The Ontario Securities Commission

OSC Bulletin

June 12, 2014

Volume 37, Issue 24

(2014), 37 OSCB

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)

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:
Fax: 416-593-8122
TTY: 1-866-827-1295

Office of the Secretary:
Fax: 416-593-2318

THOMSON REUTERS

The OSC Bulletin is published weekly by Carswell, a Thomson Reuters business, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $773 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

Carswell also offers every issue of the Bulletin, from 1994 onwards, fully searchable on S*ecuritiesSource*™, Canada's pre-eminent web-based securities resource. *SecuritiesSource*™ also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*™, as well as ordering information, please go to:

http://www.westlawecarswell.com/SecuritiesSource/News/default.htm

or call Carswell Customer Relations at 1-800-387-5164 (416-609-3800 Toronto & Outside of Canada).

Claims from *bona fide* subscribers for missing issues will be honoured by Carswell up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

ISSN 0226-9325

THOMSON REUTERS

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5082
www.carswell.com
Email www.carswell.com/email

Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Notice 11-327 – Extension of Consultation Period – Proposed National Policy 25-201 Guidance for Proxy Advisory Firms

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-327
Extension of Consultation Period
Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*

June 12, 2014

On April 24, 2014, the Canadian Securities Administrators (the CSA) published for comment proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the Proposed Policy).

The comment period is scheduled to close on June 23, 2014. We have received feedback from some stakeholders indicating that the comment period falls during proxy season and that it would be beneficial for all stakeholders to have additional time to properly review and assess the Proposed Policy and prepare comments.

We are therefore extending the comment period from June 23, 2014 to **July 23, 2014**.

Questions

Please refer your questions to any of the following:

Autorité des marchés financiers
Michel Bourque
Senior Policy Advisor
514-395-0337 ext.4466
1-877-525-0337
michel.bourque@lautorite.qc.ca

Ontario Securities Commission
Naizam Kanji
Deputy Director, Mergers & Acquisitions, Corporate Finance
416-593-8060 1-877-785-1555
nkanji@osc.gov.on.ca

Ontario Securities Commission
Laura Lam
Legal Counsel, Mergers & Acquisitions, Corporate Finance
416-593-8302 1-877-785-1555
llam@osc.gov.on.ca

Alberta Securities Commission
Sophia Mapara
Legal Counsel
403-297-2520 1-877-355-0585
sophia.mapara@asc.ca

1.1.2 Notice of Ministerial Approval of the Exchange of Letters with the Superintendencia de Valores y Seguros of Chile

NOTICE OF MINISTERIAL APPROVAL
OF THE EXCHANGE OF LETTERS WITH
THE SUPERINTENDENCIA DE VALORES Y SEGUROS OF CHILE

On June 9, 2014, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), the exchange of letters entered into between the Ontario Securities Commission and the Superintendencia de Valores y Seguros of Chile (the "Exchange of Letters").

The Exchange of Letters is a pre-condition for allowing securities issued by Canadian-based issuers to be publicly offered in Chile on an exempt basis.

The Exchange of Letters came into effect on April 3, 2014. The Exchange of Letters was published in the Bulletin on **April 10, 2014**.

Questions may be referred to:

Jean-Paul Bureaud
Director (Acting)
Office of Domestic and International Affairs
Tel: 416-593-8131
Email: jbureaud@osc.gov.on.ca

1.2 Notices of Hearing

1.2.1 Capital Markets Technologies, Inc. – 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
CAPITAL MARKETS TECHNOLOGIES, INC.

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

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on June 26, 2014 at 11:30 a.m.;

TO CONSIDER whether, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Act, it is in the public interest for the Commission to make an order:

1. against Capital Markets Technologies, Inc. ("CMT") that:

    a. pursuant to paragraph 3 of subsection 127(1) of the Act, except for the securities to be issued on the conversion of the Convertible Loan Agreements, as described within the Settlement Agreement between CMT and the Prince Edward Island Superintendent of Securities ("PEI Superintendent") dated May 31, 2013, the exemptions set out in National Instrument 45-106 do not apply to CMT in Ontario until June 5, 2018;

2. To make such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated June 2, 2014 and by reason of an order of the PEI Superintendent dated June 5, 2013, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on June 26, 2014 at 11:30 a.m., Staff will bring an application to proceed with the matter by written hearing, in accordance with Rule 11 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4095 and section 5.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and any party to the proceeding may make submissions in respect of the application to proceed by written hearing;

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

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place 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 3rd day of June, 2014.

"Josée Turcotte"
Acting Secretary to the Commission

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

AND

IN THE MATTER OF
CAPITAL MARKETS TECHNOLOGIES, INC.

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. On May 31, 2013, Capital Markets Technologies, Inc. ("CMT") entered into a settlement agreement with the Prince Edward Island Superintendent of Securities ("PEI Superintendent") (the "Settlement Agreement").

2. CMT is subject to an order made by the PEI Superintendent dated June 5, 2013 (the "PEI Order") that imposes sanctions, conditions, restrictions or requirements upon CMT.

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

4. The conduct for which CMT was sanctioned took place between July 2010 and December 2012 (the "Material Time").

5. During the Material Time, CMT raised approximately $700,000 from 36 Prince Edward Island investors without properly relying on the accredited investor exemption to the prospectus requirement under Prince Edward Island securities laws.

II. THE PEI PROCEEDINGS

Facts Agreed to by CMT

6. In the Settlement Agreement, CMT admitted the following:

   a. CMT is a corporation incorporated in accordance with the laws of the State of Florida on June 29, 1995, and has an office in Chicago, Illinois and in Ottawa, Ontario;

   b. 7645686 Canada Inc. ("7645686") is a corporation incorporated in accordance with the laws of Canada on September 10, 2010, and has an office in Chicago, Illinois and Ottawa, Ontario;

   c. 7645686 is, and was at all material times, wholly owned by CMT. At no time did 7645686 solicit investments from or issue its shares to any person other than its parent company, CMT;

   d. Paul Edward Maines is, and was at all material time, an officer of CMT;

   e. CMT has never filed, sought to file, or obtained a receipt for a prospectus with the PEI Superintendent;

   f. Between July 1, 2010 and December 17, 2012, CMT raised $701,030 from 36 Prince Edward Island investors through the distribution of securities by way of private placements in the form of "Convertible Loan Agreements") (the "Investment");

   g. The Investment involved a loan of funds by the investors to CMT for, *inter alia*, the purpose of acquiring ownership control of the common shares of a public company shell ("TargetCo"), following which the loan is to be converted into the common shares of TargetCo. Among the representations and warranties contained in the Convertible Loan Agreement was a representation by the investor that s/he satisfied the criteria for an "accredited investor" as defined in National Instrument 45-106;

   h. CMT initially was of the view that, since the investment described in the Convertible Loan Agreements was strictly a loan to CMT, it was not necessary to submit a Report of Exempt Distribution to the Superintendent, and that such a Report would not be required to be filed until the acquisition of the common shares of TargetCo was completed by CMT and the loans were thereby converted into shares of TargetCo;

i. However, CMT agreed to file the Report of Exempt Distributions on March 5, 2013, which report indicated that all 36 Prince Edward Island investors were accredited investors;

j. A subsequent review of the investors by [the PEI Superintendent] revealed that 6 of the 36 Prince Edward Island investors did not meet the definition of an "accredited investor." In addition, [the PEI Superintendent] has been unable to obtain verification that a further 9 of the Prince Edward Island investors met the criteria of an "accredited investor";

k. CMT has offered a right of rescission of his or her investment to three of the investors whom [the PEI Superintendent] identified as failing to meet the criteria for an "accredited investor" in accordance with section 5 of [the Settlement Agreement]. Each of the three investors who received an offer of rescission elected to keep their investment with CMT;

Agreement that acts constitute violations of Prince Edward Island securities law

l. The respondent CMT agrees that is has contravened section 94 of the [Prince Edward Island *Securities Act*, R.S.P.E.I. 1988, Cap. S-3.1] (the "PEI Act")] by distributing a security without having obtained a receipt for a prospectus with respect thereto or having, in all instances, properly relied on the accredited investor exemption from the prospectus requirement as set out in National Instrument 45-106; and

m. CMT agrees that it has contravened section 6.1 of National Instrument 45-106 by failing to file a Report of Exempt Distribution on or before the 10th day after the distribution.

