to be listed on the Frankfurt Exchange, and tried, unsuccessfully, to convince him to invest another $18,000.

(iv) Investor Six

[402] Investor Six called York to complain that her new share certificate, following the share-split, wrongly listed her intended beneficiaries as the owners of the shares. He told her to return the share certificate to he could resolve the problem. She did so, but did not receive a corrected share certificate.

3. Analysis: York's role in the York Rio Investment Scheme

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[403] We heard evidence that York engaged in numerous acts in furtherance of trades in York Rio securities:

- he incorporated York Rio;
- he authorized McDonald to create the York Rio website;
- he instructed McDonald and Brown with respect to the content of the York Rio website and the creation of Investor Lounge accounts for new York Rio investors;
- he authorized the preparation of the York Rio subscription agreement and its dissemination to prospective investors;
- he authorized Debrebud (during the Schwartz Period) and Runic (during the Runic Period) to pay the qualifiers and salespersons who sold York Rio securities at the Eglinton Location, the Sheppard Location, the Yonge Location and the Finch Location and to pay for other expenses of the sales operation;
- he visited the Eglinton Location, the Sheppard Location and the Yonge Location on a regular basis;
- he received the Investor Packages from Schwartz or Friedman (during the Schwartz Period) and from Georgiadis (during the Runic Period);
- he participated in decisions about whether a prospective investor was an accredited investor;
- with Robinson, he met with Investor Three, a York Rio investor who went on to make additional purchases after the meeting;
- he spoke to Investor Two, who made additional investments in York Rio after speaking to him;
- he spoke to three other Investor Witnesses (Investor One, Investor Four and Investor Six) who called him after making their investment or learning about the Temporary Order;
- he deposited investors' cheques into the York Rio Accounts, or authorized Georgiadis or others to do so;
- he authorized the payment from the York Rio Accounts of approximately $2.75 million (approximately 70% of the York Rio Proceeds) to Debrebud during the Schwartz Period, some of which went to pay for expenses of the sales operation, including office rent, courier and telecommunications fees, salaries for qualifiers and commissions for salespersons;
- he authorized the payment from the York Rio Accounts of approximately $9.2 million (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) to the Runic Companies during the Runic Period, by authorizing its flow to Superior Home either directly from the York Rio Accounts or indirectly

through the accounts of the York Companies and the Georgiadis Companies and eventually to the Runic Companies, including Superior Home and British Holdings;

- he caused various form letters to be sent to York Rio investors over his facsimile signature, including a letter enclosing a share certificate, which also bore his facsimile signature, a letter giving instructions for signing on to the York Rio Investor Lounge, a letter advising investors about a share split, and a letter dated August 1, 2007 describing the steps York Rio was taking to be listed on a stock exchange; and

- he received consideration for the sale of York Rio securities by retaining approximately $4.1 million of the York Rio Proceeds for his own use or to or for the benefit of friends and family.

[404] As stated in *Re Limelight*, "In determining whether a person or company has engaged or participated in acts in furtherance of a trade, the Commission has taken 'a contextual approach' that examines "the totality of the conduct and the setting in which the acts have occurred.' The primary consideration is, however, the effect of the acts on investors and potential investors." (*Re Limelight*, above, at paragraph 131) The Commission's decisions have established that "acts directly or indirectly in furtherance of a trade" include preparing and disseminating promotional materials to investors or posting promotional materials on a website intended to solicit investors, conducting information sessions for groups of investors, meeting with investors, issuing and signing share certificates and receiving consideration for the sale of securities. York was engaged in all of those activities.

[405] Although we heard no evidence that York cold-called prospective investors, we find that he met with or spoke to existing investors who went on to make additional investments, and, when contacted by existing investors who were concerned about their investments, attempted to reassure them. We find that that such "after-sales support" communications, intended to solicit additional investments, discourage investors from attempting to sell their securities, or discourage complaints to securities regulators, are acts directly or indirectly in furtherance of trades.

[406] We are not satisfied that the accredited investor exemption from the registration and prospectus requirements was available in respect of the trades and distribution of York Rio securities. We find that York traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[407] We also find that York distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[408] We find that York made prohibited representations that York Rio would be applying to be listed on a stock exchange, contrary to subsection 38(3) of the Act.

[409] At least two of the Investor Witnesses (Investor Seven and Investor Eight) received a letter dated August 1, 2007, signed by York, which started out by saying "We have very good news! In the last newsletter, we indicated that York-Rio would be applying for a listing on the Frankfurt stock exchange" and describing steps the company had purportedly taken to move forward. The letter also enclosed a US share certificate, which would replace the no longer valid Canadian certificate, and would be "the only certificate recognized once we receive the listing at the Frankfurt exchange."

[410] In addition, based on the evidence described in paragraphs 400-401 above, we find York made verbal representations to two other Investor Witnesses (Investor Two and Investor Three) that York Rio would be going public.

[411] We find that York made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[412] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[413] In his compelled examination, York admitted that he was aware, by September 2005, when Jbeily was ousted, that York Rio had never completed the Nova Transaction. He admitted that, despite representations and photographs showing dredge-mining on the Rio Paranaiba, which remained on the York Rio website in February 2008, York Rio was not, in fact, involved in dredging, and the site depicted was the site of Brinton's claim, not the site that York Rio planned to mine. He admitted that York Rio was not a revenue-producing company, never had a working mine, never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey. He admitted that he was unaware of the

whereabouts of any mining licences or geologists' reports, or any other documents that would support his testimony about steps taken by York Rio to develop a mine in Brazil, and he could not say how much money was sent to Brazil to develop the mine.

[414] York admitted that he was aware of the contents of the York Rio website, the York Rio Business Plan and other promotional materials, and that he authorized, permitted or acquiesced in their preparation and ongoing distribution to investors and prospective investors. However, although York knew that York Rio was a worthless company, this was not disclosed in the content York authorized for the website or promotional materials, or in York's letters and conversations with investors.

[415] For example, some two years after he realized that the Nova Transaction had not been completed, York authorized the August 1, 2007 letter that promised "very good news" about York Rio's purported application for a listing on the Frankfurt stock exchange.

[416] In July 2008, York told Investor Two that York Rio needed to raise more money to invest in mining equipment to bring the mine to production level. According to Investor Two, York told him the diamonds coming out of the mine were 30 percent gem grade and 70 percent commercial/industrial grade, and that York Rio was looking for cutters to cut the gem quality diamonds. As a result of this conversation, Investor Two invested another $100,000 in York Rio. In fact, by July 2008, York had taken steps to wind down the sale of York Rio securities and begin selling Brilliante securities. Nor did York disclose to Investor Two that 70% of the York Rio Proceeds went in commissions to Debrebud and Superior Home. And, when York Rio investors contacted York after the Temporary Order was issued in October 2008, York reassured them that York Rio had a mine in Brazil that was, or would be, producing diamonds.

[417] Between September 2005 and June 2008, York signed and certified to be true a number of Exempt Distribution Reports that were filed with the Commission and other securities regulators which indicated that no commissions or finder's fees were charged to York Rio investors. In his compelled examination, York characterized the 70% fees York Rio paid to Debrebud and Runic's Companies as "consulting fees" paid to "consulting companies" (Transcript of Compelled Examination, May 15, 2009, pp. 217-225). We find that York knew that the 70% fee he paid to Debrebud during the Schwartz Period, and to the Runic Companies during the Runic Period, was used to pay the commissions of York Rio salespersons. We also find that he knew or reasonably ought to have known that York Rio was not entitled to rely on the accredited investor exemption. We find that he knowingly misrepresented the facts to encourage prospective investors who viewed York Rio's public filings.

[418] York profited personally from the sale of York Rio securities. Of the approximately $16 million that York Rio and Brilliante raised from investors from September 2005 to October 2008, approximately $12 million (approximately 70%) was paid either to Debrebud (during the Schwartz Period) or the Runic Companies (during the Runic Period). When questioned about the disbursement of approximately $4 million during his compelled examination, York did not, for the most part, challenge Staff's figures, but repeatedly noted that the expenditures had been made over a period of approximately three years. He also claimed that certain expenditures were made for York Rio business purposes, but he provided no documentation in support of those claims.

[419] York admitted that the York Rio Proceeds were used to pay his credit card balances of approximately $2.4 million, though he claimed, without support, that these were mostly York Rio business expenses. He also admitted paying off the credit card balances of Ungaro, McDonald and Aidelman, which he claimed was part of their remuneration; the York Rio Account Summary indicates that these payments totalled $119,024.05.

[420] York admitted that York Rio spent approximately $350,000 for six vehicles: (i) the lease and eventual purchase of his 2000 Mercedes CL; (ii) the lease of a Land Rover; (iii) the lease of a Volvo that was used by McDonald; (iv) the lease of an Audi that was used by Ungaro; (v) the down payment on a lease of an Aston Martin ($75,000 paid in July 2007); and (vi) the purchase of a Saturn for Aidelman. Although York claimed that these expenses were all for York Rio business purposes, taken as income (in the case of McDonald, Ungaro and York himself) or owed to the company (in the case of Aidelman), he provided no documentary support for these claims.

[421] York admitted that York Rio made payments totalling approximately $175,000 to various stores, including Staples, Canadian Tire, Sporting Life, Walmart, Loblaws, Costco, Dominion, LCBO, Bass Pro Shops, Henry's Camera, and Pottery Barn. Though he claimed that at least 80% of these expenses were business-related, he stated that he no longer had supporting invoices.

[422] He also admitted that an April 2008 payment of $84,575.29 to the CRA represented his own taxes owing for the 2007 tax year. He explained that he borrowed this amount from the company because he did not have the funds available. He claimed to have signed a note in York Rio's minute book indicating that he owed the company that money, but stated he did not have the documents available.

[423] York also admitted that personal expenses totalling $115,516.06 were paid out of the York Rio Account for friends and family members, including $25,000 for cosmetic surgery, regular payments to a diet doctor, pet care expenses totalling $18,497.23 for five dogs, and $5,400 for laser eye surgery.

[424] We accept Staff's evidence that York misappropriated approximately $4.1 million from York Rio investors for his personal use and for the use of his family and friends.

[425] We find that York orchestrated and perpetrated a fraudulent investment scheme whose purpose was to obtain money for his own personal benefit and the personal benefit of his friends and family, the other York Rio Respondents, and other individuals and companies associated with the York Rio Respondents, and not to raise money to develop a diamond mine, as represented to York Rio investors.

[426] We find that York knowingly deceived York Rio investors and prospective investors with the aim of soliciting their investments in what he knew to be a sham, and as a result, investors lost approximately $18 million.

[427] We also find that during the Runic Period, York authorized the transfer of approximately 72% of the York Rio Proceeds to Runic through the accounts of the York Companies and the Georgiadis Companies in an attempt to conceal the source and use of the York Rio Proceeds.

[428] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(d) *Directors and Officers: section 129.2 of the Act*

[429] Staff alleges that York, being a director and officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1), 53(1) and 38(3) and section 126.1(b) of the Act, contrary to section 129.2 of the Act and contrary to the public interest.

[430] There is no dispute that York was a co-founder of York Rio, its President and CEO and the sole director of York Rio throughout the Material Time. York admitted this. As there is no dispute that York was a director and officer of York Rio throughout the Material Time, the remaining question is whether he authorized, permitted or acquiesced in York Rio's non-compliance.

[431] York's position was that he was not involved in the sale of York Rio securities, did not employ the York Rio salespersons, and had no part in any wrongdoing that gave rise to Staff's allegations.

[432] We are not persuaded of York's position on the facts, the evidence and on a balance of probabilities. In his compelled examination, York admitted that he had overall responsibility for York Rio. We heard overwhelming evidence that he orchestrated the York Rio Investment Scheme and authorized, permitted or acquiesced in all of the activities of the employees, representatives and agents of York Rio. York authorized the preparation of the York Rio website and promotional materials intended to solicit sales of York Rio securities, and failed to correct them despite knowing that the Nova Transaction had never been completed. He entered into an arrangement with Schwartz in March 2005 to sell York Rio securities from the Sheppard Location, and entered into an arrangement with Runic in July 2007 to sell York Rio securities from the Yonge Location, while arranging with Georgiadis to act as his "eyes and ears" during the Runic Period. In July 2008, he ordered that sales of York Rio securities be shut down and sales of Brilliante securities begin. Throughout the Material Time, he played a central and controlling role in the flow of funds. He authorized the transfer of the York Rio Proceeds from the York Rio Accounts to the accounts of the York Companies, Debrebud and the Runic Companies, while retaining approximately $4.1 million for his own use.

[433] We find that York was a director and officer of York Rio, and the directing mind of York Rio throughout the Material Time, and that he authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law, contrary to section 129.2 of the Act and contrary to the public interest.

4. The Evidence: York's role in the Brilliante Investment Scheme

[434] Staff's evidence about York's role in the Brilliante Investment Scheme came from Vanderlaan and Ciorma, York's compelled examination, and witnesses called by Staff (Aidelman, Georgiadis, McDonald, Brown and Ungaro). Staff alleges that York was the directing and controlling mind of Brilliante, and that Aidelman was only nominally the President and director of the company.

[435] York submits that his role in Brilliante was limited to putting in some "seed money" to help Aidelman start up a business, and that he did not foresee and could not have foreseen the wrongdoing that led to Staff's allegations.

(a) *The Conflicting Evidence given by York and Aidelman*

[436] In his compelled examination, York denied acting as a director or officer of Brilliante and denied that he was its directing and controlling mind. He testified that Brilliante was owned by Aidelman, his former son-in-law. York told Staff that he

helped Aidelman, who was unemployed, incorporate the company, showed him how to register the business and open up a bank account, then "I left it to him" (Transcript of Compelled Examination, January 18, 2009, p. 46, l. 13); basically Brilliante was Aidelman's company, and York didn't get involved.

[437] Aidelman testified at the Merits Hearing that York approached him in late 2006 about setting up a company relating to mining. Aidelman testified that on January 19, 2007, he was with York in York's apartment when York incorporated Brilliante online, listing Aidelman as the sole director and giving Aidelman's then home address as the registered office address for the company. Aidelman testified that York paid for the incorporation.

[438] Aidelman and York then visited a branch of the TD Canada Trust together and opened up Canadian and USD bank accounts for Brilliante. York made the initial deposit of $1,000 by cheque dated January 22, 2007 from the York Rio Account. The bank provided some cheques for the Brilliante account, and Aidelman signed a number of blank cheques and gave them to York, along with the client card and personal identification number. Aidelman received account statements at his home address, but gave them to York. He later added York as a signatory on the account.

[439] York also accompanied Aidelman to the offices of the Capital Transfer Agency, where Aidelman signed some documents and a cheque for $1,500, marked "Initial Retainer". Aidelman forwarded later invoices to Brilliante from Capital Transfer Agency to York for his attention.

[440] Aidelman testified that he had no involvement in setting up Brilliante's virtual office. The documents obtained by Vanderlaan bear this out. The invoice from Rostie lists York as the contact for Brilliante, and gives York's Email Address and a phone number and residential address that Aidelman identified as belonging to York. Aidelman testified he was not aware that his name had been used as a contact person on a second invoice from Rostie (though the address and email address information remained those of York).

[441] Aidelman testified that he had no involvement in creating Brilliante newsletters or promotional materials or the Brilliante website, had no involvement in creating the Brilliante Business Plan, and was not aware that it described him as having "extensive background and knowledge" in uranium mining, a claim that he described as a "lofty crock" (Hearing Transcript, June 6, 2011, p. 183, l. 21).

[442] Aidelman testified that he performed no work and had no involvement in Brilliante after incorporating the company and setting up the bank accounts and virtual office. He never communicated with prospective investors and never visited the Finch Location, of which he was unaware.

[443] Aidelman testified that he had no knowledge of five cheques from Alberta investors, totalling $95,000.00, that had been deposited into the Brilliante Account in September 2008 and obtained by Staff. The memo line on one $12,500 cheque reads "Common Share Purchase," while the memo line on a $50,000 cheque reads "Rio York". Aidelman testified that the signature on the deposit slips was not his own. Aidelman testified that a $37,500 cheque payable by Brilliante to Munket was one of the blank cheques he had signed and given to York when they opened the Brilliante Account; he did not make out the cheque, and was unaware of Munket.

[444] According to Aidelman, York was in charge of Brilliante and did not ask for his advice in making decisions. They had no agreement about how the company was to be run.

[445] Consistent with Aidelman's testimony, York admitted, in his compelled examination, that:

- he "may have" paid the fee to incorporate Brilliante (Transcript of Compelled Examination, January 28, 2009, p. 71, l. 23);
- he "may have" advanced money to Aidelman now and again, including money to set up a virtual office (Transcript of Compelled Examination, January 28, 2009, p. 79, ll. 6-13);
- he used York Rio Proceeds to purchase a vehicle for Aidelman;
- he also used York Rio Proceeds to pay off the credit card balances of Aidelman, Ungaro and McDonald;
- he introduced Aidelman to Runic, McDonald and people at the Capital Transfer Agency;
- the Brilliante Proceeds were first deposited into the Brilliante Account, then cheques were written on that account payable to Munket, of which he was the sole director;
- York wrote cheques on the Munket Account payable to 2180353, including, on one day, multiple cheques in amounts between $9,000 and $10,000;

- cheques drawn on the 2180353 Account payable to British Holdings (one of the Runic Companies);
- Brilliante raised $160,000 from nine investors;
- Runic retained approximately 72% of the Brilliante Proceeds; and
- Munket retained a percentage of the investor funds it received from Brilliante as a consulting fee or commission.

[446] Vanderlaan testified that emails were recovered from a computer that was seized during the execution of the search warrant on October 21, 2008, including an email from York's Email Address to McDonald, dated March 26, 2007, with the subject line, "Start putting everything together for the Brilliante company so we can have it on the web". The body of the email is as follows: "Denise, Further to our ongoing discussions and the previous info would you formulate the foundation info (logo, history etc.) for the website and come back to me as to the particulars for names, etc. as needed. I'd like to have this put together as soon as is practical given your schedule and the need for the website to be in place for potential investors. Liaise with Richard at investorrelations@yrrresources.com. ... Thanks, Victor York". Vanderlaan testified he found no such emails from Aidelman to McDonald.

[447] York attempted to explain this in his compelled examination by saying that he allowed Aidelman to use his computer, and any emails from his computer would appear to be from him. Aidelman admitted having access to York's computer but denied using it for Brilliante purposes. McDonald acknowledged receiving the email from York's email address.

(b) *Georgiadis and the Flow of Funds*

[448] Georgiadis testified that his role in the Brilliante Investment Scheme was similar to the role he played in the York Rio Investment Scheme: he worked for Runic, and received his instructions from Runic. He understood Aidelman to be the President of Brilliante and believed that Aidelman received 25 percent of the money raised after Runic took 75 percent.

[449] Approximately 72% of the Brilliante Proceeds ($114,500) was transferred from the Brilliante Account to the accounts of Dude and Munket which were York Companies, and from there, funds were transferred to, amongst others, the accounts of 2180353 and Vision, which were Georgiadis Companies, and from there to the accounts of British Holdings and NatWest, which were Runic Companies.

[450] Georgiadis's evidence at the Merits Hearing about 2180353 was consistent with York's testimony in his compelled examination. Georgiadis testified that he incorporated 2180353 and opened a bank account for it because Runic told him he would pay him half of one percent of all the money going into the account if he did so. Georgiadis claimed he did not tell York that he owned the 2180353 because Runic told him not to. According to Georgiadis, York would give him the cheques with the instruction to give them to Runic; instead, on Runic's instructions, and unbeknownst to York, Georgiadis deposited the cheques he received from York into the 2180353 Account before writing cheques on that account to British Holdings.

[451] We do not believe that York did not know that 2180353 was Georgiadis's company or that the cheques he was giving to Georgiadis were being deposited into the 2180353 Account. We find that York and Georgiadis attempted to emphasize the roles played by Aidelman and Runic while minimizing the role played by York in the Brilliante Investments Scheme. In our view, the most telling of York's admissions is that he was aware that Brilliante Proceeds flowed from Brilliante, which was purportedly Aidelman's company, through Munket to British Holdings. Consistent with that admission is Georgiadis's testimony at the Merits Hearing, when presented with an excerpt from the transcript of his compelled examination, that he was there, in the office, as his uncle's "eyes and ears" (Hearing transcript, March 23, 2011, p. 69, ll. 21-22).

(c) *Witnesses called by Staff*

[452] The evidence of Ungaro, McDonald and Brown was that their work for Brilliante was similar to and grew out of their work for York Rio. They also testified about Aidelman's involvement.

(i) McDonald

[453] McDonald testified that she first heard about Brilliante when Aidelman called her some time in 2007 or 2008 and asked her to put together a website for the company. She received instructions for the content of the website from email addresses belonging to Aidelman and York, though she testified that she understood the content came from Aidelman.

(ii) Ungaro

[454] Ungaro's testimony about Brilliante was consistent with McDonald's. She testified that she found out about the company through York and Aidelman and performed the same tasks for Brilliante that she did for York Rio.

(iii) Brown

[455] Brown testified that in doing the technical work in developing the Brilliante website, his only contact was with McDonald, who provided the content, although he believes Aidelman and York may have been copied on some of his emails from McDonald.

(d) *Findings on the Conflicting Evidence*

[456] Although the evidence about the roles played by Aidelman and York in the Brilliante Investment Scheme was not entirely consistent, we find that the evidence discussed at paragraphs 436-455 above provides compelling support for Staff's allegation that York orchestrated the Brilliante Investment Scheme and was the directing and controlling mind of Brilliante who authorized, permitted or acquiesced in the contraventions of Ontario securities law by Brilliante.

5. Analysis: York's role in the Brilliante Investment Scheme

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[457] We heard evidence that York, who was not registered with the Commission, engaged in numerous acts in furtherance of trades of Brilliante securities, including the following:

- he incorporated Brilliante or caused Aidelman to do so;
- he authorized McDonald and Brown to prepare the Brilliante website, and authorized the content to be posted on it, either directly or through Aidelman, who was only nominally in charge of Brilliante;
- he applied for a mailbox account for Brilliante at Rostie;
- he opened the Brilliante Account in Aidelman's name;
- he authorized Runic to pay the salespersons who sold Brilliante securities at the Finch Location and to pay for other expenses of the sales operation;
- he received the subscription agreements that had been completed by investors and returned to Brilliante, along with the investors' cheques, from Georgiadis;
- he caused the transfer of approximately 72% of the proceeds of the sale of Brilliante securities from the Brilliante Account, which he controlled, to the accounts of Dude and Munket, his companies, and wrote cheques on the Dude and Munket Accounts to the 2180353 Account, for subsequent transfer to accounts controlled by Runic; and
- he received consideration for the sale of Brilliante securities.

[458] We find that the accredited investor exemption from the registration and prospectus requirements was not available in respect of the trades and distribution of Brilliante securities.

[459] We find that York traded in Brilliante securities, without registration, in circumstances where no exemption from the registration requirement was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[460] We also find that York distributed Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[461] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[462] We find that York orchestrated the fraudulent Brilliante Investment Scheme as the successor to the York Rio Investment Scheme and that little changed, apart from the name of the company, the mineral purportedly being mined, and the aliases used by the salespersons. We find that York engaged or participated in a course of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors. York, directly or with the assistance of Aidelman, acting under his authority, incorporated Brilliante, applied for a mailbox account at Rostie, and opened the Brilliante Account. York instructed McDonald to "start putting everything together for the Brilliante company so we can have it on the web", and approved the

fraudulent content of the Brilliante website and promotional materials. He authorized the flow of funds from the Brilliante Account through the Dude Account and the Munket Account, to the 2180353 Account and the Vision Account, and further authorized Georgiadis to flow these funds to the accounts of the Runic Companies. York benefitted from the Brilliante Investment Scheme, as it appears he obtained approximately 28% of the proceeds that remained after the approximately 72% was flowed through to Runic.

[463] We find that from York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(c) *Directors and Officers: section 129.2 of the Act*

[464] Staff alleges that York, being a *de facto* director or officer of Brilliante, authorized, permitted or acquiesced in Brilliante's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act, contrary to section 129.2 of the Act and contrary to the public interest.

[465] For the reasons given at paragraphs 436-455 above, we find that York was the directing and controlling mind of Brilliante and that he authorized, permitted or acquiesced in Brilliante's non-compliance with Ontario securities law, contrary to section 129.2 of the Act and contrary to the public interest.

6. Conclusion

(a) *York Rio*

[466] We find that York traded in securities of York Rio, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[467] We find that York distributed securities of York Rio without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[468] We find that York made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[469] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest

[470] We also find that York, being a director and officer of York Rio, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest.

(b) *Brilliante*

[471] We find that York traded in securities of Brilliante, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[472] We find that York distributed securities of Brilliante without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[473] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[474] We also find that York, being a *de facto* director or officer of Brilliante, authorized, permitted or acquiesced in the contraventions subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

**D. Schwartz**

1. The Allegations

[475] Staff alleges that Schwartz:

- traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;
- being a director or officer of York Rio, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest.
- traded in securities while he was prohibited from doing so by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

2. The Evidence

(a) *Section 139 Certificates*

[476] Staff provided a Section 139 Certificate stating that Schwartz has never been registered under the Act. Schwartz admitted this when he testified at the Merits Hearing.

[477] Staff also provided a Section 139 Certificate stating that Debrebud has never been registered under the Act.

(b) *Schwartz and Debrebud*

[478] Staff obtained a Corporation Profile Report for Debrebud, which indicates that Debrebud was incorporated on September 22, 1999 and cancelled on June 7, 2008. Schwartz was listed as its sole director and President.

[479] Schwartz testified at the Merits Hearing. He made a number of substantial admissions of fact, and the focus of his defence was his submission that his activities did not implicate him in any non-compliance with Ontario securities law by York Rio. On cross-examination, Schwartz did not agree with Staff's suggestion that he was the directing and controlling mind of Debrebud. However, he admitted that he was the sole director, officer and shareholder of Debrebud, that Debrebud had no employees, that he was the only signatory on the Debrebud Account, and that no one else ever signed a cheque on the Debrebud Account.

[480] We accept that Schwartz was a director and officer of Debrebud, and we find that he was its directing and controlling mind.

[481] Staff alleges that Schwartz, acting through Debrebud, acted in the capacity of a director or officer of York Rio and authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law. Schwartz disputes that allegation, and characterizes his, and Debrebud's role, as that of "paymaster" for York Rio. Whether Schwartz, through Debrebud, was a third-party service provider for York Rio (like the entities that provided telephone or courier services, for example) or engaged in trades or acts in furtherance of trades in York Rio securities was the main dispute between Schwartz and Staff.

[482] Staff's evidence about the role that Schwartz and Debrebud played in the sale of York Rio securities came from Vanderlaan and Ciorma, who testified about the flow of York Rio investor funds through Debrebud, and from Friedman and Robinson, who testified about their observations of Schwartz's role in the York Rio office.

(c) Schwartz's Evidence at the Merits Hearing

(i) *The sale of York Rio securities at the Eglinton and Sheppard Locations*

[483] In his testimony at the Merits Hearing, Schwartz denied that he was a directing and controlling mind of York Rio. He testified that he did not make decisions for York Rio, did not have financial control of York Rio, did not have a management or operating role, and did not participate in any attempts by York Rio to acquire new property.

[484] On cross-examination by Staff counsel at the Merits Hearing, Schwartz made the following admissions:

- he admitted that York Rio securities were sold from the Eglinton and Sheppard Locations and that the vast majority of activity at both offices related to the sale of York Rio securities;
- he admitted that he and York had a verbal agreement that Debrebud would receive 70% of the money raised by York Rio, which he described as an "outsourcing fee"; from this amount, all York Rio expenses would be paid;
- he admitted that Debrebud received approximately $2.75 million from York Rio from March 8, 2005 to August 2, 2007, as shown on the Debrebud Account Summary, and that this amount is approximately 70% of $4 million, indicating that York Rio raised approximately $4 million during the Schwartz Period;
- he admitted that out of the 70% that he received, he paid all of York Rio expenses, including salaries and sales commissions, the rent at the Eglinton and Sheppard Locations, and the mailbox rent, at least 15 telephones (including long-distance charges), courier expenses, photocopy expenses and furniture;
- he stated that he believed 70% was a reasonable fee "in this day and age";
- he confirmed the evidence of Friedman and Robinson, that York Rio salespersons at the Eglinton and Sheppard Locations were paid a commission of 20% of the gross amount invested in York Rio;
- he admitted that, as shown in the Debrebud Account Summary, Debrebud paid $470,781.58 to Superior Home (Runic's company), and that these payments represented Runic's 20% commission on his sales of York Rio securities during the Schwartz Period, when Runic worked as a salesperson at the Sheppard Location; and
- he admitted that Debrebud paid $454,145.49 to Robinson and his company, and $174,906.16 to Friedman and his company during the Schwartz Period.

(ii) Amounts paid to or for the benefit of Schwartz and his family

[485] Schwartz admitted that money was paid out of the Debrebud Account to or for the benefit of himself or his family:

- he admitted that from March 9, 2005 to May 20, 2007, $143,900.48 was paid out of the Debrebud Account to himself or companies of which he is the officer and director, or was used to pay his credit card balances;
- he admitted that $456,000 was paid out of the Debrebud Account to his wife, $20,605 was used to or for the benefit of his son, and $30,300 was used to or for the benefit of his daughter;
- he admitted that another $131,930.91 was paid out of the Debrebud Account towards his wife's credit card balances; although he suggested that she may have been using her credit card to pay York Rio expenses or lending it to someone to pay York Rio expenses, he admitted she did no work for York Rio, he was unable to provide any details and he could not recall seeing any record of such expenses; and
- he admitted that $106,118.39 was paid out of the Debrebud Account in cash, but claimed he could not recall the purpose of those payments. He admitted that the only debit cards on that account belonged to himself, his wife and his daughter, and he had no knowledge that the account had been compromised.

[486] Schwartz claimed that some of the payments made by Debrebud to or for the benefit of himself or his family were loan payments or an untaxable deemed dividend. At several points in the Merits Hearing, he undertook to provide supporting documents, but none were provided.

[487] We find that the payments from the Debrebud Account described above, which totalled approximately $889,000, were made to or for the benefit of Schwartz and his family.

[488] The Debrebud Account Summary also indicates that Debrebud spent $556,188.79 for miscellaneous expenses from January 4, 2005 to October 1, 2008. Schwartz suggested, on cross-examination, that $400,000 of this amount was for telephone charges payable to Bell Canada, but this was not supported by the evidence. Schwartz confirmed that Bell Canada was York Rio's only telephone service provider, and the list of miscellaneous expenses includes only seven payments to Bell Canada, totalling $27,690.96. The miscellaneous expenses list, which covers 24 single-spaced pages of the Debrebud Account Summary, includes many entries for restaurants (for example, Swiss Chalet and the Unicorn Pub, which Schwartz testified were virtually next door to the Eglinton Location, the Golden Griddle, Cora's and Pizza Pizza), stores (Bayview Village, the Bay, Shoppers Drug Mart, Future Shop and Radio Shack, for example), gas, utilities (Bell Canada and Enbridge); financial services (Canada Life), as well as numerous service charges that appear to be ATM or other banking fees. The list also includes unattributed cheques and, on many days, there are multiple (usually 5 or 6) cash withdrawals in odd amounts, usually in the $400-600 range, consistent with salary payments.

(iii) Investors' responsibility

[489] Schwartz testified that the York Rio subscription agreement used during the Schwartz Period stated that the investment was for accredited investors, and that the York Rio qualifiers asked prospective investors whether they were accredited.

[490] Schwartz submits that "financial assets" include real estate, and he cross-examined the Investor Witnesses about their net assets, including their principal residence. He submitted that Investor Three, who he described as the only Investor Witness who invested during the Schwartz Period, was an accredited investor. We are not satisfied that Investor Three was an accredited investor. We also find that the accredited investor exemption from the registration requirement was not available with respect to trades of York Rio securities because York Rio was a market intermediary.

[491] Schwartz cross-examined the Investor Witnesses as to whether they had read the subscription agreement, and in general about their experience entering into contracts. He relied, in particular, on the subscription agreement signed by Investor Three on June 20, 2006, which, under "Representations, Warranties and Covenants of Subscriber", states that the Subscriber "represents, warrants and covenants to [York Rio] (and acknowledges that [York Rio], and its counsel, are relying thereon)" that, amongst other things, the subscriber had been independently advised as to restrictions on trading the shares imposed by applicable securities legislation, he has not requested and does need an offering memorandum, he relies solely on available published information relation to York Rio and not on any oral or written representation as to fact or otherwise made by York Rio, he is purchasing the shares under the accredited investor exemption, no securities regulator has reviewed or passed on the merits of the shares, there is no government or other insurance covering the shares, and there are risks associated with purchasing the shares.

[492] Schwartz stated, in his testimony, that if the York Rio investors had read the subscription agreement and the risk disclosure statement, they would not have invested "and I would not have walked away with these hundreds of thousands of dollars" (Hearing Transcript, August, 12, 2011, p. 35, ll. 8-10).

[493] Schwartz's attitude towards investors is best captured in the following exchange about the York Rio subscription agreement, which followed Staff counsel's suggestion that Schwartz's conduct amounted to misappropriation:

> A. Basically, if you want to get to the, you know, to the ugly mudslinging here, as I reviewed each one of these people up here, all the witness [sic], they're the ones who embezzled us because they should not have bought those securities in the first place.
>
> Q. You're blaming the investors?
>
> A. I'm blaming the investors that they didn't do their homework and they shouldn't have been involved in that exercise in the first place.
>
> Q. So what you're saying is, let me get this straight, everything is okay if you can separate somebody from their money. Is that correct?
>
> A. No, no, I didn't say that.
>
> ... .
>
> A. What I said is that the investors were supposed to have read the package and stick to what they represented and warranted that they're going to do, and had that happened, nobody would have been out of money and I wouldn't have made these hundreds of thousands of dollars and I wouldn't be sitting here for the last 25 days. That's what I said.
>
> Q. Looking at page 150 --

CHAIR: Did you say that it was the investors who embezzled you?

THE WITNESS: No, I did not say that, Commissioner.

CHAIR: Then I must have misheard it. We'll check the transcript.

THE WITNESS: I just said that from my point of view, I would not have made this fantastic amount of money through what is called pillaging and misappropriation had the investors done their proper homework and read a very simple four-page letter. It was not a twenty-five-page or a fifty-page form that you would expect from a Bay Street law firm. So it wasn't heavy reading for them. It's very plain, ordinary language, no legalese. It asked them to review this thing. Are you an accredited investor? Are you -- you're not going to rely on any phone business. You're just going to read the material. You undertake that you don't need any further information. You don't need any extra disclosure by an offering memorandum.

CHAIR: Yes. Yes.

THE WITNESS: And so I'm not saying that's their fault and it's okay to separate people from their money if they don't have to read something. I'm just saying that this extravagant wealth that I was supposed to have received, okay, was -- would not have been there had people done their proper homework. So it wasn't that I was out to slip one past them and hoping that they wouldn't read, you know, the representations and warranties.

CHAIR: That's the part I want you to explain a little bit more clearly. If they had read these documents and risk disclosure statements that you have described, you say you would not have made the extravagant money?

THE WITNESS: Yeah.

CHAIR: Why would you not have made the extravagant money?

THE WITNESS: Because then most of these witnesses that we saw and others, probably, you know, on the law of probabilities, they would have just hung up and say, you know, I can't see that in the material that you sent me, sir. You know, if there's going to be a takeover, how come -- if there's going to be such a large takeover, how come it's not in the form? Why isn't it disclosed? Why is there no press release for that?

CHAIR: As I understand what you're saying, is had they read the risk disclosure statement, they would not have invested?

THE WITNESS: Exactly, and I would not have walked away with these hundreds of thousands of dollars.

(Hearing Transcript, Aug. 12: 31-35)

[494] We consider Schwartz's disregard of his obligations towards York Rio investors to be egregious conduct.

(iv) Summary of Schwartz's Testimony

[495] In summary, Schwartz admitted that he entered into an agreement with York that Debrebud would sell York Rio securities in return for approximately 70% of the proceeds; that York Rio paid Debrebud approximately $2.75 million out of the proceeds of the sale of York Rio securities during the Schwartz Period, out of which amount Debrebud paid the expenses of the Eglinton and Sheppard Locations, including salaries and commissions to the salespersons selling York Rio securities, as well as payments of approximately $889,000 to or for the benefit of himself and his family.

[496] The dispute between Schwartz and Staff relates to the legal consequences of these admissions. Schwartz submits that he was a "payroll master" or "agent" of York Rio or performed an "outsourced" sales function for York Rio. He submits that Friedman, Robinson, Ungaro and McDonald supported his evidence on this point.

(d) *Witnesses called by Staff*

(i) Friedman

[497] Friedman testified that he has known Schwartz and his family for well over 25 years.

[498] Friedman testified that he worked with Schwartz in relation to the sale of Euston securities at the Eglinton Location. According to Friedman, he performed an administrative and clerical role at Euston, sending out promotional material to potential investors.

[499] In late 2005, Schwartz told him that the Euston project was no longer proceeding and that they would be involved in a new project, York Rio, which was involved in alluvial diamond mining in Brazil. York Rio operated out of the same office (the Eglinton Location) and Friedman performed the same administrative function.

[500] Friedman described himself as administrative assistant to Schwartz. He testified that he never spoke to investors. His role was to send out the subscription agreements to prospective investors who had been identified by the salespersons, and to receive the signed subscription agreements and investor cheques (Investor Packages), which he would pass on to Schwartz, after making note of the amount invested. Friedman kept records of sales on a week-by-week basis, so that Schwartz would know what to pay each salesperson.

[501] Friedman testified that Schwartz did not call investors. Friedman testified that he observed Schwartz giving the Investor Packages to York, and he understood that York would then pay 70% of the amounts raised to Schwartz, keeping 30% for himself. He testified that he saw York pass cheques to Schwartz in the office many times. From the 70%, Schwartz paid the qualifiers and salespersons, as well as the rent and all other office expenses. Schwartz paid the salespersons by cheque for 20% of the amount invested. Friedman was also paid by cheque, signed by Schwartz, on the Debrebud Account. He testified that he received a salary of approximately $300 per week plus a bonus (or “override”) of 2 or 3% of the amounts raised at the Eglinton Location.

[502] Friedman testified that he had no power to hire or fire anyone. Schwartz was in charge of staffing the office. It was Schwartz who ran the sales operation at the Eglinton Location.

[503] Friedman testified that when the Eglinton lease came to an end, Schwartz found the Sheppard Location, though Friedman visited it to see if it was suitable and arranged the logistics of the move, and Robinson signed the lease. Again, it was Schwartz who was in charge of the sales operation at the Sheppard Location. He was the boss, and did not report to anyone else on a day-to-day basis. He dealt with any questions or concerns, and he was “the authoritative person in the office”.