The PEI Order

7. In its Order dated June 5, 2013, the PEI Superintendent imposed the following sanctions, conditions, restrictions or requirements upon CMT:

a. pursuant to section 60(1)(d) of the PEI Act, except for the securities to be issued on the conversion of the Convertible Loan Agreements, the exemptions set out in National Instrument 45-106 do not apply to CMT in Prince Edward Island for a period of 5 years;

b. pursuant to section 60(1)(m) of the PEI Act, the respondent CMT will pay an administrative penalty to the PEI Superintendent in the amount of ten thousand dollars ($10,000.00);

c. the respondent CMT will offer a right of rescission and refund to investors set out at Schedule "B" [of the Settlement Agreement], being all those investors the PEI Superintendent has identified are not "accredited investors" as defined in National Instrument 45-106 and for whom CMT has provided no contrary evidence, independently of the Convertible Loan Agreements or from whom the PEI Superintendent has been unable to obtain verification that the investors meet the criteria of an "accredited investor" (save and except for the three investors to whom an Offer of Rescission and Refund has been made by CMT and declined), and CMT will comply with the investors' wishes in response thereto, in accordance with section 5 of the Settlement Agreement;

d. pursuant to section 63 of the PEI Act, the respondent CMT will pay to the PEI Superintendent costs of the investigation in the amount of five thousand dollars ($5,000.00); and

e. pursuant to sections 60(1)(e) and (f) of the PEI Act, the respondent CMT will engage an independent and duly qualified accountant to prepare audited financial statements of CMT for the fiscal years 2010, 2011 and 2012 and deliver a duly certified copy thereof to the PEI Superintendent no later than December 31, 2013.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

8. In the Settlement Agreement, CMT agreed to be made subject to an order of the PEI Superintendent imposing sanctions, conditions, restrictions or requirements upon CMT.

9. CMT is subject to an order of the PEI Superintendent imposing sanctions, conditions, restrictions or requirements.

10. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement 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 on the person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

11. Staff allege that it is in the public interest to make an order against CMT.

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

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

DATED at Toronto, this 2nd day of June, 2014.

1.4 Notices from the Office of the Secretary

1.4.1 Keith MacDonald Summers et al.

FOR IMMEDIATE RELEASE
June 3, 2014

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that this matter is adjourned to a status update to be held on September 9, 2014 at 3:00 p.m.

A copy of the Order dated June 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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 Paul Azeff et al.

FOR IMMEDIATE RELEASE
June 3, 2014

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

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

A copy of the Order dated June 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.3 Tricoastal Capital Partners LLC et al.

FOR IMMEDIATE RELEASE
June 3, 2014

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that (1) the August 6, 2014 hearing date for the continuation of the Temporary Order is vacated; (2) the Temporary Order is extended until September 11, 2014 or until further order of the Commission; and (3) the hearing of this matter is adjourned to September 9, 2014 at 3:00 p.m. or to such other date or time as provided by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated June 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

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

FOR IMMEDIATE RELEASE
June 5, 2014

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 its Reasons and Decision on Sanctions and Costs and an Order in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated June 4, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.5 Capital Markets Technologies, Inc.

FOR IMMEDIATE RELEASE
June 5, 2014

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

AND

IN THE MATTER OF
CAPITAL MARKETS TECHNOLOGIES, INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the Act on June 3, 2014 setting the matter down to be heard on June 26, 2014 at 11:30 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated June 3, 2014 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 2, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.6 B&A Fertilizers Limited

FOR IMMEDIATE RELEASE
June 6, 2014

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

AND

IN THE MATTER OF
B&A FERTILIZERS LIMITED

TORONTO – Take notice that the hearing in the above named matter scheduled to commence on June 9, 2014 at 9:00 a.m. is vacated.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.7 Portfolio Capital Inc. et al.

FOR IMMEDIATE RELEASE
June 6, 2014

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

AND

IN THE MATTER OF
PORTFOLIO CAPITAL INC., DAVID ROGERSON
and AMY HANNA-ROGERSON

TORONTO – The Commission issued an Order in the above noted matter which provides that the hearing on the merits will continue on June 24 and 25, 2014, beginning at 1:00 p.m. both days, on which dates the Respondents will be permitted to introduce evidence, as follows;

(a) the three British Columbia Witnesses will be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary;

(b) the Alberta Witness will be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary, or to testify at the offices of the Commission in Toronto; and

(c) the Respondents may introduce documentary evidence from the March 2014 Documents and the Additional Documents.

A copy of the Order dated June 6, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.8 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
June 6, 2014

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER 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 named matter which provides that all further service of notice or proceeding documents in this matter on Armadillo Oklahoma is waived.

A copy of the Order dated June 2, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.9 Heritage Education Funds Inc.

FOR IMMEDIATE RELEASE
June 6, 2014

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

AND

IN THE MATTER OF
HERITAGE EDUCATION FUNDS INC.

TORONTO – The Commission issued an Order in the above named matter pursuant to section 127 of the Act which provides that:

1. The Terms and Conditions imposed by the Temporary Order, as amended by previous Commission orders, are deleted.

2. The Temporary Order is revoked.

A copy of the Order dated June 6, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

1.4.10 Andrea Lee McCarthy et al.

FOR IMMEDIATE RELEASE
June 10, 2014

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

AND

IN THE MATTER OF
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC.,
and LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.)

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated June 9, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Aly Vitunski
Senior Media Relations Specialist
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)

This page intentionally left blank

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Viterra Inc. and Glencore PLC

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application from U.K. listed company (Parent) and its Canadian wholly-owned subsidiary (Subco) for an order pursuant to section 13.1 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102), exempting Subco from the requirements of NI 51-102; for an order pursuant to section 8.6 of National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109) exempting Subco from the requirements of NI 52-109; for an order pursuant to section 6.1 of National Instrument 52-110 Audit Committees (NI 52-110) exempting Subco from the requirements of NI 52-110; for an order pursuant to section 3.1 of National Instrument 58-101 Corporate Governance Practices (NI 58-101) exempting Subco from the requirements of NI 58-101; for an order exempting the insiders of subco from the insider reporting requirements and requirements to file an insider profile under National Instrument 55-102 – System for Electronic Disclosure by Insiders (NI 55-102), pursuant to section 6.1 of NI 55-102; National Instrument 55-104 – Insider Reporting Requirements and Exemptions (NI 55-104), pursuant to section 10.1 of NI 55-104, and the Securities Act (Ontario) (OSA), pursuant to section 121(2)(a)(ii) of the OSA, in each case as applicable, in respect of the securities of subco – Subco is a wholly-owned subsidiary of Parent – Parent has provided a full and unconditional guarantee of Subco's securities – Subco cannot rely on the credit support issuer exemption in section 13.4 of NI 51-102 because Parent is not an "SEC issuer" – relief granted on conditions substantially analogous to the conditions contained in section 13.4 of NI 51-102 and also on the condition that Parent meets the definition of 'designated foreign issuer' in National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers except for the fact that it is not a reporting issuer in a Jurisdiction.

Applicable Legislative Provisions

The Securities Act, 1988 (Saskatchewan), s. 130(2)(a)(ii).
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 58-101 Corporate Governance Practices, s. 3.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders, s. 6.1.
The Securities Act (Ontario) s. 121(2)(a)(ii).

May 30, 2014

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

AND

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

AND

IN THE MATTER OF
VITERRA INC. (Viterra) AND GLENCORE PLC (Glencore)
(collectively, the Filers)

DECISION

BACKGROUND

The securities regulatory authority or regulator in each of the Jurisdictions (collectively, the **Decision Makers**) has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting:

(a) Viterra from the requirements of Parts 4 through 12 of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**), pursuant to section 13.1 of NI 51-102;

(b) Viterra from the requirements of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**), pursuant to section 8.6 of NI 52-109 (the **Certification Requirements**);

(c) Viterra from the requirements of National Instrument 52-110 – *Audit Committees* (**NI 52-110**), pursuant to section 8.1 of NI 52-110 (the **Audit Committee Requirements**);

(d) the insiders of Viterra from the insider reporting requirements and requirements to file an insider profile under National Instrument 55-102 – *System for Electronic Disclosure by Insiders* (**NI 55-102**), pursuant to section 6.1 of NI 55-102; National Instrument 55-104 – *Insider Reporting Requirements and Exemptions* (**NI 55-104**), pursuant to section 10.1 of NI 55-104; and the *Securities Act* (Ontario) (**OSA**), pursuant to section 121(2)(a)(ii) of the OSA, in each case as applicable, in respect of the securities of Viterra (the **Insider Reporting Requirements**); and

(e) Viterra from the requirements of NI 58-101 – *Disclosure of Corporate Governance Practices* (**NI 58-101**), pursuant to section 3.1 of NI 58-101,

subject to specific terms and conditions as set out below (collectively, the **Requested Relief**). The exemptions in clauses (a) and (e) are collectively referred to as the **Continuous Disclosure Requirements**.

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

(a) the Financial and Consumer Affairs Authority of Saskatchewan is the principal regulator for the 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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec; 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

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 herein.

REPRESENTATIONS

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

Glencore

1. Glencore is incorporated under the laws of Jersey with its principal executive offices in Baar, Switzerland. Glencore's shares are traded on the London Stock Exchange (the **LSE**) under the symbol "GLEN", the Hong Kong Stock Exchange under the symbol "0805" and the Johannesburg Stock Exchange under the symbol "GLN". Glencore is a member of the FTSE 100 index.

2. Glencore is one of the world's largest global diversified natural resource companies and is a leading integrated producer and marketer of commodities with a well-balanced portfolio of diverse industrial assets. Glencore's industrial and marketing activities are supported by a global network of more than 90 offices located in over 50 countries. Glencore's diversified operations comprise over 150 mining and metallurgical sites, offshore oil production assets, farms and agricultural facilities.

3. On December 17, 2012, through its indirect wholly-owned subsidiary, 8115222 Canada Inc. (the **Glencore Purchaser**), Glencore acquired all of the issued and outstanding common shares of Viterra (the **Common Shares**) at a price of

C$16.25 per Common Share. The transaction was carried out by way of a statutory plan of arrangement under the *Canada Business Corporation Act*. On January 1, 2013, Viterra and the Glencore Purchaser amalgamated and carry on business under the name Viterra Inc.

4. As a company whose ordinary shares are admitted to the premium listing segment of the Official List of the United Kingdom Financial Conduct Authority (the **FCA**) and admitted to trading on the LSE's main market for listed securities, Glencore is subject to the financial reporting requirements of the Listing Rules (the **U.K. Listing Rules**) and the Disclosure Rules and the Transparency Rules of the FCA (together with the U.K. Listing Rules, the **U.K. Disclosure Rules**) pursuant to which Glencore publishes and files its financial statements prepared in accordance with International Financial Reporting Standards. Financial statements are currently required by the U.K. Disclosure Rules to be filed on a semi-annual basis. Under the U.K. Disclosure Rules, Glencore's annual financial statements are required to be published as soon as possible after they have been approved by the board of Glencore and in any event within four months of Glencore's financial year end. The half-yearly financial statements in respect of the first six months of Glencore's financial year are required to be published as soon as possible, but in any event no later than two months after the end of the period to which the report relates. The annual and half-yearly financial statements must remain available to the public for at least five years. Glencore's financial year end is December 31.

5. In addition, Glencore is required by the U.K. Disclosure Rules to make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year (each, an **Interim Management Statement**). An Interim Management Statement must include an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of Glencore and its controlled undertakings and a general description of the financial position and performance of Glencore and its controlled undertakings during the relevant period. All regulated information published by issuers in the U.K. pursuant to the U.K. Disclosure Rules is required to be published on an online facility called the National Storage Mechanism (the **NSM**). The NSM is a website that provides public access to documents that were previously maintained in the FCA's document viewing facility.

6. Glencore is in compliance with the requirements of the U.K. Disclosure Rules concerning the disclosure made to the public, to securityholders of Glencore and to the FCA relating to Glencore and the trading of its securities (the **U.K. Disclosure Requirements**) and has filed all documents that it is required to have filed by the U.K. Disclosure Requirements.

7. Glencore is not a "reporting issuer" or equivalent in any of the provinces or territories of Canada.

8. Glencore is not in default of securities legislation in any of the provinces or territories of Canada.

9. Glencore does not have a class of securities registered under section 12 of the *Securities Exchange Act of 1934* of the United States (the **1934 Act**) and is not required to file reports under section 15(d) of the 1934 Act.

10. The total number of equity securities of Glencore owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully diluted basis, of the total number of Glencore's equity securities.

Viterra

11. Viterra is an agri-business headquartered in Regina, Saskatchewan with extensive agriculture commodity handling operations across Western Canada and South Australia. Viterra primarily handles wheat, durum, barley, canola and pulses. It derives its revenue from receiving, storing, blending, shipping and marketing these commodities from the producer's farm to end-use markets.

12. The authorized capital of Viterra consists of an unlimited number of Common Shares. All of the issued and outstanding Common Shares are held by Glencore or its affiliates. There are no outstanding securities of Viterra convertible into Common Shares.

13. Viterra is a "venture issuer" (as such term is defined in NI 51-102) and is a reporting issuer in each of the provinces of Canada.

14. Viterra is not in default of any of the requirements of the securities legislation in any of the provinces of Canada.