[504] Friedman testified that after York Rio ceased operating, Schwartz told him that it was no longer necessary to retain the computer records of York Rio sales, since York had the originals. Friedman removed the files on those instructions.

[505] To summarize, Friedman testified that Schwartz:

- recruited him for the York Rio operation;
- was in charge of staffing the office;
- received Investor Packages and passed them on to York;
- received 70% of the proceeds back from York, from which amount he paid Friedman and the qualifiers and salespersons at the Eglinton Location, as well as the office expenses;
- dealt with any questions or concerns; and
- instructed him to destroy the computer records of York Rio sales.

[506] On cross-examination, Schwartz questioned Friedman about his 25 years of experience in sales and marketing, suggesting that Friedman was not an administrative assistant but a sales manager at the Eglinton and Sheppard Locations. In response, Friedman insisted “It was your office. They were your salespeople. They were your responsibility” (Hearing Transcript, June 6, 2011, p. 77, ll. 10-11).

[507] Schwartz also challenged Friedman on his testimony that it was Schwartz who hired the salespersons for the Eglinton Location, suggesting instead that the Euston staff had simply switched offices, moving from the Euston sales office on St. Clair Avenue, in Toronto, to the Eglinton Location. Friedman insisted that it was Schwartz who selected the salesmen who would come with him from Euston.

[508] Though Schwartz questioned Friedman at length in an attempt to secure a retraction, Friedman repeatedly insisted that Schwartz was "not just paying people cheques" but was "in charge of the office", had the accountability for the office, and provided and paid for the office space, desks, telephones, couriers, promotional material and other tools for use by the salespersons. He rejected Schwartz's suggestion that he, Friedman, kept track of the office expenses, and stated that he would pass bills onto Schwartz.

[509] Schwartz submitted that Friedman's evidence at the Merits Hearing was inconsistent with his compelled testimony, which included statements, for example, that he did not know how Schwartz filled his day.

[510] Schwartz also argued that Friedman's evidence about his role and his remuneration is inconsistent with the Debrebud Account Summary, which shows that Debrebud paid Friedman and his company $174,906.16 from March 21, 2005 to June 21, 2007.

[511] We are not persuaded that the amount Friedman received, paid over approximately 28 months, is inconsistent with his testimony that he received a salary of approximately $300 per week plus an "over-ride" of 2-3% of the proceeds of the sales made by York Rio salespersons at the Eglinton and Sheppard Locations. In contrast, we find that Debrebud paid approximately $889,000 to or for the benefit of Schwartz or his family over about the same period, which strongly suggests, in our view, that Schwartz had a much more central and directing role in the York Rio operation.

[512] Although Friedman may have minimized his role in the York Rio Investment Scheme, we find that his evidence, considered as a whole, supports Staff's allegation that Schwartz was the ultimate authority at the Eglinton and Sheppard Locations during the Schwartz Period.

(ii) Robinson

[513] Robinson testified that he was introduced to Schwartz in around 2002, and he went to work for him two to three months later in marketing a company called Alliance Explorations. He later worked for Schwartz, Friedman and others in selling shares of Euston. In around November 2005, Schwartz hired him to sell York Rio securities from the Eglinton Location, and he continued to work as a York Rio salesperson when the operation moved to the Sheppard Location in late 2005 or early 2006. He testified that he stopped selling York Rio securities in June 2007, on York's instructions.

[514] Robinson testified that he was paid a commission of 20% of the amount invested, if he had "opened" the account (made the first sale), 10% if someone else had opened the account. He was paid by cheque, generally written on the Debrebud Account, and handed to him by Schwartz, and occasionally by Friedman. He testified that he received approximately $454,000 from the Debrebud Account, and kept about $250,000 for his own purposes. Some of the money he received was for qualifiers who asked him to cash their cheques for them, and he owed some money to Schwartz.

[515] Robinson testified about the roles played by Friedman, Schwartz, York and Runic. He testified that Friedman generally ran the office, interviewed job applicants, provided the contact lists that Robinson and the other salespeople would use in calling prospective investors, and authorized anything going out of the office to prospective investors. Friedman prepared a script, together with Robinson. Friedman also provided the weekly sales records for Schwartz, who would use them to make out the commission cheques for the salespersons.

[516] However, Robinson testified that Friedman reported to Schwartz. Schwartz had an office at the Eglinton and Sheppard Locations, and it was Schwartz who was probably ultimately in charge, although it wasn't always clear. Schwartz answered the salespersons' questions about York Rio. In late 2006, Schwartz, along with Runic, asked Robinson to sign the lease for the Yonge Location.

[517] Robinson described Schwartz's role as paying the salespeople, and agreed with Schwartz's description of his role as "payroll contractor", a firm that acts as a third party for paying salaries and expenses. He agreed with Schwartz's suggestion that York had "outsourced" the sales function.

[518] Robinson attempted neither to minimize his own or Friedman's role in the sale of York Rio securities nor to maximize Schwartz's. In cross-examination, he agreed with Schwartz's characterization of Schwartz's role as "payroll contractor", but this did not detract from the main point he made in his evidence in chief – that it was Schwartz who was ultimately in charge of the York Rio sales operation at the Eglinton and Sheppard Locations. We accept Robinson's evidence.

(iii) Ungaro

[519] Ungaro testified that Schwartz ran the sales operation at the Eglinton Location and later the Sheppard Location. She acted as a liaison between York and Schwartz. She did not have an office at either location, but occasionally visited Schwartz at the Eglinton Location and may have visited him at the Sheppard Location to deliver messages on York's behalf. In particular,

she testified that when Schwartz wanted to receive more shares of York Rio for his own purposes, she relayed York's refusal to him.

[520] On cross-examination, Schwartz suggested to Ungaro that his request for 10 million shares of York Rio was related to the expulsion of Jbeily, but Ungaro testified that she was unable to recall.

[521] Ungaro's evidence does not assist Schwartz, and indeed, supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

(iv) McDonald

[522] McDonald testified that she met Schwartz once and understood him to be "the sales arm of York Rio". However, on cross-examination by Schwartz, she admitted that she had no direct knowledge about his role, and that it was Friedman she communicated with when setting up investor access to the Investor Lounge pages of the York Rio website.

[523] McDonald's evidence does not assist Schwartz.

(v) Jbeily

[524] Jbeily testified that in mid-2005, York took him to an office on Eglinton and introduced him to Schwartz, who York described as someone they might have to use to raise money for York Rio.

[525] Jbeily's evidence supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[526] Staff does not allege and we received no evidence that Schwartz communicated directly with investors or prospective investors to solicit or complete sales of York Rio securities. There is no evidence that Schwartz had any role in preparing the York Rio Business Plan or any other promotional documents given to investors and posted on the website. There is also no evidence that he hired, trained or supervised York Rio qualifiers or salespersons.

[527] Schwartz submits that, through Debrebud, he acted as an "outsourced" payroll administrator, and he compares his role to that of a third-party service provider. He also submits that he did not receive or deposit monies from York Rio investors but only received and deposited monies from York Rio, the issuer of the securities. He submits that his activities did not require registration, and, that he worked behind a "firewall" in order to avoid engaging in registrable activities.

[528] We find that Schwartz's evidence, when considered as a whole, makes a compelling case for his having played an integral role in the York Rio Investment Scheme during the Schwartz Period. For example:

- he testified that he relied on what he understood to be a *bona fide* conveyance of mineral rights, pursuant to the July 2004 Contract between York Rio and Nova, which he had been given by York;
- he admitted that he hired Friedman, who had worked with him previously, and testified that Friedman was in charge of the office;
- he admitted that he had seen the York Rio subscription agreement that was sent out to prospective investors, and he admitted that he relied on the completed subscription agreements that were received from investors;
- he admitted relying on the private issuer exemptions, stating: "I was confident and [*sic*] still confident to this day that I made use of the private exemptions, and every deed and act done in Debrebud was within the confines of the law." (Hearing Transcript, August 12, 2011, p. 72, ll. 5-8);
- he admitted that "we were engaged in raising money for York Rio" (Hearing Transcript, August 11, 2011, p. 101, ll. 10-11); and
- he admitted that Debrebud "could be construed as an agent" in connection with the sale of the securities through the outsourcing by York Rio (Hearing Transcript, August 12, 2011, p. 73, ll. 20-21).

[529] In addition, the evidence of Friedman, Robinson, Ungaro and Jbeily supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

[530] We place particular importance on Staff's evidence as to the flow of funds, which Schwartz admitted. Schwartz admitted that Debrebud received 70% of the proceeds of the sale of York Rio securities – approximately $2.75 million – during the Schwartz Period. Of this amount, we find that approximately $889,000 (approximately 22% of the York Rio Proceeds during the Schwartz Period) was paid to or for the benefit of Schwartz or his family. These amounts are inconsistent with Schwartz's characterization of Debrebud's role as merely that of "payroll contractor" or "paymaster" and provide compelling evidence that Debrebud, and Schwartz, played an integral role in the York Rio Investment Scheme.

[531] Considering the evidence as a whole, including Staff's evidence as to the flow of funds, Schwartz's admissions, and the evidence of Friedman, Robinson, Ungaro and Jbeily, we find that Schwartz played an integral role in the York Rio Investment Scheme. We do not accept Schwartz's submission that he avoided personal responsibility by operating through Debrebud (of which he is the sole owner, director and officer) or by receiving monies from York Rio, rather than directly from investors. We find that Schwartz had overall authority for the sales of York Rio securities at the Eglinton and Sheppard Locations during the Schwartz Period, and we find that he did this acting in concert with York. We find that he has made a deliberate attempt to circumvent the provisions of the Act, and has failed to do so. We find that Schwartz engaged in numerous acts in furtherance of trades of York Rio securities during the Schwartz Period.

[532] Although we received insufficient evidence to determine whether Investor Three was an accredited investor, this does not assist Schwartz, who failed to establish that the approximately $4 million of York Rio securities that were sold during the Schwartz Period were sold only to accredited investors. We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to the trades of York Rio securities.

[533] We find that Schwartz traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest. We also find that Schwartz distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission, and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[534] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[535] Staff alleges that Schwartz engaged or participated in securities fraud, contrary to section 126.1(b) of the Act and contrary to the public interest, by participating in the York Rio Investment Scheme during the Schwartz Period.

[536] Schwartz submits, with respect to the *actus reus* of fraud, that, during the Schwartz Period:

- There was no reasonable expectation of York Rio's demise at that time. York Rio engaged sufficient expertise in mining personnel, and produced viable plans and reports of the property.
- York Rio did not claim that it owned an operating mine or was extracting diamonds but claimed that it owned mineral rights, and was in exploration mode with a seven-stage plan of development. It issued forecasts and budgets, clearly marked as such.
- The funding needs of York Rio's start-up operation, known to the investors through the published plans, were met, so that their investment was not at any greater risk than the normal industry risk that was disclosed by York Rio.
- Prospective investors were cautioned in writing to rely only on documented information from York Rio and not to rely on representations from anyone else.
- There was no detriment to or deprivation of investors. The mining rights were acquired with the investors' money, as represented.
- All payments to Debrebud were properly authorized by York Rio. There was no unauthorized use or diversion of investors' funds.
- There is no legal restriction on the amount of fees or commissions that may be charged, and there is no evidence that the 70% fee paid to Debrebud put investors' funds at risk. York Rio had sufficient money to fulfill its phased plans, and Debrebud's 70% fee was partially spent on bona fide York Rio corporate expenses.

[537] With respect to the *mens rea* of fraud, Schwartz submits that there is no evidence that he was aware of any risk to the interests of York Rio investors or that he was wilfully blind or reckless as to his conduct and the truth or falsity of any statements

made to York Rio investors. He also submits: "Knowledge of any risk would have required a clear reading of the proverbial crystal ball, that is that with foreknowledge and malice, I knew the mining project was doomed. If it is indeed doomed then it was not by any one's [*sic*] design. The Commission's intervention was the termination of the mining project."

[538] We find that Schwartz played an integral role in perpetrating the York Rio Investment Scheme fraud during the Schwartz Period. In making this finding, we give significant weight to the evidence that Debrebud received and disbursed approximately 70% of the York Rio Proceeds during the Schwartz Period, that Debrebud disbursed approximately $889,000 to or for the benefit of Schwartz and his family during the Schwartz Period, and that Schwartz was unable to explain the over $500,000 of miscellaneous disbursements out of the Debrebud Account, which included numerous payments at restaurants and retail stores. We find that these are not the business practices of a legitimate third-party service provider.

[539] Although we find that the flow of funds evidence is sufficient to establish Schwartz's direct and knowing participation in the York Rio Investment Scheme, this conclusion is also supported by Schwartz's admissions about his ongoing involvement in the direction and control of the sale of York Rio securities, and by the evidence of Robinson and Friedman about Schwartz's directing role at the Eglinton and Sheppard Locations during the Schwartz Period.

[540] The Commission's fraud cases have affirmed that in considering the mental element of fraud, a respondent's state of mind may be inferred from the totality of the circumstances (*Re Lehman Cohort*, above, at paragraphs 93-94; *Re Goldpoint*, above, at paragraphs 140-141; and *Re Maple Leaf*, above, at paragraph 319). Despite Schwartz's careful attempts to characterize his and Debrebud's role as that of "payroll contractor", we find that the evidence as to the flow of York Rio investor funds through Debrebud is entirely inconsistent with the role of a legitimate third-party service provider and provides compelling evidence that Schwartz knowingly played a direct and central role in the fraudulent scheme. In any event, the best evidence of Schwartz's state of mind may come from Schwartz himself (see paragraphs 492-493 above).

[541] We find that Schwartz engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(c) *Directors and Officers: section 129.2 of the Act*

[542] Schwartz was not a director or officer of York Rio, and he denies that he acted in the capacity of a director or officer of York Rio. He testified that he did not make decisions for York Rio, did not have financial control of York Rio, did not have a management or operating role, and did not participate in any attempts by York Rio to acquire new property. He submits that he was not a directing and controlling mind of York Rio and did not exercise any delegated executive authority with respect to York Rio.

[543] We find that during the Schwartz Period, Schwartz was a *de facto* officer of York Rio, as defined in the Act, because he performed functions similar to those of an officer, such as a general manager, chief operating officer or comptroller at various times. We find that Schwartz, who had an office at the Eglinton and Sheppard Locations and attended every day, was far more than a "paymaster" or service-provider. He hired Friedman and Robinson, amongst others. He was aware of the sales activity at the Eglinton and Sheppard Locations during the Schwartz Period, and he was ultimately in charge of the sales operation. He relayed Investor Packages to York, and received 70% of the York Rio Proceeds during the Schwartz Period, from which he authorized payment of York Rio's expenses, including commissions for York Rio salespersons, and approximately $889,000 to or for the benefit of himself and his family. We find that Schwartz played a central and integral role in the York Rio Investment Scheme during the Schwartz Period.

[544] For all the reasons given, we find that Schwartz, being a *de facto* officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest.

4. Breach of the Euston Order: subsection 122(1)(c) of the Act

(a) *The Allegations*

[545] Staff alleges that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act, by trading in York Rio securities at a time when he was prohibited from trading in any securities as a result of the Euston Order.

[546] The Euston Order was issued on May 1, 2006 and was continued on May 11, 2006, June 9, 2006, October 17, 2006, December 4, 2006, March 20, 2009 and April 1, 2009. It prohibited all trading in securities of Euston, prohibited Schwartz and Euston from trading in any securities, and made any exemptions contained in Ontario securities law inapplicable to Euston and Schwartz. On July 29, 2009, the Commission prohibited trading in any securities by or of Euston or Schwartz for ten years, prohibited the acquisition of any securities by Euston or Schwartz, and made any exemptions contained in Ontario securities

laws inapplicable to Euston and Schwartz for ten years, ordered Schwartz to resign any position he holds as a director or officer of an issuer, and prohibited Schwartz from becoming or acting as a director or officer of any issuer for a period of ten years.

(b) *Schwartz's Submissions*

[547] Schwartz submits that the Euston Order expired precisely at the commencement of the temporary order hearing on June 9, 2006 at 10:00 a.m. and, once expired, could not be continued by the Commission. He submits that because the May 11, 2006 order continued the Euston Order until June 9, 2006 and set a return date for the same day, there was a lapse in coverage that could not be remedied because of subsection 127(6) of the Act, which states: "The temporary order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission." Schwartz does not accept that the Commission had the authority to continue the Euston Order at the conclusion of the June 9, 2006 hearing.

(c) *The Evidence*

[548] In his testimony at the Merits Hearing, Schwartz admitted that:

- he was aware that the Euston Order was issued on May 1, 2006 (Hearing Transcript, August 11, 2011, p. 113, ll. 16-19);
- he was aware that the Euston Order was continued on May 11, 2006 (Hearing Transcript, August 11, 2011, p. 113, ll. 20-24);
- he was aware that on June 9, 2006, the Commission made a further order against him, continuing the Euston Order until October 17, 2006 (Hearing Transcript, August 11, 2011, p. 113, l. 25- p. 114, l. 17);
- he "may have consented" to the continuation of the Euston Order on June 9, 2006, as is stated in a recital in the order (Hearing Transcript, August 11, 2011, p. 71, ll. 6-9);
- he was aware that on October 17, 2006, at a time when he was represented by counsel, the Commission made a further order continuing the Euston Order in writing, which order states, in a recital, that it was made on consent (Hearing Transcript, August 11, 2011, p. 116, l. 24 - p. 117, l. 6);
- he was aware that on December 4, 2006, the Commission made a further order against him continuing the Euston Order, at the conclusion of a hearing that was attended by his counsel, who told the Commission that the continuation of the Euston Order had been consented to until that time (Hearing Transcript, August 11, 2011, p. 121, l. 23 – p. 122, l. 5, p. 194, ll. 18-22; Exhibit 18);
- the Euston Order prohibited him from trading in any securities, and none of the exemptions available in the Act were to apply to him (Hearing Transcript, August 11, 2011, p. 114, l. 18 – p. 115, l. 4);
- he did not contact the Commission or seek legal advice as to whether the Euston Order remained in place after June 9, 2006 (Hearing Transcript, August 11, 2011, p. 116, ll. 8-20, p. 123, l. 24 – p. 124, l. 7); and
- he did not apply for a variation of the Euston Order pursuant to section 144 of the Act (Hearing Transcript, August 11, 2011, p. 123, l. 24 – p. 124, l. 7).

[549] Schwartz does not dispute that the Euston Order was in place from May 1, 2006 to June 9, 2006 (the "**Undisputed Period**"), and that York Rio securities were traded during the Undisputed Period:

> Q. ... So you have no issue with respect to the fact that the order was in place on May the 1st, 2006 and June the 9th, 2006. At least we agree on that, correct?
>
> A. Yes, we do.
>
> Q. Did Debrebud or York Rio participate in the sale of any securities during that period of time?
>
> A. Debrebud? Yes.
>
> Q. All right. So in other words, Debrebud was involved in raising capital for York Rio during the period of time that you do not dispute. Correct?
>
> A. During the time that I do not dispute?

Q. That being May the 1st, 2006 to 6 June the 9th, 2006 at 9:59 a.m.

A. Yes.

(Hearing Transcript, August 11, 2011, p. 122, l. 15 – p. 123, l. 8)

[550] Questioned about an entry in the York Rio Account Summary showing a deposit of $30,000 from an Alberta investor on May 24, 2006, Schwartz responded by saying "Yes, but Debrebud was not cease traded at that point, only I was, and I dispute that I was trading" (Hearing Transcript, August 11, 2011, p. 126). This was one of ten deposits into the York Rio Account between May 1, 2006 and June 9, 2006, and money flowed from that account to Debrebud during that same period.

[551] The Debrebud Account Summary indicates that approximately $77,573.92 was transferred from the York Rio Account to the Debrebud Account during the Undisputed Period in eight transactions from May 3, 2006 to June 8, 2006. It also shows that Debrebud made payments to Friedman and Robinson and to or for the benefit of Schwartz and his family during the Undisputed Period.

[552] For the reasons given above, we find that Schwartz was the directing and controlling mind of Debrebud and engaged in numerous acts in furtherance of trades in York Rio securities during the Schwartz Period. We do not accept Schwartz's submission that his activities through Debrebud were immune from the effect of the Euston Order.

(d) *Analysis*

[553] We do not accept Schwartz's interpretation of the temporary order provisions of the Act. We find that subsection 127(6) of the Act must be read together with subsection 127(5), which authorizes the Commission to make certain temporary orders without a hearing (*ex parte*) if, in the opinion of the Commission, the length of time required to conclude a hearing could be prejudicial to the public interest. In these circumstances, subsection 127(6) requires that the *ex parte* order, which takes effect immediately, shall expire on the fifteenth day unless extended by the Commission, and subsection 127(7) authorizes the Commission to extend the temporary order until the hearing is concluded if a hearing is commenced within the fifteen-day period.

[554] Applying those provisions to this case, the Euston Order was issued *ex parte* on May 1, 2006, pursuant to subsection 127(5) of the Act, and a Notice of Hearing was issued on May 2, 2006, setting a return date of May 11, 2006, which was within the 15 days set out in subsection 127(6) of the Act. At the May 11, 2006 hearing, the order was continued "until the June 9, 2006 hearing or until further order of the Commission." The 15-day rule set out in subsection 127(6) of the Act had no further application in this case after May 11, 2006.

[555] We note that the May 11, 2006 order did not say that the order was continued "until June 9, 2006, at 10:00 a.m." or "until the start of the June 9, 2006 hearing" but "until the June 9, 2006 hearing or until further order of the Commission." In our view, the May 11, 2006 order was intended to remain in place until the Commission made a further order at the conclusion of the hearing on June 9, 2006, which the Commission did.

[556] We find that Schwartz engaged in numerous acts in furtherance of trades in York Rio securities, contrary to the Euston Order, during and after the Undisputed Period. With respect to Schwartz's submission that because the Euston Order prohibited him from trading but not from acquiring securities, it would not apply to a reverse takeover, it is sufficient to note that Debrebud received 70% of the proceeds of *sales* of York Rio securities during the Undisputed Period, and at no time did York Rio embark on a reverse takeover. Nor do we accept Schwartz's submission that any change in the Commission's general approach to temporary orders practice reflects a view that a temporary order expires at 12:01 a.m. on the day of the hearing, or that it expires at the start of any temporary order hearing.

[557] We find that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

5. Conclusion

[558] We find that Schwartz traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[559] We find that Schwartz distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[560] We find that Schwartz engaged or participated in a course of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[561] We also find that Schwartz, being a *de facto* officer of York Rio during the Schwartz Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest.

[562] Finally, we find that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

**E. Runic**

1. The Allegations

[563] Staff alleges that Runic:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and
- being a director or officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

2. The Evidence

(a) *Identification of Runic as "Richard Turner", "Richard Taylor" and "John Taylor"*

[564] The photograph from Runic's driver's licence was shown to Georgiadis and Hoyme, who testified during the first week of the Merits Hearing. Georgiadis testified that he knew the person in the photograph as "Richard Turner" or "Richard Taylor". Hoyme testified that she knew the person in the photograph as "Richard Turner".

[565] During his compelled examination, Runic admitted that he used the name "Richard Turner" when he spoke to "clients" of York Rio at the Sheppard, Yonge and Finch Locations, that he used "John Taylor" when he signed the application for the mailbox rental in April 2008 and that he used "Richard Taylor" when he signed the lease for the Finch Location in June 2008.

[566] Based on this evidence, we are satisfied that "Richard Turner", "Richard Taylor" and "John Taylor" were aliases used by Runic while he worked at the Sheppard, Yonge and Finch Locations.

(b) *Section 139 Certificate*

[567] Staff provided a Section 139 Certificate stating that Runic has never been registered under the Act.

(c) *Staff Investigators*

[568] Vanderlaan and Ciorma gave the following evidence about the flow of funds from York Rio and Brilliante securities to Runic and individuals and companies associated with Runic.

(i) The Superior Home Account

[569] From Oct. 7, 2004 to Oct. 30, 2008, $9,224,325.53 was deposited into the Superior Home Account, including:

- $470,781.18 from Debrebud; and
- $8,753,544.35 from companies controlled by York – $7,123,276.15 from Evason, $1,478,932.30 from Big Brother, $105,139.78 from Munket, and $46,196.12 from YRR Holdings Inc.

[570] The registered address of Superior Home is the office of Koch Inc. From June 4, 2007 to October 22, 2008, approximately $2,687,000 was transferred from the Superior Home Account to the trust account of Koch Inc. (the "**Koch Account**"), which was controlled by Koch.

[571] Another $3,800,000 was transferred from the Superior Home Account to the account of Palkowski Law (the "**Palkowski Account**"), in three transactions in September and October 2008 (September 30, October 3 and October 20, 2008). The Palkowski Account also received $1 million which was transferred from the Koch Account in two transactions (October 6 and October 22, 2008).

[572] The Superior Home Account was also used as a York Rio payroll account, including payments to Bassingdale, Demchuk, Oliver's Spouse and Valde. Over $2 million was taken out of the Superior Home Account in cash, and $21,974.50 went to Runic.

(ii) The Koch Account

[573] Approximately $2,687,000 was transferred from the Superior Home Account to the Koch Account from June 4, 2007 to October 22, 2008. Transfers out of the Koch account included $1 million to the Palkowski Account in two transactions ($900,000 on October 6, 2008 and $100,000 on October 22, 2008), $893,328.20 to the Blue Star Account between January 18 and September 16, 2008, and, $581,858.14 to or for the benefit of Siegel in the summer of 2007.

(iii) The Palkowski Account

[574] Approximately $4.8 million was transferred from the Superior Home Account to the Palkowski Account in September and October 2008. In early 2009, these funds were frozen by order of the BCSC.

(iv) The Blue Star Account

[575] Koch is registered as the director of the numbered company (0796249 B.C. Ltd.) carrying on business as Blue Star, which was incorporated on February 1, 2008. Koch (as President) and Siegel are the signing officers on the Blue Star Account. A total of $893,328.20 was transferred from the Koch Account to the Blue Star Account from January 18 to September 16, 2008. The Blue Star Account was used as a payroll account, with payments going to Bassingdale ($67,658.42), Demchuk ($201,833.74), Oliver's Spouse ($53,543.54) and Valde ($75,585.03), as well as to Siegel ($6,100) and Palkowski ($5,700), amongst others.

(v) The British Holdings Account

[576] Money from investors was deposited into the Brilliante Account, and was then transferred to the Munket Account (controlled by York), and from there to the 2180353 Account (controlled by Georgiadis). From the 2180353 Account, $56,000 was transferred to the British Holdings Account. British Holdings was incorporated in B.C. on September 26, 2008, with Koch as director. Koch, as President and Secretary of British Holdings, and Runic, are the signing officers on the British Holdings Account, which was opened on October 7, 2008.

(vi) Siegel and the 0795624 Account

[577] Siegel appears to have been associated with the flow of funds. She was listed as a signing officer on the Superior Home Account and the Blue Star Account and received money from both accounts. In July 2007, the Aurora Property was purchased in her name with $534,875 sent from the Koch Account to a Richmond Hill law firm. A numbered B.C. company (0795624) of which Koch is the sole director placed a lien of $525,000 on the Aurora Property immediately after it was purchased. Staff registered a certificate of direction to the Land Registry office in respect of the Aurora Property on July 7, 2009.

(d) Runic's Compelled Examination

[578] Staff was unsuccessful in its attempts to serve Runic before the Merits Hearing began. On April 5, 2011, at the beginning of the sixth day of the Merits Hearing, Staff advised that Runic had recently been located and been served with a

summons to attend at the Commission for examination under section 13 of the Act. Runic attended for compelled examination, with counsel, on April 20 and May 4, 2011, and the transcript was admitted in evidence. Runic did not attend or testify at the Merits Hearing.

[579] In his compelled examination, Runic made the following admissions and gave the following testimony about his involvement in the sale of York Rio securities:

- He has never been registered with the Commission. He did not finish high school and his previous work involved multi-level marketing.
- In 1999, he moved to Vancouver and incorporated Anyphone, which later became Superior Home, to sell prepaid long distance phone cards from vending machines. He continued the business until about 2003, but then returned to multi-level marketing. He moved back to Toronto in 2005.
- In October 2006, he answered an ad in the newspaper for Debrebud, which he described as the marketing arm for York Rio. After meeting with Friedman and Schwartz at the Sheppard Location, he was hired as a salesman to sell York Rio securities. He started the following week.
- He identified himself as "Richard Turner" when he interviewed for the job because he did not know whether this was a legitimate company and he knew there were a lot of unregistered and unscrupulous investment companies in Toronto. He also used the named "Richard Turner" when he contacted clients of York Rio.
- He called investors across Canada, but not in Ontario. He was told that there was a limit of 29 investors for a private placement in Ontario and that York Rio had reached that limit.
- He was not involved in determining whether a prospective investor was an accredited investor – this was the job of the qualifiers, who worked in a different room. The qualifiers would fill out lead cards, which would be given to Friedman and handed on to Runic and the other salesmen ("openers") to make the initial sale; "loaders" would later contact investors to solicit additional sales.
- When he started selling York Rio securities, he was given several scripts, as well as marketing materials, newsletters and other print-outs from the York Rio website. He relied on the materials provided. He had no direct knowledge about whether any of this information was true.
- He told prospective investors that York Rio had a diamond mine, and in late 2006, he was told that the mine was in production, which he passed on to prospective investors.
- He was also told that York Rio was negotiating for a buyout or merger. He was aware that a March 2007 York Rio newsletter stated that York Rio had completed negotiations for the purchase of additional land and had been approached with a merger offer.
- He had nothing to do with any mining operations for York Rio. He told Staff: "The only thing I did for York Rio was raise money, hire other salesmen to raise money, period, and pay out commissions to those salesmen, give them a home to work in, period." (Transcript of Compelled Examination, May 4, 2011, p. 337, ll. 2-5) Nor was any part of the money he received for selling York Rio securities used to develop the mining operation, and there was no discussion of this.
- He identified a number of York Rio scripts that were used by York Rio salesmen. He agreed with Staff's suggestion that the scripts were "full of lies", including the following:
    - "I am a venture capitalist."
    - "We look at about 80 to 100 proposals every year from companies all over the globe."
    - "So naturally they come to people like us who have thousands of clients in our portfolio, hundreds of millions under management and a ROCK-SOLID track record."
    - "I only get shares as payment for my services."
    - "Phase Two: The Production Phase: Currently in production and selling Diamonds to generate revenues."

- various claims that the salesperson was previously involved in successful private placements in the past – Diamond Fields International Ltd. ("**Diamond Fields**") Resources, Petrolifera Petroleum Limited ("**Petrolifera**") or Aurelian.

(Transcript of Compelled Examination, April 20, 2011, p. 131, ll. 12-15)

- Runic claimed he did not personally use the scripts, but knew that the salesmen did. Some created their own scripts. He admitted he was condoning people lying to investors. He also admitted personally telling prospective investors that he had been involved in taking Aurelian public, which was not true.

- During the Schwartz Period, Runic was paid a commission of 20% of the proceeds of his sales of York Rio securities. He was paid by cheque payable to Anyphone. Every Friday, Schwartz would hand him a cheque on the Debrebud Account. The amount was based on sales information provided by Friedman. Runic admitted that prospective investors were not told about the commission structure.

- Runic admitted that he was the most successful York Rio salesman at the Sheppard Location.

- By the end of 2006, he didn't want to work at the Sheppard Location anymore. He met with York and Schwartz, and it was agreed that Runic would open a satellite office in partnership with Schwartz. Runic found the new office at the Yonge Location. According to Runic, Schwartz had Robinson sign the lease so that Schwartz could control the Yonge Location.

- Starting in January 2007, he ran the Yonge Location on a 50/50 partnership with Schwartz. York paid Debrebud 70% of the proceeds of the York Rio sales from the Yonge Location, from which commissions and other expenses were paid. Schwartz and Runic split the net profit on a 50/50 basis.

- At the Yonge Location, Runic hired salesmen and provided them with the scripts, promotional materials and website materials from the Sheppard Location. He told the salesmen that York Rio had a diamond mine in Brazil that was producing diamonds.

- From October 18, 2006 to late spring 2007, he received approximately $450,000 from Debrebud in commission payments and profit sharing. He agreed with the Superior Home Account Summary, shown to him by Staff, which indicated that he received $470,781.18 from Debrebud. He explained that approximately $40,000 of this was his commission for selling York Rio shares while he was a salesman for Debrebud, and the remainder was net profits from his partnership with Schwartz.

- According to Runic, in early 2007, York told him that they were planning to take York Rio public and were considering a buyout or merger. Runic admitted that he passed this on to the salesmen, who would "automatically" pass it on to prospective investors.

- York Rio sales "took off" after the move to the Yonge Location, and soon outstripped the sales at the Sheppard Location. In late 2007, he hired more qualifiers and salespersons, and hired Hoyme.

- According to Runic, all the people he hired used false names (or "phone names") as a matter of course, and didn't need to be told to do so. Runic passed on what he had been told about York Rio and the registration requirement – that the only requirement was for York Rio to file an Exempt Distribution Report in any province.

- Runic stated that Hoyme and the qualifiers were paid in cash, which he withdrew from the Superior Home Account at a nearby RBC branch that he attended daily. Anyone who asked was paid in cash. Runic admitted paying some salesmen by the following process. Runic would write a cheque payable to a nominee, then have someone endorse the cheque in that name. He would return to the bank, cash the cheque, and buy a bank draft in the same amount payable to the nominee, then return to the bank later, redeem the bank draft as its purchaser, and pay that amount to the salesman involved. Initially, Runic was reluctant to admit that he had done this on multiple occasions and said he did not understand this as creating a false paper trail. When Staff suggested to him that approximately $1.2 million of such transactions had been traced to the Superior Home Account, he admitted that this was "probably a good figure", with 80% of this amount going to a single nominee for sales commissions (Transcript of Compelled Examination, April 20, 2011, p. 117, ll. 1-4). Ultimately, when Staff asked him whether this was "a deceitful paper trail", he admitted "Yes, I guess it is" (Transcript of Compelled Examination, April 20, 2011, p. 124, l. 5).

- Runic was also unable to explain the numerous transactions for $9,900 recorded in the Superior Home Account, other than by saying he had been advised to do this by an unidentified person.

- In April or May 2007, his partnership with Schwartz came to an end. From then on, he ran the Yonge Location himself and received 70% of York Rio Proceeds from the Yonge Location.

[580] Runic made the following admissions and gave the following testimony, during his compelled examination, about the flow of the York Rio Proceeds through the Superior Home Account:

- He admitted, as set out in the Superior Home Account Summary, that his commission and profit-sharing payments in relation to the sale of York Rio securities did not come directly from York Rio, but came from the York Companies, including Evason, Big Brother, Munket and YRR Holdings Inc., and from Debrebud.

- He did not dispute Staff's calculation that in total, he received approximately $9,393,513.18 from October 7, 2004 to October 30, 2008 in relation to sales of York Rio securities, including the $470,781.18 he received from Debrebud.

[581] Runic also confirmed Staff's analysis of his disbursement of York Rio Proceeds that were deposited into the Superior Home Account.

[582] He admitted that he instructed Koch set up several companies in British Columbia for him, including British Holdings, NatWest, Blue Star and 0795624.

[583] He admitted that he transferred approximately $2.687 million from the Superior Home Account to the Koch Account. From the Koch Account, he authorized the transfer of monies to the Blue Star Account, which he used as a payroll account for York Rio.

[584] He admitted that approximately $1 million of the monies that were transferred from the Superior Home Account to the Koch Account were transferred on to the Palkowski Account in October 2008, and that another $3.8 million of York Rio investor funds was transferred from the Superior Home Account to the Palkowski Account in September and October 2008. He admitted that all the money that was transferred from the Superior Home Account to the Koch Account and the Palkowski Account came from the York Rio Proceeds.

[585] Runic told Staff that on October 15, 2008, he signed an agreement, on behalf of Superior Home, to purchase 1,000 shares of New World Timbers Limited, a timber company in Belize ("**New World**"), for $8.5 million, which was to be paid in nine instalments from October 31, 2008 to April 15, 2009. New World was purportedly in the business of recovering logs from a river. According to Runic, the first $5 million of the purchase price was to be paid from the Palkowski Account, and the remainder would be paid later. The agreement included a clause that stated that all funds would be forfeited if any of the payments was not made on time and in strict compliance with the agreement. In fact, this transaction did not go forward because the funds in the Palkowski Account were frozen by order of the BCSC.

[586] Questioned about the New World agreement during his compelled examination, Runic claimed not to have known who the owners of the company were or that the company had no assets. He could not explain how he planned to obtain the remaining $3.5 million. He denied Staff's suggestion that the contract was backdated and was actually prepared in March 2009. He could not recall what documents he was shown before making the investment. He could not explain why $4.2 million was transferred from the Superior Home Account to the Palkowski Account before the agreement was purportedly executed on October 15, 2008.

[587] We find that the purported Belize transactions provide compelling evidence of an attempt to conceal the source and ultimate use of money raised from York Rio and Brilliante investors.

[588] Runic also admitted that he gave Siegel approximately $500,000, which she used to buy the Aurora Property. He claimed that the money was consideration for a list of leads of high net worth accredited investors, which he no longer has. He admitted that he sent the money to Koch and instructed Koch to fund the purchase. He also admitted that a numbered B.C. company that he controlled has a registered mortgage on the property, but claimed he did not know why this was done. He agreed that the money used to purchase the Aurora Property is directly traceable to York Rio investors. Runic also admitted he bought an Audi A8 for Siegel using investor funds.

[589] Runic made the following admissions and gave the following testimony in relation to his involvement in Brilliante during his compelled examination:

- York Rio "loaders" continued to sell York Rio securities at the Finch Location, but most of the York Rio sales staff switched to selling Brilliante securities. They used a different alias from the one they used when selling York Rio securities.

- Runic did not sell any Brilliante securities himself. He claimed he was not involved in Brilliante, but continued to oversee York Rio when Brilliante securities were being sold. He used the alias "Richard Taylor" after the move to the Finch Location.

- The documents used for promoting Brilliante were very similar to the York Rio materials. The Brilliante Business Plan is almost identical to the York Rio Business Plan except for the name of the company and the resource being mined – uranium rather than diamonds. The summaries of projected expenditures are exactly identical, and Runic agreed "there is no excuse for that" (Transcript of Compelled Examination, April 20, 2011, p. 185, ll. 16-17). In addition, Brilliante scripts were modified versions of York Rio scripts, and in general, the materials were commingled.

- The Brilliante Proceeds were deposited into the Brilliante Account, then transferred to the Munket Account, and from there to the 2180353 Account. From the 2180353 Account, Georgiadis wrote a cheque for $56,000 to British Holdings, an account belonging to Palkowski (Runic's accountant) because Georgiadis owed Runic money for office expenses and commissions for both companies. Runic admitted that he would have benefitted from this money if the British Holdings Account had not been frozen.

(e) *Witnesses called by Staff*

(i) Robinson

[590] Robinson testified that he first met Runic at the Sheppard Location, when both worked as salesmen. He knew Runic as "Richard Taylor" but understood this was not his real name. Robinson testified that in November 2006, Runic and Schwartz asked him to sign the lease for the new location (the Yonge Location) and Runic left the Sheppard Location to run the Yonge Location in December 2006 or January 2007.

(ii) Friedman

[591] Friedman testified that he met "Richard Turner" for the first time in the fall of 2006 at the Sheppard Location. Friedman testified that "Turner" was "very actively" selling York Rio securities and had "very good" sales ability.

(iii) Sherman

[592] Sherman testified that he has known Runic since childhood. He testified that he learned about York Rio in the summer of 2007, when Runic offered him a job at the Yonge Location updating the client base and raising capital for a diamond mining company. According to Sherman, he asked Runic whether you had to be a broker to do this and was repeatedly told "no". Sherman testified that Runic ran the Yonge Location and hired him to call existing investors to solicit additional investments.

[593] Sherman testified that he shared an office with Runic for the first couple of months so that he could observe Runic calling investors. Runic gave Sherman contact sheets and instructions, and dictated a script for Sherman to read verbatim. Sherman testified that apart from viewing the York Rio website, he relied on Runic and scripts dictated by Runic for all the information he passed on to investors, including a claim that a 69 carat diamond had been found, that the caller had been involved in previous successful private placements (Diamond Fields Resources, Petrolifera and Aurelian Resources), and that York Rio was talking about a merger with a large global mining firm that was listed on the Frankfurt Stock Exchange. Runic also told him about the accredited investor exemption, and Sherman relied on Runic's explanation.

[594] According to Sherman, Runic told him to use a "phone name" so that investors could not contact him at home if their investment did not do well. Runic used the phone name "Richard Turner" and asked him to refer to him by that name in the office; most people, Sherman said, called Runic "Richard" or "Rob".

[595] Sherman testified that a total of 20% commission was paid for the sale of York Rio securities: 10% to the "tier 1" salesperson, who made the initial sale, and 10% to the "tier 2" salesperson who sold the additional investments, but this was shared with anyone else who helped to make the sale. Runic paid everyone in cash every Friday. However, on Runic's instructions, Sherman told investors he was compensated in York Rio shares, a statement that Sherman admitted was not true.

(iv) Hoyme

[596] Hoyme testified that in July 2007, "Richard Turner" hired her to perform administrative tasks at the Yonge Location and paid her $650 cash per week. According to Hoyme, "Turner" told her to use a false name because investors might get upset if they lost their money (she used the name "Vanessa"). He also told her that York owned York Rio, which was doing alluvial mining for diamonds in Brazil.

[597] Hoyme testified that "Turner" was the office manager. He provided a directory for use by the qualifiers and handed out the call lists to the qualifiers and salespeople. Once Georgiadis picked up the Investor Packages from the post office box, he would leave them for "Turner". Hoyme testified that "Turner" told her that he gave the Investor Packages to York, but she did not observe this happening. It was Hoyme who arranged for the courier pickups, and on that basis, she estimated that about 15 cheques were received every week.

[598] Hoyme testified that it was "Turner" who decided to move to the Finch Location. According to Hoyme, "Turner" told her that they had completed the fund-raising for York Rio, which was going to go public on the Frankfurt Exchange, and they would now begin fund-raising for Brilliante. Hoyme understood that York owned Brilliante as well as York Rio. "Turner" continued to run the office, and most of the York Rio qualifiers and salespersons stayed on to sell Brilliante securities.

(v) Georgiadis

[599] Georgiadis testified that York introduced him to "Richard Turner" (Runic) in the summer of 2007 and suggested he work for "Turner" at the Yonge Location. Georgiadis testified that he did administrative work for "Turner", who ran the office, and that "Turner" paid him a salary of $650 per week, in cash. He testified that "Turner" paid the qualifiers an hourly rate, plus a bonus for sales, in cash, and paid the salespeople a 20% commission by cash or cheque. Georgiadis also testified that if an investor called in with a question – for example, about when York Rio was going to go public – he would refer the question to "Turner".

[600] Georgiadis also testified that "Turner" chose the location for the Finch Location, but asked him to co-sign the lease to ensure it would be approved. "Turner" signed as "Richard Taylor". This was the first time Georgiadis had seen him use that name, though he had given his name as "John Taylor" on the mailbox application form.

[601] Georgiadis testified that he did not observe any transactions between "Turner" and York at the office, and said that York "mostly ... wouldn't come to the office". Georgiadis delivered cheques from "Turner" to York and from York to "Turner", usually visiting York at home or some other location outside of the office. Georgiadis testified that initially he delivered the Investor Packages from "Turner" to York and delivered cheques from York to "Turner", but later he went with Turner to meet with York for this purpose.

[602] We do not believe Georgiadis's evidence that Runic asked him to incorporate 2180353 and not to tell his uncle about it. We find that York asked Georgiadis to incorporate 2180353 for the purpose of flowing the proceeds of the sale of York Rio securities (and later, Brilliante securities) from York's companies to Runic's companies. Georgiadis admitted that he acted as his uncle's "eyes and ears" and that he reported back to York, though "Richard was my boss". However, although York was ultimately in charge of the York Rio Investment Scheme, we accept Georgiadis's testimony that he reported to Runic, who ran the Yonge and Finch Locations, which was consistent with the weight of the evidence we heard.

(f) *Schwartz*

[603] Schwartz testified that he knew Runic as "Richard Taylor". He confirmed that Debrebud paid out $470,781.58 to Superior Home, and that this represented Runic's 20% commission on sales of York Rio securities. He testified that Runic earned the highest commission of any of the York Rio salespersons at the Sheppard Location.

[604] Schwartz testified that he and Runic parted ways when Runic entered into an arrangement with York to set up his own sales office (the Yonge Location), which led to the termination of Schwartz's arrangement with York.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[605] We find that Runic traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest, based on the following evidence, which we accept:

- Runic admitted that, as stated in Staff's Section 139 Certificate, he has never been registered with the Commission.

- Runic admitted that he was hired as a York Rio salesperson in October 2006, that he sold York Rio securities to investors across Canada (but not in Ontario), and that he was the most successful salesperson at the Sheppard Location. He admitted that he was paid a commission of 20% of the proceeds of his sales of York Rio securities during the Schwartz Period, and that the payment was made to the Superior Home Account, which he controlled, from the Debrebud Account.

- Runic admitted that in January 2007, he entered into a 50/50 partnership with Schwartz in relation to York Rio sales at a new sales office (the Yonge Location). Confirming evidence about Runic's direct involvement in York Rio sales came from Schwartz, Robinson and Friedman, and from Sherman, who observed Runic making sales calls while they shared an office.

- Runic admitted that in April or May 2007, his partnership with Schwartz came to an end, and that he ran the Yonge Location thereafter, receiving 70% of the York Rio Proceeds.

[606] We find, based on Runic's admissions in his compelled examination, Staff's evidence about the flow of funds, and the evidence of Sherman, Hoyme and Georgiadis, that during the Runic Period, Runic engaged in a number of acts in furtherance of trades in York Rio securities apart from his direct sales activities, including:

- hiring qualifiers and salespersons;

- training salespersons, including Sherman;

- writing scripts and providing scripts to qualifiers and salespersons;

- providing qualifiers and salespersons with York Rio promotional materials, including newsletters and other print-outs from the York Rio website, and information provided by York, knowing that this information would be used to sell York Rio securities; and

- giving the Investor Packages to York, or arranging for this to be done;

- receiving 70% of the York Rio Proceeds from the accounts of the York Companies; and

- from this amount, paying the expenses of the York Rio sales operation, including the salaries and commissions of the York Rio qualifiers and salespersons.

[607] Though Runic denied selling Brilliante securities directly, he admitted that he received approximately 72% of the Brilliante Proceeds. He admitted that Brilliante and York Rio promotional materials were commingled, that Brilliante scripts and promotional materials were modified versions of York Rio materials, and that Brilliante securities were sold by the same salespersons who sold York Rio securities, although under a different alias. Runic's admissions are supported by the evidence of Georgiadis and Hoyme that Runic managed the sales of Brilliante securities at the Finch Location, just as he had managed the sales of York Rio securities. We find that Runic engaged in a number of acts in furtherance of trades in Brilliante securities, as he had in relation to York Rio securities.

[608] The evidence of Vanderlaan and Ciorma shows that Runic received $470,781.18 from Debrebud between October 2006 and late spring 2007. Runic admitted this, and stated that this represented a 20% commission on his own York Rio sales and his 50% share of the net profits of the Yonge Location. Staff's evidence shows that Runic also received $8,753,544.35 from the York Companies from October 7, 2004 to October 30, 2008, and Runic admitted that he received these amounts. We find that Runic received $9,224,325.53 (approximately $9.2 million) from the sale of York Rio and Brilliante securities during the Material Time.

[609] We find that Runic traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[610] We also find that Runic distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[611] We are not satisfied that Staff has proven, on a balance of probabilities, that Runic made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act. However, for the reasons given at paragraph 621 below, we find that Runic, being a *de facto* director and officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsection 38(3) of the Act.

(c) *Fraud: section 126.1(b) of the Act*

[612] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[613] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest, based on the following.

[614] Runic admitted that he used the alias, "Richard Turner" when he sold York Rio and Brilliante securities, he used the alias "John Taylor" when he signed the application for the mailbox rental in April 2008 and he used "Richard Taylor" when he signed the lease for the Finch Location in June 2008. We find that Runic knew or reasonably ought to have known that using an alias while engaging in acts in furtherance of trades in securities was a badge of fraud.

[615] Runic admitted that he told prospective investors that York Rio had a diamond mine and that the mine was in production. He claimed that he relied on the materials provided to him, including scripts, newsletters, promotional material and print-outs from the York Rio website. He admitted that he had no knowledge as to whether any of these statements were true. We find that Runic knew or reasonably ought to have known that these representations had no basis in fact. Runic admitted that the York Rio scripts that were used to sell York Rio securities contained a number of lies, including claims that the caller had previously been involved in successful private placements and was paid only in shares, and that he had been involved in taking Aurelian public, which was not true.

[616] Runic admitted that none of the money he receiving for selling York Rio securities was used to develop the mining operation, and that this information was not disclosed to investors. Instead, most of the York Rio Proceeds was used to compensate the York Rio Respondents and others associated with the York Rio Investment Scheme. Runic admitted that prospective investors were not told about the commission structure.

[617] We find that Runic attempted to conceal the use of the York Rio Proceeds and the Brilliante Proceeds by authorizing the transfer of the funds from the Superior Home Account through the accounts of the other Runic Companies and from there to the Koch Account and the Palkowski Account. We did not receive sufficient evidence to determine the nature and purpose of the New World agreement, and we accept Staff's submission that we do not need to do so for our purposes. We are satisfied that none of the approximately $9.2 million that flowed through the accounts of the Runic Companies was used for the purported mining operations of York Rio and Brilliante.

[618] We find that Runic played a crucial role in the operation of the York Rio and Brilliante Investment Schemes. From April or May 2007, he took over the running of the Yonge Location, and later ran the Finch Location, working with York, to sell worthless securities to investors across Canada. He was the person who hired qualifiers and salespersons, told them to use aliases when contacting investors, trained them, provided them with scripts and promotional materials that were "full of lies". Of the approximately $18 million of York Rio securities sold during the Material Time, approximately $9.2 million passed through accounts controlled by or associated with Runic, in an obvious attempt to conceal the source and ultimate use of investors' money.

[619] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(d) *Directors and Officers: section 129.2 of the Act*

[620] We find that Runic was a *de facto* officer of York Rio, and that he authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law during the Runic Period (from January 2007 to October 21, 2008), based on the following:

- Runic admitted that he opened the Yonge Location in January 2007, after a meeting with York and Schwartz. Rather than receiving the 20% sales commission he had received in his first months at the Sheppard Location, he was now Schwartz's partner and entitled to a 50% share of the net profit.

- At the Yonge Location, Runic admitted that he hired and paid York Rio qualifiers and salesmen, including Bassingdale, Oliver, Sherman and Valde. In April or May 2007, Runic ended his partnership with Schwartz and took over the management of the Yonge Location. From that point on, Runic received a commission of approximately 72% of the York Rio Proceeds. Runic admitted these arrangements during his compelled examination, but stated that Georgiadis, who started working at the Yonge Location at about that time, was "overseeing everything" on York's behalf. We accept that York continued to have ultimate oversight of the York Rio Investment Scheme, as evidenced by the commission structure and the flow of funds. However, this does not affect our finding that Runic performed functions similar to those normally performed by an officer and played an important role in executing the York Rio Investment Scheme during the Runic Period.

- In the summer of 2008, Runic, with Georgiadis, signed the lease for the Finch Location. Again, Runic's evidence that he took this step at York's direction does not affect our finding that Runic was a directing mind of York Rio at this time.

- Runic admitted that at the Yonge and Finch Locations, he passed on information he received about York Rio, knowing the qualifiers and salespersons would pass it onto investors. He admitted that he knew that York Rio salespersons were using scripts that were "full of lies" to sell York Rio securities, and he admitted he condoned people lying to investors. He also admitted telling York Rio salespersons that York Rio was planning to take the company public, knowing that they would "automatically" pass the information on to prospective investors.

[621] We also find that Runic authorized, permitted or acquiesced in York Rio making prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest, based on the following evidence:

- Runic admitted that a March 2007 York Rio newsletter stated that York Rio had been approached with a merger offer from a UK oil, gas and mineral company, and he stated that he was also advised by York in early 2007 that they were planning on taking the company public and were considering a buyout or merger. He admitted that he passed on this information to qualifiers and salespersons, who used it to sell York Rio securities.

- Sherman testified that in speaking to prospective investors, he relied on the information provided by Runic and the scripts that Runic dictated for his verbatim use, which included the representation that York Rio was talking about a merger with a large global mining firm that was listed on the Frankfurt Exchange, and he and other York Rio salespersons would pass this on to prospective investors.

- Hoyme testified that Runic told her, in the context of the planned move to the Finch Location, in the summer of 2008, that they had completed the fund-raising for York Rio, which was going to go public on the Frankfurt Exchange, and were about to begin raising funds for Brilliante.

[622] We find that Runic was a *de facto* officer of Brilliante and that he authorized, permitted or acquiesced in Brilliante's non-compliance with Ontario securities during the Runic Period from the summer of 2008, when the Brilliante Investment Scheme was started up, to October 21, 2008, based on the following evidence.

- Although Runic claimed he was not involved in the Brilliante Investment Scheme, he admitted that Brilliante securities were sold at the Finch Location that he managed, often by salespersons who also sold York Rio securities, and using promotional materials that were modified versions of the York Rio promotional materials.

- Hoyme testified that Runic told her they would now begin fund-raising for Brilliante, that Runic continued to run the Finch Location, and that most of the York Rio and Brilliante salespersons stayed on.

- In our view, the best evidence of Runic's central role in the Brilliante Investment Scheme is the evidence, which he admitted, that he received approximately 72% of the proceeds of the sale of Brilliante securities, an amount that is inconsistent with anything but a role as a *de facto* officer of Brilliante.

[623] Of the approximately $16 million raised from York Rio and Brilliante investors from September 2005 to October 2008, approximately $9.2 million passed through the Superior Home Account, and from that amount, significant amounts were then transferred into other accounts controlled by Runic. In our view, the flow of funds provides compelling evidence that Runic was a *de facto* officer of York Rio and Brilliante during the Runic Period and that he authorized, permitted or acquiesced in the contraventions of Ontario securities law by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

4. Conclusion

[624] We find that Runic traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) and contrary to the public interest.

[625] We find that Runic distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[626] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or should have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[627] We also find that Runic, being a *de facto* officer of York Rio during the Runic Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

[628] We also find that Runic, being a *de facto* officer of Brilliante during the Runic Period, authorized, permitted or acquiesced in Brilliante's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

**F. Demchuk**

1. The Allegations

[629] Staff alleges that Demchuk:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[630] Demchuk did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan and Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Demchuk's compelled examination, which took place on December 16, 2008.

(a) *Identification of Demchuk as "Simon McKay" and "Andrew Sutton"*

[631] Vanderlaan identified the photograph of Demchuk that Staff obtained from the Ministry of Transportation and showed to Sherman, Georgiadis and Hoyme during the Merits Hearing (the "**Demchuk Photograph**"). Georgiadis and Hoyme testified that the person in the Demchuk Photograph sold York Rio securities using the name "Simon McKay", and sold Brilliante securities as "Andrew Sutton". Georgiadis knew his first name to be "Ryan". Hoyme could not recall his real name at the Merits Hearing but refreshed her memory by reviewing the transcript of her compelled examination, when she had identified him as "Ryan".

(b) *Section 139 Certificate*

[632] Staff provided a Section 139 Certificate stating that Demchuk has never been registered under the Act.

(c) *Documents seized from the Finch Location*

[633] Vanderlaan identified various documents found at the Finch Location on October 21, 2008: a file folder marked "Simon McKay/Andrew Sutton", an August 22, 2008 email from "Simon McKay" to a York Rio investor enclosing York Rio newsletters and the York Rio Business Plan; two handwritten lead cards for "Simon McKay", and, with respect to Brilliante, three sales order logs, Brilliante subscription agreements and covering emails.

(d) Demchuk's Compelled Examination

[634] In his compelled examination, Demchuk made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission and has no background in securities. After finishing high school, he worked in telemarketing and insurance sales, and at one time, he was a registered insurance broker.

- In December 2007, he found out about York Rio from someone who had been a colleague at an insurance company. Demchuk was interviewed by "Richard Turner" (Runic) at the Yonge Location. He started working at York Rio in mid-December 2007.

- He used the alias "Simon MacKay" when selling York Rio securities and "Andrew Sutton" when selling Brilliante securities because he was told it was company policy for everyone to use a false name. Demchuk claimed he questioned this policy.

- Demchuk was initially hired as a qualifier at $12 per hour, but "Turner" asked him to become a salesman after one week.

- As a qualifier, Demchuk was provided with a script to read to prospective investors. He identified several York Rio scripts as scripts he had seen, but stated that he used only parts of them. He said that the use of scripts is standard in the telemarketing industry.

- The York Rio script that Demchuk used included a claim that the caller had spoken to the prospective investor about another company, and solicited interest in receiving information about York Rio. Qualifiers would also qualify prospective investors as accredited investors. "Turner" or Hoyme provided the call list, which consisted of names in the western provinces, not Ontario.

- Demchuk was told that an accredited investor was an individual with a net worth of $1 million or a combined net worth of $2 million with a spouse, or an individual with an annual pre-tax income of $200,000 or, combined with a spouse, $300,000, for the last two years. This was the definition Demchuk passed on to prospective investors. If a prospective investor told Demchuk they qualified as an accredited investor, he would fill out a lead card and give it to Hoyme.

- As a salesman, Demchuk received a 20% commission on his York Rio sales plus an additional 10% commission on subsequent sales made to the same investor ("loads"). His commission was paid by cheque on the Blue Star Account. He kept a sales log and admitted that he earned commissions of approximately $200,000 for sales and another approximately $20,000 for loads while selling York Rio securities.

- Initially, Demchuk deposited his commission cheques into his own bank account, then incorporated his company, Demchuk Marketing Inc. (of which he is the sole director and President, Secretary and Treasurer) on March 19, 2008, and afterwards deposited most of his cheques into the company account.

- As a salesman, he called the names on the lead cards provided to him. The sales script he used was different from the qualifier sales script. He told prospective investors that York Rio had a diamond mine in Brazil, and that the mine was in production and had recovered diamonds. He denied saying anything about the quality or size of the diamonds being produced.

- He admitting reading from a script that "My average investor comes on board at the $50,000 to 75,000 level", although in fact the average investment he sold was a little more than $10,000.

- He told prospective investors that York Rio would be going public, and that traditionally a company went public in 10-12 months, although he knew nothing about the process of taking a company public. He denied giving any figures, even estimates, about what the share price would be when York Rio went public or how much profit investors might make. When a prospective investor asked about this, Demchuk would say that the company had called them previously about Aurelian, which had gone from $2.75 to $35 per share.

[635] In his compelled examination, Demchuk made the following admissions and gave the following evidence about his role in the sale of Brilliante securities:

- He stopped selling York Rio securities at the end of August and started selling Brilliante securities in mid-September. He used the alias, "Andrew Sutton" when selling Brilliante securities. He called investors in Alberta, not in Ontario. The share price was $1 per share.

- He was told that Brilliante was a uranium mine in Brazil, and that Brilliante owned a reserve of uranium or had rights to it. He was given a script and was told to read it, as he had done when selling York Rio securities. He identified a Brilliante script that he used when selling Brilliante shares.

- He read what was in the script. He told prospective investors that it was a good time to invest in uranium, which was an energy source good for the environment. He also read the part of the script that included a representation that the company had offered the prospective investor a deal two years before.

- He admitted reading to prospective investors the claim, from the script, that "I brought you Thompson Creek 2 years ago when it was at 60 cents/share, and my investors who we're [sic] on board at that time were layered out between $18-$20", although this was not true. However, he denied telling prospective investors that Brilliante was going public or that their shares were going to go up.

- He admitted reading, from the script, "my experience in the venture capital arena dates back over 12 years spanning three highly successful ventures", though this was not true: he has no experience in venture capital.

- He admitted reading, from the script, "As an independent contractor of Brilliante, I am not provided a salary nor am I paid any commissions. My interest here is solely in shares of the company", although this was not true: he was paid in commissions and owns no shares in Brilliante.

- He admitted writing the handwritten note at the bottom of the typed script saying "we are essentially bringing the world's third largest reserve of uranium into production". Demchuk explained that someone told him "it was the third largest or Brazil is the third largest reserve for uranium. There's – I looked on the internet and read about uranium." (Transcript of Compelled Examination, December 16, 2008, p. 112, ll. 1-4)

- He initially told Staff that he understood, based on the Brilliante website and on what he had been told, that Brilliante was mining uranium, but later admitted that they had a mine but the mine was not "in production, "so I don't know whether that means they're mining uranium or not." (Transcript of Compelled Examination, December 16, 2008, p. 114, ll. 5-7)

- He admitted that he had read the Brilliante Business Plan and understood that the company was not yet in production, and he could not explain the year 1 projection of US $28.9 million set out in the Brilliante Business Plan.

- He admitting selling $25,000 of Brilliante securities to a single investor in Alberta in late September 2008, but stated that he never received the commission he was owed on the sale. He had also sent out Brilliante subscription agreements to two other prospective investors, but they were never returned.

(e) *Amounts obtained by Demchuk*

[636] The Superior Home Account Summary prepared by Ciorma indicates that Demchuk received $17,000 in cheques from the Superior Home Account from January 4, 2008 to February 20, 2008. The Blue Star Account Summary indicates that Demchuk and Demchuk Marketing Inc. received $201,833.74 in cheques from the Blue Star Account from March 3, 2008 to October 8, 2008. Staff presented no evidence that would allow us to break these figures down into York Rio and Brilliante commissions.

[637] We note that Demchuk's estimate that he received approximately $220,000 in York Rio commissions is consistent with Ciorma's evidence that he received $218,833.74 from January 4, 2008 to October 8, 2008, and we accept Ciorma's evidence on this point.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[638] Based on the evidence of Vanderlaan, Georgiadis and Hoyme, and based on Demchuk's admissions, made in his compelled examination, we find that Demchuk sold York Rio securities at the Yonge and Finch Locations using the alias "Simon McKay", and that he sold Brilliante securities at the Finch Location using the alias "Andrew Sutton". Although Demchuk admitted to making only one sale of Brilliante securities, he also admitted to sending Brilliante subscription agreements to two other prospective investors who did not go ahead with their purchases. By admittedly making sales calls to these investors and sending them subscription agreements, Demchuk engaged in acts in furtherance of trades in Brilliante securities, and therefore also engaged in unregistered trading with respect to these investors.

[639] We accept the evidence of Staff's Section 139 Certificate that Demchuk has never been registered under the Act, which was admitted by Demchuk.

[640] We find that Demchuk misrepresented the Net Financial Assets Test for the accredited investor exemption by telling prospective investors that an individual with a net worth of $1 million, including real property and personal property, was an

accredited investor. We find that the accredited investor exemption to the registration and prospectus requirements was not available for sales of York Rio or Brilliante securities.

[641] We find that Demchuk traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[642] We find that Demchuk distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[643] Based on Demchuk's admission that he told prospective investors that York Rio would go public, which traditionally happened within 10-12 months, we find that he made a prohibited representation that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest.

[644] Demchuk denied telling prospective investors that Brilliante would be going public, and we heard no evidence that he did so. We find that Staff has not satisfied its burden of proving, on a balance of probabilities, that Demchuk made prohibited representations that Brilliante securities would be listed on a stock exchange, and accordingly Staff's allegation that Demchuk contravened subsection 38(3) of the Act with respect to Brilliante is dismissed.

(c) *Fraud: section 126.1(b) of the Act*

[645] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[646] Demchuk admitted that he sold York Rio and Brilliante securities using an alias and that he knowingly misrepresented to investors that he or the company had contacted the investor previously, that he had been involved in taking Thompson Creek public, which had resulted in the share price increasing from $0.60 to $18-20 per share, that the York Rio diamond mine was already in production, that the average York Rio investor invested at the $50,000-75,000 level, and that that he was not paid commission. Although he claimed that he relied on what he was told by others and on information obtained from the York Rio and Brilliante websites and Business Plans, we find that he knew or reasonably ought to have known that his sales pitch included numerous misrepresentations. For example, he was unable to explain how Brilliante, which he knew not to be in production, could project revenues of US $28.9 million in the first year, as stated in the Brilliante Business Plan.

[647] We accept Ciorma's evidence that Demchuk obtained $218,833.74 as a result of his non-compliance with Ontario securities law in relation to the sale of York Rio and Brilliante securities. Based on a 20% commission rate, this suggests that York Rio and Brilliante investors were deprived of approximately $1.1 million as a result of Demchuk's non-compliance with the Act.

[648] We find that Demchuk engaged in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[649] We find that Demchuk engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[650] We find that Demchuk traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[651] We find that Demchuk distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[652] We find that Demchuk made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest. We are not satisfied he contravened subsection 38(3) in respect of Brilliante securities.

[653] We find that Demchuk engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

## G. Oliver

1. The Allegations

[654] Staff alleges that Oliver:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[655] Oliver did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Oliver's compelled examination, which took place on July 6, 2009.

(a) *Identification of Oliver as "Mark Roberts" and "Bill Hastings"*

[656] Vanderlaan testified that Oliver was present during the search of the Finch Location on October 21, 2008, and provided his name and date of birth at that time. Vanderlaan could not recall whether Oliver provided his driver's licence number but in any event, his car, which was parked outside, carried personalized plates. Based on that information, Vanderlaan obtained from the Ministry of Transportation the photograph of Oliver that Staff showed to Sherman, Georgiadis and Hoyme at the Merits Hearing (the "**Oliver Photograph**"). Sherman testified that the person in the Oliver Photograph sold York Rio securities using the name "Mark Roberts". Georgiadis testified that "Roberts" sold York Rio securities only, not Brilliante securities. Hoyme identified the person in the Oliver Photograph as "Matt".

(b) *Section 139 Certificate*

[657] Staff provided a Section 139 Certificate stating that Oliver has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[658] Vanderlaan testified that the documents seized from the Finch Location included a file folder, labelled "Mark Roberts", which contained and email correspondence from September and October 2008 between "Mark Roberts" and nine York Rio investors, the cover page of the subscription agreement that the investor was asked to sign, and the sales order log for each of the sales.

(d) Oliver's Compelled Examination

[659] In his compelled examination, Oliver made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission. He did not finish high school and has no background in securities. Before getting involved in selling York Rio securities, he was involved in telemarketing of pens, precious stones, voice-over-internet protocol ("**VOIP**") services, and selling securities in a tech company.
- He is married to Oliver's Spouse.
- He met Runic when he was selling VOIP for his own company, which was not doing well. In May 2007, Runic called Oliver, told him about York Rio and suggested he check the York Rio website. Runic called again about two months later, and as a result, Oliver met him twice in the York Rio office on Yonge. Runic offered him a job selling York Rio securities.

- He began selling York Rio securities from the Yonge Location in July 2007, made the move to the Finch Location in August 2008, continued to sell York Rio securities from the Finch Location until the Search Warrant was executed on October 21, 2008, and was present at the Finch Location at that time.

- He made "quite a number of sales".

- He used the name "Mark Roberts" when selling York Rio securities. According to Oliver, he asked why he had to use a "pseudonym" and was told it was because if an investment doesn't go quite as planned, some investors can be vengeful.

- According to Oliver, Runic gave him a script, and he read the script to prospective investors. He was not concerned whether statements in the script were untrue because he believed that the company as it was represented to him and over the internet was legitimate, and he was interested in making some money. He stated "I did what I was asked to do and I got paid. ... So whether or not I believed it to be truthful or not truthful, if that's what you're asking, I never questioned. I just did what was asked." (Transcript of compelled examination, July 6, 2009, p. 85, ll. 18-24)

- He told prospective investors that York Rio was producing 1 to 69 carat diamonds, that 80% of the diamonds were gem quality and 20% industrial quality, and that York Rio had outbid De Beers and others in a successful bid for another 38,000 hectares of land.

- He told prospective investors that York Rio was in negotiations about a possible merger with a company trading in double digit Euros on the Deutsche Börse, and that York Rio was at the 90 to 95% stage of completion for a merger with a global mining firm, which would result in returns of 6 or 7 to one. He admitted telling prospective investors that he could see York Rio valued easily at 4 to 7 times its earnings at $1.25 per share, although he claimed he never made any promises as far as dollar amounts.

- He told prospective investors that he had been involved in taking Aurelian and Petrolifera public, although this was not true.

- He was paid commission of 10% on sales of York Rio securities. He was paid in cash and by cheque, and he asked Runic to make his cheques payable to Oliver's Spouse; for personal reasons, Oliver does not have a bank account or credit card.

- He did not tell prospective investors how he was compensated.

[660] With respect to Brilliante, Oliver stated, during his compelled examination, that he never sold any Brilliante securities, although he admitting talking about Brilliante to one client who called in looking for a share certificate. He used the name "Bill Hastings" when speaking to this client. Oliver stated that he was handed fewer than a dozen Brilliante accounts for "updating" just five or six days before the raid, but he did nothing because he had no direction beyond "do the same thing".

(e) *Investor Two*

[661] Investor Two testified that "Roberts" called him in April 2008 to solicit an investment in a diamond mine, at $0.55 per share, before it went public. "Roberts" described himself as a broker or stock promoter and said he was contracted by York Rio to sell the securities. Investor Two testified that "Roberts" told him the mine was in preliminary production, and was producing 30% gem quality and 70% industrial quality diamonds, and that York Rio was in negotiation with another company that was likely going to make an offer in the $4-10 range by the end of 2008. Investor Two also testified that "Roberts" urged him to make a commitment right away, on the basis that the share offering was closing. Each time "Roberts" called, he tried to convince Investor Two to "bump up" the number of shares he purchased to make the share count an even "block" – 50,000 shares at the time of this first purchase. Eventually, Investor Two invested $27,500.

[662] In June 2008, "Roberts" called again, offering shares at $0.375 per share. Investor Two invested another $120,000 to obtain approximately 320,000 additional shares.

[663] "Roberts" called again in July 2008, offering additional shares at $0.25 per share. Again, he urged Investor Two to "bump up" his purchases to bring his total number of shares to 1 million. He explained that he knew some Hong Kong investors who were keen on getting in on this but couldn't do so until it went public, and when that happened, "Roberts" had arranged to sell them blocks of shares. Investor Two was unwilling to invest that much money.

[664] "Roberts" also told Investor Two that a partner in York Rio was not well and was trying to sell his shares quickly to clean up his estate. Investor Two thought that sounded unusual, and insisted on seeing some financial documents before

investing any more money. “Roberts” suggested he speak to York, and Investor Two did so, before investing another $100,000 in York Rio.

[665] Investor Two testified that neither “Roberts” nor “York” told him that 70% of the York Rio Proceeds went in commissions to Debrebud and Superior Home, and if they had, he would not have invested because that would not have been a reasonable use of the money.

(e) Investor Five

[666] Investor Five initially bought York Rio securities from “Jack Baker”. “Mark Roberts” called him in January 2008 to solicit an additional investment, and, as a result, in February 2008, Investor Five invested another $25,000 in York Rio. To induce him to buy more York Rio shares, “Roberts” told him that York Rio was pulling diamonds out of the ground, 70-80% of which were high grade gem diamonds and 20-30% industrial diamonds, that the diamonds ranged from 1 to 69 carats, and that uranium and traces of gold had been found. “Roberts” also told Investor Five that York Rio was raising money to buy another 38,000 hectares of land, that a geologist, Daniel Pasin, was involved, that they were getting close to listing on the Frankfurt exchange and that a German company was interested in buying 85% of the company.

[667] Investor Five testified that neither “Roberts” nor “Baker” told him they were paid a 20% commission, and if they had, he “would have thought more about” his investment, because it would mean they were selling the security “because they were putting money in their own pocket”, not “because it was a good stock”.

(f) *Amounts obtained by Oliver*

[668] The Superior Home Account Summary prepared by Ciorma indicates that Oliver received $65,071.97 from that account from August 2007 to February 2008 by cheques made payable to Oliver’s Spouse. The Blue Star Account Summary indicates that Oliver received $53,543.94 from that account from February 2008 to June 2008 by cheques made payable to Oliver’s Spouse. We accept Ciorma’s evidence that Oliver, through cheques made payable to Oliver’s Spouse, received $118,615.91 from the Superior Home Account and the Blue Star Account from August 2007 to June 2008.

[669] Although Oliver admitted that he received some commission payments in cash, and we heard some evidence that some of his commission cheques were made out to a cheque-cashing service, Staff does not rely on these payments, which cannot be ascertained with reasonable certainty, and relies only on the payments by cheques payable to Oliver’s Spouse.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[670] Based on the evidence of Vanderlaan, Sherman, Georgiadis and Hoyme, and based on Oliver’s admissions, made in his compelled examination, we find that Oliver sold York Rio securities at the Yonge and Finch Locations, using the alias “Mark Roberts”.

[671] We accept the evidence of Staff’s Section 139 Certificate that Oliver has never been registered under the Act, which he admitted.

[672] We find that Oliver sold York Rio securities to at least one investor who was not an accredited investor (Investor Two). We also find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to York Rio securities.

[673] We find that Oliver received at least $118,615.91 from August 2007 to June 2008 in relation to the sale of York Rio securities. Based on a 10% commission rate, this suggests that Oliver sold at least $1.18 million of York Rio securities in a little less than a year.

[674] Based on Oliver’s admission, during his compelled examination, we find that Oliver spoke to one investor about Brilliante, using the name “Bill Hastings”. However, Oliver denied having sold any Brilliante securities, stating that he was handed fewer than a dozen Brilliante accounts for “updating” just five or six days before the raid, but he did not follow up because he had receiving little direction. We note that the documents seized from the Finch Location indicate that Oliver was still soliciting sales of York Rio securities in September and October 2008, just before the execution of the Search Warrant. Georgiadis testified that Oliver sold only York Rio securities, not Brilliante. Staff presented no other evidence as to Oliver’s involvement in selling Brilliante securities. We find, in the circumstances of this case, that we have insufficient evidence to find that Oliver engaged in trades or acts in furtherance of trades in Brilliante securities.

[675] We find that Oliver traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[676] We find that Oliver distributed York Rio securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[677] Staff's allegations that Oliver contravened subsection 25(1)(a) and 53(1) of the Act with respect to Brilliante securities are dismissed.

(b) *Prohibited representations: subsection 38(3) of the Act*

[678] Based on Oliver's admission during his compelled examination and based on the evidence of Investor Two and Investor Five, we find that Oliver made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[679] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[680] Oliver admitted that he sold York Rio securities using an alias and that he read a number of representations from a script without exercising any diligence to determine whether they were true, including claims that York Rio had a mine that was producing diamonds of 1-69 carats, 70-80% of which were gem quality diamonds, that York Rio had outbid De Beers to acquire rights to another 38,000 hectares of land, and that York Rio was about to complete a merger with a global mining firm. He also admitted telling investors that he had been involved in taking Aurelian and Petrolifera public, though he knew this to be untrue. He did not tell prospective investors how he was compensated. As a result of his misrepresentations, Oliver earned commission of at least $118,615.91 from August 2007 to June 2008 in relation to his sales of York Rio securities. As a result of his non-compliance with Ontario securities law, York Rio investors lost at least $1.18 million. We find that Oliver engaged in dishonest acts which he knew or reasonably ought to have known would result in York Rio investors being deprived of their investments.

[681] We find that Oliver engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[682] We find that Oliver traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[683] We find that Oliver distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[684] We find that Oliver made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[685] We find that Oliver engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[686] We are not satisfied that Staff has satisfied its burden of proving its allegations against Oliver with respect to the Brilliante Investment Scheme on a balance of probabilities, and accordingly those allegations are dismissed.

**H. Valde**

1. The Allegations

[687] Staff alleges that Valde:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[688] Valde did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Valde's compelled examination, which took place on January 13, 2009.

(a) *Identification of Valde as "Doug Bennett" and "Don Wade"*

[689] Vanderlaan identified the photograph of Valde that Staff obtained from the Ministry of Transportation and showed Sherman, Hoyme and Georgiadis at the Merits Hearing (the "**Valde Photograph**"). Hoyme and Sherman identified the person in the Valde Photograph as "Doug Bennett", a York Rio salesman. Georgiadis testified that the person in the Valde Photograph was known to him as "Don Wade", who had an office at the Finch Location.

(b) *Section 139 Certificate*

[690] Staff provided a Section 139 Certificate stating that Valde has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[691] Vanderlaan testified that several May 2007 emails between "Doug Bennett" and two York Rio investors were seized from the Finch Location. Amongst the other things seized from the Finch Location were a file folder, labelled "Don Wade", which contained email correspondence between "Don Wade" and four Brilliante investors, the cover page of the subscription agreement which the investor was asked to sign, and the sales order log for each of the four sales.