15. No securities of Viterra are listed on a securities exchange.

16. As of the date hereof, Viterra has outstanding the following unsecured notes (collectively, the **Notes**):

    (a) C$24,207,000 million principal amount of 6.406% notes due February 16, 2021 (the **BNY Notes**); and

(b) US$400 million principal amount of 5.950% notes due August 1, 2020 (the **Deutsche Bank Notes**).

2012 Consent Solicitation

17. In July 2012, Glencore solicited the consent of: (a) the holders of the Deutsche Bank Notes to amend the indenture governing the Deutsche Bank Notes (the **2012 DB Amendments**); and (b) the holders of the BNY Notes to amend the indenture governing the BNY Notes (the **Proposed 2012 BNY Amendments**).

18. The 2012 DB Amendments and the Proposed 2012 BNY Amendments each included, among other things, that: (a) Viterra would only have to deliver to the trustee under each indenture and each holder of Notes a copy of any financial statements that Viterra is required to file on SEDAR; and (b) Glencore and Glencore International AG, a wholly-owned subsidiary of Glencore (**GIAG**), would provide a full and unconditional guarantee of the payment, within 15 days of when due, of the principal and interest owing by Viterra to holders of the Notes.

19. The 2012 DB Amendments received the requisite noteholder approval but the Proposed 2012 BNY Amendments did not receive the requisite noteholder approval.

20. On December 17, 2012, the 2012 DB Amendments were implemented and Glencore and GIAG provided a full and unconditional guarantee of Viterra's obligations under the Deutsche Bank Notes.

21. As part of Glencore wanting to conform its guarantee structure for subsidiary bonds that are outstanding across its various subsidiaries, Glencore (Schweiz) AG, a wholly-owned subsidiary of Glencore (**Glencore (Schweiz)**) may provide a full and unconditional guarantee of the payment, within 15 days of when due, of the principal and interest owing by Viterra to holders of the Deutsche Bank Notes.

BNY Indenture

22. The terms of the indenture governing the BNY Notes previously required Viterra to provide BNY Trust Company of Canada and each holder of BNY Notes certain information, as follows:

    (a) audited consolidated financial statements of Viterra, no later than 120 days after the end of each fiscal year; and

    (b) quarterly consolidated financial statements of Viterra, including year-to-date and year-over-year comparator data, no later than 60 days after the end of the applicable quarter.

    Viterra satisfied this obligation by filing the above materials on SEDAR, as permitted under the indenture governing the BNY Notes.

23. On May 5, 2014, Viterra commenced an offer to purchase for cash any and all of the BNY Notes (the **2014 Offer to Purchase**) and at the same time solicited the consent (the **2014 Consent Solicitation**) of the holders of the BNY Notes to, among other things, conform the disclosure requirements under the indenture governing the BNY Notes to the disclosure requirements under the indenture governing the Deutsche Bank Notes (the **2014 BNY Amendments**); that is, amend the indenture governing the BNY Notes to allow Viterra to provide only the financial statements that Viterra is required to file on SEDAR, with the intention, which was disclosed to noteholders in the 2014 Consent Solicitation documentation, that should the Requested Relief be granted, Viterra would generally only be required to file the financial statements and other continuous disclosure information of Glencore and not of Viterra.

24. On May 23, 2014, the 2014 BNY Amendments received the requisite noteholder approval and Viterra implemented the 2014 BNY Amendments. Also on May 26, 2014, Viterra purchased for cash $175,793,000 principal amount of the BNY Notes in accordance with the 2014 Offer to Purchase.

Glencore Guarantee

25. As part of the implementation of the 2014 BNY Amendments, Glencore provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the BNY Notes or in one or more agreements governing the rights of holders of the BNY Notes, that results in the holders of the BNY Notes being entitled to receive payment from Glencore within 15 days of any failure by Viterra to make a payment.

26. In addition, GIAG and Glencore (Schweiz) have provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the BNY Notes or in one or more agreements governing the rights of holders of the BNY Notes, that results in the holders of the BNY Notes being entitled to receive payment from GIAG and/or Glencore (Schweiz) within 15 days of any failure by Viterra to make a payment.

27. Therefore, the BNY Notes are guaranteed by Glencore, GIAG and Glencore (Schweiz). The Deutsche Bank Notes are guaranteed by Glencore and GIAG and may be guaranteed by Glencore (Schweiz). As a result of the guarantees provided by Glencore in respect of the Notes, the holders of the Notes in effect have a greater interest in the financial condition of Glencore than they have in Viterra alone.

28. The only securities issued by Viterra that are owned by parties unaffiliated with Glencore are the Notes. The principal amount outstanding of the BNY Notes is C$24,207,000 million (down from C$200 million as a result of the 2014 Offer to Purchase) and the principal amount outstanding of the Deutsche Bank Notes is US$400 million. This represents less than 1% of the $103.5 billion enterprise value of Glencore (calculated as of June 30, 2013). There are no outstanding securities of Viterra convertible into Common Shares.

29. Glencore and Viterra currently have investment grade credit ratings. Glencore's long-term debt securities are presently rated BBB by Standard and Poor's with a stable outlook and Baa2 by Moody's Investors Service with a stable outlook. Viterra's Deutsche Bank Notes are presently rated BBB by Standard and Poor's with a stable outlook and Baa3 by Moody's Investors Service with a stable outlook, and Viterra's BNY Notes are presently rated BBB by Standard and Poor's with a stable outlook and Baa3 by Moody's Investors Service with a stable outlook.

30. Securities legislation currently provides certain exemptions from continuous disclosure and other obligations on reporting issuers incorporated in foreign jurisdictions that have a limited presence in the markets of the provinces and territories of Canada. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) provides exemptions for "designated foreign issuers" (as such term is defined in NI 71-102) from the continuous disclosure requirements of NI 51-102. Although Glencore would qualify as a designated foreign issuer under NI 71-102, the relief provided by NI 71-102 is not available to relieve Viterra from its continuous disclosure obligations, as Viterra is incorporated under the laws of Canada.

31. In addition, section 13.4 of NI 51-102 relieves reporting issuers of a significant portion of the continuous disclosure obligations under NI 51-102 where the reporting issuer is not incorporated in a foreign jurisdiction and has issued only "designated credit support securities" that have been fully and unconditionally guaranteed by an "SEC issuer" (as such terms are defined in NI 51-102).

32. Glencore is not an SEC issuer for the purposes of section 13.4 of NI 51-102. As a result, the exemptions from NI 51-102 for credit support issuers that have issued only designated credit support securities fully and unconditionally guaranteed by an SEC issuer are not applicable to Viterra and Glencore.