(d) *Valde's Compelled Examination*

[692] In his compelled examination, Valde made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission. He has no background in securities. Before getting involved in selling securities, he worked mainly in non-securities sales.

- He worked as a salesman for Maitland Capital from July to October 2005.

- "Richard Turner" (Runic) called him in early 2007 about York Rio. He met with "Turner" and York, and as a result, "Turner" hired him.

- He started working as a salesman for York Rio at the Yonge Location in March or April 2007 and continued for a year or a year and a half, until at least August or September of 2008. He worked three or four days a week on an irregular basis, and worked fewer hours in the summertime. He made sales calls to investors all over Canada, except in Ontario and Quebec.

- Because of his experience with Maitland, he understood that a private placement could only be sold to accredited investors. He understood that all York Rio investors were pre-screened as accredited investors and had to sign a form saying so.

- He understood that York Rio was raising funds for a diamond mine in Brazil, and hoped to take it public. He understood the mine had limited production by late 2007. He read the York Rio Business Plan, which was sent out to prospective investors, but did not review the material on the York Rio website.

- According to Valde, "Turner" told him that no one at the office used their real name. He admitted using the alias "Doug Bennett", when selling York Rio securities.

- When calling a prospective investor, Valde told them about the York Rio project and ask if they were interested in receiving information on it; if so, the information would usually be emailed. He also told prospective investors that the investment was for accredited investors, which he understood to be someone

with a net worth of $1 million, including the value of any business or real estate, or an annual income of $200,000.

- He was given a script to use when selling York Rio securities, and used the same script throughout his time there. He admitted telling prospective investors that York Rio hoped to go public within 12 to 18 months, and that he thought it would do very well. York Rio shares cost $0.75 per share at the time; he would tell prospects that although he could not guarantee what the stock would do, it was expected to go up, and York had been successful in the past. Towards the end of the Material Time, he would say that the mine was in limited production, which is a good base for going public, and the mandate was to go public six months to a year from the start of production.

- The script also included the statement that York had brought Aurelian public, and that it had done very well. Sometimes Valde read this part of the script. He also sometimes told investors he had been in the business a few years. He did not tell investors about the commission structure, and no one ever asked.

- In August 2008, Valde made the move to the Finch Location with York Rio. He continued to sell York Rio securities "a little bit" but he believed that York was winding it down to start his new venture, Brilliante.

- He was paid a commission of 20% of the proceeds of his York Rio sales, and, if another salesperson made an additional sale to the same investor, he would also receive a 10% commission on that sale. According to Valde, he sold about $200,000 worth of York Rio securities to 20-30 people, his largest sale was approximately $20,000 and his sales averaged approximately $7,500. He was paid by cheque payable on a company whose name he was unable to remember (not York Rio), and later received cheques from Blue Star. He was paid in cash sometimes, and he estimated that he received one cash payment of $1,200 in addition to the cheques. He did not receive any T4s in relation to his York Rio income and claimed he was unable to estimate how much he received in York Rio commissions in 2007-2008. He declined to provide income tax or other supporting income documentation.

[693] In his compelled examination ,Valde made the following admissions and gave the following evidence about his involvement in selling Brilliante securities:

- He read the Brilliante Business Plan. He understood that Brilliante was a uranium mine in Brazil, and that it was scheduled to begin production in 2011 or 2012.

- He phoned people to try to sell them shares of Brilliante, using the alias "Don Wade". He sold Brilliante securities to only two or three people because the fall of 2008 was a bad time in the stock market. Again, he earned 20% commissions, "maybe $5,000." He was paid by cheque from the Blue Star Account.

- He would tell prospective investors that Brilliante was raising funds to take the company public, and that the price of uranium had gone up 200% in the past three years. Shares were selling at a dollar per share. He would tell prospective investors that he could not guarantee what the shares would come out at, but quite often on private placements "it comes out higher". He claimed he also told prospective investors that more than half of private placements never hit the market.

- He used a script when soliciting sales of Brilliante securities, but would vary it to make it shorter. Included in the script was the claim that York or Aidelman had been involved with Thompson Creek, and Valde admitted talking about Thompson Creek in his sales calls.

[694] Valde admitted he took no steps to confirm or deny the information he was given about York Rio or Brilliante.

(e) *Amounts Obtained by Valde*

[695] The Superior Home Account Summary prepared by Ciorma indicates that Valde received $117,850.23 from that account between February 2007 and February 2008. The Blue Star Account Summary indicates that Valde received $75,585.03 from that account between February 2008 and October 2008.

(f) *Investor Seven*

[696] Investor Seven testified that he invested $10,000 in York Rio through "Bennett" in May 2007. "Bennett" told Investor Seven, amongst other things, that York Rio had out-bid DeBeers on some land in Brazil.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[697] Based on the evidence of Vanderlaan, Sherman, Hoyme and Investor Seven, and based on Valde's admissions, made in his compelled examination, we find that Valde sold York Rio securities at the Yonge and Finch Locations using the alias "Doug Bennett". Based on the evidence of Vanderlaan and Georgiadis, and based on Valde's admissions, made in his compelled examination, we find that Valde sold Brilliante securities at the Finch Location using the alias "Don Wade".

[698] We accept the evidence of Staff's Section 139 Certificate that Valde has never been registered under the Act, which he admitted.

[699] Although Valde stated, in his compelled examination, that he always told prospective investors that the investment was only available for "accredited investors", we find that Valde misunderstood or misstated the "accredited investor" definition as including someone with a net worth of $1 million, including the value of any business or real estate, or an annual income of $200,000. We find that Valde sold York Rio securities to at least one investor who was not an "accredited investor" (Investor Seven). We find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to the sale of York Rio and Brilliante securities.

[700] Valde estimated that he sold about $200,000 of York Rio securities, which would result in a commission of $40,000, based on a 20% commission. He estimated that he received only about $5,000 in commission for his Brilliante sales. He provided no supporting documentation. In the absence of reliable evidence from Valde about his income from selling York Rio and Brilliante securities, we accept Ciorma's evidence that Valde received commission of at least $193,435.26 between February 2007 and October 2008 in relation to his sales of York Rio and Brilliante securities. Based on a 20% commission rate, this suggests that Valde sold at least $967,176.30 or York Rio and Brilliante securities between February 2007 and October 2008.

[701] We find that Valde traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest. We find that Valde distributed York Rio and Brilliante securities, without filing a prospectus or preliminary prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[702] Based on Valde's admission that he told prospective investors that York Rio and Brilliante were intended to go public, we find that he made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[703] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[704] Valde admitted that he sold York Rio and Brilliante securities using an alias, misrepresented the accredited investor exemption, falsely claimed that York had been involved in taking Aurelian public, that York Rio's diamond mine was in limited production and that York Rio planned to go public, and failed to tell prospective investors that he would receive 20% of their investment as his sales commission. He did not exercise any diligence to confirm the information he was given. As a result of his misrepresentations, Valde earned commission of at least $193,435.26 between February 2007 and October 2008 in relation to his sales of York Rio and Brilliante securities, and York Rio and Brilliante investors lost at least $967,176.30. We find that Valde engaged or participated in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[705] We find that Valde engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[706] We find that Valde traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[707] We find that Valde distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[708] We find that Valde made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[709] We find that Valde engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

**I. Bassingdale**

1. The Allegations

[710] Staff alleges that Bassingdale:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[711] Bassingdale did not testify at the Merits Hearing. Staff attempted to summons him for a compelled examination under section 13 of the Act, but could not locate him. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Georgiadis, Sherman and Hoyme.

(a) *Identification of Bassingdale as "Gavin Myles" and "Brent Gordon"*

[712] The photograph from Bassingdale's driver's licence, which Vanderlaan obtained from the Ministry of Transportation, was shown to three witnesses at the Merits Hearing (the "**Bassingdale Photograph**"). Georgiadis identified the person in the Bassingdale Photograph as "Scott", and testified that "Scott" sold York Rio securities using the name "Gavin Myles" and sold Brilliante securities using the name "Brent Gordon". Hoyme identified the person in the Bassingdale Photograph as "Gavin Myles". Sherman identified him as "Scott", but said that he only knew him by his "phone name" ("Gavin Myles"), until the Commission became involved. Sherman testified that "Gavin Myles" sold York Rio shares.

(b) *Section 139 Certificate*

[713] Staff provided a Section 139 Certificate stating that Bassingdale has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[714] Vanderlaan testified that the handwritten names "Gavin Myles" and "Brent Gordon" were found on file folders, sales scripts, subscription agreements, lead cards, sales order logs, email correspondence and other documents that were seized from the Finch Location at the time of the execution of the search warrant, including scripts using the name "Brent Gordon" and a lead chart with "Brent Gordon" written on it.

[715] Amongst the documents seized was an October 15, 2008 memo from "Brent Gordon" to an investor, Investor A, stating "As discussed, the attached is your subscription agreement for 5,000 shares of Brilliante Brasilcan Resources Corp. Please sign all copies and enclose with your cheque for $5,000 payable to Brilliante Brasilcan Resources Corp.". The first page of the subscription agreement for Investor A was also seized, as well as an October 16, 2008 sales order log identifying "Brent Gordon" as the salesperson who made the sale. In an October 15, 2008 email, Investor A declined to proceed with the transaction.

[716] Also seized from the Finch Location was a September 29, 2008 sales order log sheet listing "Brent Gordon" as the salesperson and another investor, Investor B as the "contact", indicating a sale of 10,000 shares at $1 per share.

(d) *Investor C*

[717] Vanderlaan testified that Investor C, an Alberta investor whose name appeared on a courier slip for a Brilliante pick-up, stated that he had invested $50,000 in Brilliante in September 2008 after receiving a sales call from a person who called himself "Brent Gordon". Investor C's statement was admitted into evidence through Vanderlaan. Investor C stated that he had received several earlier calls about Brilliante in August and September 2008, and he had told those callers to send him information about Brilliante. "Brent Gordon" called him on September 10, 2008 to follow up.

[718] According to Investor C, "Brent Gordon" told him he had called him two years earlier and the stock he was recommending at that time did very well. He said he was now working for Brilliante, and they had a group of directors with "very good credentials". "Brent Gordon" "said it was for a uranium mine in Brazil, all of the information I had seen was for York Rio which is diamonds. I thought it was odd that the website that I was directed to did not mention anything about uranium or Brilliante."

[719] According to Investor C, "Brent Gordon" asked if he could invest for one block at $1 per share of 50,000 shares. "He then said there would be an opportunity once the company went public for additional shares at $0.75 (up to 35,000 shares). He said he expected the price to list at a minimum of $1.25 when the company was listed. He also mentioned that it would be a minimum of three months before the listing and that the price should do as well as the last offer ($20). He said he was investing his money in this opportunity and was committed for the next two years to this one stock."

[720] Investor C stated that "Brent Gordon" asked him if he was an accredited investor, and said that would send a contract by email for him to sign and return. Vanderlaan testified that Investor C was an accredited investor.

(e) *Amounts Obtained by Bassingdale*

[721] The Brilliante Account Summary prepared by Ciorma indicates that Brilliante received $10,000 from Investor A and $50,000 from Investor C.

[722] The Superior Home Account Summary indicates that Bassingdale received $87,936.98 from the Superior Home Account from August 2007 to February 2008. The Blue Star Account Summary indicates that Bassingdale or 2182130 Ont. Inc. ("2182130"), of which Bassingdale is an officer and director, received $67,658.42 from the Blue Star Account from March to October 2008.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[723] Based on the evidence of Vanderlaan and Ciorma, Georgiadis, Hoyme and Sherman, we find that Bassingdale sold York Rio securities at the Finch Location, using the alias "Gavin Myles". Based on the evidence of Vanderlaan and Ciorma, Investor C and Georgiadis, we find that Bassingdale sold Brilliante securities at the Finch Location using the alias "Brent Gordon".

[724] Based on the Brilliante Account Summary and the Superior Home Account Summary, we find that Bassingdale or his company received $155,595.40 from August 2007 to October 2008 from the Superior Home Account and the Blue Star Account, which were accounts used by Runic to pay the commissions of York Rio and Brilliante salespersons. We find that that Bassingdale received $155,595.40 from these accounts, representing his commission for sales of York Rio and Brilliante securities. This suggests Bassingdale's non-compliance with Ontario securities law resulted in York Rio and Brilliante investors being deprived of approximately $777,977.00, if Bassingdale was paid a 20% commission, like the other York Rio and Brilliante salespersons.

[725] We accept the evidence of Staff's Section 139 Certificate that Bassingdale has never been registered under the Act. Staff acknowledged at the Merits Hearing that Investor C was an accredited investor. However, we find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to the sale of York Rio and Brilliante securities.

[726] We find that Bassingdale traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[727] We find that Bassingdale distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[728] We received no evidence that Bassingdale made prohibited representations that York Rio securities would be listed on a stock exchange.

[729] We find that Staff has satisfied its burden of proof, on a balance of probabilities, with respect to the allegation that Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act. Investor C's evidence about what "Brent Gordon" said to him, is hearsay evidence. Hearsay evidence is admissible in Commission proceedings, subject to weight. We accept Investor C's evidence, which was uncontroverted and consistent with the evidence we heard about the sales practices adopted by the York Rio and Brilliante Respondents. We find that Bassingdale made a prohibited representation that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[730] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[731] Bassingdale sold York Rio and Brilliante securities using an alias, falsely claimed that Brilliante had a uranium mine in Brazil, that Brilliante had a group of directors with "very good credentials" and that Brilliante was expected to be listed on a stock exchange at a minimum of $1.25 per share and increase to $20 per share, and, as a result, he received commission payments of $155,595.40 in relation to his sales of York Rio and Brilliante securities. We are satisfied that Staff has satisfied its burden of proving, on a balance of probabilities, that Bassingdale engaged or participated in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[732] We find that Bassingdale engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[733] We find that Bassingdale traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[734] We find that Bassingdale distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[735] We find that Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) and contrary to the public interest.

[736] We find that Bassingdale engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud, on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

## IX. CONCLUSION

[737] For the reasons given, we make the following findings against each of the Respondents:

(a) We find that York Rio:

(i) traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

(iii) engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

(b) We find that Brilliante:

(i) traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

(iii) engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

(c) We find that York:

(i) traded in securities of York Rio and Brilliante, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed securities of York Rio and Brilliante without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(v) being a director and officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

(d) We find that Runic:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) engaged or participated in acts, practices or courses of conduct that he knew or should have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(iv) being an officer of York Rio and Brilliante, during the Runic Period, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

(e) We find that Schwartz:

(i) traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) engaged or participated in a course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;

(iv) being a *de facto* officer of York Rio during the Schwartz Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest; and

(v) contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

(f) We find that Demchuk:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(g) We find that Oliver:

(i) traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(h) We find that Valde:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(i) We find that Bassingdale:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[738] An order will be issued as follows:

(i) Staff shall file and serve written submissions on sanctions and costs by April 15, 2013;

(ii) each Respondent shall file and serve written submissions on sanctions and costs by April 29, 2013; and

(iii) Staff shall file and serve reply submissions on sanctions and costs by May 6, 2013.

(iv) the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, on May 14, 2013, 2013, at 10:00 a.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

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

**DATED** at Toronto this 25th day of March, 2013.

“Vern Krishna”

“Edward P. Kerwin”

### 3.1.3 League Investment Services Inc. – s. 31

**IN THE MATTER OF**
**STAFF'S RECOMMENDATION TO SUSPEND THE REGISTRATION OF**
**LEAGUE INVESTMENT SERVICES INC.**

**OPPORTUNITY TO BE HEARD BY THE DIRECTOR**
**UNDER SECTION 31 OF THE SECURITIES ACT**

**Decision**

1. For the reasons outlined below, my decision is that the registration of League Investment Services Inc. (LISI) should be suspended.

**Background**

2. By letter dated October 28, 2013, staff (Staff) of the Ontario Securities Commission advised LISI that Staff had recommended to the Director that LISI's registration be suspended. Staff's view is that LISI's solvency concerns make it unsuitable for registration, and that its ongoing registration would be objectionable.

3. LISI is registered in all jurisdictions of Canada as an exempt market dealer (EMD). British Columbia is its principal regulator.

4. LISI is part of the League Group, which exclusively distributes securities of League Group issuers. Adam Gant (Gant) is the controlling mind and management of LISI and its related entities in the League Group. Gant is the ultimate designated person of LISI.

5. On October 17, 2013, over 100 entities in the League Group, including LISI, applied to the Supreme Court of British Columbia for an order granting protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (CCAA).

6. The November 6, 2013 decision of Paul C. Bourque, Q.C., Executive Director of the British Columbia Securities Commission (BCSC) suspending the registration of LISI in British Columbia (the BC suspension decision) sets out the following:

   Gant, in his affidavit in support of the application for the CCAA order, attested that LISI and its 104 related League Group entities:

   - are under substantial cash flow pressure, and are facing a larger than anticipated number of redemption requests by investors, further straining the League Group's cash flow
   - no longer have sufficient cash and have ceased meeting their obligations as they become due in the ordinary course of the League Group's business
   - are facing one active and one imminent foreclosure involving the League Group entities
   - have a number of unsecured creditors including:
     - noteholders of the various Project LP's
     - inter-corporate debt
     - trade creditors, in particular relating to the Colwood Development
     - professional service firms including law and accounting firms
   - are in arrears with certain property taxes

7. Because the BCSC is LISI's principal regulator, LISI's registration became automatically suspended in all jurisdictions of Canada, other than Ontario, pursuant to s. 4A.6 of Multilateral Instrument 11-102 *Passport System*.

8. Staff submits that the BC suspension decision provides support to Staff's position that LISI's registration should be suspended and that its ongoing registration is objectionable. The Director observed in *Re Jory Capital Inc.* (2012), 35

OSCB 11217 at para. 6, that he was "concerned that it would be inconsistent with the OSC's mandate to provide investor protection and to foster fair and efficient capital markets and confidence in capital markets to permit [a firm suspended by its principal regulator] to remain registered in Ontario."

9. By letter dated November 8, 2013, Farris, Vaughan, Wills & Murphy LLP, counsel to LISI, advised that

> [i]n light of the decision of the B.C. Securities Commission, LISI's principal regulator, to suspend LISI's registration, and in light of the automatic suspension of LISI's registration in all other Canadian jurisdictions with the exception of Ontario, LISI does not oppose the suspension of its registration in Ontario.

**Reasons**

10. My decision is that the registration of LISI should be suspended for the reasons set out in the BC suspension decision set out below:

> Registration is a privilege, not a right, and it places significant obligations on registrants when they deal with members of the public who are potential investors or who are already clients.
>
> The public should not be exposed to the risk of a registrant that is under court protection from its creditors because it cannot meet its obligations as they become due … Instead it is reasonable for clients of a registered firm to expect that the firm is financially viable and not committing acts of bankruptcy.
>
> It is not in the public interest for LISI to continue in the business of trading in securities because it is not in a position to meet the many responsibilities that registrant firms must meet so that investors are protected.
>
> … In my view, LISI is no longer suitable for registration and it is in the public interest to suspend its registration, effective immediately.

11. In my view, LISI is not suitable for registration and LISI's ongoing registration is objectionable.

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

Dated: November 11, 2013

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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 |
|---|---|---|---|---|
| Armadillo Resources Ltd. | 07 Nov 13 | 19 Nov 13 | | |
| Cayenne Gold Mines Ltd. | 07 Nov 13 | 19 Nov 13 | | |
| Consolidated Tanager Limited | 07 Nov 13 | 19 Nov 13 | | |
| Delta Uranium Inc. | 07 Nov 13 | 19 Nov 13 | | |
| Desert Eagle Resources Ltd. | 07 Nov 13 | 19 Nov 13 | | |
| Twoco Petroleums Ltd. | 29 Oct 13 | 11 Nov 13 | 11 Nov 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 |
|---|---|---|---|---|---|
| Strike Minerals Inc. | 19 Sept 13 | 01 Oct 13 | 01 Oct 13 | | |

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# Chapter 5

# Rules and Policies

**5.1.1 OSC Rule 91-506 Derivatives: Product Determination, Companion Policy 91-506CP, OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting**

**ONTARIO SECURITIES COMMISSION**

**NOTICE OF ONTARIO SECURITIES COMMISSION RULE 91-506**
***DERIVATIVES: PRODUCT DETERMINATION***

**COMPANION POLICY 91-506CP**
***DERIVATIVES: PRODUCT DETERMINATION***

**ONTARIO SECURITIES COMMISSION RULE 91-507**
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**AND**

**COMPANION POLICY 91-507CP**
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

## 1. Introduction

The Ontario Securities Commission (the **OSC**, the **Commission** or **we**) is implementing:

- OSC Rule 91-506 *Derivatives: Product Determination* (the **Scope Rule**);
- OSC Companion Policy 91-506CP *Derivatives: Product Determination* (the **Scope CP**),
- OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and
- OSC Companion Policy 91-507CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**).

Collectively, the Scope Rule, the Scope CP, the TR Rule and the TR CP will be referred to as the **Rules**. Ministerial approvals are required for these Rules to come into force. The Rules were delivered to the Minister of Finance on October 17, 2013. The Minister may approve or reject the Rules or return them for further consideration. If the Minister approves the Rules or does not take any further action by December 16, 2013, the Rules will come into force on December 31, 2013.

## 2. Background

On December 6, 2012, the Canadian Securities Administrators Derivatives Committee (the **Committee**) published *CSA Staff Consultation Paper 91-301 Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* (the **Draft Model Rules**). The Committee invited public comment on all aspects of the Draft Model Rules. Thirty-five comment letters were received. The Committee reviewed the comments received and made determinations on revisions to the Draft Model Rules (the **Updated Draft Model Rules**). Based on the Updated Draft Model Rules, some of the CSA jurisdictions developed harmonized province-specific rules. On June 6, 2013 the OSC published *Proposed OSC Rule 91-506 Derivatives: Product Determination; Proposed OSC Companion Policy 91-506CP Derivatives: Product Determination, Proposed OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, and Proposed OSC Companion Policy 91-507CP Trade Repositories and Derivatives Data Reporting* (the **Proposed Ontario Rules**). On the same date, the Autorité des marchés financiers and Manitoba Securities Commission published proposed province specific rules while the Alberta Securities Commission, the British Columbia Securities Commission, the New Brunswick Securities Commission, the Nova Scotia Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan published a multi-province consultation paper containing the Updated Model Rules (the **Paper** and collectively with the **Proposed Ontario Rules** and the Autorité des marchés financiers and Manitoba Securities Commission proposed province specific rules, the **Proposed Provincial Rules**). Collectively, twenty-seven comment letters were received on the Proposed Provincial Rules. A list of those who submitted comments and a chart summarizing the comments received and the Committee's responses to them are attached at Appendix "A" to this Notice. The Committee has reviewed all comment letters on the Proposed Provincial Rules and made determinations on harmonized changes to the province specific rules. Changes to the Rules are discussed further below.

These Rules are the final Ontario rules.

### 3. Substance and Purpose of the Scope Rule and Scope CP

The purpose of the Scope Rule is to define the types of derivatives that will be subject to reporting requirements under the TR Rule. The Scope Rule will initially only apply for the purposes of the TR Rule. Any other legislation, rules, notice or other policies applicable to derivatives will continue to apply. For example, OSC Staff Notice 91-702 – *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* would continue to apply to these types of instruments until any new rules replacing the treatment as described in the notice have been implemented.

The Scope Rule prescribes certain contracts or instruments that fall within the broad definition of "derivative" in the *Ontario Securities Act* (the **Act**), not to be derivatives. The excluded contracts are contracts that have not traditionally been considered to be over-the-counter derivatives. The Scope Rule also addresses the fact that the definitions of "derivative" and "security" in securities legislation are expansive and, in some cases, overlapping. The Scope Rule resolves conflicts that arise when a contract or instrument meets both the definition of "derivative" and the definition of "security".

### 4. Substance and Purpose of the TR Rule and TR CP

The purpose of the TR Rule is to improve transparency in the derivatives market and to ensure that designated trade repositories operate in a manner that promotes the public interest. Derivatives data is essential for effective regulatory oversight of the derivatives market, including the ability to identify and address systemic risk and the risk of market abuse. Derivatives data reported to designated trade repositories will also support policy-making by providing regulators with information on the nature and characteristics of the Canadian derivatives market.

The TR Rule is divided into two areas (i) regulation and oversight of trade repositories, including the designation process, data access and dissemination, and operational requirements, and (ii) derivatives data reporting requirements by counterparties to derivatives transactions.

Please note that the TR CP does not provide guidance on Appendix A to the TR Rule. Guidance for Appendix A to the TR Rule is included in the Description column of the reporting fields in Appendix A itself.

### 5. Summary of the Scope Rule

The Scope Rule provides guidance as to which types of contracts or instruments will be treated as derivatives or securities, or are excluded in whole or in part from regulation. The definition of "derivative" in subsection 1(1) the Act is intended to include the types of instruments traditionally referred to as derivatives (for example, swaps and forwards) as well as other novel instruments. However, the definition of "derivative" is broad enough to capture many contracts and instruments that are not traditionally considered to be derivatives. The Scope Rule tailors the application of regulatory requirements to a broad range of existing and emerging products by making clear which contracts or instruments are to be regulated as derivatives or securities, or are outside the scope of securities or derivatives legislation.

The following contracts will be excluded from the definition of "derivative":

- gaming and insurance contracts where such contracts are regulated by a domestic or an equivalent foreign regulatory regime;
- currency exchange contracts provided that the contract (i) settles within prescribed timelines, (ii) is intended by the counterparties to be settled by delivery of the currency referenced in the contract, and (iii) is not rolled-over;
- commodity forward contracts provided that physical delivery of the commodity is intended and the contract does not permit cash settlement in the ordinary course;
- evidence of a deposit of certain federally and provincially regulated entities;
- contracts or instruments traded on certain prescribed exchanges;
- contracts meeting the definition of both security and derivative in the Act, provided that such contract is not a security solely by virtue of being an "investment contract" or "option"; and
- certain listed issuer compensation products where the underlying interest is a stock or share of the issuer.

As noted above, any contract or instrument excluded from the definition of "derivative" under the Scope Rule will not be required to be reported to a designated trade repository.

**6. Summary of the TR Rule**

The TR Rule can generally be divided into two areas: (i) requirements relating to the regulation of trade repositories, and (ii) reporting requirements by counterparties to derivatives transactions.

*(i) Regulation of Trade Repositories*

To obtain and maintain designation as a trade repository, a person or entity must apply to the Commission for designation and must comply with the designated trade repository requirements set out in the TR Rule, as well as all terms and conditions imposed by the Commission in any designation order made.

The legal entity that applies to be a designated trade repository will be required to file with the Commission a completed Form 91-507F1 and financial statements.[1] When determining whether or not to designate a trade repository, the Commission will consider various factors, including whether it is in the public interest to do so, whether the applicant is in compliance with securities law and whether the applicant has established policies and procedures that meet standards applicable to trade repositories. The TR CP provides additional guidance on how the Commission will assess such factors.

Once designated, a trade repository will be required to provide the Commission with interim and year-end financial statements and to provide notice of any significant changes to the information submitted in its Form 91-507F1 before implementing the changes.

A designated trade repository will be subject to a variety of on-going requirements including ensuring the adequacy of its governance arrangements, meeting board composition requirements, clearly defining management roles and responsibilities, maintaining policies and procedures for material aspects of its business, retaining records, ensuring data security and confidentiality, establishing a comprehensive risk management framework and meeting other requirements related to systems and operational risks. A designated trade repository will also be required to appoint a chief compliance officer and to clearly define his or her role and responsibilities.

Once operational, a designated trade repository will be expected to accept derivatives data for each asset class set out in the Commission's designation order. Any fees charged by a designated trade repository must be fairly and equitably allocated amongst its participants and must be publicly disclosed. Designated trade repositories will also have an obligation to confirm derivatives data with all participants of their service.

A designated trade repository will be required to provide the following access to derivatives data:

- the Commission will have access to all relevant derivatives data reported to a designated trade repository in accordance with the Commission's mandate;
- counterparties to a transaction will have access to derivatives data relevant to their transactions; and
- aggregate data on open positions, volume, number and prices related to transactions will be required to be reported publicly.

*(ii) Reporting Obligation*

All derivatives transactions involving a local counterparty are required to be reported to a designated trade repository or to the Commission. The TR Rule outlines a hierarchy for determining which counterparty will be required to report a transaction based on the counterparty to the transaction which is best suited to fulfill the reporting obligation. For example, for transactions that are cleared through a recognized or exempt clearing agency, the clearing agency is best positioned to report derivatives data and is therefore subject to the reporting obligation.

In terms of timing, initial reporting is required to be completed on a real-time basis. However, where it is not technologically possible to do so, the reporting counterparty must report as soon as possible but not later than the end of the next business day following the day that the transaction was entered into. Transactions that were entered into prior to the TR Rule coming into force will be required to be reported provided they have not expired or been terminated within a prescribed period after the TR Rule comes into force.

[1] Certain additional information and forms will be required from applicants that are located outside of Ontario.

Three main types of data must be reported under the TR Rule: (i) creation data, (see Appendix A to TR Rule for more details); (ii) life-cycle event data, which includes any change to derivatives data previously reported; and (iii) valuation data, which includes the current value of the transaction.

**7. Changes to Rules**

Appendix "A" to this Notice summarizes the comments received in respect of the Proposed Provincial Rules. A number of these comments led the Committee to make non-material revisions to the Proposed Provincial Rules. The main revisions which have been incorporated into the Rules are outlined below. In addition, the Commission has made some general drafting changes that are not of a substantive nature but which clarify the intended effect of certain provisions of the Rules and simplify the Rules as a whole.

*(i) Scope Rule*

Subsection 2(2) of the Scope Rule has been added to clarify that transactions executed on derivatives trading facilities are not eligible for the paragraph 2(1)(g) prescribed exclusion of exchange traded derivatives from the reporting requirements under the TR Rule. While the Committee does not intend to require transactions executed on an exchange to be reported under the TR Rule, the Committee has always intended that transactions executed on derivatives trading facilities would be required to be reported. The Commission is of the view that the clarification provided by subsection 2(2) is necessary because until an oversight regime for derivative trading facilities is enacted, such facilities may be recognized or exempted as exchanges.

*(ii) TR Rule*

*(a) Local Counterparty Definition*

Subsection (c) of the local counterparty definition has been revised so that guaranteed affiliates of registered foreign derivatives dealers are not local counterparties. This revision was made in response to a number of comments regarding the potential extra-territorial effect of the definition of local counterparty as proposed. The Committee determined that guaranteed affiliates of foreign derivatives dealers do not have a sufficient nexus to Ontario to warrant treatment as local counterparties.

*(b) Reporting Counterparty*

Subsection 25(1) has been revised to clarify the intent of the reporting counterparty hierarchy. If a transaction required to be reported is between two derivatives dealers, each derivatives dealer has an obligation to report the transaction. As previously drafted, the provision was focused on circumstances in which the derivatives dealers could not agree on which dealer would act as reporting counterparty. The revisions to subsection 25(1) make it clear that both dealers have a reporting obligation, but they may delegate this obligation under subsection 26(3) so as to avoid double reporting. Therefore, both derivatives dealers to the transaction ultimately have the reporting obligation, but are free to contract or institute systems and practices to delegate the reporting function to one of them.

Similarly, if a transaction required to be reported is between two non-derivatives dealer counterparties, each counterparty that is a local counterparty has an obligation to report under the TR Rule. Therefore, if a transaction is between two local counterparties that are not derivatives dealers, both local counterparties have an obligation to report under the TR Rule. As previously drafted, the provision was focused on circumstances in which the counterparties could not agree on which would act as reporting counterparty. The revisions to subsection 25(1) make it clear that both local counterparties have a reporting obligation, but they may delegate this obligation under subsection 26(3) so as to avoid double reporting. That is, both local counterparties to the transaction have a reporting obligation, but are free to contract or to institute systems and practices to delegate the reporting function to one of them. Likewise, when a local counterparty enters into a transaction with a foreign non-derivatives dealer counterparty, the local counterparty may delegate its reporting obligations to the foreign counterparty, but will remain ultimately responsible for reporting the transaction.

In each case, the intention of the TR Rule is to facilitate single reporting by one counterparty through delegation while requiring derivatives dealers and local counterparties to have procedures or contractual arrangements in place to ensure that reporting occurs.

*(c) Foreign Reporting Counterparty*

Subsection 25(2) applies to situations where the reporting counterparty, as determined under subsection 25(1), is not a local counterparty or a recognized or exempt clearing agency. This provision is intended to cover situations where a non-local reporting counterparty does not report a transaction or otherwise fails to fulfill the reporting counterparty's reporting duties. In such case the local counterparty must act as the reporting counterparty and fulfill the reporting counterparty duties under the TR Rule. This provision differs slightly from the delegation concept described in subsection (c) above in that, in the first instance the reporting obligation falls only on the derivatives dealer and not the non-derivatives dealer. The Committee believes that

derivatives dealers are better positioned to report and only where a derivatives dealer is not a local counterparty does a fallback obligation arise on the non-derivatives dealer local counterparty.

The provision has been revised to clarify how a local counterparty may determine when a foreign reporting counterparty has failed to report and, consequently, when the local counterparty must fulfill the reporting counterparty's duties. The Commission expects that a local counterparty will determine that the non-local reporting counterparty has discharged its reporting obligations by reviewing a confirmation of the transaction report. Where the local counterparty has not received confirmation that its transaction has been reported in accordance with the requirements of this TR Rule within two business days after the date on which the transaction occurred, it must act as reporting counterparty for the transaction. Where the local counterparty is a participant of the designated trade repository this confirmation would come from the designated trade repository in accordance with subsection 23(1). Where the local counterparty is not a participant it would be necessary for the local counterparty to ensure that it receives the confirmation from the reporting counterparty (or its delegate).

*(d) Limited Substituted Compliance*

Subsection 26(5) has been added to provide limited substituted compliance for counterparties that reside primarily outside of Ontario but are otherwise subject to the TR Rule. This provision would apply, for example, to an Ontario registered foreign derivatives dealer. In this example, the foreign derivatives dealer would be required to comply with the TR Rule in its entirety when dealing with Ontario market participants. Substituted compliance would be available to the foreign derivatives dealer for a transaction with a foreign market participant provided that the transaction was reported pursuant to an equivalent foreign rule and the Commission had access to the reported data. This revision is intended to reduce overlapping international trade reporting requirements while ensuring that the Commission has access to the data necessary to fulfill its mandate.

*(e) Valuation Data Reporting*

Section 33 has been revised to remove the requirement that both counterparties to a transaction report valuation data. As revised, only one party to each transaction is required to report valuation data. This revision was made in response to a number of comments that double valuation reporting is unduly onerous and inconsistent with U.S. reporting rules. The Committee determined that the burdens of double reporting outweigh the short-term benefits; however, the Committee may revisit this issue in the future once sufficient derivatives transaction reporting data is available.

*(f) Transaction Level Public Transparency*

Subsection 43(2) has been added to provide a 6-month extension to the requirement that a designated trade repository publicize anonymous transaction level data. This revision was made in response to many comments that the publication of transaction level data, even with the reporting delays provided for in the TR Rule, could cause harm to the Canadian derivatives market and market participants due to the less liquid nature of the Canadian derivatives market relative to other major trading jurisdictions. The Committee determined that a 6-month delay would allow time to further consider the appropriateness of the timing of transaction level public disclosure.

**8. Future Amendments to the Rule**

The OSC is implementing the TR Rule and Scope Rule as one part of Canada's broader G20 commitment to regulate OTC derivatives. Other areas of OTC derivatives regulation that have been recommended by the CSA include mandatory clearing, electronic trading, registration and capital and collateral requirements. Future rule-making in these other areas of the regulatory framework will include concepts that are shared with and impact the TR Rule and Scope Rule. Accordingly, future developments in the OTC derivatives regulatory framework may require consequential amendments to the TR Rule and Scope Rule.

**9. Legislative Authority for Rule Making**

The Scope Rule will come into force under the rulemaking authority provided under paragraphs 19.1 and 19.4 of subsection 143(1) of the Act, following proclamation of such rulemaking authority. Paragraph 19.1 authorizes the Commission to make rules prescribing one or more classes of contracts or instruments that are not derivatives for the purpose of prescribed provisions of Ontario securities law and prescribing those provisions. Paragraph 19.4 authorizes the Commission to make rules prescribing derivatives or classes of derivatives that are deemed to be securities for the purposes of prescribed provisions of the Act, the regulations and the rules.

The Commission has authority to designate trade repositories under section 21.2.2 of the Act. This authority includes the power to impose terms and conditions on the designation and the ability to make any decision with respect to the manner in which a designated trade repository carries on business or any by-law, rule, regulation, policy, procedure, interpretation or practice of a designated trade repository. The Commission's rulemaking authority to regulate designated trade repositories under the TR Rule is provided under paragraph 12 of subsection 143(1) of the Act.

The Commission's rulemaking authority for derivatives data reporting requirements under the TR Rule will be provided under subparagraph 35(ii) of subsection 143(1) of the Act, following proclamation of such rulemaking authority. Subparagraph 35(ii) authorizes the Commission to make rules requiring or respecting record keeping, reporting and transparency relating to derivatives.

**10. Alternatives Considered**

No other alternatives were considered.

**11. Unpublished Materials**

The Commission did not rely on any unpublished study, report or other written materials in connection with the Rules.

**12. Anticipated Costs and Benefits**

We believe that the impact of the Rules, including anticipated costs of compliance for designated trade repositories and reporting counterparties, is proportional to the benefits we seek to achieve. Greater transparency in the OTC derivatives market is one of the central pillars of derivatives regulatory reform in Canada and internationally. The G20 has agreed that all OTC derivative transactions should be reported to trade repositories. Trade repositories support transparency by making transactional and aggregated data available to relevant regulatory authorities on a routine basis and by request. In order to identify and assess potential risks in the Canadian derivatives market, regulators must have access to aggregate and transaction level data for all Canadian derivatives transactions, including Canadian referenced derivatives. Timely access to data collected by trade repositories will enable Canadian regulators and the central bank to monitor systemic risk exposures of market participants, detect market abuse, and assist in the performance of systemic risk analysis on these markets. It will also increase transparency in the OTC derivatives market to the public, reducing information imbalances through greater access and dissemination of appropriate data including aggregate data on open positions and trading volumes on a periodic basis.

We recognize that counterparties will incur some additional costs in order to comply with the derivatives data reporting obligations. The primary expenditure associated with the TR Rule's reporting obligations is the cost of updating systems or implementing new systems to facilitate the reporting of derivatives data to designated trade repositories. Once such systems are in place, additional areas of expenditure will likely include ongoing compliance costs and systems maintenance.

Certain provisions of the TR Rule and other external factors should help mitigate the initial costs associated with implementing necessary systems, processes and procedures for derivatives data reporting. For example, the TR Rule provides a hierarchy for determining which counterparty is obligated to report derivatives data which is intended to ensure that clearing agencies and derivatives dealers do the majority of reporting. The incremental implementation costs for such entities will be limited by the fact that many derivatives dealers and clearing agencies active in the Canadian derivatives market must comply with foreign trade reporting regimes and already have trade reporting systems in place. The TR Rule also provides accommodation for foreign market participants that are subject to the Rules because they are derivatives dealers registered in Ontario by providing for substituted compliance where they are transacting with foreign counterparties. In addition, the TR Rule permits delegation of reporting obligations. The ability to delegate reporting obligations to third-party service providers should provide end-users with a cost-effective alternative to direct reporting, without having to incur the initial costs associated with implementing reporting systems.

**November 14, 2013**

## APPENDIX A
## COMMENT SUMMARY AND OSC RESPONSES

### 1. The Scope Rule

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| **S. 2(1)(c) – Excluded derivatives – FX spot transactions** | Two commenters expressed concern that the activities of non-bank money services business – e.g., foreign exchange dealers – would be captured under paragraph 2(1)(c). | No change. Transactions involving foreign exchange dealers that do not qualify for the paragraph 2(1)(c) exclusion are expected to be reported. |
| **S. 2(1)(c)(i)(B) – Excluded derivatives – FX security conversion transactions** | A number of commenters requested clarification regarding the interpretation of clause 2(1)(c)(i)(B) and provided a number of examples of market practices relating to securities conversion transactions. | No change. We believe that the TR CP provides adequate guidance on the eligibility of securities conversions transactions for the clause 2(1)(c)(i)(B) exclusion. |
| **S. 2(1)(d) – Excluded derivatives – Physically settled commodity transactions** | One commenter urged that greater clarity is required in the CP for industry participants to form the interpretation that subparagraph 2(1)(d)(i) includes standardized industry contracts that contemplate cash settlement in place of physical delivery where a termination event has occurred. | No change. We believe that the TR CP provides adequate guidance on the treatment of termination events. |

### 2. The TR Rule

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| **General comments – Harmonized regulations, simultaneous coming into force and passport system** | A number of commenters stressed the importance of a coordinated approach to trade reporting across Canada, including with respect to harmonizing the effective date of the trade reporting requirements in all of the provinces. | No change. Provincial jurisdictions are committed to implementing harmonized trade reporting and trade repository rules. To the extent possible, jurisdictions will harmonize implementation timeframes. |
| | A number of commenters reiterated the suggestion that a "principal regulator" model or "passport system" for trade reporting and designation of trade repositories be adopted. | No change. A "principal regulator" model or "passport system" is outside the scope of the TR Rule. |
| **General comments – Substituted compliance** | Two commenters suggested that the Rule should provide for reciprocity or recognition of foreign-based trade repositories that are subject to the rules of an equivalent jurisdiction. | No change. Trade repositories may apply under renumbered section 42 for exemptions to certain requirements based upon substituted compliance. |
| | A number of commenters urged that a system of "substituted compliance" be adopted in the Rule to provide for recognition of a market participant's reporting (i) pursuant to "recognized" data reporting requirements, such as CFTC or SEC rules, and/or (ii) to an equivalent foreign trade repository. One commenter suggested that provincial securities regulators should publish a list of "recognized" requirements that would satisfy the substituted compliance suggestion set out above. | Change made. New subsection 26(5) deems a reporting counterparty to be in compliance with its reporting obligations under the Rule if (a) the transaction is required to be reported solely because it involves a local counterparty that is required to be registered with the Commission, or an affiliate thereof, (b) the transaction is reported to a designated trade repository pursuant to the securities legislation of a province of Canada or the laws of a foreign jurisdiction identified in Appendix B, and (c) the reporting counterparty instructs the designated TR to provide the Commission with access to the data it would otherwise be required to report |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| | | under the TR Rule. |
| | A number commenters suggested harmonizing data fields with, or at minimum limiting deviations from, the data fields required to be reported under CFTC and SEC rules, to avoid technological costs associated with compliance. | Change made. The data fields list in Appendix A are consistent with the fields required by major trading jurisdictions. The "Custodian" field has been deleted. |
| **S. 1 – "Dealer"** | One commenter suggested that the defined term should be "derivatives dealer", to distinguish from dealers that are securities dealers. | Change made. The defined term has been revised from "dealer" to "derivatives dealer". |
| **S. 1 – "Life-cycle event"** | One commenter suggested revising the language in the guidance provided in the TR CP with respect to "life-cycle event", to clarify that the reporting of life-cycle events may follow either a "message by message" approach or an end of business day "snapshot" approach that reflects all updates that occurred on the record on the given day. | Change made. The defined term "life-cycle data" has been revised to "life-cycle event data" to avoid any confusion. Pursuant to section 32, life-cycle event data is required to be reported by the end of the business day. |
| **S. 1 – "Local counterparty" – General** | A number commenters expressed concern that an entity could meet the "local counterparty" definition in more than one jurisdiction, and requested clarification as to the treatment and reporting obligations of such an entity. | No change. We note that reporting requirements will be harmonized across the Canadian jurisdictions. See also new subsection 26(5). |
| **S. 1 – "Local counterparty" – Paragraph (b)** | One commenter expressed concern that even if a party is exempt from any registration requirements under provincial law, it would still be "subject to" such regulations and thus be included within the definition of "local counterparty", and therefore subject to reporting requirements under the Rule. | Change made. Paragraph (b) has been revised to clarify that the paragraph applies only to counterparties that are required to be registered. |
| **S. 1 – "Local counterparty" – Paragraph (c)** | One commenter expressed concern with what it perceived as the extra-territorial reach of the definition of "local counterparty". | Change made. Paragraph (c) has been revised such that it no longer applies to counterparties that are local counterparties solely by virtue of paragraph (b). |
| **S. 2(4) – Initial filing and designation – Changes and inaccuracies** | One commenter suggested revising the requirement to notify the Commission "in writing immediately" of changes to, or inaccuracy of, information in Form 91-507F1 to a requirement for notice in writing as soon as practicable upon the applicant making such changes or becoming aware of such changes, consistent with the requirement to file an amended Form 91-507F1 within 7 days of such change occurring or the applicant becoming aware of such inaccuracy. | Change made. The requirement to notify the Commission is satisfied by the filing of a completed amended Form 91-507F1 no later than 7 days after the change occurs or after becoming aware of any inaccuracy. |
| **S. 13 – Access to designated trade repository services** | One commenter recommended that continuing derivatives data reporting by the clearing agency should be made to the same trade repository where the original trade was reported. The commenter also pointed out that by naming a clearinghouse as a reporting party in former section 27, there may be an increased likelihood that, in circumstances where a clearinghouse operates a trade repository, there will be a loss of choice as the clearinghouse will be incented to report to its own trade repository. | Change made. New subsection 26(9) requires that where a clearing agency is the reporting counterparty, it must report to a designated trade repository selected by the local counterparty. Renumbered subsection 26(6) requires that all derivatives data must be reported to the same designated trade repository to which the initial report was made. |
| **Former s. 20(2) – General business risk** | One commenter recommended that subsection 20(2) expressly provide that that a designated trade repository must hold liquid net assets funded by equity equal to at least six months of current operating expenses. | Change made. Section 20 has been revised to require a designated trade repository to hold liquid assets funded by equity equal to at least 6 months of |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| | | current operating expenses. |
| **S. 21(1), (2) – Systems and other operational risk requirements** | One commenter suggested that the requirements of the board in subsections 21(1) and (2) are overly broad and place on the board responsibilities better seated with the management of the trade repository. | No change. International standards require board involvement in the risk management framework. |
| **S. 21(4) – Systems and other operational risk requirements – Business continuity plans** | One commenter suggested that the requirement to recover within 2 hours is unnecessary and unduly burdensome relative to the risk presented by a longer recovery time. | No change. The 2-hour recovery time requirement is consistent with international standards. |
| **S. 21(6) – Systems and other operational risk requirements – Independent review of systems** | One commenter urged that an independent review of systems would (i) force designated trade repositories to incur excessive cost, (ii) be inconsistent with oversight requirements promulgated in other jurisdictions requiring trade reporting, and (iii) be duplicative of independent internal assessments. The commenter suggested subsection 21(6) be amended to allow the required independent assessment to be performed by internal audit departments that are compliant with the Institute of Internal Audit's (IIA) "International Standards for the Professional Practice of Internal Auditing", and align the frequency of reviews to coincide with such standards. | Change made. The TR CP provides that this requirement may be satisfied by an independent internal assessment. |
| **S. 21(8) – Systems and other operational risk requirements – Publication of requirements** | One commenter suggested revising subsection 21(8) such that the 3 month requirement is changed to state "a period of time sufficiently in advance of implementation to allow for sufficient testing and system modification by participants". | Change made. Subsection 21(8) has been revised to reflect suggested language. |
| **S. 21(9) – Systems and other operational risk requirements – Testing environment** | One commenter suggested revising subsection 21(9) such that the 2 month requirement is changed to state "a period of time sufficiently in advance of implementation to allow for sufficient testing and system modification by participants". | Change made. Subsection 21(9) has been revised to reflect suggested language. |
| **S. 23 – Confirmation of data and information** | A number of commenters suggested that (i) a trade repository not be required to affirmatively communicate with both counterparties when data is received from a third-party service provider, a CCP, or an execution platform if (a) the designated trade repository reasonably believes the data is accurate, (b) the data reflects that both counterparties agreed to the data, and (c) the counterparties were provided with a 48-hour correction period; and (ii) the trade repository be required to affirmatively communicate with both parties to the transaction when creation data is submitted directly by a swap counterparty. | Change made. TR CP revised to explain that the section 23 confirmation obligations may be satisfied by a notice to the counterparties that a transaction has been reported in their name. No response within 48 hours by a party may be deemed confirmation of the derivatives data reported. |
| **Former s. 25 – Duty to report – Interaction between s. 25 and former s. 27** | A number of commenters requested clarification on the interaction between the duty to report under former subsection 25(1) and the reporting counterparty hierarchy set out in former subsection 27(1). | Change made. Renumbered section 26 provides that the reporting counterparty's obligation to report is triggered by a derivatives transaction involving a local counterparty. Renumbered section 25 prescribes who the reporting counterparty with the legal obligation to report is. |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| **Former s. 25 – Duty to report – Post-transaction services** | One commenter requested clarification with respect to the reporting of bulk post-transaction services, including portfolio compression. The commenter specifically requested confirmation that transactions resulting bulk post-transaction services shall not be required to be reported in real-time due to technological impracticability, and recommended that, for both reporting and public dissemination, reporting resulting post-transaction services should be clearly indicated as such and not be accompanied by pricing data. | Change made. Appendix A revised to include field for post-transaction services. The size of a post-transaction services operation would be taken into account in determining technological practability. |
| **Former s. 26 – Pre-existing derivatives data** | A number of commenters raised concerns with the scope of the data required to be reported for pre-existing transactions. | No change. The reporting fields required for pre-existing transactions are consistent with the fields required by major trading jurisdictions. |
| | Two commenters suggested that, for clarity and simplicity, the obligation to report pre-existing transactions should include all those transactions that are open as of the day that mandatory reporting begins, as opposed to when the Proposed Rules come into effect, regardless of whether any such trade expires or terminates within the 365 day back-load period post the mandatory compliance date. | No change. We believe that the current reporting requirements and timeframe for pre-existing transactions are appropriate. There are no restrictions against a local counterparty voluntarily reporting any other pre-existing trade. |
| **Former s. 27(1) – Reporting counterparty** | One commenter suggested that former paragraph 27(1)(a) expressly refer to a "clearing agency" as a recognized or exempt clearing agency, to ensure that the clearing agency is subject to the Commission's regulatory oversight and jurisdiction. | Change made. Renumbered section 25 now refers to a "recognized or exempt clearing agency". |
| | A number of commenters expressed concern with placing on local counterparties the ultimate obligation for ensuring derivatives data is reported. A number of commenters suggested that the obligation to report derivatives trade data under former section 27 should be imposed on derivatives dealers or a clearing agency or swap execution facility involved in such transactions, regardless of whether such entities are foreign or not. | Change made. Renumbered section 26 revised such that a recognized or exempt clearing agency has exclusive reporting obligation. A registered foreign derivatives dealer is a local counterparty pursuant to subsection (b) of the "local counterparty" definition and has the reporting onus when transacting with non-dealers.<br>Further change made. Renumbered subsection 25(2) provides that where a local counterparty has not received a confirmation, by the end of the second business day after the day on which the transaction is required to be reported, the local counterparty must act as the reporting counterparty. |
| **Former s. 28 – Real-time reporting** | A number of commenters requested clarification that the phrase "as soon as technologically practicable" would take into account the nature of the reporting counterparty. | Partial change made. Revised subsection 31(2) of the Rule reflects that the real-time reporting requirement applies to creation data only. The TR CP provides guidance that revised subsection 31(2) "is intended to take into account the fact that not all counterparties will have the same technological capabilities." |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| **Former s. 32 – Unique product identifier** | One commenter suggested that the counterparties to a transaction are best situated to understand the product and assign a unique product identifier to that product in accordance with either industry or international standards and that it is not the province of the trade repository to analyze transactions and determine the type of product being reported. | Change made. Renumbered section 30 has been revised to require the reporting counterparty to assign a unique product identifier. |
| **Former s. 33 – Life-cycle event data** | One commenter recommended that life-cycle data and valuation data for transactions between affiliated entities be required to be reported on a quarterly, not daily, basis. | No change. The Commission believes that daily reporting of life-cycle event data for transactions between affiliated entities is important in providing the Commission with a view of the risk exposure in the market. To the extent that affiliated entities are not derivatives dealers, valuation data is only required to be reported quarterly in accordance with renumbered paragraph 33(1)(b). |
| **Former s. 35 – Valuation data – Reporting counterparty** | A number of commenters urged that only the reporting counterparty should be required to report valuation data, with one commenter suggesting that requiring local end-users to report valuation data will remove an incentive to clear transactions. | Change made. Renumbered section 33 revised to require only the reporting counterparty to report valuation data. |
| **S. 37(2) – Data available to regulators – Access standards** | One commenter suggested that subsection 37(2) be revised so as to require a designated trade repository to conform its access standards to internationally accepted regulatory access standards applicable to trade repositories only to the extent that the internationally accepted regulatory standards comport with the standards of any regulatory body with oversight responsibility for the designated trade repository. | No change. We note that, to the extent that internationally accepted regulatory standards conflict with the standards of a regulatory body with oversight responsibility for the designated trade repository, a designated trade repository may, in accordance with renumbered section 42, apply to a Director for an exemption to this Rule, in whole or in part. |
| **S. 37(3) – Data available to regulators** | A number of commenters expressed concern with the requirement that a local counterparty must "take any action necessary" to ensure that the Commission can access the derivatives data reported for transactions involving the local counterparty. | Change made. Section 37(3) has been revised to require a local counterparty to use "best efforts" to ensure that the Commission has access to reported derivatives data, including instructing a trade repository to provide the Commission with access |
| **S. 38 – Data available to counterparties** | One commenter recommended that, in cases of conflict between reporting laws and foreign privacy or blocking (secrecy) laws, the CSA should allow the reporting counterparty to withhold disclosure of certain identity information without having to seek the explicit approval of the regulator. | No change. We note that a reporting counterparty may, in accordance with renumbered section 42, apply to a Director for an exemption to this Rule, in whole or in part. |
| | One commenter urged that, in order to promote a level playing field with regard to derivatives-related services, service providers should be granted access to data in trade repositories upon consent by relevant counterparties to the trades submitted to the repositories and that trade repositories shall not be able to restrict such access based on reasons other than information security safeguards. | No change. The TR CP provides in guidance to section 38 that where a counterparty has provided consent to a trade repository to grant access to data to a third-party service provider, the trade repository shall grant such access on the terms consented to. |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| **S. 39 – Data available to the public** | A number of commenters urged that the need to preserve confidentiality and anonymity of the data being disseminated by the trade repository is of utmost priority. Commenters urged that subsection 39(3) should provide certain exceptions to public reporting for block trades, or trades above a certain threshold, and/ or mandatory minimum time delays with respect to public disclosure of data of such trades. Commenters encouraged the Commission to delay public reporting of transaction-level data. | Change made to renumbered section 43 to provide a further 6-month delay in the coming into force of subsection 39(3). |
| | A number of commenters suggested removing the requirement that a trade repository release to the public the geographic location and type of counterparty involved in a transaction, given the potential harm associated with the identification of a specific Ontario end-user. | Change made. The requirement to publish aggregate data on "geographic location" and "type of entity" has been deleted from subsection 39(2). |
| **S. 39(6) – Data available to the public – Affiliate transactions** | One commenter expressed concern that the wording of subsection 39(6) does not establish a restriction against the public release of affiliate transaction data, and recommended revising subsection 39(6) to state the trade repository "must not" make public any derivatives data for transactions between affiliates, consistent with the approach used in subsection 39(4) to establish a restriction. | No change. Given the international nature of the derivatives market, the Commission is not in a position to mandate that a trade repository may not publicly release such data where it may be required to do so under foreign regulations. |
| **S. 40 – Exclusions** | One commenter expressed concern that the result of former paragraph (c) in subsection 40 is to create a singular exclusion where one already exists – that is, it says if the counterparty is not the reporting counterparty, then it is excused from reporting obligations, with the result that every OTC commodity derivative transaction, regardless of transaction size or type of participant involved, will be subject to the reporting obligation. | Change made. Former paragraph (c) in section 40 has been deleted. |
| | One commenter requested clarification on the intent of section 40, and suggested that the term "physical commodity transaction" be replaced with "commodity other than cash or currency" for consistency with paragraph 2(1)(d) of the Scope Rule. | Change made. The exclusion in section 40 has made consistent with the Scope Rule and refers to a "derivative the asset class of which is a commodity other than cash or currency". |
| | A number of commenters suggested that the $500,000 threshold for exemption from reporting may be too low. | No change. This exclusion is only intended to be available to small market participants. |
| **S. 40 – Exclusions – Inter-affiliate and intra-group trades** | A number of commenters urged that inter-affiliate derivatives transactions should be excluded from the proposed trade reporting obligations. | No change. See the response to comments relating to public dissemination of inter-affiliate transaction data in section 39 above. |
| **Former s. 41 – Exemptions – General** | Two commenters suggested that the Rule be amended to specifically address issues that could lead to frequent applications for exemptive relief, including: (i) substituted compliance, and (ii) confidentiality laws and public dissemination of block trade data. Commenters also suggested that a process for obtaining and "passporting" exemptive relief into other CSA jurisdictions be developed | See general comments above relating to harmonization and substituted compliance (first two comments on TR Rule). |

| Section Reference | Issue/Comment Summary | Response |
|---|---|---|
| | One commenter suggested expanded usage of the exemption under former section 41 in instances where minor conflicts exist between the laws and regulations governing a foreign trade repository in its home jurisdiction and those proposed by the OSC. | No change. As stated above, an exemption may be available under renumbered section 42 where minor conflicts exist. |
| **Former s. 42 – Effective date** | A number of commenters suggested the Rule be amended to defer the reporting obligations on non-dealers for at least six months. | No change. Non-dealer market participants are afforded a deferral of reporting obligations under renumbered subsection 43(4). |
| | A number of commenters expressed concern regarding reporting requirements that differ in data fields or by transaction asset class or sub-asset class from those in other major trading jurisdictions. The commenters suggested deferring the effective date for reporting of data fields and transactions in additional asset classes that are not currently required to be reported in other major trading jurisdictions. | No change. Reporting requirement timelines are consistent with the timelines in other jurisdictions. |

**3. The TR Rule Appendix A – Data Fields**

| Topic or Field | Round 2 Issue/Comment | Response |
|---|---|---|
| **N/A fields** | One commenter recommended that fields that are not applicable should be left blank, rather than populated with N/A. | Change made. A field should be left blank where the field is not applicable. |
| **Clearing Exemption and End-user Exemption fields** | One commenter expressed concern with the Clearing Exemption and End-user Exemption fields, suggesting that only the Clearing Exemption field should be used and the End user Exemption field should be deleted. | Change made. The End-user Exemption field has been deleted, as the Clearing Exemption field captures the required information. |
| **Execution Timestamp** | One commenter requested clarification as to whether the "Execution Timestamp" field is applicable to transactions not executed on a trading venue. Also, it is not always the case that this information is available when a counterparty is back-loading pre-existing trades. | Change made. Further clarifying language provided in the public dissemination column, requiring information to be provided only if available. |
| **Confirmation Timestamp** | A number of commenters expressed concern with the requirement to report the confirmation timestamp as it is either difficult to report or it will be different between counterparties. | Change made. This field has been deleted as the benefits of having it are limited and keeping it could cause reporting issues for participants. |
| **Electronic Trading Venue (ETV) and ETV Identifier fields** | One commenter suggests that Electronic Trading Venue Identifier field be deleted. The identifier of the execution venue can be used as the value under the Electronic Trading Venue field. | Change made. This field has been deleted. Further clarifying language has been provided in the public dissemination column. |
| **Custodian field** | Two commenters expressed concern with the "Custodian" field. | Change made. This field has been deleted as it is not required by other major trading jurisdictions and may be difficult to report. |
| **Compression** | One commenter expressed concern that it was not clear if a transaction resulting from portfolio compression was subject to public dissemination. | Change made. A "Post-Transaction Services" field has been added to identify a transaction that results from post-transaction services, including compression and reconciliation exercises. |

**4. The TR Rule Forms – Form 91-507F1**

| Section reference | Round 2 Issue/Comment | Response |
|---|---|---|
| **Exhibit I, s. 1** | One commenter expressed concern regarding the provision of the names of participants prior to designation of an applicant company, noting that absent consent to provide such information, the applicant trade repository may be in violation of the privacy rights of such participants. | Change made. This requirement has been deleted. |

**5. List of Commenters**

1. Alternative Investment Management Association
2. Blake, Cassels & Graydon LLP
3. BP Canada Energy Group ULC
4. Canadian Life and Health Insurance Association Inc.
5. Canadian Market Infrastructure Committee
6. Capital Power Corporation
7. Depository Trust & Clearing Corporation
8. Direct Energy Marketing Limited
9. Terence W. Doherty
10. FpML Standards Committee, Financial product Markup Language
11. Global Financial Markets Association, Global Foreign Exchange Division
12. IGM Financial Inc.
13. International Swaps and Derivatives Association, Inc.
14. Just Energy Group Inc.
15. MarkitSERV, Markit Group Limited
16. Miller Thomson LLP
17. Nexen Marketing
18. Ontario Teachers' Pension Plan
19. Osler, Hoskin & Harcourt, LLP
20. RBC Global Asset Management Inc.
21. SaskEnergy Incorporated and TransGas Limited
22. Securities Industry and Financial Markets Association
23. Shell Energy North America (Canada) Inc. and Shell Trading Canada
24. State Street Global Advisors, Ltd.
25. Suncor Energy Marketing Inc.
26. TransAlta Corporation
27. TriOptima AB

**ONTARIO SECURITIES COMMISSION RULE 91-506**
***DERIVATIVES: PRODUCT DETERMINATION***

**Application**

**1.** This Rule applies to Ontario Securities Commission Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*.

**Excluded derivatives**

**2.** (1) A contract or instrument is prescribed not to be a derivative if it is

(a) regulated by,

(i) gaming control legislation of Canada or a jurisdiction of Canada, or

(ii) gaming control legislation of a foreign jurisdiction, if the contract or instrument

(A) is entered into outside of Canada,

(B) is not in violation of legislation of Canada or Ontario, and

(C) would be regulated under gaming control legislation of Canada or Ontario if it had been entered into in Ontario;

(b) an insurance or annuity contract entered into,

(i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or

(ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or Ontario if it had been entered into in Ontario;

(c) a contract or instrument for the purchase and sale of currency that,

(i) except where all or part of the delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the parties, their affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,

(A) within two business days, or

(B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,

(ii) is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and

(iii) does not allow for the contract or instrument to be rolled over;

(d) a contract or instrument for delivery of a commodity other than cash or currency that,

(i) is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and

(ii) does not allow for cash settlement in place of delivery except where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents;

(e) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;

(f) evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or

(g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(2) For the purposes of paragraph (1)(g), an exchange does not include a derivatives trading facility.

**Investment contracts and over-the-counter options**

**3.** A contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being an investment contract under paragraph (n) of the definition of "security" in subsection 1(1) of the Act, or being an option described in paragraph (d) of that definition, that is not described in section 5, is prescribed not to be a security.

**Derivatives that are securities**

**4.** A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise be a derivative is prescribed not to be a derivative.

**Derivatives prescribed to be securities**

**5.** A contract or instrument that is a security and would otherwise be a derivative, other than a contract or instrument to which any of sections 2 to 4 apply, is prescribed not to be a derivative if such contract or instrument is used by an issuer or affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.

**COMPANION POLICY 91-506CP**
**TO ONTARIO SECURITIES COMMISSION RULE 91-506**
***DERIVATIVES: PRODUCT DETERMINATION***

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## PART 1
## GENERAL COMMENTS

### Introduction

This Companion Policy (the "Policy") sets out the views of the Commission ("our" or "we") on various matters relating to Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* (the "Rule").

Except for Part 1, the numbering and headings in this Companion Policy correspond to the numbering and headings in the Rule. Any general guidance for a Section appears immediately after the Section name. Any specific guidance on sections in the Rule follows any general guidance.

The Rule applies only to the Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*.

Unless defined in the Rule or this Companion Policy, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and Ontario Securities Commission Rule 14-501 *Definitions*.

In this Companion Policy, the term "contract" is interpreted to mean "contract or instrument".

## PART 2
## GUIDANCE

### Excluded derivatives

**2.** (1)(a) *Gaming contracts*

Paragraph 2(1)(a) of the Rule prescribes certain domestic and foreign gaming contracts not to be "derivatives". While a gaming contract may come within the definition of "derivative", it is generally not recognized as being a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. In addition, the Commission does not believe that the derivatives regulatory regime will be appropriate for this type of contract. Further, gaming control legislation of Canada (or a jurisdiction of Canada), or equivalent gaming control legislation of a foreign jurisdiction, generally has consumer protection as an objective and is therefore aligned with the objective of securities legislation to provide protection to investors from unfair, improper or fraudulent practices.

With respect to subparagraph 2(1)(a)(ii), a contract that is regulated by gaming control legislation of a foreign jurisdiction would only qualify for this exclusion if: (1) its execution does not violate legislation of Canada or Ontario, and (2) it would be considered a gaming contract under domestic legislation. If a contract would be treated as a derivative if entered into in Ontario, but would be considered a gaming contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction.

(b) *Insurance and annuity contracts*

Paragraph 2(1)(b) of the Rule prescribes qualifying insurance or annuity contracts not to be "derivatives". A reinsurance contract would be considered to be an insurance or annuity contract.

While an insurance contract may come within the definition of "derivative", it is generally not recognized as a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. The Commission does not believe that the derivatives regulatory regime will be appropriate for this type of contract. Further, a comprehensive regime is already in place that regulates the insurance industry in Canada and the insurance legislation of Canada (or a jurisdiction of Canada), or equivalent insurance legislation of a foreign jurisdiction, has consumer protection as an objective and is therefore aligned with the objective of securities legislation to provide protection to investors from unfair, improper or fraudulent practices.

Certain derivatives that have characteristics similar to insurance contracts, including credit derivatives and climate-based derivatives, will be treated as derivatives and not insurance or annuity contracts.

Subparagraph 2(1)(b)(i) requires an insurance or annuity contract to be entered into with a domestically licensed insurer and that the contract be regulated as an insurance or annuity contract under Canadian insurance legislation. Therefore, for example, an interest rate derivative entered into by a licensed insurance company would not be an excluded derivative.

With respect to subparagraph 2(1)(b)(ii), an insurance or annuity contract that is made outside of Canada would only qualify for this exclusion if it would be regulated under insurance legislation of Canada or Ontario if made in Ontario. Where a contract would otherwise be treated as a derivative if entered into in Canada, but is considered an insurance contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction. Subparagraph 2(1)(b)(ii) is included to address the situation where a local counterparty purchases insurance for an interest that is located outside of Canada and the insurer is not required to be licensed in Canada.

(c) *Currency exchange contracts*

Paragraph 2(1)(c) of the Rule prescribes a short-term contract for the purchase and sale of a currency not to be a "derivative" if it is settled within the time limits set out in subparagraph 2(1)(c)(i). This provision is intended to apply exclusively to contracts that facilitate the conversion of one currency into another currency specified in the contract. These currency exchange services are often provided by financial institutions or other businesses that exchange one currency for another for clients' personal or business use (e.g., for purposes of travel or to make payment of an obligation denominated in a foreign currency).

Timing of delivery (subparagraph 2(1)(c)(i))

To qualify for this exclusion the contract must require physical delivery of the currency referenced in the contract within the time periods prescribed in subparagraph 2(1)(c)(i). If a contract does not have a fixed settlement date or otherwise allows for settlement beyond the prescribed periods or permits settlement by delivery of a currency other than the currency referenced in the contract, it will not qualify for this exclusion.

Clause 2(1)(c)(i)(A) applies to a transaction that settles by delivery of the referenced currency within two business days – being the industry standard maximum settlement period for a spot foreign exchange transaction.

Clause 2(1)(c)(i)(B) allows for a longer settlement period if the foreign exchange transaction is entered into contemporaneously with a related securities trade. This exclusion reflects the fact that the settlement period for certain securities trades can be three or more days. In order for the provision to apply, the securities trade and foreign exchange transaction must be related, meaning that the currency to which the foreign exchange transaction pertains was used to facilitate the settlement of the related security purchase.

Where a contract for the purchase or sale of a currency provides for multiple exchanges of cash flows, all such exchanges must occur within the timelines prescribed in subparagraph 2(1)(c)(i) in order for the exclusion in paragraph 2(1)(c) to apply.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(c)(i))

Subparagraph 2(1)(c)(i) requires that a contract must not permit settlement in a currency other than what is referenced in the contract unless delivery is rendered impossible or commercially unreasonable as a result of events not reasonably within the control of the counterparties.

Settlement by delivery of the currency referenced in the contract requires the currency contracted for to be delivered and not an equivalent amount in a different currency. For example, where a contract references Japanese Yen, such currency must be delivered in order for this exclusion to apply. We consider delivery to mean actual delivery of the original currency contracted for either in cash or through electronic funds transfer. In situations where settlement takes place through the delivery of an alternate

currency or account notation without actual currency transfer, there is no settlement by delivery and therefore the exclusion in paragraph 2(1)(c) would not apply.

We consider events that are not reasonably within the control of the counterparties to include events that cannot be reasonably anticipated, avoided or remedied. An example of an intervening event that would render delivery to be commercially unreasonable would include a situation where a government in a foreign jurisdiction imposes capital controls that restrict the flow of the currency required to be delivered. A change in the market value of the currency itself will not render delivery commercially unreasonable.

Intention requirement (subparagraph 2(1)(c)(ii))

Subparagraph 2(1)(c)(ii) excludes from the reporting requirement a contract for the purchase and sale of a currency that is intended to be settled through the delivery of the currency referenced in such contract. The intention to settle a contract by delivery may be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the currency and not merely an option to make or take delivery. Any agreement, arrangement or understanding between the parties, including a side agreement, standard account terms or operational procedures that allow for the settlement in a currency other than the referenced currency or on a date after the time period specified in subparagraph 2(1)(c)(i) is an indication that the parties do not intend to settle the transaction by delivery of the prescribed currency within the specified time periods.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, will not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties' intention was to actually deliver the contracted currency. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(c)(ii) include:

- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a currency to net offsetting obligations, provided that the counterparties intended to settle through delivery at the time the contract was created and the netted settlement is physically settled in the currency prescribed by the contract, and

- a provision where cash settlement is triggered by a termination right that arises as a result of a breach of the terms of the contract.

Although these types of provisions permit settlement by means other than the delivery of the relevant currency, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. Where a counterparty's conduct indicates an intention not to settle by delivery, the contract will not qualify for the exclusion in paragraph 2(1)(c). For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency, the contract will not qualify for this exclusion. Similarly, a contract would not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency.

Rolling over (subparagraph 2(1)(c)(iii))

Subparagraph 2(1)(c)(iii) provides that, in order to qualify for the reporting exclusion in paragraph 2(1)(c), a currency exchange contract must not permit a rollover of the contract. Therefore, physical delivery of the relevant currencies must occur in the time periods prescribed in subparagraph 2(1)(c)(i). To the extent that a contract does not have a fixed settlement date or otherwise allows for the settlement date to be extended beyond the periods prescribed in subparagraph 2(1)(c)(i), the Commission would consider it to permit a rollover of the contract. Similarly, any terms or practice that permits the settlement date of the contract to be extended by simultaneously closing the contract and entering into a new contract without delivery of the relevant currencies would also not qualify for the exclusion in paragraph 2(1)(c).

The Commission does not intend that the exclusion in paragraph 2(1)(c) will apply to contracts entered into through platforms that facilitate investment or speculation based on the relative value of currencies. These platforms typically do not provide for physical delivery of the currency referenced in the contract, but instead close out the positions by crediting client accounts held by the person operating the platform, often applying the credit using a standard currency.

(d) *Commodities*

Paragraph 2(1)(d) of the Rule prescribes a contract for the delivery of a commodity not to be a "derivative" if it meets the criteria in subparagraphs 2(1)(d)(i) and (ii).

Commodity

The exclusion available under paragraph 2(1)(d) is limited to commercial transactions in goods that can be delivered either in a physical form or by delivery of the instrument evidencing ownership of the commodity. We take the position that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this exclusion will not apply to financial commodities such as currencies, interest rates, securities and indexes.

Intention requirement (subparagraph 2(1)(d)(i))

Subparagraph 2(1)(d)(i) of the Rule requires that counterparties *intend* to settle the contract by delivering the commodity. Intention can be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of an intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the commodity and not merely an option to make or take delivery. Subject to the comments below on subparagraph 2(1)(d)(ii), we are of the view that a contract containing a provision that permits the contract to be settled by means other than delivery of the commodity, or that includes an option or has the effect of creating an option to settle the contract by a method other than through the delivery of the commodity, would not satisfy the intention requirement and therefore does not qualify for this exclusion.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, may not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties' intention was to actually deliver the commodity. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(d)(i) include:

- an option to change the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered;
- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a commodity to net offsetting obligations provided that the counterparties intended to settle each contract through delivery at the time the contract was created,
- an option that allows the counterparty that is to accept delivery of a commodity to assign the obligation to accept delivery of the commodity to a third-party; and
- a provision where cash settlement is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder.

Although these types of provisions permit some form of cash settlement, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, cash settlement, the contract will not qualify for this exclusion. Similarly, a contract will not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, cash settlement of the original contract.

When determining the intention of the counterparties, we will examine their conduct at execution and throughout the duration of the contract. Factors that we will consider include whether a counterparty is in the business of producing, delivering or using the commodity in question and whether the counterparties regularly make or take delivery of the commodity relative to the frequency with which they enter into such contracts in relation to the commodity.

Situations may exist where, after entering into the contract for delivery of the commodity, the counterparties enter into an agreement that terminates their obligation to deliver or accept delivery of the commodity (often referred to as a "book-out" agreement). Book-out agreements are typically separately negotiated, new agreements where the counterparties have no obligation to enter into such agreements and such book-out agreements are not provided for by the terms of the contract as

initially entered into. We will generally not consider a book-out to be a "derivative" provided that, at the time of execution of the original contract, the counterparties intended that the commodity would be delivered.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(d)(ii))

Subparagraph 2(1)(d)(ii) requires that a contract not permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents. A change in the market value of the commodity itself will not render delivery commercially unreasonable. In general, we consider examples of events not reasonably within the control of the counterparties would include:

- events to which typical *force majeure* clauses would apply,
- problems in delivery systems such as the unavailability of transmission lines for electricity or a pipeline for oil or gas where an alternative method of delivery is not reasonably available, and
- problems incurred by a counterparty in producing the commodity that they are obliged to deliver such as a fire at an oil refinery or a drought preventing crops from growing where an alternative source for the commodity is not reasonably available.

In our view, cash settlement in these circumstances would not preclude the requisite intention under subparagraph 2(1)(d)(i) from being satisfied.

(e) and (f) *Evidence of a deposit*

Paragraphs 2(1)(e) and (f) of the Rule prescribe certain evidence of deposits not to be a "derivative".

Paragraph 2(1)(f) refers to "similar statutes of Canada or a jurisdiction of Canada". While the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) is Ontario legislation, it is intended that all federal or province-specific statutes will receive the same treatment in every province or territory. For example, if a credit union to which the Ontario *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies issues an evidence of deposit to a market participant that is located in a different province, that province would apply the same treatment under its equivalent legislation.

(g) *Exchange-traded derivatives*

Paragraph 2(1)(g) of the Rule prescribes a contract not to be a derivative if it is traded on certain prescribed exchanges. Exchange-traded derivatives provide a measure of transparency to regulators and to the public, and for this reason are not required to be reported. We note that where a transaction is cleared through a clearing agency, but not traded on an exchange, it will not be considered to be exchange-traded and will be required to be reported.

Subsection 2(2) of the Rule excludes derivatives trading facilities from the meaning of exchange as it is used in paragraph 2(1)(g). A derivatives trading facility includes any trading system, facility or platform in which multiple participants have the ability to execute or trade derivative instruments by accepting bids and offers made by multiple participants in the facility or system, and in which multiple third-party buying and selling interests in over-the-counter derivatives have the ability to interact in the system, facility or platform in a way that results in a contract.

For example, the following would not be considered an exchange for purposes of paragraph 2(1)(g): a "swap execution facility" as defined in the Commodity Exchange Act 7 U.S.C. §(1a)(50); a "security-based swap execution facility" as defined in the Securities Exchange Act of 1934 15 U.S.C. §78c(a)(77); and a "Multilateral trading facility" as defined in Directive 2004/39/EC Article 4(1)(15) of the European Parliament. Therefore derivatives traded on the foregoing facilities that would otherwise be considered derivatives for the purposes of this Rule are required to be reported.

(h) *Additional contracts not considered to be derivatives*

Apart from the contracts expressly prescribed not to be derivatives in section 2 of the Rule, there are other contracts that we do not consider to be "derivatives" for the purposes of securities or derivatives legislation. A feature common to these contracts is that they are entered into for consumer, business or non-profit purposes that do not involve investment, speculation or hedging. Typically, they provide for the transfer of ownership of a good or the provision of a service. In most cases, they are not traded on a market.