DECISION

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

34. The decision of the Decision Makers under the Legislation is that the relief from the Continuous Disclosure Requirements and the Audit Committee Requirements is granted to Viterra provided that:

    (a) Glencore is the direct or indirect beneficial owner of all the issued and outstanding voting securities of Viterra;

    (b) Glencore is not incorporated or organized under the laws of Canada, and Canadian residents own, directly or indirectly, outstanding voting securities carrying no more than 50 per cent of the votes for the election of directors and none of the following is true:

        (i) the majority of the executive officers or directors of Glencore are residents of Canada;

        (ii) more than 50 per cent of the consolidated assets of Glencore are located in Canada; and

        (iii) the business of Glencore is administered principally in Canada;

    (c) Glencore does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;

    (d) Glencore's ordinary shares are admitted to the premium listing segment of the Official List of the FCA and admitted to trading on the LSE's main market for listed securities and Glencore is subject to and complies with the U.K. Disclosure Requirements and has filed all documents that it is required to have filed by the U.K. Disclosure Requirements;

    (e) the United Kingdom is a "designated foreign jurisdiction" (as such term is defined in section 1.1 of NI 71-102);

(f) the total number of equity securities of Glencore owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully diluted basis, of the total number of Glencore's equity securities, calculated in accordance with sections 1.2 and 1.3 of NI 71-102;

(g) Viterra does not issue any securities, and does not have any securities outstanding, other than;

(i) designated credit support securities for which Glencore has provided a full and unconditional guarantee;

(ii) securities issued to and held by Glencore or an affiliate of Glencore;

(iii) 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

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

(h) Glencore has provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the Notes or in one or more agreements governing the rights of holders of the Notes, that results in the holders of the Notes being entitled to receive payment from Glencore within 15 days of any failure by Viterra to make a payment, and no other person or company (other than a wholly-owned subsidiary of Glencore) has provided a guarantee or "alternative credit support" (as such term is defined in NI 51-102) for the payments to be made under any issued and outstanding securities of Viterra;

(i) Viterra files on SEDAR in electronic format copies of all documents Glencore is required to file with the FCA under the U.K. Disclosure Requirements, at the same time or as soon as practicable after such documents are made public on the NSM, provided that Viterra shall not be required to file on SEDAR prospectuses submitted to the FCA for securities offerings that do not take place in Canada;

(j) Viterra files on SEDAR in electronic format copies of all documents that are published by Glencore via a Regulatory Information Service (the approved disseminators of regulatory information under the continuous disclosure regime in the U.K.) and are accessible by the public on the NSM (other than documents not required to be filed on SEDAR pursuant to paragraph (i) above), at the same time or as soon as practicable after such documents are published via a Regulatory Information Service;

(k) Glencore's disclosure documents required to be filed electronically pursuant to paragraphs (i) and (j) above comply with the requirements of NI 52-107 applicable to foreign issuers;

(l) at least once a year, Viterra discloses in, or as an appendix to, a document that Glencore is required to file under the U.K. Disclosure Requirements and that Viterra files in the Jurisdictions that:

(i) Glencore is subject to the regulatory requirements of the FCA; and

(ii) pursuant to the terms of this decision, the Decision Makers have provided Viterra with exemptive relief from certain continuous disclosure requirements under the Legislation provided that, among other things, Viterra files in each of the provinces of Canada and provides to its securityholders the disclosure documents filed by Glencore and provided to its securityholders pursuant to the U.K. Disclosure Requirements;

(m) Glencore complies with the U.K. Disclosure Requirements in respect of making public disclosure of material information on a timely basis and immediately issues and files in each of the provinces of Canada any news release that discloses a material change in Glencore's affairs;

(n) Viterra issues a news release and files a material change report on SEDAR for all material changes in respect of the affairs of Viterra that are not also material changes in the affairs of Glencore;

(o) Viterra files on SEDAR, in electronic format, in or with the copy of each consolidated interim financial report and consolidated annual financial statements of Glencore, filed pursuant to paragraph (i) above, for the periods covered by the consolidated interim financial report or consolidated annual financial statements of Glencore filed, consolidating summary financial information for Glencore presented with a separate column for each of the following:

(i) Glencore on a non-consolidated basis;

(ii) Viterra and its subsidiaries on a consolidated basis;

(iii) any other subsidiaries of Glencore on a combined basis;

(iv) consolidating adjustments; and

(v) the total consolidated amounts;

(p) the consolidating summary financial information required by paragraph (o) above shall be prepared on a basis consistent with section 13.4(1.1) of NI 51-102;

(q) so long as the securities issued by Viterra include debt, Viterra concurrently sends to all holders of such securities in the provinces of Canada all disclosure materials that are sent to holders of similar debt of Glencore in the manner and at the time required by the U.K. Disclosure Requirements and if any such documents are required to be sent, at least once each year, Glencore includes with such documents the disclosure required under paragraph (l) above;

(r) in the event that Viterra issues designated credit support securities that are non-convertible preferred shares or convertible preferred shares that are convertible into securities of Glencore, Viterra concurrently sends to all holders of such securities in the provinces of Canada all disclosure materials that are sent to holders of similar preferred shares of Glencore in the manner and at the time required by the U.K. Disclosure Requirements and if any such documents are required to be sent, at least once each year, Glencore includes with such documents the disclosure required under paragraph (l) above;

(s) any amendments or supplements to disclosure documents of Glencore filed by Viterra pursuant to this decision shall also be filed in the same manner by Viterra;

(t) Viterra files such other documents relating to Glencore that Glencore would be required to file under current and future requirements of the Legislation if Glencore were a designated foreign issuer and Glencore complies with current and future requirements of the Legislation applicable to designated foreign issuers as if Glencore were a designated foreign issuer, provided that Glencore will not be considered to be a reporting issuer because it complies with such requirements in order to satisfy the conditions of this decision, and provided further that any requirement of the Legislation that requires designated foreign issuers to file disclosure documents may be satisfied by the filing of such documents by Viterra; and

(u) the relief from the Continuous Disclosure Requirements and Audit Committee Requirements will expire on March 15, 2018.

35. The further decision of the Decision Makers under the Legislation is that the relief from the Certification Requirements is granted to Viterra provided that:

(a) Viterra qualifies for the relief from the Continuous Disclosure Requirements and Audit Committee Requirements and Viterra and Glencore are in compliance with the requirements and conditions set out in paragraph 34 above;

(b) Viterra is not required to, and does not, file its own annual or interim filings; and

(c) the relief from the Certificate Requirements will expire on March 15, 2018.

36. The further decision of the Decision Makers is that the relief from the Insider Reporting Requirements be granted to insiders of Viterra provided that:

(a) if the insider is not Glencore,

(i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Glencore before the material facts or material changes are generally disclosed; and

(ii) the insider is not an insider of Glencore in any capacity other than by virtue of being an insider of Viterra;

(b) if the insider is Glencore, Glencore does not beneficially own any designated credit support securities of Viterra;

(c) Viterra qualifies for the relief from the Continuous Disclosure Requirements and Audit Committee Requirements and Viterra and Glencore are in compliance with the requirements and conditions set out in paragraph 34 above; and

(d) the relief from the Insider Reporting Requirements will expire on March 15, 2018.

"Dave Wild"
Chair, Financial and Consumer Affairs Authority of Saskatchewan

2.1.2 Rutter 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).

June 5, 2014

Rutter Inc.
63 Thorburn Road
St. John's, NL A1B 3M2

Dear Sirs/Mesdames:

Re: Rutter Inc. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Quebec, 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.

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

2.1.3 McVicar Industries 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).

June 5, 2014

McVicar Industries Inc.
Unit 25, 11 Progress Avenue
Toronto, Ontario M1P 4S7

Dear Sirs/Mesdames:

Re: McVicar Industries Inc. (the Applicant) – application for a decision under the securities legislation of Ontario, Manitoba and Alberta (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

2.1.4 1810040 Alberta Ltd.

Headnote

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

Applicable Legislative Provisions

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

June 5, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
1810040 ALBERTA LTD.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Makers**") 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 "**Exemptive Relief Sought**").

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

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

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

Interpretation

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

Representations

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

1. The Filer, a corporation resulting from the amalgamation of Homburg Invest Inc. ("**HII**"), Homburg Shareco Inc., Holland Garden Development Ltd., Homburg Invest USA Limited and Swiss Bondco Inc. on March 24, 2014 (the "**Amalgamation**"), is a real estate company based in Canada and existing under the *Business Corporations Act* (Alberta).

2. The Filer's head office is located in Dartmouth, Nova Scotia, its registered office is located in Calgary, Alberta and the Filer has executive offices in Montréal, Québec.

3. The Filer indirectly owns a diversified portfolio of real estate, including office, retail, industrial and hospitality properties.

4. Prior to November 23, 2011, HII was licensed in the Netherlands to operate as an investment institution.

5. Prior to the Plan Implementation Date (as defined below), the authorized capital of HII consisted of an unlimited number of Class A Subordinate Voting Shares, Class B Multiple Voting Shares, Class A Preferred Shares and Class B Preferred Shares of which 17,034,489 Class A Subordinate Voting Shares, 3,104,838 Class B Multiple Voting Shares, no Class A Preferred Shares and no Class B Preferred Shares were issued and outstanding.

6. The authorized capital of the Filer consists of an unlimited number of common shares of which 100 common shares are issued and outstanding.

7. Throughout the past years, deteriorating conditions in European markets, particularly in the Netherlands, affected HII's ability to maintain revenue streams and sufficient cash flow to service its obligations. Given its considerable debt obligations, its decreasing revenue and cash flow generation, as well as expectations that values of properties would continue to deteriorate, HII could no longer continue to conduct business in the normal course and meet its obligations as they became due.

8. On September 9, 2011, HII and certain of its affiliates and related entities (collectively, the "**HII Group Entities**") obtained an order (the "**Initial Order**") from the Superior Court of Québec (Commercial Division) (the "**Court**") granting the HII Group Entities protection from their respective creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and appointing Samson Bélair/Deloitte & Touche Inc.

as the monitor (the "**Monitor**") for the proceedings (the "**CCAA Proceedings**").

9. Two plans of compromise and reorganization were developed (collectively, the "**Plan**"), as described in the management information circular of HII dated May 3, 2013 filed on SEDAR which contemplated, among other things, the following transactions:

   (a) all of HII's outstanding shares (other than common shares of HII issued to Geneba Properties N.V. ("**Geneba**") under the Plan) were cancelled without consideration;

   (b) holders of debt securities and trade creditors of HII (collectively, the "**Affected Creditors**") holding proven claims (as defined in the Plan) had the option to elect to receive cash payments payable by The Catalyst Capital Group Inc. (the "**Cash-out Option**") and a cash distribution from the Monitor in full payment of their claim;

   (c) Affected Creditors holding proven claims that had not elected the Cash-Out Option received, or will receive, a certain number of shares in Geneba and a cash distribution from the Monitor in full payment of their claims; and

   (d) HII transferred to Geneba its core business assets, all of which are located in Europe (i.e., Germany, the Netherlands and the Baltic States).

10. On May 30, 2013, the Plan was approved by 99% of the votes cast, representing 90% of the value of proven claims.

11. The Plan was sanctioned by the Court on June 5, 2013 (the "**Sanction Order**").

12. Based on the CCAA and applicable case law, HII was required to establish the following in order to obtain the Sanction Order evidencing the Court's approval of the Plan:

   (a) there has been strict compliance with all statutory requirements of the CCAA and adherence to previous orders of the Court, including the Initial Order;

   (b) nothing has been done or purported to be done that is not authorized by the CCAA; and

   (c) the Plan is fair and reasonable.

13. The third criterion, the "fairness test", provides the Court with broad discretion to assess the terms of the Plan. When considering whether a plan is fair and reasonable, the Court must consider the equities and balance the relative degrees of prejudice that would flow to various stakeholders from approving or refusing to approve the Plan. HII was required to demonstrate to the Court that the Plan fairly balances the interests of all stakeholders generally. The hearing for the Sanction Order provided the HII's stakeholders (including the Affected Creditors) with an opportunity to object to the Plan if they believed the Plan treated them unfairly, having regard to their legal rights and interests.

14. The CCAA specifically provides that persons or entities with Equity Claims (as defined in the Plan), such as the claims of the persons who were shareholders of HII prior to the Plan Implementation Date, may not receive any recovery under a CCAA plan until all other creditors have been paid in full. In HII's circumstances, the recovery of other creditors will be impaired, so it is not possible under the CCAA to provide a recovery for Equity Claims (as defined in the Plan).

15. No leave to appeal the Sanction Order was sought and no extension was granted to seek one.

16. The required creditor approval of the Plan has been obtained and the Sanction Order has been granted. All conditions precedent to implementation of the Plan have been satisfied or waived and the Monitor delivered a certificate indicating that implementation has occurred and the Plan became binding in accordance with its terms on March 27, 2014 (the "**Plan Implementation Date**").

17. On March 28, 2014, the Filer published a press release stating that it will apply to cease to be a reporting issuer in each of the provinces and territories of Canada.

18. On the Plan Implementation Date, Geneba became the owner of 100 common shares of the Filer, which represents 100% of all the issued and outstanding common shares of the Filer. The Filer has no other securityholders than Geneba. However, the Filer will remain a distinct entity from Geneba under the administration of the Monitor for the sole purpose of selling the Filer's remaining assets in order to repay creditors, as set out in the Plan. Therefore, despite owning shares of the Filer, Geneba will have no control of the Filer and no entitlement to any proceeds from the disposition of the Filer's assets.

19. The Filer is a reporting issuer in all the Jurisdictions.

20. The Filer ceased to be a reporting issuer in British Columbia on April 17, 2014.

21. The Filer is seeking a decision that it is not a reporting issuer in each of the Jurisdictions in which it is a reporting issuer.

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

23. The securities of the Filer, including debt securities, are not traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

24. As the resulting issuer of HII pursuant to the amalgamation, the Filer, is in default of its obligations under the Legislation as a reporting issuer for the failure to file, in respect of the periods subsequent to the interim period ended September 30, 2012 and until the interim period ended on March 31, 2014, its annual and interim financial statements and management's discussion and analysis related thereto as well as an annual information form as required by *Regulation 51-102 respecting continuous disclosure obligations* and the certificates of such filings as required by *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*.

25. As a result of the defaults described in paragraph 24, an application under the "simplified procedure" of CSA Staff Notice 12-307 – *Application for a Decision that an Issuer is not a Reporting Issuer* is not available to the Filer.

26. Since HII was focused on preserving cash during the CCAA Proceedings, it was considered to be in the best interests of HII not to proceed with the preparation of the required filings under the Legislation. Management of HII was therefore able to fully focus on HII's and the HII Group Entities' restructuring process and the CCAA Proceedings. Since the Plan Implementation Date, the Filer has been subject to the administration of the Monitor for the sole purpose of selling the Filer's assets in order to repay creditors, as set out in the Plan. In order to maximise creditor recovery under the Plan, it was determined in the best interests of the Filer not to prepare and file interim public disclosure documents for the interim period ended on March 31, 2014.

27. The Filer does not intend to seek public financing by way of an offering of its securities in Canada or to list its securities on any marketplace in Canada.