These contracts include, but are not limited to:

- a consumer or commercial contract to acquire, or lease real or personal property, to provide personal services, to sell or assign rights, equipment, receivables or inventory, or to obtain a loan or mortgage, including a loan or mortgage with a variable rate of interest, interest rate cap, interest rate lock or embedded interest rate option;
- a consumer contract to purchase non-financial products or services at a fixed, capped or collared price;
- an employment contract or retirement benefit arrangement;
- a guarantee;
- a performance bond;
- a commercial sale, servicing, or distribution arrangement;
- a contract for the purpose of effecting a business purchase and sale or combination transaction;
- a contract representing a lending arrangement in connection with building an inventory of assets in anticipation of a securitization of such assets; and
- a commercial contract containing mechanisms indexing the purchase price or payment terms for inflation such as via reference to an interest rate or consumer price index.

**Investment contracts and over-the-counter options**

**3.** Section 3 of the Rule prescribes a contract (to which section 2 of the Rule does not apply) that is a derivative and a security solely by reason of being an investment contract under paragraph (n) of the definition of "security" in subsection 1(1) of the Act, not to be a security. Some types of contracts traded over-the-counter, such as foreign exchange contracts and contracts for difference meet the definition of "derivative" (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) but also meet the definition of "security" (because they are investment contracts). This section prescribes that such instruments will be treated as derivatives and therefore be required to be reported to a designated trade repository.

Similarly, options fall within both the definition of "derivative" and the definition of "security". Section 3 of the Rule prescribes an option that is only a security by virtue of paragraph (d) of the definition of "security" in subsection 1(1) of the Act (and not described in section 5 of the Rule), not to be a security. This section prescribes that such instruments will be treated as derivatives and therefore will be required to be reported to a designated trade repository. This treatment will only apply to options that are traded over-the-counter. Under paragraph 2(g), exchange-traded options will not be required to be reported to a designated trade repository. Further, options that are entered into on a commodity futures exchange pursuant to standardized terms and conditions are commodity futures options and therefore regulated under the *Commodity Futures Act* (Ontario) and excluded from the definition of "derivative".

**Derivatives that are securities**

**4.** Section 4 of the Rule prescribes a contract (to which sections 2 and 3 of the Rule do not apply) that is a security and a derivative, not to be a derivative. Derivatives that are securities and which are contemplated as falling within this section include structured notes, asset-backed securities, exchange-traded notes, capital trust units, exchangeable securities, income trust units, securities of investment funds and warrants. This section ensures that such instruments will continue to be subject to applicable prospectus disclosure and continuous disclosure requirements in securities legislation as well as applicable registration requirements for dealers and advisers. The Commission anticipates that it will again review the categorization of instruments as securities and derivatives once the comprehensive derivatives regime has been implemented.

**Derivatives prescribed to be securities**

**5.** Section 5 of the Rule prescribes a security-based derivative that is used by an issuer or its affiliate to compensate an officer, director, employee or service provider, or as a financing instrument, not to be a derivative. Examples of the compensation instruments that are contemplated as falling within section 5 include stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers, such as broker options. Securities treatment would also apply to the aforementioned instruments when used as a financing instrument, for example, rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. The Commission takes the view that an instrument would only be

considered a financing instrument if it is used for capital-raising purposes. An equity swap, for example, would generally not be considered a financing instrument. The classes of derivatives referred to in section 5 can have similar or the same economic effect as a securities issuance and are therefore subject to requirements generally applicable to securities. As they are prescribed not to be derivatives they are not subject to the derivatives reporting requirements.

**ONTARIO SECURITIES COMMISSION RULE 91-507**
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**PART 1**
**DEFINITIONS AND INTERPRETATION**

**Definitions**

**1.** (1) In this Rule

"asset class" means the asset category underlying a derivative and includes interest rate, foreign exchange, credit, equity and commodity;

"board of directors" means, in the case of a designated trade repository that does not have a board of directors, a group of individuals that acts in a capacity similar to a board of directors;

"creation data" means the data in the fields listed in Appendix A;

"derivatives dealer" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Ontario as principal or agent;

"derivatives data" means all data related to a transaction that is required to be reported pursuant to Part 3;

"Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee;

"Legal Entity Identifier System Regulatory Oversight Committee" means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012;

"life-cycle event" means an event that results in a change to derivatives data previously reported to a designated trade repository in respect of a transaction;

"life-cycle event data" means changes to creation data resulting from a life-cycle event;

"local counterparty" means a counterparty to a transaction if, at the time of the transaction, one or more of the following apply:

(a) the counterparty is a person or company, other than an individual, organized under the laws of Ontario or that has its head office or principal place of business in Ontario;

(b) the counterparty is registered under Ontario securities law as a derivatives dealer or in an alternative category as a consequence of trading in derivatives;

(c) the counterparty is an affiliate of a person or company described in paragraph (a), and such person or company is responsible for the liabilities of that affiliated party;

"participant" means a person or company that has entered into an agreement with a designated trade repository to access the services of the designated trade repository;

"reporting counterparty" means the counterparty to a transaction as determined under section 25 that is required to report derivatives data under section 26;

"transaction" means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative;

"user" means, in respect of a designated trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that designated trade repository pursuant to this Rule; and

"valuation data" means data that reflects the current value of the transaction and includes the data in the applicable fields listed in Appendix A under the heading "Valuation Data".

(2) In this Rule, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: "accounting principles"; "auditing standards"; "publicly accountable enterprise"; "U.S. AICPA GAAS"; "U.S. GAAP"; and "U.S. PCAOB GAAS".

(3) In this Rule, "interim period" has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

## PART 2
## TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

**Trade repository initial filing of information and designation**

**2.** (1) An applicant for designation under section 21.2.2 of the Act must file a completed Form 91-507F1 – *Application For Designation and Trade Repository Information Statement*.

(2) In addition to the requirement set out in subsection (1), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located outside of Ontario must

(a) certify on Form 91-507F1 that it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission,

(b) certify on Form 91-507F1 that it will provide the Commission with an opinion of legal counsel that

(i) the applicant has the power and authority to provide the Commission with access to its books and records, and

(ii) the applicant has the power and authority to submit to onsite inspection and examination by the Commission.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 91-507F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process*.

(4) Within 7 days of becoming aware of an inaccuracy in or making a change to the information provided in Form 91-507F1, an applicant must file an amendment to Form 91-507F1 in the manner set out in that Form.

**Change in information**

**3.** (1) Subject to subsection (2), a designated trade repository must not implement a significant change to a matter set out in Form 91-507F1 unless it has filed an amendment to Form 91-507F1 in the manner set out in that Form at least 45 days before implementing the change.

(2) A designated trade repository must file an amendment to the information provided in Exhibit I (Fees) of Form 91-507F1 in the manner set out in the Form at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For a change to a matter set out in Form 91-507F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to Form 91-507F1 in the manner set out in that Form by the earlier of

(a) the close of business of the designated trade repository on the 10th day after the end of the month in which the change was made, and

(b) the time the designated trade repository publicly discloses the change.

**Filing of initial audited financial statements**

**4.** (1) An applicant must file audited financial statements for its most recently completed financial year with the Commission as part of its application for designation under section 21.2.2 of the Act.

(2) The financial statements referred to in subsection (1) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(ii) IFRS, or

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) be audited in accordance with

(i) Canadian GAAS,

(ii) International Standards on Auditing, or

(iii) U.S. AICPA GAAS or U.S. PCAOB GAAS if the person or company is incorporated or organized under the laws of the United States of America.

(3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

(a) expresses an unmodified opinion if the financial statements are audited in accordance with Canadian GAAS or International Standards on Auditing,

(b) expresses an unqualified opinion if the financial statements are audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS,

(c) identifies all financial periods presented for which the auditor's report applies,

(d) identifies the auditing standards used to conduct the audit,

(e) identifies the accounting principles used to prepare the financial statements,

(f) is prepared in accordance with the same auditing standards used to conduct the audit, and

(g) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

**Filing of annual audited and interim financial statements**

**5.** (1) A designated trade repository must file annual audited financial statements that comply with the requirements in subsections 4(2) and 4(3) with the Commission no later than the 90th day after the end of its financial year.

(2) A designated trade repository must file interim financial statements with the Commission no later than the 45th day after the end of each interim period.

(3) The interim financial statements referred to in subsection (2) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(ii) IFRS, or

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America, and

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements.

**Ceasing to carry on business**

**6.** (1) A designated trade repository that intends to cease carrying on business in Ontario as a trade repository must make an application and file a report on Form 91-507F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

(2) A designated trade repository that involuntarily ceases to carry on business in Ontario as a trade repository must file a report on Form 91-507F3 as soon as practicable after it ceases to carry on that business.

**Legal framework**

**7.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities.

(2) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

(a) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,

(b) the rights and obligations of a user, owner and regulator with respect to the use of the designated trade repository's information are clear and transparent,

(c) the contractual arrangements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability, and

(d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

**Governance**

**8.** (1) A designated trade repository must establish, implement and maintain written governance arrangements that

(a) are well-defined, clear and transparent,

(b) set out a clear organizational structure with consistent lines of responsibility,

(c) provide for effective internal controls,

(d) promote the safety and efficiency of the designated trade repository,

(e) ensure effective oversight of the designated trade repository,

(f) support the stability of the broader financial system and other relevant public interest considerations, and

(g) properly balance the interests of relevant stakeholders.

(2) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

(3) A designated trade repository must publicly disclose on its website

(a) the governance arrangements established in accordance with subsection (1), and

(b) the rules, policies and procedures established in accordance with subsection (2).

**Board of directors**

**9.** (1) A designated trade repository must have a board of directors.

(2) The board of directors of a designated trade repository must include

(a) individuals who have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and

(b) appropriate representation by individuals who are independent of the designated trade repository.

(3) The board of directors of a designated trade repository must, in consultation with the chief compliance officer of the designated trade repository, resolve conflicts of interest identified by the chief compliance officer.

(4) The board of directors of a designated trade repository must meet with the chief compliance officer of the designated trade repository on a regular basis.

**Management**

**10.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that

(a) specify the roles and responsibilities of management, and

(b) ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge its roles and responsibilities.

(2) A designated trade repository must notify the Commission no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

**Chief compliance officer**

**11.** (1) The board of directors of a designated trade repository must appoint a chief compliance officer with the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

(2) The chief compliance officer of a designated trade repository must report directly to the board of directors of the designated trade repository or, if so directed by the board of directors, to the chief executive officer of the designated trade repository.

(3) The chief compliance officer of a designated trade repository must

(a) establish, implement, maintain and enforce written rules, policies and procedures to identify and resolve conflicts of interest,

(b) establish, implement, maintain and enforce written rules, policies and procedures to ensure that the designated trade repository complies with securities legislation,

(c) monitor compliance with the rules, policies and procedures required under paragraphs (a) and (b) on an ongoing basis,

(d) report to the board of directors of the designated trade repository as soon as practicable upon becoming aware of a circumstance indicating that the designated trade repository, or an individual acting on its behalf, is not in compliance with the securities laws of a jurisdiction in which it operates and one or more of the following apply:

(i) the non-compliance creates a risk of harm to a user;

(ii) the non-compliance creates a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(iv) the non-compliance may have an impact on the ability of the designated trade repository to carry on business as a trade repository in compliance with securities legislation,

(e) report to the designated trade repository's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and

(f) prepare and certify an annual report assessing compliance by the designated trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraph (3)(d), (3)(e) or (3)(f), the chief compliance officer must file a copy of the report with the Commission.

**Fees**

**12.** All fees and other material costs imposed by a designated trade repository on its participants must be

(a) fairly and equitably allocated among participants, and

(b) publicly disclosed on its website for each service it offers with respect to the collection and maintenance of derivatives data.

**Access to designated trade repository services**

**13.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that establish objective, risk-based criteria for participation that permit fair and open access to the services it provides.

(2) A designated trade repository must publicly disclose on its website the rules, policies and procedures referred to in subsection (1).

(3) A designated trade repository must not do any of the following:

(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the designated trade repository;

(b) permit unreasonable discrimination among the participants of the designated trade repository;

(c) impose a burden on competition that is not reasonably necessary and appropriate;

(d) require the use or purchase of another service for a person or company to utilize the trade reporting service offered by the designated trade repository.

**Acceptance of reporting**

**14.** A designated trade repository must accept derivatives data from a participant for a transaction in a derivative of the asset class or classes set out in the designated trade repository's designation order.

**Communication policies, procedures and standards**

**15.** A designated trade repository must use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of

(a) its participants,

(b) other trade repositories,

(c) exchanges, clearing agencies, alternative trading systems, and other marketplaces, and

(d) other service providers.

**Due process**

**16.** For a decision made by a designated trade repository that directly adversely affects a participant or an applicant that applies to become a participant, the designated trade repository must ensure that

(a) the participant or applicant is given an opportunity to be heard or make representations, and

(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

**Rules, policies and procedures**

**17.** (1) The rules, policies and procedures of a designated trade repository must

(a) be clear and comprehensive and provide sufficient information to enable a participant to have an accurate understanding of its rights and obligations in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the services of the designated trade repository,

(b) be reasonably designed to govern all aspects of the services offered by the designated trade repository with respect to the collection and maintenance of derivatives data and other information on a completed transaction, and

(c) not be inconsistent with securities legislation.

(2) A designated trade repository must monitor compliance with its rules, policies and procedures on an ongoing basis.

(3) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures for sanctioning non-compliance with its rules, policies and procedures.

(4) A designated trade repository must publicly disclose on its website

(a) its rules, policies and procedures referred to in this section, and

(b) its procedures for adopting new rules, policies and procedures or amending existing rules, policies and procedures.

(5) A designated trade repository must file its proposed new or amended rules, policies and procedures for approval in accordance with the terms and conditions of its designation order, unless the order explicitly exempts the designated trade repository from this requirement.

**Records of data reported**

**18.** (1) A designated trade repository must design its recordkeeping procedures to ensure that it records derivatives data accurately, completely and on a timely basis.

(2) A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a transaction for the life of the transaction and for a further 7 years after the date on which the transaction expires or terminates.

(3) Throughout the period described in subsection (2), a designated trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), in a safe location and in a durable form, separate from the location of the original record.

**Comprehensive risk-management framework**

**19.** A designated trade repository must establish, implement and maintain a written risk-management framework for comprehensively managing risks including business, legal, and operational risks.

**General business risk**

**20.** (1) A designated trade repository must establish, implement and maintain appropriate systems, controls and procedures to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses in order that it can continue operations and services as a going concern in order to achieve a recovery or an orderly wind down if those losses materialize.

(3) For the purposes of subsection (2), a designated trade repository must hold, at a minimum, liquid net assets funded by equity equal to six months of current operating expenses.

(4) A designated trade repository must identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for an orderly wind-down.

(5) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (4).

(6) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to ensure that it or a successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of subsection 6(2) and section 37 in the event of the bankruptcy or insolvency of the designated trade repository or the wind-down of the designated trade repository's operations.

**System and other operational risk requirements**

**21.** (1) A designated trade repository must establish, implement, maintain and enforce appropriate systems, controls and procedures to identify and minimize the impact of all plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.

(2) The systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

(3) Without limiting the generality of subsection (1), a designated trade repository must

(a) develop and maintain

(i) an adequate system of internal controls over its systems, and

(ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(c) promptly notify the Commission of a material systems failure, malfunction, delay or other disruptive incident, or a breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce business continuity plans, including disaster recovery plans reasonably designed to

(a) achieve prompt recovery of its operations following a disruption,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) provide for the exercise of authority in the event of an emergency.

(5) A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) For each of its systems for collecting and maintaining reports of derivatives data, a designated trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

(7) A designated trade repository must provide the report prepared in accordance with subsection (6) to

(a) its board of directors or audit committee promptly upon the completion of the report, and

(b) the Commission not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A designated trade repository must publicly disclose on its website all technology requirements regarding interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(9) A designated trade repository must make available testing facilities for interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(10) A designated trade repository must not begin operations in Ontario unless it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if

(a) the change to its technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,

(b) the designated trade repository immediately notifies the Commission of its intention to make the change to its technology requirements, and

(c) the designated trade repository publicly discloses on its website the changed technology requirements as soon as practicable.

**Data security and confidentiality**

**22.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure the safety, privacy and confidentiality of the derivatives data.

(2) A designated trade repository must not release derivatives data for commercial or business purposes unless

(a) the derivatives data has otherwise been disclosed pursuant to section 39, or

(b) the counterparties to the transaction have provided the designated trade repository with their express written consent to use or release the derivatives data.

**Confirmation of data and information**

**23.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade repository receives from a reporting counterparty, or from a party to whom a reporting counterparty has delegated its reporting obligation under this Rule, is accurate.

(2) Despite subsection (1), a designated trade repository need only confirm the accuracy of the derivatives data it receives with those counterparties that are participants of the designated trade repository.

**Outsourcing**

**24.** If a designated trade repository outsources a material service or system to a service provider, including to an associate or affiliate of the designated trade repository, the designated trade repository must

(a) establish, implement, maintain and enforce written rules, policies and procedures for the selection of a service provider to which a material service or system may be outsourced and for the evaluation and approval of such an outsourcing arrangement,

(b) identify any conflicts of interest between the designated trade repository and a service provider to which a material service or system is outsourced, and establish, implement, maintain and enforce written rules, policies and procedures to mitigate and manage those conflicts of interest,

(c) enter into a written contract with the service provider that is appropriate for the materiality and nature of the outsourced activity and that provides for adequate termination procedures,

(d) maintain access to the books and records of the service provider relating to the outsourced activity,

(e) ensure that the Commission has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangement,

(f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangement,

(g) take appropriate measures to determine that a service provider to which a material service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with the requirements under section 21,

(h) take appropriate measures to ensure that the service provider protects the safety, privacy and confidentiality of derivatives data and of users' confidential information in accordance with the requirements under section 22, and

(i) establish, implement, maintain and enforce written rules, policies and procedures to regularly review the performance of the service provider under the outsourcing arrangement.

## PART 3
## DATA REPORTING

**Reporting counterparty**

**25.** (1) The reporting counterparty with respect to a transaction involving a local counterparty is

(a) if the transaction is cleared through a recognized or exempt clearing agency, the recognized or exempt clearing agency,

(b) if the transaction is not cleared through a recognized or exempt clearing agency and is between two derivatives dealers, each derivatives dealer,

(c) if the transaction is not cleared through a recognized or exempt clearing agency and is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer, and

(d) in any other case, each local counterparty to the transaction.

(2) A local counterparty to a transaction must act as the reporting counterparty to the transaction for the purposes of this Rule if

(a) the reporting counterparty to the transaction as determined under paragraph (1)(c) is not a local counterparty, and

(b) by the end of the second business day following the day on which derivatives data is required to be reported under this Part, the local counterparty has not received confirmation that the derivatives data for the transaction has been reported by the reporting counterparty.

**Duty to report**

**26.** (1) A reporting counterparty to a transaction involving a local counterparty must report, or cause to be reported, the data required to be reported under this Part to a designated trade repository.

(2) A reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

(3) A reporting counterparty may delegate its reporting obligations under this Rule, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

(4) Despite subsection (1), if no designated trade repository accepts the data required to be reported by this Part, the reporting counterparty must electronically report the data required to be reported by this Part to the Commission.

(5) A reporting counterparty satisfies the reporting obligation in respect of a transaction required to be reported under subsection (1) if

(a) the transaction is required to be reported solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) or (c) of the definition of "local counterparty",

(b) the transaction is reported to a designated trade repository pursuant to

(i) the securities legislation of a province of Canada other than Ontario, or

(ii) the laws of a foreign jurisdiction listed in Appendix B; and

(c) the reporting counterparty instructs the designated trade repository referred to in paragraph (b) to provide the Commission with access to the derivatives data that it is required to report pursuant to this Rule and otherwise uses its best efforts to provide the Commission with access to such derivatives data.

(6) A reporting counterparty must ensure that all reported derivatives data relating to a transaction

(a) is reported to the same designated trade repository to which the initial report was made or, if the initial report was made to the Commission under subsection (4), to the Commission, and

(b) is accurate and contains no misrepresentation.

(7) A reporting counterparty must report an error or omission in the derivatives data as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

(8) A local counterparty, other than the reporting counterparty, must notify the reporting counterparty of an error or omission with respect to derivatives data relating to a transaction to which it is a counterparty as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

(9) A recognized or exempt clearing agency must report derivatives data to the designated trade repository specified by a local counterparty and may not report derivatives data to another trade repository without the consent of the local counterparty where

(a) the reporting counterparty to a transaction is the recognized or exempt clearing agency, and

(b) the local counterparty to the transaction that is not a recognized or exempt clearing agency has specified a designated trade repository to which derivatives data in respect of that transaction is to be reported.

**Identifiers, general**

**27.** A reporting counterparty must include the following in every report required by this Part:

(a) the legal entity identifier of each counterparty to the transaction as set out in section 28;

(b) the unique transaction identifier for the transaction as set out in section 29;

(c) the unique product identifier for the transaction as set out in section 30.

**Legal entity identifiers**

**28.** (1) A designated trade repository must identify each counterparty to a transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers

(a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System, and

(b) a local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty to a transaction at the time when a report under this Rule is required to be made, all of the following rules apply

(a) each counterparty to the transaction must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers,

(b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), and

(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned legal entity identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

**Unique transaction identifiers**

**29.** (1) A designated trade repository must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique transaction identifier.

(2) A designated trade repository must assign a unique transaction identifier to a transaction, using its own methodology or incorporating a unique transaction identifier previously assigned to the transaction.

(3) A designated trade repository must not assign more than one unique transaction identifier to a transaction.

**Unique product identifiers**

**30.** (1) For the purposes of this section, a unique product identifier means a code that uniquely identifies a derivative and is assigned in accordance with international or industry standards.

(2) A reporting counterparty must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique product identifier.

(3) A reporting counterparty must not assign more than one unique product identifier to a transaction.

(4) If international or industry standards for a unique product identifier are unavailable for a particular derivative when a report is required to be made to a designated trade repository under this Rule, a reporting counterparty must assign a unique product identifier to the transaction using its own methodology.

**Creation data**

**31.** (1) Upon execution of a transaction that is required to be reported under this Rule, a reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

(2) A reporting counterparty in respect of a transaction must report creation data in real time.

(3) If it is not technologically practicable to report creation data in real time, a reporting counterparty must report creation data as soon as technologically practicable and in no event later than the end of the business day following the day on which the data would otherwise be required to be reported.

(4) Despite subsections (2) and (3), a local counterparty that is required to act as reporting counterparty to a transaction under subsection 25(2) must report the creation data relating to the transaction in no event later than the end of the third business day following the day on which the data would otherwise be required to be reported.

**Life-cycle event data**

**32.** (1) For a transaction that is required to be reported under this Rule, the reporting counterparty must report all life-cycle event data to a designated trade repository by the end of the business day on which the life-cycle event occurs.

(2) If it is not technologically practicable to report life-cycle event data by the end of the business day on which the life-cycle event occurs, the reporting counterparty must report life-cycle event data no later than the end of the business day following the day on which the life-cycle event occurs.

**Valuation data**

**33.** (1) For a transaction that is required to be reported under this Rule, a reporting counterparty must report valuation data, based on industry accepted valuation standards, to a designated trade repository

(a) daily, based on relevant closing market data from the previous business day, if the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency , or

(b) quarterly, as of the last day of each calendar quarter, if the reporting counterparty is not a derivatives dealer or a recognized or exempt clearing agency.

(2) Valuation data required to be reported pursuant to paragraph 1(b) must be reported to the designated trade repository no later than 30 days after the end of the calendar quarter.

**Pre-existing transactions**

**34.** (1) Despite section 31 and subject to subsection 43(5), for a transaction required to be reported pursuant to subsection 26(1) that was entered into before July 2, 2014 and that had outstanding contractual obligations on that day

(a) a reporting counterparty to the transaction is required to report only that creation data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A, and

(b) the creation data required to be reported pursuant to paragraph (a) must be reported no later than December 31, 2014.

(2) Despite section 32, for a transaction to which subsection (1) applies, a reporting counterparty’s obligation to report life-cycle event data under section 32 commences only after it has reported creation data in accordance with subsection (1).

(3) Despite section 33, for a transaction to which subsection (1) applies, a reporting counterparty’s obligation to report valuation data under section 33 commences only after it has reported creation data in accordance with subsection (1).

**Timing requirements for reporting data to another designated trade repository**

**35**. Despite the data reporting timing requirements in sections 31, 32, 33 and 34, where a designated trade repository ceases operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty may fulfill its reporting obligations under this Rule by reporting the derivatives data to another designated trade repository, or the Commission if there is not an available designated trade repository, within a reasonable period of time.

**Records of data reported**

**36.** (1) A reporting counterparty must keep transaction records for the life of each transaction and for a further 7 years after the date on which the transaction expires or terminates.

(2) A reporting counterparty must keep records referred to in subsection (1) in a safe location and in a durable form.

## PART 4
## DATA DISSEMINATION AND ACCESS TO DATA

**Data available to regulators**

**37.** (1) A designated trade repository must, at no cost

(a) provide to the Commission direct, continuous and timely electronic access to such data in the designated trade repository’s possession as is required by the Commission in order to carry out the Commission’s mandate,

(b) accept and promptly fulfil any data requests from the Commission in order to carry out the Commission’s mandate,

(c) create and make available to the Commission aggregate data derived from data in the designated trade repository's possession as required by the Commission in order to carry out the Commission's mandate, and

(d) disclose to the Commission the manner in which the derivatives data provided under paragraph (c) has been aggregated.

(2) A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

(3) A reporting counterparty must use its best efforts to provide the Commission with access to all derivatives data that it is required to report pursuant to this Rule, including instructing a trade repository to provide the Commission with access to such data.

**Data available to counterparties**

**38.** (1) A designated trade repository must provide counterparties to a transaction with timely access to all derivatives data relevant to that transaction which is submitted to the designated trade repository.

(2) A designated trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by non-reporting counterparties or a party acting on behalf of a non-reporting counterparty.

(3) Each counterparty to a transaction is deemed to have consented to the release of all derivatives data required to be reported or disclosed under this Rule.

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a transaction.

**Data available to public**

**39.** (1) A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and price, relating to the transactions reported to it pursuant to this Rule.

(2) The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, contract type, maturity and whether the transaction is cleared.

(3) A designated trade repository must make transaction level reports of the data indicated in the column entitled "Required for Public Dissemination" in Appendix A for each transaction reported pursuant to this Rule available to the public at no cost not later than

(a) the end of the day following the day on which it receives the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, or

(b) the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction in all other circumstances.

(4) In disclosing transaction level reports required by subsection (3), a designated trade repository must not disclose the identity of either counterparty to the transaction.

(5) A designated trade repository must make the data required to be made available to the public under this section available in a usable form through a publicly accessible website or other publicly accessible technology or medium.

(6) Despite subsections (1) to (5), a designated trade repository is not required to make public any derivatives data for transactions entered into between affiliated companies as defined under subsection 1(2) of the Act.

**PART 5**
**EXCLUSIONS**

**40.** Despite any other section of this Rule, a local counterparty is under no obligation to report derivatives data for a transaction if,

(a) the transaction relates to a derivative the asset class of which is a commodity other than cash or currency,

(b) the local counterparty is not a derivatives dealer, and

(c) the local counterparty has less than $500,000 aggregate notional value, without netting, under all its outstanding transactions at the time of the transaction including the additional notional value related to that transaction.

**41.** Despite any other section of this Rule, a counterparty is under no obligation to report derivatives data in relation to a transaction if it is entered into between

(a) Her Majesty in right of Ontario or the Ontario Financing Authority when acting as agent for Her Majesty in right of Ontario, and

(b) an Ontario crown corporation or crown agency that forms part of a consolidated entity with Her Majesty in right of Ontario for accounting purposes.

## PART 6
## EXEMPTIONS

**42.** A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

## PART 7
## EFFECTIVE DATE

**Effective date**

**43.** (1) Parts 1, 2, 4, and 6 come into force on December 31, 2013.

(2) Despite subsection (1), subsection 39(3) does not apply until December 31, 2014.

(3) Parts 3 and 5 come into force July 2, 2014.

(4) Despite subsection (3), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer to make any reports under that Part until September 30, 2014.

(5) Despite the foregoing, Part 3 does not apply to a transaction entered into before July 2, 2014 that expires or terminates not later than December 31, 2014.

**Appendix A to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting**
**Minimum Data Fields Required to be Reported to a Designated Trade Repository**

**Instructions:**

The reporting counterparty is required to provide a response for each of the fields unless the field is not applicable to the transaction.

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Transaction identifier | The unique transaction identifier as provided by the designated trade repository or the identifier as identified by the two counterparties, electronic trading venue of execution or clearing agency. | N | Y |
| Master agreement type | The type of master agreement, if used for the reported transaction. | N | N |
| Master agreement version | Date of the master agreement version (e.g., 2002, 2006). | N | N |
| Cleared | Indicate whether the transaction has been cleared by a clearing agency. | Y | Y |
| Clearing agency | LEI of the clearing agency where the transaction was cleared. | N | Y |
| Clearing member | LEI of the clearing member, if the clearing member is not a counterparty. | N | N |
| Clearing exemption | Indicate whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement. | Y | N |
| Broker | LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty. | N | N |
| Electronic trading venue identifier | LEI of the electronic trading venue or, if not available, the name of the electronic trading venue where the transaction was executed. | Y (Only "Yes" or "No" shall be publicly disseminated) | Y |
| Inter-affiliate | Indicate whether the transaction is between two affiliated entities. | N | N |
| Collateralization | Indicate whether the transaction is collateralized.<br>Field Values:<br>• Fully (initial and variation margin required to be posted by both parties),<br>• Partially (variation only required to be posted by both parties),<br>• One-way (one party will be required to post some form of collateral),<br>• Uncollateralized. | Y | N |
| Identifier of reporting counterparty | LEI of the reporting counterparty or, in case of an individual, its client code. | N | Y |
| Identifier of non-reporting counterparty | LEI of the non-reporting counterparty or, in case of an individual, its client code. | N | Y |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Counterparty side | Indicate whether the reporting counterparty was the buyer or seller. In the case of swaps, other than credit default, the buyer will represent the payer of leg 1 and the seller will be the payer of leg 2. | N | Y |
| Identifier of agent reporting the transaction | LEI of the agent reporting the transaction if reporting of the transaction has been delegated by the reporting counterparty. | N | N |
| Reporting counterparty derivatives dealer or non-derivatives dealer | Indicate whether the reporting counterparty is a derivatives dealer or non-derivatives dealer. | N | N |
| Non-reporting counterparty local counterparty or not local | Indicate whether the non-reporting counterparty is a local counterparty or not. | N | N |
| **A. Common Data** | • These fields are required to be reported for all derivative transactions even if the information may be entered in an Asset field below.<br>• Fields do not have to be reported if the unique product identifier adequately describes those fields. | | |
| Unique product identifier | Unique product identification code based on the taxonomy of the product. | Y | N |
| Contract type | The name of the contract type (e.g., swap, swaption, forwards, options, basis swap, index swap, basket swap, other). | Y | Y |
| Underlying asset identifier 1 | The unique identifier of the asset referenced in the contract. | Y | Y |
| Underlying asset identifier 2 | The unique identifier of the second asset referenced in the contract, if more than one.<br>If more than two assets identified in the contract, report the unique identifiers for those additional underlying assets. | Y | Y |
| Asset class | Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity, etc.). | Y | N |
| Effective date or start date | The date the transaction becomes effective or starts. | Y | Y |
| Maturity, termination or end date | The date the transaction expires. | Y | Y |
| Payment frequency or dates | The dates or frequency the transaction requires payments to be made (e.g., quarterly, monthly). | Y | Y |
| Reset frequency or dates | The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually). | Y | Y |
| Day count convention | Factor used to calculate the payments (e.g., 30/360, actual/360). | Y | Y |
| Delivery type | Indicate whether transaction is settled physically or in cash. | N | Y |
| Price 1 | The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, | Y | Y |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| | accrued interest, etc. | | |
| Price 2 | The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc. | Y | Y |
| Price notation type 1 | The manner in which the price is expressed (e.g., percent, basis points, etc.). | Y | Y |
| Price notation type 2 | The manner in which the price is expressed (e.g., percent, basis points, etc.). | Y | Y |
| Price multiplier | The number of units of the underlying reference entity represented by 1 unit of the contract. | N | N |
| Notional amount leg 1 | Total notional amount(s) of leg 1 of the contract. | Y | Y |
| Notional amount leg 2 | Total notional amount(s) of leg 2 of the contract. | Y | Y |
| Currency leg 1 | Currency(ies) of leg 1. | Y | Y |
| Currency leg 2 | Currency(ies) of leg 2. | Y | Y |
| Settlement currency | The currency used to determine the cash settlement amount. | Y | Y |
| Up-front payment | Amount of any up-front payment. | N | N |
| Currency or currencies of up-front payment | The currency in which any up-front payment is made by one counterparty to another. | N | N |
| Embedded option | Indicate whether the option is an embedded option. | Y | N |
| **B. Additional Asset Information** | These additional fields are required to be reported for transactions in the respective types of derivatives set out below, even if the information is entered in a Common Data field above. | | |
| **i) Interest rate derivatives** | | | |
| Fixed rate leg 1 | The rate used to determine the payment amount for leg 1 of the transaction. | N | Y |
| Fixed rate leg 2 | The rate used to determine the payment amount for leg 2 of the transaction. | N | Y |
| Floating rate leg 1 | The floating rate used to determine the payment amount for leg 1 of the transaction. | N | Y |
| Floating rate leg 2 | The floating rate used to determine the payment amount for leg 2 of the transaction. | N | Y |
| Fixed rate day count convention | Factor used to calculate the fixed payer payments (e.g., 30/360, actual/360). | N | Y |
| Fixed leg payment frequency or dates | Frequency or dates of payments for the fixed rate leg of the transaction (e.g., quarterly, semi-annually, annually). | N | Y |
| Floating leg payment frequency or dates | Frequency or dates of payments for the floating rate leg of the transaction (e.g., quarterly, semi-annually, annually). | N | Y |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Floating rate reset frequency or dates | The dates or frequency at which the floating leg of the transaction resets (e.g., quarterly, semi-annually, annually). | N | Y |
| **ii) Currency derivatives** | | | |
| Exchange rate | Contractual rate(s) of exchange of the currencies. | N | Y |
| **iii) Commodity derivatives** | | | |
| Sub-asset class | Specific information to identify the type of commodity derivative (e.g., Agriculture, Energy, Freights, Metals, Index, Environmental, Exotic). | Y | Y |
| Quantity | Total quantity in the unit of measure of an underlying commodity. | Y | Y |
| Unit of measure | Unit of measure for the quantity of each side of the transaction (e.g., barrels, bushels, etc.). | Y | Y |
| Grade | Grade of product being delivered (e.g., grade of oil). | N | Y |
| Delivery point | The delivery location. | N | N |
| Delivery connection points | Description of the delivery route. | N | N |
| Load type | For power, load profile for the delivery. | N | Y |
| Transmission days | For power, the delivery days of the week. | N | Y |
| Transmission duration | For power, the hours of day transmission starts and ends. | N | Y |
| **C. Options** | These additional fields are required to be reported for options transactions set out below, even if the information is entered in a Common Data field above. | | |
| Option exercise date | The date(s) on which the option may be exercised. | Y | Y |
| Option premium | Fixed premium paid by the buyer to the seller. | Y | Y |
| Strike price (cap/floor rate) | The strike price of the option. | Y | Y |
| Option style | Indicate whether the option can be exercised on a fixed date or anytime during the life of the contract (e.g., American, European, Bermudan, Asian). | Y | Y |
| Option type | Put/call. | Y | Y |
| **D. Event Data** | | | |
| Action | Describes the type of action to the transaction (e.g., new transaction, modification or cancellation of existing transaction, etc.). | Y | N |
| Execution timestamp | Where the transaction was executed on a trading venue, the time and date of execution, expressed using Coordinated Universal Time (UTC). | Y | Y (If available) |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Post-transaction services | Indicate whether the transaction resulted from a post-transaction service, such as compression or reconciliation. | N | N |
| Clearing timestamp | The time and date the transaction was cleared, expressed using UTC. | N | N |
| Reporting date | The time and date the transaction was submitted to the trade repository, expressed using UTC. | N | N |
| **E. Valuation data** | These additional fields are required to be reported on a continuing basis for all reported derivative transactions, including reported pre-existing transactions. | | |
| Value of contract calculated by the reporting counterparty | Mark-to-market valuation of the contract, or mark-to-model valuation. | N | N |
| Valuation date | Date of the latest mark-to-market or mark-to-model valuation. | N | N |
| Valuation type | Indicate whether valuation was based on mark-to-market or mark-to-model. | N | N |

**Appendix B to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting**
**Equivalent Trade Reporting Laws of Foreign Jurisdictions**
**Subject to Deemed Compliance Pursuant to Subsection 26(5)**

The Commission has determined that the laws and regulations of the following jurisdictions outside of Ontario are equivalent for the purposes of the deemed compliance provision in subsection 26(5).

| Jurisdiction | Law, Regulation and/or Instrument |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

**FORM 91-507F1**
**OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**APPLICATION FOR DESIGNATION**
**TRADE REPOSITORY**
**INFORMATION STATEMENT**

**Filer:** ☐ **TRADE REPOSITORY**

**Type of Filing:** ☐ **INITIAL** ☐ **AMENDMENT**

1. Full name of trade repository:

2. Name(s) under which business is conducted, if different from item 1:

3. If this filing makes a name change on behalf of the trade repository in respect of the name set out in item 1 or item 2, enter the previous name and the new name.

   Previous name:

   New name:

4. Head office

   Address:

   Telephone:

   Facsimile:

5. Mailing address (if different):

6. Other offices

   Address:

   Telephone:

   Facsimile:

7. Website address:

8. Contact employee

   Name and title:

   Telephone number:

   Facsimile:

   E-mail address:

9. Counsel

   Firm name:

   Contact name:

   Telephone number:

   Facsimile:

E-mail address:

10. Canadian counsel (if applicable)

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

**EXHIBITS**

File all Exhibits with the Filing. For each Exhibit, include the name of the trade repository, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Except as provided below, if the filer files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer must, in order to comply with section 3 of OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the "TR Rule"), provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and blacklined version showing changes from the previous filing.

If the filer has otherwise filed the information required by the previous paragraph pursuant to section 17 of the TR Rule, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

***Exhibit A – Corporate Governance***

1. Legal status:

   ☐ Corporation

   ☐ Partnership

   ☐ Other (specify):

2. Indicate the following:

   1. Date (DD/MM/YYYY) of formation.

   2. Place of formation.

   3. Statute under which trade repository was organized.

   4. Regulatory status in other jurisdictions.

3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.

4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the trade repository or the services it provides, including those related to the commercial interest of the trade repository, the interests of its owners and its operators, the responsibilities and sound functioning of the trade repository, and those between the operations of the trade repository and its regulatory responsibilities.

5. An applicant that is located outside of Ontario that is applying for designation as a trade repository under section 21.2.2(1) of the Act must additionally provide the following:

1. An opinion of legal counsel that, as a matter of law the applicant has the power and authority to provide the Commission with prompt access to the applicant's books and records and submit to onsite inspection and examination by the Commission, and

2. A completed Form 91-507F2, Submission to Jurisdiction and Appointment of Agent for Service.

***Exhibit B – Ownership***

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository. For each of the persons listed in the Exhibit, please provide the following:

1. Name.

2. Principal business or occupation and title.

3. Ownership interest.

4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

In the case of a trade repository that is publicly traded, if the trade repository is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a security with voting rights.

***Exhibit C – Organization***

1. A list of partners, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

    1. Name.

    2. Principal business or occupation and title.

    3. Dates of commencement and expiry of present term of office or position.

    4. Type of business in which each is primarily engaged and current employer.

    5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

    6. Whether the person is considered to be an independent director.

2. A list of the committees of the board, including their mandates.

3. The name of the trade repository's Chief Compliance Officer.

***Exhibit D – Affiliates***

1. For each affiliated entity of the trade repository provide the name and head office address and describe the principal business of the affiliate.

2. For each affiliated entity of the trade repository

    (i) to which the trade repository has outsourced any of its key services or systems described in Exhibit E – Operations of the Trade Repository, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison, data feed, or

    (ii) with which the trade repository has any other material business relationship, including loans, cross-guarantees, etc.,

    provide the following information:

    1. Name and address of the affiliate.

2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.

3. A description of the nature and extent of the contractual and other agreements with the trade repository, and the roles and responsibilities of the affiliate under the arrangement.

4. A copy of each material contract relating to any outsourced functions or other material relationship.

5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

6. For the latest financial year of any affiliated entity that has any outstanding loans or cross-guarantee arrangements with the trade repository, financial statements, which may be unaudited, prepared in accordance with:

   a. Canadian GAAP applicable to publicly accountable enterprises;

   b. IFRS; or

   c. U.S. GAAP where the affiliated entity is incorporated or organized under the laws of the U.S.

***Exhibit E – Operations of the Trade Repository***

Describe in detail the manner of operation of the trade repository and its associated functions. This should include, but not be limited to, a description of the following:

1. The structure of the trade repository.

2. Means of access by the trade repository's participants and, if applicable, their clients to the trade repository's facilities and services.

3. The hours of operation.

4. A description of the facilities and services offered by the trade repository including, but not limited to, collection and maintenance of derivatives data.

5. A list of the types of derivatives instruments for which data recordkeeping is offered, including, but not limited to, a description of the features and characteristics of the instruments.

6. Procedures regarding the entry, display and reporting of derivatives data.

7. Description of recordkeeping procedures that ensure derivatives data is recorded accurately, completely and on a timely basis.

8. The safeguards and procedures to protect derivatives data of the trade repository's participants, including required policies and procedures reasonably designed to protect the privacy and confidentiality of the data.

9. Training provided to participants and a copy of any materials provided with respect to systems and rules and other requirements of the trade repository.

10. Steps taken to ensure that the trade repository's participants have knowledge of and comply with the requirements of the trade repository.

11. A description of the trade repository's risk management framework for comprehensively managing risks including business, legal, and operational risks.

The filer must provide all policies, procedures and manuals related to the operation of the trade repository.

***Exhibit F – Outsourcing***

Where the trade repository has outsourced the operation of key services or systems described in Exhibit E – Operations of the Trade Repository to an arms-length third party, including any function associated with the collection and maintenance of derivatives data, provide the following information:

1. Name and address of person or company (including any affiliates of the trade repository) to which the function has been outsourced.

2. A description of the nature and extent of the contractual or other agreement with the trade repository and the roles and responsibilities of the arms-length party under the arrangement.

3. A copy of each material contract relating to any outsourced function.

***Exhibit G – Systems and Contingency Planning***

For each of the systems for collecting and maintaining reports of derivatives data, describe:

1. Current and future capacity estimates.

2. Procedures for reviewing system capacity.

3. Procedures for reviewing system security.

4. Procedures to conduct stress tests.

5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.

6. Procedures to test business continuity and disaster recovery plans.

7. The list of data to be reported by all types of participants.

8. A description of the data format or formats that will be available to the Commission and other persons receiving trade reporting data.

***Exhibit H – Access to Services***

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the trade repository described in Exhibit E.4.

2. Describe the types of trade repository participants.

3. Describe the trade repository's criteria for access to the services of the trade repository.

4. Describe any differences in access to the services offered by the trade repository to different groups or types of participants.

5. Describe conditions under which the trade repository's participants may be subject to suspension or termination with regard to access to the services of the trade repository.

6. Describe any procedures that will be involved in the suspension or termination of a participant.

7. Describe the trade repository's arrangements for permitting clients of participants to have access to the trade repository. Provide a copy of any agreements or documentation relating to these arrangements.

***Exhibit I – Fees***

A description of the fee model and all fees charged by the trade repository, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to access and the collection and maintenance of derivatives data, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

## CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

## IF APPLICABLE, ADDITIONAL CERTIFICATE OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF ONTARIO

The undersigned certifies that

(a) it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission;

(b) as a matter of law, it has the power and authority to

i. provide the Commission with access to its books and records, and

ii. submit to onsite inspection and examination by the Commission.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

**FORM 91-507F2**
**OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**TRADE REPOSITORY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS**

1. Name of trade repository (the "Trade Repository"):

   _____

2. Jurisdiction of incorporation, or equivalent, of Trade Repository:

   _____

3. Address of principal place of business of Trade Repository:

   _____

4. Name of the agent for service of process for the Trade Repository (the "Agent"):

   _____

5. Address of Agent for service of process in Ontario:

   _____

6. The Trade Repository designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Trade Repository in Ontario. The Trade Repository hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Trade Repository.

7. The Trade Repository agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Trade Repository in Ontario.

8. The Trade Repository shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Trade Repository ceases to be designated or exempted by the Commission, to be in effect for six years from the date it ceases to be designated or exempted unless otherwise amended in accordance with section 9.

9. Until six years after it has ceased to be a designated or exempted by the Commission from the recognition requirement under subsection 21.2.2(1) of the Act, the Trade Repository shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of Ontario.

Dated: _____

_____
Signature of the Trade Repository

_____
Print name and title of signing
officer of the Trade Repository

**AGENT**

**CONSENT TO ACT AS AGENT FOR SERVICE**

I, _____ (name of Agent in full; if Corporation, full Corporate name) of _____(business address), hereby accept the appointment as agent for service of process of _____(insert name of Trade Repository) and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ (insert name of Trade Repository) on _____ (insert date).

Dated: _____

_____
Signature of Agent

_____
Print name of person signing and, if Agent is not an individual, the title of the person

**FORM 91-507F3**
**OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY**

1. Identification:

   A. Full name of the designated trade repository:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date designated trade repository proposes to cease carrying on business as a trade repository:

3. If cessation of business was involuntary, date trade repository has ceased to carry on business as a trade repository:

**Exhibits**

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the trade repository, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

**Exhibit A**

The reasons for the designated trade repository ceasing to carry on business as a trade repository.

**Exhibit B**

A list of all derivatives instruments for which data recordkeeping is offered during the last 30 days prior to ceasing business as a trade repository.

**Exhibit C**

A list of all participants who are counterparties to a transaction whose derivatives data is required to be reported pursuant to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting and for whom the trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

**CERTIFICATE OF TRADE REPOSITORY**

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

**COMPANION POLICY 91-507CP**
**TO ONTARIO SECURITIES COMMISSION RULE 91-507**
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

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## PART 1
## GENERAL COMMENTS

### Introduction

This companion policy (the "Policy") sets out the views of the Commission ("our" or "we") on various matters relating to Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the "Rule") and related securities legislation.

The numbering of Parts, sections and subsections from Part 2 on in this Policy generally corresponds to the numbering in the Rule. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Policy will skip to the next provision that does have guidance.

Unless defined in the Rule or this Policy, terms used in the Rule and in this Policy have the meaning given to them in securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and OSC Rule 14-501 *Definitions*.

### Definitions and interpretation

**1.** (1) In this Policy,

"CPSS" means the Committee on Payment and Settlement Systems,

"FMI" means a financial market infrastructure, as described in the PFMI Report,

"Global LEI System" means the Global Legal Entity Identifier System,

"IOSCO" means the Technical Committee of the International Organization of Securities Commissions,

"LEI" means a legal entity identifier,

"LEI ROC" means the LEI Regulatory Oversight Committee,

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPSS and IOSCO, as amended from time to time,[1] and

"principle" means, unless the context otherwise indicates, a principle set out in the PFMI Report.

[1] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

(2) A "life-cycle event" is defined in the Rule as an event that results in a change to derivatives data previously reported to a designated trade repository. Where a life-cycle event occurs, the corresponding life-cycle event data must be reported under section 32 of the Rule by the end of the business day on which the life-cycle event occurs. When reporting a life-cycle event, there is no obligation to re-report derivatives data that has not changed – only new data and changes to previously reported data need to be reported. Examples of a life-cycle event would include

- a change to the termination date for the transaction,
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported,
- the availability of a legal entity identifier for a counterparty previously identified by name or by some other identifier,
- a corporate action affecting a security or securities on which the transaction is based (e.g., a merger, dividend, stock split, or bankruptcy),
- a change to the notional amount of a transaction including contractually agreed upon changes (e.g., amortization schedule),
- the exercise of a right or option that is an element of the expired transaction, and
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

(3) Paragraph (c) of the definition of "local counterparty" captures affiliates of parties mentioned in paragraph (a) of the "local counterparty" definition, provided that such party guarantees the liabilities of the affiliate. It is our view that the guarantee must be for all or substantially all of the affiliate's liabilities.

(4) The term "transaction" is defined in the Rule and used instead of the term "trade", as defined in the Act, in order to reflect the types of activities that require a unique transaction report, as opposed to the modification of an existing transaction report. The primary difference between the two definitions is that unlike the term "transaction", the term "trade" includes material amendments and terminations.

A material amendment is not referred to in the definition of "transaction" but is required to be reported as a life-cycle event in connection with an existing transaction under section 32. A termination is not referred to in the definition of "transaction", as the expiry or termination of a transaction would be reported to a trade repository as a life-cycle event without the requirement for a new transaction record.

In addition, unlike the definition of "trade", the definition of "transaction" includes a novation to a clearing agency. Each transaction resulting from a novation of a bi-lateral transaction to a clearing agency is required to be reported as a separate, new transaction with reporting links to the original transaction.

(5) The term "valuation data" is defined in the Rule as data that reflects the current value of a transaction. It is the Commission's view that valuation data can be calculated based upon the use of an industry-accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles and will result in a reasonable valuation of a transaction.[2] The valuation methodology should be consistent over the entire life of a transaction.

**PART 2**
**TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS**

Part 2 contains rules for designation of a trade repository and ongoing requirements for a designated trade repository. To obtain and maintain a designation as a trade repository, a person or entity must comply with these rules and requirements in addition to all of the terms and conditions in the designation order made by the Commission. In order to comply with the reporting obligations contained in Part 3, counterparties must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in Ontario, a counterparty that reports a transaction to an undesignated trade repository would not be in compliance with its reporting obligations under this Rule with respect to that transaction.

The legal entity that applies to be a designated trade repository will typically be the entity that operates the facility and collects and maintains records of completed transactions reported to the trade repository by other persons or companies. In some cases, the applicant may operate more than one trade repository facility. In such cases, the trade repository may file separate forms in respect of each trade repository facility, or it may choose to file one form to cover all of the different trade repository

[2] For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

facilities. If the latter alternative is chosen, the trade repository must clearly identify the facility to which the information or changes submitted under this Part apply.

**Trade repository initial filing of information and designation**

**2.** (1) In determining whether to designate an applicant as a trade repository under section 21.2.2 of the Act, it is anticipated that the Commission will consider a number of factors, including

- whether it is in the public interest to designate the applicant,
- the manner in which the trade repository proposes to comply with the Rule,
- whether the trade repository has meaningful representation on its governing body,
- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters both fair and efficient capital markets, and improves transparency in the derivatives market,
- whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides,
- whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- whether the trade repository's process for setting fees is fair, transparent and appropriate,
- whether the trade repository's fees are inequitably allocated among the participants, have the effect of creating barriers to access or place an undue burden on any participant or class of participants,
- the manner and process for the Commission and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions,
- whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data, and
- whether the trade repository has entered into a memorandum of understanding with its local securities regulator.

The Commission will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the Rule and any terms and conditions attached to the Commission's designation order in respect of a designated trade repository.

A trade repository that is applying for designation must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. We consider that these rules, policies and procedures include, but are not limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the corresponding sections of the Rule the interpretation of which we consider ought to be consistent with the principles:

| ***Principle in the PFMI Report applicable to a trade repository*** | ***Relevant section(s) of the Rule*** |
|---|---|
| Principle 1: Legal Basis | Section 7 – Legal framework<br><br>Section 17 – Rules (in part) |

| ***Principle in the PFMI Report applicable to a trade repository*** | ***Relevant section(s) of the Rule*** |
|---|---|
| Principle 2: Governance | Section 8 – Governance<br>Section 9 – Board of directors<br>Section 10 – Management |
| Principle 3: Framework for the comprehensive management of risks | Section 19 – Comprehensive risk management framework<br>Section 20 – General business risk (in part) |
| Principle 15: General business risk | Section 20 – General business risk |
| Principle 17: Operational risk | Section 21 – System and other operational risk requirements<br>Section 22 – Data security and confidentiality<br>Section 24 – Outsourcing |
| Principle 18: Access and participation requirements | Section 13 – Access to designated trade repository services<br>Section 16 – Due process (in part)<br>Section 17 – Rules (in part) |
| Principle 19: Tiered participation arrangements | No equivalent provisions in the Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 20: FMI links | No equivalent provisions in the Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 21: Efficiency and effectiveness | No equivalent provisions in the Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 22: Communication procedures and standards | Section 15 – Communication policies, procedures and standards |
| Principle 23: Disclosure of rules, key procedures, and market data | Section 17 – Rules (in part) |
| Principle 24: Disclosure of market data by trade repositories | Sections in Part 4 – Data Dissemination and Access to Data |

It is anticipated that the Commission will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the Rule, designated trade repositories will be expected to observe the principles.

The forms filed by an applicant or designated trade repository under the Rule will be kept confidential in accordance with the provisions of securities legislation. The Commission is of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers of disclosure outweigh the benefit of the principle requiring that forms be made available for public inspection. However, the Commission would expect a designated trade repository to publicly disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.[3] In addition, much of the information that will be included in the forms that are filed will be required to be made publicly available by a designated trade repository pursuant to the Rule or the terms and conditions of the designation order imposed by the Commission.

[3] Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

While Form 91-507F1 – *Application for Designation and Trade Repository Information Statement* and any amendments to it will be kept generally confidential, if the Commission considers that it is in the public interest to do so, it may require the applicant or designated trade repository to publicly disclose a summary of the information contained in such form, or amendments to it.

Notwithstanding the confidential nature of the forms, an applicant's application itself (excluding forms) will be published for comment for a minimum period of 30 days.

**Change in information**

**3.** (1) Under subsection 3(1), a designated trade repository is required to file an amendment to the information provided in Form 91-507F1 at least 45 days prior to implementing a significant change. The Commission considers a change to be significant when it could impact a designated trade repository, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). The Commission would consider a significant change to include, but not be limited to,

- a change in the structure of the designated trade repository, including procedures governing how derivatives data is collected and maintained (included in any back-up sites), that has or may have a direct impact on users in Ontario,
- a change to the services provided by the designated trade repository, or a change that affects the services provided, including the hours of operation, that has or may have a direct impact on users in Ontario,
- a change to means of access to the designated trade repository's facility and its services, including changes to data formats or protocols, that has or may have a direct impact on users in Ontario,
- a change to the types of derivative asset classes or categories of derivatives that may be reported to the designated trade repository,
- a change to the systems and technology used by the designated trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,
- a change to the governance of the designated trade repository, including changes to the structure of its board of directors or board committees and their related mandates,
- a change in control of the designated trade repository,
- a change in affiliates that provide key services or systems to, or on behalf of, the designated trade repository,
- a change to outsourcing arrangements for key services or systems of the designated trade repository,
- a change to fees or the fee structure of the designated trade repository,
- a change in the designated trade repository's policies and procedures relating to risk-management, including relating to business continuity and data security, that has or may have an impact on the designated trade repository's provision of services to its participants,
- the commencement of a new type of business activity, either directly or indirectly through an affiliate, and
- a change in the location of the designated trade repository's head office or primary place of business or the location where the main data servers or contingency sites are housed.

(2) The Commission generally considers a change in a designated trade repository's fees or fee structure to be a significant change. However, the Commission recognizes that designated trade repositories may frequently change their fees or fee structure and may need to implement fee changes within timeframes that are shorter than the 45-day notice period contemplated in subsection (1). To facilitate this process, subsection 3(2) provides that a designated trade repository may provide information that describes the change to fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change to fees or fee structure). See section 12 of this Policy for guidance with respect to fee requirements applicable to designated trade repositories.

The Commission will make best efforts to review amendments to Form 91-507F1 filed in accordance with subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the Commission's review may exceed these timeframes.

(3) Subsection 3(3) sets out the filing requirements for changes to information provided in a filed Form 91-507F1 other than those described in subsections 3(1) or (2). Such changes to information are not considered significant and include changes that:

- would not have an impact on the designated trade repository's structure or participants, or more broadly on market participants, investors or the capital markets; or
- are administrative changes, such as
    - changes in the routine processes, policies, practices, or administration of the designated trade repository that would not impact participants,
    - changes due to standardization of terminology,
    - corrections of spelling or typographical errors,
    - changes to the types of designated trade repository participants in Ontario,
    - necessary changes to conform to applicable regulatory or other legal requirements of Ontario or Canada, and
    - minor system or technology changes that would not significantly impact the system or its capacity.

For the changes referred to in subsection 3(3), the Commission may review these filings to ascertain whether they have been categorized appropriately. If the Commission disagrees with the categorization, the designated trade repository will be notified in writing. Where the Commission determines that changes reported under subsection 3(3) are in fact significant changes under subsection 3(1), the designated trade repository will be required to file an amended Form 91-507F1 that will be subject to review by the Commission.

**Ceasing to carry on business**

**6.** (1) In addition to filing a completed Form 91-507F3 – *Cessation of Operations Report for Trade Repository*, a designated trade repository that intends to cease carrying on business in Ontario as a designated trade repository must make an application to voluntarily surrender its designation to the Commission pursuant to securities legislation. The Commission may accept the voluntary surrender subject to terms and conditions.[4]

**Legal framework**

**7.** (1) Designated trade repositories are required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions, whether within Canada or any foreign jurisdiction, where they have activities.

**Governance**

**8.** Designated trade repositories are required to have in place governance arrangements that meet the minimum requirements and policy objectives set out in subsections 8(1) and 8(2).

(3) Under subsection 8(3), a designated trade repository is required to make the written governance arrangements required under subsections 8(1) and (2) available to the public on its website. The Commission expects that this information will be posted on the trade repository's publicly accessible website and that interested parties will be able to locate the information through a web search or through clearly identified links on the designated trade repository's website.

**Board of directors**

**9.** The board of directors of a designated trade repository is subject to various requirements, such as requirements pertaining to board composition and conflicts of interest. To the extent that a designated trade repository is not organized as a corporation, the requirements relating to the board of directors may be fulfilled by a body that performs functions that are equivalent to the functions of a board of directors.

(2) Paragraph 9(2)(a) requires individuals who comprise the board of directors of a designated trade repository to have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations. This would

[4] Section 21.4 of the Act provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of derivatives data/information can be addressed through the terms and conditions imposed by the Commission on such application.

include individuals with experience and skills in areas such as business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(2)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Commission would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Commission would expect that independent directors of a designated trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled, and that the interests of participants who are not derivatives dealers are considered.

**Chief compliance officer**

**11.** (3) References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

**Fees**

**12.** A designated trade repository is responsible for ensuring that the fees it sets are in compliance with section 12. In assessing whether a designated trade repository's fees and costs are fairly and equitably allocated among participants as required under paragraph 12(a), the Commission will consider a number of factors, including

- the number and complexity of the transactions being reported,
- the amount of the fee or cost imposed relative to the cost of providing the services,
- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market,
- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the designated trade repository, and
- whether the fees or costs represent a barrier to accessing the services of the designated trade repository for any category of participant.

A designated trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a designated trade repository should also disclose other fees and costs related to connecting to or accessing the trade repository. For example, a designated trade repository should disclose information on the system design, as well as technology and communication procedures, that influence the costs of using the designated trade repository. A designated trade repository is also expected to provide timely notice to participants and the public of any changes to services and fees.

**Access to designated trade repository services**

**13.** (3) Under subsection 13(3), a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its participants, imposing unreasonable burdens on competition or requiring the use or purchase of another service in order for a person or company to utilize its trade reporting service. For example, a designated trade repository should not engage in anti-competitive practices such as setting overly restrictive terms of use or engaging in anti-competitive price discrimination. A designated trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the designated trade repository.

**Acceptance of reporting**

**14.** Section 14 requires that a designated trade repository accept derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository includes interest rate derivatives, the designated trade repository is required to accept transaction data for all types of interest rate derivatives that are entered into by a local counterparty. It is possible that a designated trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories that accept derivatives data for only certain types of commodity derivatives such as energy derivatives.

**Communication policies, procedures and standards**

**15.** Section 15 sets out the communication standard required to be used by a designated trade repository in communications with other specified entities. The reference in paragraph 15(d) to "other service providers" could include persons or companies who offer technological or transaction processing or post-transaction services.

**Rules, policies and procedures**

**17.** Section 17 requires that the publicly disclosed written rules and procedures of a designated trade repository be clear and comprehensive, and include explanatory material written in plain language so that participants can fully understand the system's design and operations, their rights and obligations, and the risks of participating in the system. Moreover, a designated trade repository should disclose to its participants and to the public, basic operational information and responses to the CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

(2) Subsection 17(2) requires that a designated trade repository monitor compliance with its rules and procedures. The methodology of monitoring such compliance should be fully documented.

(3) Subsection 17(3) requires a designated trade repository to implement processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person or company, including the Commission or other regulatory body.

(5) Subsection 17(5) requires a designated trade repository to file its rules and procedures with the Commission for approval, in accordance with the terms and conditions of the designation order. Upon designation, the Commission may develop and implement a protocol with the designated trade repository that will set out the procedures to be followed with respect to the review and approval of rules and procedures and any amendments thereto. Generally, such a rule protocol will be appended to and form part of the designation order. Depending on the nature of the changes to the designated trade repository's rules and procedures, such changes may also impact the information contained in Form 91-507F1. In such cases, the designated trade repository will be required to file a revised Form 91-507F1 with the Commission. See section 3 of this Policy for a discussion of the filing requirements.

**Records of data reported**

**18.** A designated trade repository is a market participant under securities legislation and therefore subject to the record-keeping requirements under securities legislation. The record-keeping requirements under section 18 are in addition to the requirements under securities legislation.

(2) Subsection 18(2) requires that records be maintained for 7 years after the expiration or termination of a transaction. The requirement to maintain records for 7 years after the expiration or termination of a transaction, rather than from the date the transaction was entered into, reflects the fact that transactions create on-going obligations and information is subject to change throughout the life of a transaction.

**Comprehensive risk-management framework**

**19.** Requirements for a comprehensive risk-management framework of a designated trade repository are set out in section 19.

*Features of framework*

A designated trade repository should have a written risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in, or are borne by, a designated trade repository. A designated trade repository's framework should include the identification and management of risks that could materially affect its ability to perform or to provide services as expected, such as interdependencies.

*Establishing a framework*

A designated trade repository should have comprehensive internal processes to help its board of directors and senior management monitor and assess the adequacy and effectiveness of its risk-management policies, procedures, systems, and controls. These processes should be fully documented and readily available to the designated trade repository's personnel who are responsible for implementing them.

*Maintaining a framework*

A designated trade repository should regularly review the material risks it bears from, and poses to, other entities (such as other FMIs, settlement banks, liquidity providers, or service providers) as a result of interdependencies, and develop appropriate risk-

management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become non-viable.

**General business risk**

**20.** (1) Subsection 20(1) requires a designated trade repository to manage its general business risk effectively. General business risk includes any potential impairment of the designated trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a designated trade repository.

(2) For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a designated trade repository should hold is to be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services, if such action is taken.

(3) Subsection (3) requires a designated trade repository, for the purposes of subsection (2), to hold liquid net assets funded by equity equal to no less than six months of current operating expenses.

(4) For the purposes of subsections 20(4) and (5), and in connection with developing a comprehensive risk-management framework under section 19, a designated trade repository should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. These scenarios should take into account the various independent and related risks to which the designated trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(4) (and taking into account any constraints potentially imposed by legislation), the designated trade repository should prepare appropriate written plans for its recovery or orderly wind-down. The plan should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the designated trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The designated trade repository should maintain the plan on an ongoing basis, to achieve recovery and orderly wind-down, and should hold sufficient liquid net assets funded by equity to implement this plan (see also subsections 20(2) and (3) above). A designated trade repository should also take into consideration the operational, technological, and legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

**Systems and other operational risk requirements**

**21.** (1) Subsection 21(1) sets out a general principle concerning the management of operational risk. In interpreting subsection 21(1), the following key considerations should be applied:

- a designated trade repository should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;
- a designated trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and
- a designated trade repository should have clearly defined operational-reliability objectives and policies in place that are designed to achieve those objectives.

(2) The board of directors of a designated trade repository should clearly define the roles and responsibilities for addressing operational risk and approve the designated trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a designated trade repository to develop and maintain an adequate system of internal control over its systems as well as adequate general information-technology controls. The latter controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recommended Canadian guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants and '*COBIT*' from the IT Governance Institute. A designated trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a designated trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. The paragraph also imposes

an annual requirement for designated trade repositories to conduct periodic capacity stress tests. Continual changes in technology, risk management requirements and competitive pressures will often result in these activities or tests being carried out more frequently.

Paragraph 21(3)(c) requires a designated trade repository to notify the Commission of any material systems failure. The Commission would consider a failure, malfunction, delay or other disruptive incident to be "material" if the designated trade repository would in the normal course of its operations escalate the incident to, or inform, its senior management that is responsible for technology, or the incident would have an impact on participants. The Commission also expects that, as part of this notification, the designated trade repository will provide updates on the status of the failure, the resumption of service, and the results of its internal review of the failure.

(4) Subsection 21(4) requires that a designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Commission believes that these plans should allow the designated trade repository to provide continuous and undisrupted service, as back-up systems ideally should commence processing immediately. Where a disruption is unavoidable, a designated trade repository is expected to provide prompt recovery of operations, meaning that it resumes operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) Subsection 21(5) requires a designated trade repository to test its business continuity plans at least once a year. The expectation is that the designated trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans, including testing of back-up facilities for both the designated trade repository and its participants.

(6) Subsection 21(6) requires a designated trade repository to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraphs 21(3)(a) and (b) and subsections 21(4) and (5). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. The Commission is of the view that this obligation may also be satisfied by an independent assessment by an internal audit department that is compliant with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Audit. Before engaging a qualified party, the designated trade repository should notify the Commission.

(8) Subsection 21(8) requires designated trade repositories to make public all material changes to technology requirements to allow participants a reasonable period to make system modifications and test their modified systems. In determining what a reasonable period is, the Commission of the view that the designated trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

(9) Subsection 21(9) requires designated trade repositories to make available testing facilities in advance of material changes to technology requirements to allow participants a reasonable period to test their modified systems and interfaces with the designated trade repository. In determining what a reasonable period is, the Commission of the view that the designated trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

**Data security and confidentiality**

**22.** (1) Subsection 22(1) provides that a designated trade repository must establish policies and procedures to ensure the safety, privacy and confidentiality of derivatives data to be reported to it under the Rule. The policies must include limitations on access to confidential trade repository data and safeguards to protect against persons and companies affiliated with the designated trade repository from using trade repository data for their personal benefit or the benefit of others.

(2) Subsection 22(2) prohibits a designated trade repository from releasing reported derivatives data, for a commercial or business purpose, that is not required to be publicly disclosed under section 39 without the express written consent of the counterparties to the transaction or transactions to which the derivatives data relates. The purpose of this provision is to ensure that users of the designated trade repository have some measure of control over their derivatives data.

**Confirmation of data and information**

**23.** Subsection 23(1) requires a designated trade repository to have and follow written policies and procedures for confirming the accuracy of the derivatives data received from a reporting counterparty. A designated trade repository must confirm the

accuracy of the derivatives data with each counterparty to a reported transaction provided that the non-reporting counterparty is a participant of the trade repository. Where the non-reporting counterparty is not a participant of the trade repository, there is no obligation to confirm with such non-reporting counterparty.

The purpose of the confirmation requirement in subsection 23(1) is to ensure that the reported information is agreed to by both counterparties. However, in cases where a non-reporting counterparty is not a participant of the relevant designated trade repository, the designated trade repository would not be in a position to confirm the accuracy of the derivatives data with such counterparty. As such, under subsection 23(2) a designated trade repository will not be obligated to confirm the accuracy of the derivatives data with a counterparty that is not a participant of the designated trade repository. Additionally, similar to the reporting obligations in section 26, confirmation under subsection 23(1) can be delegated under section 26(3) to a third-party representative.

A trade repository may satisfy its obligation under section 23 to confirm the derivatives data reported for a transaction by notice to each counterparty to the transaction that is a participant of the designated trade repository, or its delegated third-party representative where applicable, that a report has been made naming the participant as a counterparty to a transaction, accompanied by a means of accessing a report of the derivatives data submitted. The policies and procedures of the designated trade repository may provide that if the designated trade repository does not receive a response from a counterparty within 48 hours, the counterparty is deemed to confirm the derivatives data as reported.

**Outsourcing**

**24.** Section 24 sets out requirements applicable to a designated trade repository that outsources any of its key services or systems to a service provider. Generally, a designated trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements. Such policies and procedures include assessing the suitability of potential service providers and the ability of the designated trade repository to continue to comply with securities legislation in the event of bankruptcy, insolvency or the termination of business of the service provider. A designated trade repository is also required to monitor the ongoing performance of a service provider to which it outsources a key service, system or facility. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers or affiliates of the designated trade repository. A designated trade repository that outsources its services or systems remains responsible for those services or systems and for compliance with securities legislation.

**PART 3**
**DATA REPORTING**

Part 3 deals with reporting obligations for transactions and includes a description of the counterparties that will be subject to the duty to report, requirements as to the timing of reports and a description of the data that is required to be reported.

**Reporting counterparty**

**25.** Section 25 outlines how the counterparty required to report derivatives data and fulfil the ongoing reporting obligations under the Rule is determined. Reporting obligations on derivatives dealers apply irrespective of whether the derivatives dealer is a registrant.

(1) Subsection 25(1) outlines a hierarchy for determining which counterparty to a transaction will be required to report the transaction based on the counterparty to the transaction that is best suited to fulfill the reporting obligation. For example, for transactions that are cleared through a recognized or exempt clearing agency, the clearing agency is best positioned to report derivatives data and is therefore required to act as reporting counterparty

Although there may be situations in which the reporting obligation falls on both counterparties to a transaction, it is the Commission's view that in such cases the counterparties should select one counterparty to fulfill the reporting obligation to avoid duplicative reporting. For example, if a transaction required to be reported is between two dealers, each dealer has an obligation to report under paragraph 25(1)(b). Similarly, if a transaction is between two local counterparties that are not dealers, both local counterparties have an obligation to report under paragraph 25(1)(d). However, because a reporting counterparty may delegate its reporting obligations under subsection 26(3), the Commission expects that the practical outcome is that one counterparty will delegate its reporting obligation to the other (or a mutually agreed upon third party) and only one report will be filed in respect of the transaction. Therefore, although both counterparties to the transaction examples described above ultimately have the reporting obligation, they may institute contracts, systems and practices to agree to delegate the reporting function to one party. The intention of these provisions is to facilitate one counterparty reporting through delegation while requiring both counterparties to have procedures or contractual arrangements in place to ensure that reporting occurs.

(2) Subsection 25(2) applies to situations where the reporting counterparty, as determined under paragraph 25(1)(c), is not a local counterparty. This provision is intended to cover situations where a non-local reporting counterparty does not report a transaction or otherwise fails to fulfil the reporting counterparty's reporting duties. In such case the local counterparty must act

as the reporting counterparty and fulfil the reporting counterparty duties under the Rule. This provision differs from the situations in paragraphs 25(1)(b) and 25(1)(d) because the Commission is of the view that, where a transaction is between a derivatives dealer and an end-user, the derivatives dealer is best positioned to act as reporting counterparty.

The Commission expects that a local counterparty will determine that the non-local reporting counterparty has discharged its reporting obligations by reviewing a confirmation of the transaction report. Where the local counterparty has not received confirmation that its transaction has been reported in accordance with the requirements of this Rule within two business days after the date on which the transaction occurred, under subsection 25(2) it must act as reporting counterparty for the transaction. Where the local counterparty is a participant of the designated trade repository this confirmation would come from the designated trade repository in accordance with subsection 23(1). Where the local counterparty is not a participant it would be necessary for the local counterparty to ensure that it receives the confirmation from the reporting counterparty (or its delegate).

Subsection 31(4) modifies the timing requirement for the reporting of data where a local counterparty has assumed the role of reporting counterparty because of a failure to report by a non-local reporting counterparty. In such cases the local counterparty should report the transaction no later than the end of the third business day after the day on which the data should otherwise have been reported.

The Commission is of the view that, because a registered foreign derivatives dealer is a local counterparty under the rule, there will only be limited situations where this subsection 25(2) applies.

**Duty to report**

**26.** Section 26 outlines the duty to report derivatives data.

(1) Subsection 26(1) requires that, subject to sections 40, 41, 42 and 43, derivatives data for each transaction to which one or more counterparties is a local counterparty be reported to a designated trade repository. The counterparty required to report the derivatives data is the reporting counterparty as determined under section 25.

(2) Under subsection 26(2), the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes ongoing requirements such as the reporting of life-cycle event data and valuation data.

(3) Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle event data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider. However, the reporting counterparty remains responsible for ensuring that the derivatives data is accurate and reported within the timeframes required under the Rule.

(4) With respect to subsection 26(4), prior to the reporting rules in Part 3 coming into force, the Commission will provide public guidance on how reports for transactions that are not accepted for reporting by any designated trade repository should be electronically submitted to the Commission.

(5) Subsection 26(5) provides for limited substituted compliance with this Rule where a transaction has been reported to a designated trade repository pursuant to the law of a province of Canada other than Ontario or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraphs (a) and (c) are satisfied.

(6) Paragraph 26(6)(a) requires that all derivatives data reported for a given transaction be reported to the same designated trade repository to which the initial report is submitted or, with respect to transactions reported under section 26(4), to the Commission. For a bi-lateral transaction that is assumed by a clearing agency (novation), the designated trade repository to which all derivatives data for the assumed transactions must be reported is the designated trade repository to which the original bi-lateral transaction was reported.

The purpose of this requirement is to ensure the Commission has access to all reported derivatives data for a particular transaction from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories. Where the entity to which the transaction was originally reported is no longer a designated trade repository, all data relevant to that transaction should be reported to another designated trade repository as otherwise required by the Rule.

(7) The Commission interprets the requirement in subsection 26(7) to report errors or omissions in derivatives data "as soon as technologically practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(8) Under subsection 26(8), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that is reported to a designated trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty. Once the error or omission is reported to the reporting counterparty, the reporting counterparty then has an obligation under subsection 26(7) to report the error or omission to the designated trade

repository or to the Commission in accordance with subsection 26(6). The Commission interprets the requirement in subsection 26(8) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

**Legal entity identifiers**

**28.** (1) Subsection 28(1) requires that a designated trade repository identify all counterparties to a transaction by a legal entity identifier. It is envisioned that this identifier be a LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative[5] that will uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20.

(2) The "Global Legal Entity Identifier System" referred to in subsection 28(2) means the G20 endorsed system that will serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally to counterparties who enter into transactions.

(3) If the Global LEI System is not available at the time counterparties are required to report their LEI under the Rule, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational; counterparties must cease using their substitute LEI and commence reporting their LEI. The substitute LEI and LEI could be identical.

**Unique transaction identifier**

**29.** A unique transaction identifier will be assigned by the designated trade repository to each transaction which has been submitted to it. The designated trade repository may utilize its own methodology or incorporate a previously assigned identifier that has been assigned by, for example, a clearing agency, trading platform, or third-party service provider. However, the designated trade repository must ensure that no other transaction shares the same identifier.

A transaction in this context means a transaction from the perspective of all counterparties to the transaction. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier. For a bi-lateral transaction that is novated to a clearing agency, the reporting of the novated transactions should reference the unique transaction identifier of the original bi-lateral transaction.

**Unique product identifier**

**30.** Section 30 requires that a reporting counterparty identify each transaction that is subject to the reporting obligation under the Rule by means of a unique product identifier. There is currently a system of product taxonomy that may be used for this purpose.[6] To the extent that a unique product identifier is not available for a particular transaction type, a reporting counterparty would be required to create one using an alternative methodology.

**Creation data**

**31.** Subsection 31(2) requires that reporting of creation data be made in real time, which means that creation data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be "technological practicable", the Commission will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The Commission may also conduct independent reviews to determine the state of reporting technology.

(3) Subsection 31(3) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations, such as trade compressions involving numerous transactions, real time reporting may not currently be practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

(4) Subsection 31(4) is intended to take into account the fact that a local counterparty who is required to fulfill the obligations of a reporting counterparty under subsection 25(2) will become aware of a non-local reporting counterparty's failure to report derivatives data only by the end of the second day following the execution of the transaction required to be reported. Accordingly, a local counterparty that must act as reporting counterparty under subsection 25(2) is required to report creation data no later than the end of the third business day following the day on which the data should otherwise have been reported.

[5] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.
[6] See http://www2.isda.org/identifiers-and-otc-taxonomies/ for more information.