28. Upon the granting of the Exemptive Relief Sought, the Filer will not be a reporting issuer in the Jurisdictions.

29. The Filer acknowledges that, in granting the Exemptive Relief Sought, the Decision Makers are not expressing any opinion or approval as to the terms of the Plan.

Decision

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

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

"Martin Latulippe"
Director, Continuous Disclosure
Autorité des marchés financiers

2.1.5 Mega Brands Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for an order that the Filer 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).

TRANSLATION

June 5, 2014

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

AND

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

AND

IN THE MATTER OF
MEGA BRANDS INC.
(THE FILER)

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**) that the Filer 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 Autorité des marchés financiers is the principal regulator for this application, and

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* (**CBCA**) with its head office located at 4505 Hickmore, Montréal, Québec, H4T 1K4.

2. The Filer is a reporting issuer in each of the Jurisdictions and is thus subject to continuous disclosure requirements under the Legislation.

3. On February 27, 2014, the Filer entered into an arrangement agreement with Mattel-MEGA Holdings Inc. (formerly 8653275 Canada Inc.) (**Mattel-MEGA Holdings**), Mattel Overseas Operations Ltd. and Mattel, Inc. to complete a transaction (the **Arrangement**) by way of statutory plan of arrangement under section 192 of the CBCA pursuant to which Mattel-MEGA Holdings would acquire all of the outstanding common shares of the Filer (the **Common Shares**) and the Filer would repurchase all of the outstanding warrants to acquire Common Shares (the **Warrants**), options to acquire Common Shares (the **Options**), deferred share units under the Filer's deferred share unit plan (the **DSUs**) and restricted share units under the Filer's restricted share unit plan (the **RSUs**).

4. The authorized share capital of the Filer consists of an unlimited number of Common Shares and an unlimited number of preferred shares. As of the close of business on April 29, 2014, the Filer had issued and outstanding:

   a) 23,747,296 Common Shares;

   b) 69,066,236 Warrants;

   c) 2,000,644 Options;

   d) 122,060 DSUs; and

   e) 250,541 RSUs.

5. As of April 30, 2014, the Filer also had outstanding C$45,174,900 aggregate principal amount of 10% Senior Secured Debentures with a maturity date of March 31, 2015 (the **Debentures**). The Debentures were issued pursuant to an indenture dated January 28, 2010, as amended (the **Indenture**) between the Filer, certain direct and indirect subsidiaries of the Filer

and CIBC Mellon Trust Company (the **Trustee**). The Debentures were not convertible.

6. The Arrangement was completed on April 30, 2014 (the **Effective Date**). Pursuant to the Arrangement:

   a) holders of Common Shares received cash consideration of C$17.75 per Common Share (the **Common Share Consideration**);

   b) holders of Warrants received cash consideration of C$0.3905 per Warrant;

   c) each Option outstanding immediately prior to the Effective Date (whether vested or unvested) was assigned to the Filer in exchange for a cash payment from the Filer equal to the amount (if any) by which the Common Share Consideration in respect of each Option exceeded the exercise price of such Option; and

   d) each DSU and RSU outstanding immediately prior to the Effective Date (whether vested or unvested) was assigned to the Filer in exchange for a cash payment from the Filer equal to the Common Share Consideration.

7. The Debentures were not included in the Arrangement and remained outstanding following the completion of the Arrangement.

8. On the Effective Date, the Filer deposited with the Trustee, in accordance with the Indenture, the sums as were sufficient to pay the redemption price equal to 105% of the principal amount of the Debentures, plus accrued and unpaid interest thereon (the **Redemption Amount**) to Debentureholders.

9. On May 12, 2014, all of the outstanding Debentures were surrendered to the Trustee, the Redemption Amount was paid by the Trustee to the Debentureholders and the Debentures ceased to be outstanding in accordance with the terms of the Indenture.

10. All of the Filer's issued and outstanding Common Shares are beneficially owned by Mattel-MEGA Holdings.

11. The Filer has no other securities outstanding, including debt securities and convertible securities.

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

13. The Common Shares and Warrants were delisted from the Toronto Stock Exchange at the close of trading on May 2, 2014 and the Debentures were delisted at the close of trading on May 12, 2014.

14. None of the Filer's securities, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

15. The Filer has no current intention to seek public financing by way of an offering of securities in any jurisdiction in Canada.

16. The Filer is in default of its obligations as a reporting issuer under the Legislation to file its interim financial statements and its management discussion and analysis in respect of such statements for the period ended March 31, 2014 (the **Interim Documents**), as required under *Regulation 51-102 respecting Continuous Disclosure Obligations* and the related certificates as required under *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*. At the filing date of the Interim Documents, the Filer has only one holder of its outstanding securities.

17. The Filer 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* in order to avoid the ten day waiting period under that instrument.

18. The Filer 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 under the Legislation as a reporting issuer and because it is a reporting issuer in British Columbia.

19. Upon the granting of the Exemptive Relief Sought, the Filer will not be a reporting issuer in any jurisdiction in Canada.

Decision

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

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

"Martin Latulippe"
Director, Continuous Disclosure
Autorité des marchés financiers

2.1.6 Coastal Contacts Inc. – 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).

June 9, 2014

Coastal Contacts Inc.
Suite 320 - 2985 Virtual Way
Vancouver, British Columbia
V5M 4X7

Dear Sirs/Mesdames,

Re: Coastal Contacts Inc. (the "Applicant") – Application for a decision under the Securities Legislation of Alberta, Manitoba, Ontario, and Quebec (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.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.7 Portfolio Strategies Securities Inc. and the Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus for 5 days – Lapse date extended due to Filer's failure to file a pro forma prospectus not less than thirty days prior to the lapse date as per section 62(2) of the Securities Act (Ontario).

Applicable Legislative Provisions

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

March 28, 2014

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
PORTFOLIO STRATEGIES SECURITIES INC.
(the Filer)

AND

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

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Funds be extended as if the lapse date of the amended and restated simplified prospectus of the Funds dated July 31, 2013, amending and restating the amended and restated simplified prospectus dated May 13, 2013, which amended and restated the simplified prospectus dated March 28, 2013 (the **Current Prospectus**) is April 2, 2014 (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

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

2. The Filer is a corporation existing under the laws of the Province of Alberta, is registered with the OSC as an investment fund manager, and is a dealer member of the IIROC. The head office of the Filer is in Ontario and so the OSC is the principal regulator.

3. Units of the Funds are currently qualified for distribution in each of the Jurisdictions under the Current Prospectus and the Funds are reporting issuers in each of the Jurisdictions.

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

5. Pursuant to the Legislation, the "lapse date" for the Current Prospectus is March 28, 2014 (the **Current Lapse Date**). Accordingly, under the Legislation, the distribution of units of the Funds would have to cease on the Current Lapse Date unless (i) the Funds file a *pro forma* simplified prospectus for the Funds at least 30 days prior to the Current Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after the Current Lapse Date; and (iii) a receipt for the simplified prospectus is obtained within 20 days of the Current Lapse Date. However, the Filer is unable to rely on the foregoing since the *pro forma* simplified prospectus for the Funds was filed on February 28, 2014 instead of February 26, 2014. Accordingly, under the Legislation, the distribution of units of the Funds would have to cease on the Current Lapse Date unless the final simplified prospectus (the **Final Renewal Prospectus**) is filed by the Current Lapse Date and a receipt for

the final simplified prospectus is obtained by the Current Lapse Date.