**Life-cycle event data**

**32.** The Commission notes that, in accordance with subsection 26(6), all reported derivatives data relating to a particular transaction must be reported to the same designated trade repository to which the initial report was made, or to the Commission for transactions for which derivatives data was reported to the Commission in accordance with subsection 26(4).

(1) Life-cycle event data is not required to be reported in real time but rather at the end of the business day on which the life-cycle event occurs. The end of business day report may include multiple life-cycle events that occurred on that day.

**Valuation data**

**33.** Valuation data with respect to a transaction that is subject to the reporting obligations under the Rule is required to be reported by the reporting counterparty. For both cleared and uncleared transactions, counterparties may, as described in subsection 26(3), delegate the reporting of valuation data to a third party, but such counterparties remain ultimately responsible for ensuring the timely and accurate reporting of this data. The Commission notes that, in accordance with subsection 26(6), all reported derivatives data relating to a particular transaction must be reported to the same designated trade repository to which the initial report was made, or to the Commission for transactions for which the initial report was made to the Commission in accordance with subsection 26(4).

(1) Subsection 33(1) provides for differing frequency of valuation data reporting based on the type of entity that is the reporting counterparty.

**Pre-existing derivatives**

**34.** Section 34 requires that pre-existing transactions that were entered into before July 2, 2014 and that will not expire or terminate on or before December 31, 2014 to be reported to a designated trade repository. Creation data in respect of pre-existing transactions that must be reported pursuant to section 34 must be reported to a designated trade repository no later than December 31, 2014. In addition, only the data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A will be required to be reported for pre-existing transactions.

Transactions that are entered into before July 2, 2014 and that expire or terminate on or before December 31, 2014 will not be subject to the reporting obligation. These transactions are exempted from the reporting obligation in the Rule, to relieve some of the reporting burden for counterparties and because they would provide marginal utility to the Commission due to their imminent termination or expiry.

The derivatives data required to be reported for pre-existing transactions under section 34 is substantively the same as the requirement under CFTC Rule 17 CFR Part 46 – *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*. Therefore, to the extent that a reporting counterparty has reported pre-existing transaction derivatives data required by the CFTC rule, this would meet the derivatives data reporting requirements under section 34. This interpretation applies only to pre-existing transactions.

**PART 4**
**DATA DISSEMINATION AND ACCESS TO DATA**

**Data available to regulators**

**37.** (1) Subsection 37(1) requires designated trade repositories to, at no cost to the Commission: (a) provide to the Commission continuous and timely electronic access to derivatives data; (b) promptly fulfill data requests from the Commission; (c) provide aggregate derivatives data; and (d) disclose how data has been aggregated. Electronic access includes the ability of the Commission to access, download, or receive a direct real-time feed of derivatives data maintained by the designated trade repository.

The derivatives data covered by this subsection are data necessary to carry out the Commission’s mandate to protect against unfair, improper or fraudulent practices, to foster fair and efficient capital markets, to promote confidence in the capital markets, and to address systemic risk. This includes derivatives data with respect to any transaction or transactions that may impact Ontario’s capital markets.

Transactions that reference an underlying asset or class of assets with a nexus to Ontario or Canada can impact Ontario’s capital markets even if the counterparties to the transaction are not local counterparties. Therefore, the Commission has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Rule, but is held by a designated trade repository.

(2) Subsection 37(2) requires a designated trade repository to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards have been developed by CPSS and IOSCO. It is expected that all designated trade repositories will comply with the access recommendations in CPSS-IOSCO's final report. [7]

(3) The Commission interprets the requirement for a reporting counterparty to use best efforts to provide the Commission with access to derivatives data to mean, at a minimum, instructing the designated trade repository to release derivative data to the Commission.

**Data available to counterparties**

**38.** Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, has access to all derivatives data relating to its transaction(s) in a timely manner. The Commission is of the view that where a counterparty has provided consent to a trade repository to grant access to data to a third-party service provider, the trade repository shall grant such access on the terms consented to.

**Data available to public**

**39.** (1) Subsection 39(1) requires a designated trade repository to make available to the public, free of charge, certain aggregate data for all transactions reported to it under the Rule (including open positions, volume, number of transactions, and price). It is expected that a designated trade repository will provide aggregate data by notional amounts outstanding and level of activity. Such aggregate data is expected to be available on the designated trade repository's website.

(2) Subsection 39(2) requires that the aggregate data that is disclosed under subsection 39(1), be broken down into various categories of information. The following are examples of the aggregate data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., Canada for derivatives which reference the TSX60 index);
- asset class of reference entity (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared;
- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

(3) Subsection 39(3) requires a designated trade repository to publicly report the data indicated in the column entitled "Required for public dissemination" in Appendix A of the Rule. For transactions where at least one counterparty is a derivatives dealer, paragraph 39(3)(a) requires that such data be publicly disseminated by the end of the day following the day on which the designated trade repository receives the data. For transactions where neither counterparty is a derivatives dealer, paragraph 39(3)(b) requires that such data be publicly disseminated by the end of the second day following the day on which the designated trade repository receives the data. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

(4) Subsection 39(4) provides that a designated trade repository must not disclose the identity of either counterparty to the transaction. This means that published data must be anonymized and the names or legal entity identifiers of counterparties must not be published. This provision is not intended to create a requirement for a designated trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the transaction.

**PART 5**
**EXCLUSIONS**

**40.** Section 40 provides that the reporting obligation for a physical commodity transaction entered into between two non-derivatives dealers does not apply in certain limited circumstances. This exclusion only applies if a local counterparty to a transaction has less than $500,000 aggregate notional value under all outstanding derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions, including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a physical commodity transaction would be calculated by multiplying the quantity of the physical

[7] See report entitled "Authorities' Access to TR Data" available at http://www.bis.org/publ/cpss110.htm.

commodity by the price for that commodity. A counterparty that is above the $500,000 threshold is required to act as reporting counterparty for a transaction involving a party that is exempt from the reporting obligation under section 40. In a situation where both counterparties to a transaction qualify for this exclusion, it would not be necessary to determine a reporting counterparty in accordance with section 25.

This relief applies to physical commodity transactions that are not excluded derivatives for the purpose of the reporting obligation in paragraph 2(d) of OSC Rule 91-506 *Derivatives: Product Determination*. An example of a physical commodity transaction that is required to be reported (and therefore could benefit from this relief) is a physical commodity contract that allows for cash settlement in place of delivery.

**PART 7**
**EFFECTIVE DATE**

**Effective date**

**43.** (2) The requirement under subsection 39(3) to make transaction level data reports available to the public does not apply until December 31, 2014.

(3) Where the counterparty is a derivatives dealer or recognized or exempted clearing agency, subsection 42(3) provides that no reporting is required until July 2, 2014.

(4) For non-dealers, subsection 42(4) provides that no reporting is required until September 30, 2014. This provision only applies where both counterparties are non-dealers. Where the counterparties to a transaction are a dealer and a non-dealer, the derivatives dealer will be required to report according to the timing outlined in subsection 42(3).

(5) Subsection 43(5) provides that no reporting is required for pre-existing transactions that terminate or expire by December 31, 2014.

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

**REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1**

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 10/25/2013 | 6 | 2297970 Ontario Inc. - Debentures | 130,000.00 | N/A |
| 10/22/2013 | 1 | ADMA Biologics, Inc. - Common Shares | 1,529,745.00 | 175,000.00 |
| 10/22/2013 | 1 | Advaxis, Inc. - Common Shares | 953,326.80 | 5,750,000.00 |
| 10/22/2013 | 1 | Advaxis, Inc. - Warrants | 115.80 | 2,875,000.00 |
| 10/18/2013 | 2 | Alexandria Minerals Corporation - Common Shares | 676,442.00 | 6,764,420.00 |
| 10/22/2013 | 3 | Alliant Techsystems Inc. - Notes | 1,840,836.00 | 1,790.00 |
| 10/17/2013 | 1 | American Solar Direct Holdings Inc. - Units | 514,850.00 | 250,000.00 |
| 10/30/2013 | 2 | Asher Resources Corporation - Common Shares | 204,000.00 | 900,000.00 |
| 10/10/2013 | 14 | ATK Oilfield Transportation Inc. - Common Shares | 725,000.00 | 362,500.00 |
| 10/31/2013 | 1 | Axela Inc. - Debenture | 300,000.00 | 1.00 |
| 10/24/2013 | 1 | Bank of Montreal - Debt | 2,000,000.00 | 1.00 |
| 10/18/2013 to 10/23/2013 | 6 | Barclays Bank PLC - Notes | 749,475.00 | 6.00 |
| 10/10/2013 | 14 | Biosenta Inc. - Units | 978,433.80 | 6,522,892.00 |
| 10/24/2013 | 2 | Boreal Agrominerals Inc. - Common Shares | 275,000.00 | 1,375,000.00 |
| 10/25/2013 | 36 | British Columbia Ferry Services Inc. - Bonds | 200,000,000.00 | 200,000.00 |
| 10/16/2013 to 10/24/2013 | 115 | Canadian First Financial Group Inc. - Common Shares | 26,906,163.61 | 28,322,246.00 |
| 10/22/2013 | 24 | Cancana Resources Corp. - Units | 632,446.00 | 3,162,232.00 |
| 03/01/2013 to 08/01/2013 | 3 | Capital Growth Fund Limited Partnership - Limited Partnership Units | 550,000.00 | 171.92 |
| 10/24/2013 | 2 | Casino, Guichard-Perrachon - Notes | 5,040,000.00 | 35.00 |
| 10/15/2013 to 10/17/2013 | 2 | Claim Post Resources Inc. - Units | 275,000.00 | 5,500,000.00 |
| 10/11/2013 | 3 | Cline Mining Corporation - Bonds | 1,100,000.00 | 3.00 |
| 10/25/2013 | 12 | CommunityLend Holdings Inc. - Preferred Shares | 13,860,128.00 | 21,656,450.00 |
| 10/22/2013 | 16 | Condor Resources Inc. - Units | 205,000.00 | 4,100,000.00 |
| 10/11/2013 to 10/18/2013 | 31 | Corporation Tomagold - Units | 684,500.00 | 6,845,000.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 01/01/2013 to 09/30/2013 | 30 | CQI Equity Opportunities Fund I - Units | 1,278,413.53 | N/A |
| 01/01/2013 to 09/30/2013 | 26 | CQI Equity Opportunities Fund II - Units | 2,917,999.88 | N/A |
| 07/31/2013 to 09/30/2013 | 37 | CQI Income Opportunities Fund - Units | 5,729,900.93 | N/A |
| 10/21/2013 | 106 | Crew Energy Inc. - Notes | 151,250,000.00 | 151,250.00 |
| 10/28/2013 | 6 | Crown Castle International Corp. - Common Shares | 3,941,943.00 | 51,000.00 |
| 10/28/2013 | 1 | Crown Castle International Corp. - Common Shares | 261,125.00 | 2,500.00 |
| 10/31/2013 to 11/05/2013 | 5 | DualEx Energy International Inc. - Units | 988,000.00 | 5,200,000.00 |
| 10/17/2013 | 9 | Environmental Waste International Inc. - Units | 624,800.00 | 5,206,666.00 |
| 10/22/2013 | 3 | ePals Corporation - Units | 3,020,050.00 | 40,267,333.00 |
| 10/18/2013 | 1 | EQT Credit II (No. 1) Limited Partnership - Limited Partnership Interest | 71,838,600.00 | N/A |
| 11/23/2012 to 09/30/2013 | 1 | Excel China Fund - Units | 1,290,000.00 | 72,585.17 |
| 05/06/2013 to 08/27/2013 | 1 | Excel China Fund - Units | 1,300,000.00 | 72,044.00 |
| 08/26/2013 | 1 | Excel China Fund - Units | 150,000.00 | 8,100.14 |
| 12/19/2012 to 09/27/2013 | 1 | Excel Emerging Europe Fund - Units | 288,198.14 | 47,905.80 |
| 12/19/2012 | 1 | Excel Emerging Europe Fund - Units | 5,133.64 | 879.27 |
| 05/08/2013 | 1 | Excel India Fund - Units | 150,000.00 | 8,407.51 |
| 11/23/2012 to 09/30/2013 | 1 | Excel India Fund - Units | 1,140,000.00 | 67,663.36 |
| 05/08/2013 | 1 | Excel India Fund - Units | 600,000.00 | 33,630.03 |
| 05/07/2013 | 1 | Excel India Fund - Units | 90,000.00 | 5,057.03 |
| 06/04/2013 to 09/30/2013 | 1 | Excel Latin America Fund - Units | 270,000.00 | 39,185.37 |
| 12/12/2012 to 09/03/2013 | 1 | Excel Money Market Fund - Units | 19,607,248.87 | 1,960,724.89 |
| 09/27/2013 | 1 | Fiera Properties CORE Fund LP - Limited Partnership Units | 600,000.00 | N/A |
| 10/25/2013 | 20 | Freyja Resources Inc. (Formerly, D-Fense Capital Ltee) - Units | 386,750.00 | 2,275,000.00 |
| 10/07/2013 | 3 | GB Minerals Ltd. - Common Shares | 248,025.00 | 620,063.00 |
| 10/21/2013 | 26 | Globex Mining Enterprises Inc. - Membership Interests | 1,807,753.05 | 3,676,259.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 09/30/2013 | 102 | Grafton Energy Income Fund - Units | 11,201,148.00 | 1,117,069.47 |
| 08/14/2013 | 14 | Greybrook Ordnance Limited Partnership - Units | 2,787,600.00 | 29,615.00 |
| 09/16/2013 | 2 | Harte Gold Corp. - Flow-Through Units | 60,000.00 | 600,000.00 |
| 10/25/2013 | 1 | HedgeForum Metacapital Ltd. - Units | 1,033,000.00 | N/A |
| 10/03/2013 | 94 | ICM VI Realty Trust - Units | 2,699,550.00 | 269,955.00 |
| 11/04/2013 | 2 | Intesa Sanpaolo S.p.A. - Trust certificates | 10,917,925.00 | 52.50 |
| 10/28/2013 | 1 | JBS Investments GmbH - Notes | 1,044,500.00 | 1,000.00 |
| 10/29/2013 | 1 | Kansas City Southern de Mexico, S.A. de C.V. - Notes | 2,089,000.00 | 2,000.00 |
| 10/29/2013 | 1 | Kansas City Southern Railway Company - Notes | 1,997,320.00 | 2,000.00 |
| 10/22/2013 | 8 | Kestrel Gold Inc. - Units | 400,000.00 | 2,000,000.00 |
| 10/16/2013 | 35 | Klondex Mines Ltd. - Special Warrants | 19,454,000.00 | 14,200,000.00 |
| 10/17/2013 | 28 | Kombat Copper Inc. - Receipts | 2,903,700.00 | 29,037,000.00 |
| 10/24/2013 | 70 | LED Medical Diagnostics Inc. - Units | 5,006,505.00 | 15,000,000.00 |
| 10/24/2013 | 10 | LiveQoS Inc. - Debentures | 2,204,000.00 | 10.00 |
| 10/17/2013 | 2 | LTP Financing Inc. - Bonds | 122,000.00 | 122.00 |
| 11/04/2013 | 4 | LTP Financing Inc. - Bonds | 236,000.00 | 236.00 |
| 10/16/2013 | 4 | Mag Copper Limited - Common Shares | 208,112.00 | 4,161,842.00 |
| 10/29/2013 | 2 | Metalex Ventures Ltd. - Flow-Through Shares | 1,700,000.03 | 22,666,667.00 |
| 10/31/2013 | 14 | Miraculins Inc. - Units | 602,000.00 | 10,033,333.00 |
| 06/10/2013 | 1 | Nevada Clean Magnesium Inc. - Units | 10,000.00 | 1,000,000.00 |
| 10/24/2013 | 3 | New Gold Inc. - Common Shares | 49,790.00 | 6,500.00 |
| 10/11/2013 to 10/17/2013 | 8 | NewStrike Resources Ltd. - Units | 333,749.97 | 5,134,615.00 |
| 10/21/2013 | 7 | NioCorp Developments Ltd. - Common Shares | 342,992.20 | 2,286,612.00 |
| 10/30/2013 | 13 | North Arrow Minerals Inc. - Common Shares | 5,450,000.00 | 13,625,000.00 |
| 09/20/2013 | 36 | North Battleford Power L.P. - Bonds | 667,346,711.00 | 667,346.00 |
| 10/21/2013 | 1 | Pinetree Capital Ltd. - Common Shares | 60,172.20 | 182,340.00 |
| 10/23/2013 | 1 | Pivotal Therapeutics Inc. - Units | 2,741,809.00 | 12,462,768.00 |
| 10/22/2013 | 4 | Portola Pharmaceuticals, Inc. - Common Shares | 122,122.50 | 5,000.00 |
| 10/01/2012 to 09/03/2013 | 41 | Pyramis Canadian Bond Trust - Units | 268,483,159.04 | 14,389,108.40 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 10/01/2012 to 09/30/2013 | 68 | Pyramis Canadian Core Equity Trust - Units | 251,882,070.64 | 9,236,531.13 |
| 10/01/0012 to 09/30/2013 | 15 | Pyramis Canadian Long Bond Trust - Units | 329,528,273.15 | 20,772,762.26 |
| 10/01/2012 to 09/30/2013 | 28 | Pyramis Canadian Systematic Equity Trust - Units | 64,057,607.07 | 1,985,483.29 |
| 10/01/2012 to 09/30/2013 | 5 | Pyramis Concentrated International Small Cap Trust - Units | 9,155,685.22 | 374,735.99 |
| 10/01/2012 to 09/30/2013 | 4 | Pyramis Currency Hedged Emerging Markets Debt Trust - Units | 6,006,239.40 | 413,735.93 |
| 10/01/2012 to 09/30/2013 | 1 | Pyramis Currency Hedged U.S. Large Cap Core Non-Registered Fund - Units | 3,133,977.81 | 196,324.61 |
| 10/01/2012 to 09/30/2013 | 21 | Pyramis International Growth Trust - Units | 37,627,680.02 | 2,395,834.75 |
| 10/01/0012 to 09/30/2013 | 31 | Pyramis Select International Equity Trust - Units | 49,733,986.31 | 3,004,574.82 |
| 10/01/2012 to 09/30/2013 | 14 | Pyramis U.S. Large Cap Core Non Registered Trust - Units | 23,827,546.32 | 2,229,337.49 |
| 10/01/2012 to 09/30/2013 | 11 | Pyramis U.S. Large Cap Core Trust - Units | 7,965,334.80 | 604,632.26 |
| 10/18/2013 | 2 | Quantum Leap Mortgage Investments Fund - Units | 30,456.85 | 3,000.00 |
| 10/10/2013 | 15 | Redstone Capital Corporation - Bonds | 512,700.00 | N/A |
| 10/15/2013 | 11 | Rescue Limited Partnership - Limited Partnership Units | 1,028,025.00 | 1,028,025.00 |
| 10/15/2013 | 3 | ROI Capital/2088013 Ontario Inc.(Empire Communities-Brampton) L2 - Common Shares | 992,458.00 | 992,458.00 |
| 10/18/2013 | 2 | ROI Capital/401 & 405 West Mall LP Junior - Units | 1,380,000.00 | 1,380,000.00 |
| 10/15/2013 | 3 | ROI Capital/Empire Communities (2183 lakeshore Blvd.), L.P. - Units | 1,425,430.00 | 1,425,430.00 |
| 10/09/2013 | 152 | Royal Bank of Canada - Common Shares | 3,638,950.00 | 35,000.00 |
| 10/16/2013 | 10 | Royal Bank of Canada - N/A | 4,138,000.00 | 40,000.00 |
| 10/29/2013 | 3 | Sally Holdings LLC and Sally Capital Inc. - Notes | 7,311,500.00 | 7,000.00 |
| 10/28/2013 | 4 | ScribeStar Ltd. - Common Shares | 537,949.90 | 99,780.00 |
| 10/17/2013 to 10/24/2013 | 65 | SecureCare Investments Inc. - Bonds | 1,488,842.00 | 322.00 |
| 10/28/2013 | 1 | SGX Resources Inc. - Common Shares | 19,000.00 | 200,000.00 |
| 10/17/2013 to 10/24/2013 | 62 | SIF Solar Energy Income & Growth Fund - Units | 1,271,700.00 | 12,717.00 |
| 10/15/2013 | 22 | Skyline Apartment Real Estate Investment Trust - Units | 2,465,189.00 | 186,052.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 10/10/2013 | 62 | Solar Flow-Through 2013-I Limited Partnership - Units | 2,232,000.00 | N/A |
| 10/04/2013 | 3 | Spire Real Estate Limited Partnership - Units | 992,500.00 | 8,729.12 |
| 10/18/2013 | 4 | Spire Real Estate Limited Partnership - Units | 735,000.00 | 6,464.38 |
| 10/21/2013 | 80 | Sunridge Gold Corp. - Units | 6,580,128.21 | 34,632,254.00 |
| 10/25/2013 | 1 | SunTrust Banks, Inc. - Note | 522,055.88 | 1.00 |
| 10/16/2013 | 14 | T-Mobile USA, Inc. - Notes | 48,689,777.50 | 14.00 |
| 10/15/2013 | 1 | The Toronto United Church Council - Notes | 150,000.00 | 150,000.00 |
| 10/09/2013 | 15 | Thomas Franchise Solutions concept Fund #1 Limited Partnership - Limited Partnership Units | 1,820,000.00 | 1,820,000.00 |
| 10/18/2013 | 3 | Tomagold Corporation - Common Shares | 47,500.00 | 500,000.00 |
| 10/01/2013 | 15 | U308 Corp. - Common Shares | 233,371.84 | 1,795,468.00 |
| 10/21/2013 to 10/25/2013 | 18 | UBS AG, Jersey Branch - Certificates | 5,154,460.67 | 18.00 |
| 10/21/2013 to 10/24/2013 | 4 | UBS AG, Zurich - Certificates | 503,229.22 | 4.00 |
| 10/24/2013 | 1 | United Hydrocarbon International Corp. - Debentures | 20,000,000.00 | 20,000,000.00 |
| 10/15/2013 | 2 | Uno Energy Associates Inc. - Common Shares | 82,560.00 | 200,000.00 |
| 10/17/2013 to 10/25/2013 | 35 | US Oil Sands Inc. - Common Shares | 81,005,449.65 | 5,547,104,331.00 |
| 10/10/2013 | 6 | Viva Source Corp. - Special Warrants | 126,000.00 | 2,000,000.00 |
| 06/21/2013 | 3 | VSS Communications Parallel Partners IV L.P. - Limited Partnership Interest | 643,553.00 | N/A |
| 10/14/2013 | 3 | VSS Communications Parallel Partners IV, L.P. - Limited Partnership Interest | 678,264.00 | N/A |
| 10/23/2013 | 44 | Wajax Corporation - Notes | 125,000,000.00 | 44.00 |
| 10/24/2013 | 17 | Walton CA Tuscan Hills Investment Corporation - Common Shares | 329,210.00 | 32,921.00 |
| 10/24/2013 | 10 | Walton CA Tuscan hills LP - Limited Partnership Units | 1,065,503.17 | 103,467.00 |
| 07/11/2013 | 23 | Walton Income 7 Investment Corporation - Common Shares | 1,113,500.00 | 2,300.00 |
| 10/17/2013 | 36 | Walton Income 8 Investment Corporation - Common Shares | 1,560,500.00 | 3,600.00 |
| 10/24/2013 | 33 | Walton Income 8 Investment Corporation - Common Shares | 1,749,500.00 | 3,300.00 |
| 07/11/2013 | 48 | Walton VA Alexander's Run Investment Corporation - Common Shares | 1,349,810.00 | 134,981.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 07/11/2013 | 38 | Walton VA Alexander's Run LP - Units | 2,610,924.73 | 247,904.00 |
| 10/15/2013 to 10/18/2013 | 15 | Westcan Income Limited Partnership III - Units | 7,900,000.00 | 790,000.00 |
| 10/25/2013 | 11 | Xplornet Communications Inc. - Preferred Shares | 11,841,000.00 | 11,841.00 |
| 10/25/2013 | 3 | Xplornet Communications Inc. - Units | 102,418,000.00 | 102,418.00 |
| 10/07/2013 | 15 | Yonge-Yorkville-Cumberland Fund - Units | 797,000.00 | 7,970.00 |

## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
CI G5|20 2039 Q1 Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated November 11, 2013
NP 11-202 Receipt dated November 11, 2013
**Offering Price and Description:**
Class A, F and O units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CI Investments Inc.
**Project** #2130530

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**Issuer Name:**
Copernican British Banks Fund
Global Banks Premium Income Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated November 1, 2013
NP 11-202 Receipt dated November 6, 2013
**Offering Price and Description:**
Series A, Series A2, Series F and Series G Units
**Underwriter(s) or Distributor(s):**
Mandeville Private Client Inc.
Mandeville Wealth Services Inc.
**Promoter(s):**
Portland Investment Counsel Inc.
**Project** #2127144

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**Issuer Name:**
First Trust AlphaDEX European Dividend Index ETF
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated November 4, 2013
NP 11-202 Receipt dated November 5, 2013
**Offering Price and Description:**
Common Units and Advisor Class Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
FT Portfolios Canada Co.
**Project** #2127756

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**Issuer Name:**
Klondex Mines Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated November 5, 2013
NP 11-202 Receipt dated November 5, 2013
**Offering Price and Description:**
$19,454,000.00 - 14,200,000 Common Shares Issuable on Exercise of Outstanding Special Warrants
Price: $1.37 per Special Warrant
**Underwriter(s) or Distributor(s):**
GMP SECURITIES L.P.
MGI SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
M PARTNERS INC.
EURO PACIFIC CANADA INC.
JONES, GABLE & COMPANY LIMITED
PI FINANCIAL CORP.
**Promoter(s):**
-
**Project** #2127824

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**Issuer Name:**
Orbite Aluminae Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated November 8, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
Minimum Offering: $10,000,000.00 (10,000 Units)
Maximum Offering: $16,000,000.00 (16,000 Units)
7.5% Convertible Unsecured Unsubordinated Debentures and Share Purchase Warrants
Price: $1,000 per Unit
**Underwriter(s) or Distributor(s):**
Euro Pacific Canada Inc.
**Promoter(s):**
-
**Project** #2129805

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**Issuer Name:**
TELUS Corporation
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Base Shelf Prospectus dated November 8, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
$3,000,000,000.00:
Debt Securities
Preferred Shares
Common Shares
Warrants to Purchase Equity Securities
Warrants to Purchase Debt Securities
Share Purchase Contracts
Share Purchase or Equity Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2129932

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**Issuer Name:**
Barrick Gold Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated November 7, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
US$ 3,000,225,000.00
163,500,000 COMMON SHARES
**Underwriter(s) or Distributor(s):**
RBC DOMINION SECURITIES INC.
BARCLAYS CAPITAL CANADA INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
MORGAN STANLEY CANADA LIMITED
CITIGROUP GLOBAL MARKETS CANADA INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
HSBC SECURITIES (CANADA) INC.
MERRILL LYNCH CANADA INC.
UBS SECURITIES CANADA INC.
BNP PARIBAS (CANADA) SECURITIES INC.
CREDIT SUISSE SECURITIES (CANADA) INC.
GOLDMAN SACHS CANADA INC.
**Promoter(s):**
-
**Project** #2126419

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**Issuer Name:**
Canada Lithium Corp.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated November 7, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
$10,000,000.00 - 25,000,000 Units
Price: $0.40 per Unit
$2,500,800.00 - 5,210,000 Flow-Through Shares
Price: $0.48 per Flow-Through Share
**Underwriter(s) or Distributor(s):**
Dundee Securities Ltd.
**Promoter(s):**
-
**Project** #2124378

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**Issuer Name:**
CANOE BOND ADVANTAGE CLASS (Series A and F)
CANOE BOND ADVANTAGE FUND (Series A, F and I)
CANOE CANADIAN ASSET ALLOCATION CLASS (Series A, F and T6)
CANOE CANADIAN MONTHLY INCOME CLASS (Series A, F and T6)
CANOE ENERGY CLASS (Series A and F)
CANOE ENERGY INCOME CLASS (Series A and F)
CANOE ENHANCED INCOME CLASS (Series A and F)
CANOE ENHANCED INCOME FUND (Series A, F and I)
CANOE EQUITY CLASS (Series A, F and T6)
CANOE EQUITY INCOME CLASS (Series A and F)
CANOE NORTH AMERICAN MONTHLY INCOME CLASS (Series A and F)
CANOE STRATEGIC HIGH YIELD CLASS (Series A and F)
CANOE STRATEGIC HIGH YIELD FUND (Series A, F and I)
ENERVEST NATURAL RESOURCE FUND LTD. (mutual fund shares)
Principal Regulator - Alberta
**Type and Date:**
Amendment No. 2 dated October 21, 2013 to the Simplified Prospectus and Annual Information Forms dated August 13, 2013.
NP 11-202 Receipt dated November 6, 2013
**Offering Price and Description:**
Series A, F, I and T6 and Mutual Fund Shares @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Canoe Financial Corp.
**Project** #2081740

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**Issuer Name:**
CNH Capital Canada Receivables Trust
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated November 7, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
$1,200,000,000.00 of Receivable-Backed Notes
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CNH CAPITAL CANADA LTD.
**Project** #2122736

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**Issuer Name:**
DirectCash Payments Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated November 8, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
$15,200,000.00
950,000 Common Shares
Price: $16.00 per Common Share
**Underwriter(s) or Distributor(s):**
BMO NESBITT BURNS INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
SCOTIA CAPITAL INC.
**Promoter(s):**
-
**Project** #2124541

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**Issuer Name:**
Series A, Series B, Series F and Series O units (unless otherwise indicated) of
Fidelity Canadian Disciplined Equity Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Canadian Growth Company Fund
Fidelity Canadian Large Cap Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Canadian Opportunities Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Dividend Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Greater Canada Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Dividend Plus Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Special Situations Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity True North Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity American Disciplined Equity Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity American Disciplined Equity Currency Neutral Fund (Series O units only)
Fidelity American Opportunities Fund
Fidelity American Value Fund
Fidelity U.S. Focused Stock Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Small Cap America Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity U.S. Dividend Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity U.S. Dividend Currency Neutral Fund (Series A, B, F, T5, T8, S5, S8, F5 and F8 units only)
Fidelity U.S. Dividend Investment Trust (Series O units only)
Fidelity U.S. Dividend Registered Fund (Series A, B and F units only)
Fidelity U.S. All Cap Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity AsiaStar Fund
Fidelity China Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Emerging Markets Fund
Fidelity Europe Fund
Fidelity Far East Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Disciplined Equity Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Disciplined Equity Currency Neutral Fund (Series O units only)
Fidelity Global Dividend Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Large Cap Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Opportunities Fund
Fidelity Global Small Cap Fund

Fidelity International Disciplined Equity Fund (Series T5, T8, S5 and S8 units also available)
Fidelity International Disciplined Equity Currency Neutral Fund (Series O units only)
Fidelity International Value Fund
Fidelity Japan Fund
Fidelity Latin America Fund
Fidelity NorthStar Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Overseas Fund
Fidelity Global Dividend Investment Trust (Series O units only)
Fidelity Global Consumer Industries Fund
Fidelity Global Financial Services Fund
Fidelity Global Health Care Fund
Fidelity Global Natural Resources Fund
Fidelity Global Real Estate Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Technology Fund
Fidelity Global Telecommunications Fund
Fidelity Canadian Asset Allocation Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Canadian Balanced Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Monthly Income Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Income Allocation Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Asset Allocation Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Monthly Income Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Tactical Strategies Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity U.S. Monthly Income Fund (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Income Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Income Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Balanced Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Balanced Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Growth Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Growth Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity ClearPath 2005 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath 2010 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath 2015 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath 2020 Portfolio
Fidelity ClearPath 2025 Portfolio
Fidelity ClearPath 2030 Portfolio
Fidelity ClearPath 2035 Portfolio
Fidelity ClearPath 2040 Portfolio
Fidelity ClearPath 2045 Portfolio
Fidelity ClearPath Income Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity Income Replacement 2017 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2019 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2021 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2023 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2025 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2027 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2029 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2031 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2033 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2035 Portfolio (Series A, B and F units only)
Fidelity Income Replacement 2037 Portfolio (Series A, B and F units only)
Fidelity Canadian Bond Fund
Fidelity Corporate Bond Fund
Fidelity Canadian Money Market Fund (Series C and D units also available)
Fidelity Canadian Short Term Bond Fund
Fidelity Tactical Fixed Income Fund
Fidelity American High Yield Fund
Fidelity American High Yield Currency Neutral Fund
Fidelity U.S. Money Market Fund
Fidelity Global Bond Fund
Fidelity Global Bond Currency Neutral Fund
Fidelity Canadian Bond Capital Yield Fund (Series T5, S5 and F5 units also available)
Fidelity American High Yield Capital Yield Fund (Series T5, S5 and F5 units also available)
Fidelity Tactical Fixed Income Capital Yield Fund (Series A, B and F units only)
Fidelity U.S. Monthly Income Capital Yield Fund (Series A, B, F, T5, T8, S5, S8, F5 and F8 units only)

Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated October 30, 2013
NP 11-202 Receipt dated November 5, 2013

**Offering Price and Description:**

Series A, Series B, Series C, Series D, Series F, Series O, Series T5, Series T8, Series S5, Series S8, Series F5 and Series F8 @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Fidelity Investments Canada Limited
Fidelity Investments Canada ULC

**Promoter(s):**

FIDELITY INVESTMENTS CANADA ULC

**Project** #2112406

**Issuer Name:**
Paramount Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Amendment #1 dated November 7, 2013 to the Base Shelf Prospectus dated November 14, 2012
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1979092

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**Issuer Name:**
Raging River Exploration Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated November 5, 2013
NP 11-202 Receipt dated November 5, 2013
**Offering Price and Description:**
$78,400,000.00
14,000,000 Common Shares
Price: $5.60 per Common Share
**Underwriter(s) or Distributor(s):**
FIRSTENERGY CAPITAL CORP.
PETERS & CO. LIMITED
DUNDEE SECURITIES LTD.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
PARADIGM CAPITAL INC.
CORMARK SECURITIES INC.
**Promoter(s):**
-
**Project** #2125096

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**Issuer Name:**
RMP Energy Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated November 6, 2013
NP 11-202 Receipt dated November 6, 2013
**Offering Price and Description:**
$50,001,700.00
8,197,000 Common Shares
Price: $6.10 per Common Share
**Underwriter(s) or Distributor(s):**
GMP SECURITIES L.P.
PETERS & CO. LIMITED
MACQUARIE CAPITAL MARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
CORMARK SECURITIES INC.
FIRSTENERGY CAPITAL CORP.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
**Promoter(s):**
-
**Project** #2123308

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**Issuer Name:**
Storm Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated November 8, 2013
NP 11-202 Receipt dated November 8, 2013
**Offering Price and Description:**
$30,150,000.00
9,000,000 Common Shares
$3.35 per Common Share
**Underwriter(s) or Distributor(s):**
FIRSTENERGY CAPITAL CORP.
PETERS & CO. LIMITED
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
RBC DOMINION SECURITIES INC.
CORMARK SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
**Promoter(s):**
-
**Project** #2124641

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**Issuer Name:**
TAG Oil Ltd
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated November 5, 2013
NP 11-202 Receipt dated November 6, 2013
**Offering Price and Description:**
$25,080,000.00
5,700,000 Common Shares
Price: $4.40 Per Share
**Underwriter(s) or Distributor(s):**
DUNDEE SECURITIES LTD.
CASIMIR CAPITAL LTD.
CREDIT SUISSE SECURITIES (CANADA) INC.
CORMARK SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
M PARTNERS INC.
**Promoter(s):**
-
**Project** #2125206

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**Issuer Name:**
Whitecap Resources Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated November 6, 2013
NP 11-202 Receipt dated November 6, 2013
**Offering Price and Description:**
$65,004,000.00
5,417,000 Common Shares
Price $12.00 per Common Share

**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
GMP Securities L.P.
TD Securities Inc.
Dundee Securities Ltd.
FirstEnergy Capital Corp.
Macquarie Capital Markets Canada Ltd.
Scotia Capital Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Peters & Co. Limited
Raymond James Ltd.
**Promoter(s):**
-
**Project** #2124476

# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Consent to Suspension (Pending Surrender) | Parador Asset Management, LLC | Portfolio Manager | October 7, 2013 |
| Consent to Suspension (Pending Surrender) | Solutions Monetaires Monarc Inc./Monarc Money Solutions Inc. | Mutual Fund Dealer | November 5, 2013 |
| New Registration | Acernis Capital Management Inc. | Portfolio Manager, Exempt Market Dealer and Investment Fund Manager | November 5, 2013 |
| Consent to Suspension (Pending Surrender) | GrowthWorks Enterprises Ltd. | Mutual Fund Dealer, Investment Fund Manager, Exempt Market Dealer and Portfolio Manager | November 8, 2013 |
| Change in Registration Category | Crusader Asset Management Inc. | From: Portfolio Manager<br>To: Portfolio Manager and Commodity Trading Manager | November 8, 2013 |
| Change in Registration Category | Stone Asset Management Limited | From: Portfolio Manager and Investment Fund Manager<br>To: Restricted Dealer, Portfolio Manager and Investment Fund Manager | November 11, 2013 |

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# Chapter 13

# SROs, Marketplaces and Clearing Agencies

## 13.1 SROs

### 13.1.1 IIROC – OSC Staff Notice of Request for Comment – Republication of Proposed Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules

**OSC STAFF NOTICE OF REQUEST FOR COMMENT**

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)**

**REPUBLICATION OF PROPOSED CONSOLIDATION OF IIROC ENFORCEMENT, PROCEDURAL, EXAMINATION AND APPROVAL RULES**

IIROC has republished for public comment a rule proposal to consolidate and rationalize certain enforcement and related rules currently contained within the Universal Market Integrity Rules and Dealer Member Rules into a set of new rules ("Consolidated Rules"). The Consolidated Rules were originally published for comment on March 23, 2012. IIROC has made certain material revisions to the Consolidated Rules in light of comments received and has republished them for comment. A copy of the IIROC notice including the amended Consolidated Rules is published on our website at http://www.osc.gov.on.ca.

## 13.2 Marketplaces

### 13.2.1 TSX Inc. – Notice of Commission Approval of Proposed Changes

**TSX INC.**

**NOTICE OF COMMISSION APPROVAL OF PROPOSED CHANGES**

On November 11, 2013, the Commission approved changes proposed by TSX Inc. to introduce the ability for participating organizations to enter a limit price on dark midpoint orders at a non-standard trading increment.

A notice requesting feedback on the proposed change was published on the OSC website and in the OSC Bulletin on September 26, 2013 at (2013), 36 OSCB 9481. No comments were received.

TSX Inc. is expected to publish a notice indicating the intended implementation date of the approved changes.

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