6. Given the ongoing review of the *pro forma* simplified prospectus and subsequent comments by the OSC, the Filer is requesting additional time by means of an extension of the Current Lapse Date from March 28, 2014 to April 2, 2014 to permit the Filer to respond to the OSC's comments and file the Final Renewal Prospectus for the Funds without resulting in the Funds being forced to cease distribution of units because the Current Prospectus has lapsed.

7. The Filer will file the Final Renewal Prospectus not later than ten days after April 2, 2014.

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

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

Decision

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

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

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

SCHEDULE "A"

Foundation Yield Portfolio
Foundation Equity Portfolio
Foundation Tactical Conservative Portfolio
Foundation Tactical Balanced Portfolio
Foundation Tactical Growth Portfolio

(collectively, the "**Funds**")

2.1.8 GWR Global Water Resources Corp.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief applications in Multiple Jurisdictions – the Filer requests relief from the requirements under section 3.2 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises in order to permit the Filer, who is not an SEC issuer, to prepare its financial statements and financial statements of its significant equity investee in accordance with U.S. GAAP – Filer requests to have conditions in existing decision replaced with revised conditions – exiting decision revoked – requested relief granted.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 5.1.
Securities Act,R.S.O. 1990, c. S.5, as am., s. 144.

June 9, 2014

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
GWR GLOBAL WATER RESOURCES CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the requirements under section 3.2 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that its financial statements and the financial statements of its significant equity investee, Global Water Resources, Inc. (**GWRI**) (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report (the **Exemption Sought**). The Filer previously obtained exemptive relief under the Legislation from the principal regulator in a decision dated July 28, 2011 (*Re GWR Global Water Resources Corp.*, (2011) 34 OSCB 8399), which permits the Filer to prepare its financial statements and the financial statements of its significant equity investee, GWRI, in accordance with U.S. GAAP for their financial years that begin on or after January 1, 2012 but before January 1, 2015 (the **Existing 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;

(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, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the **Passport Jurisdictions**); and

(c) the decision of the principal regulator automatically results in an equivalent decision in the Passport Jurisdictions.

Interpretation

In this decision:

(a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 52-107 have the same meaning if used herein; and

(b) "activities subject to rate regulation" has the meaning ascribed in Part V of the Handbook at the date hereof.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia) whose only business is to hold shares of GWRI and actively participate in the management, business and operations of GWRI through its representation on the board of, and shared management with, GWRI. The registered office of the Filer is located in Vancouver, British Columbia.

2. The Filer is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions.

3. The Filer currently prepares its financial statements and the financial statements of its significant equity investee, GWRI, in accordance with U.S. GAAP as permitted by the Existing Relief.

4. The Filer is not an SEC issuer.

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

6. The Filer owns an approximate 48.1% interest in GWRI, a Delaware corporation with a registered office in Phoenix, Arizona. GWRI is a foreign issuer. GWRI is not a reporting issuer or an SEC issuer.

7. The Filer has undertaken to the Ontario Securities Commission and to the securities regulatory authorities in each of the provinces and territories of Canada that for so long as GWRI represents a significant asset of the Filer and is not consolidated into the financial statements of the Filer, the Filer will provide its shareholders with separate audited annual consolidated financial statements and interim consolidated financial statements for GWRI, prepared in accordance with U.S. GAAP (together with a reconciliation to Canadian GAAP) or as would be required for GWRI under NI 52-107.

8. The Filer and GWRI each have activities subject to rate regulation.

9. Were the Filer and GWRI SEC issuers, they would be permitted by section 3.7 of NI 52-107 to file their financial statements prepared in accordance with U.S. GAAP, which accords treatment of activities subject to rate regulation similar to that under Canadian GAAP – Part V of the Handbook.

10. The Existing Relief will expire not later than January 1, 2015.

11. The International Accounting Standards Board (**IASB**) continues to work on a project focusing on accounting specific to rate-regulated activities. It is not yet known when this project will be completed or whether IFRS will include a specific standard that is mandatory for entities with rate-regulated activities.

Decision

The principal regulator is satisfied that the decision satisfies 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 Existing Relief is revoked;

(b) the Exemption Sought is granted to the Filer in respect of the Filer's financial statements and the financial statements of its significant equity investee, GWRI, in each case required to be filed on or after the date of this order, provided that the Filer prepares those financial statements in accordance with U.S. GAAP; and

(c) the Exemption Sought will terminate in respect of the Filer on the earliest of the following:

(i) January 1, 2019;

(ii) if the Filer or GWRI, as applicable, cease to have activities subject to rate regulation, the first day of the financial year of the Filer or GWRI, respectively, that commences after the Filer or GWRI, respectively, ceases to have activities subject to rate regulation; and

(iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with rate-regulated activities.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

2.1.9 Suncor Energy Inc.

Headnote

MI 11-102 and NP 11-203 – Issuer allowed to make US-compliant disclosure based on US disclosure requirements so long as it describes any significant differences with NI 51-101 – the Issuer's US disclosure would not meet certain requirements in NI 51-101 – the Issuer is subject to the requirements of NI 51-101 and will provide disclosure compliant with that instrument – National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

Applicable Legislative Provisions

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

Citation: Re Suncor Energy Inc., 2014 ABASC 215

June 3, 2014

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

AND

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

AND

IN THE MATTER OF
SUNCOR ENERGY INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be exempted (the **COGEH Relief**) from sections 5.2 and 5.3 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**).

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

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

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

(c) this 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 any of National Instrument 14-101 *Definitions*, NI 51-101, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The head office of the Filer is located in Calgary, Alberta.

2. The Filer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any of the provinces or territories of Canada.

3. The Filer's common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange under the symbol “SU”.

4. The Filer has securities registered under the 1934 Act and is an SEC issuer, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.

5. The Filer frequently accesses debt capital markets in the United States (**U.S.**) through its U.S. debt shelf prospectus (the **US Debt Program**). The US Debt Program, which the Filer intends to renew at the end of May, 2014, is established in the U.S. by filing a Form F-10 registration statement (**F-10**) with the SEC.

6. There is no alternative to filing an F-10 available to the Filer to establish its US Debt Program.

7. The F-10 requires disclosure of certain supplemental information with respect to reserves, future net revenue and other information of a type that is specified in Form 51-101F1 (the **Supplemental Information**).

8. The F-10 requires that the Supplemental Information be prepared in accordance with the requirements and restrictions under U.S. federal securities laws, and guidance applied by the SEC (collectively, the **US Disclosure Requirements**).

9. In its disclosure that is subject to Part 5 of NI 51-101, commencing on the date of filing the F-10, the Filer will be required to include certain disclosure of reserves, future net revenue and other oil and gas information of a type that is specified in Form 51-101F1 prepared in accordance with US Disclosure Requirements and may wish to include additional disclosure of reserves, future net revenue and other oil and gas information of a type that is specified in Form 51-101F1 prepared in accordance with the US Disclosure Requirements (the **US Disclosure**).

10. Differences between the US Disclosure Requirements and NI 51-101 are such that, absent relief, some disclosure made in accordance with the US Disclosure Requirements would contravene NI 51-101.

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.

1. Pursuant to Section 8.1 of NI 51-101, the COGEH Relief is granted with respect to the Filer’s US Disclosure, provided that:

   (a) the Filer describes any material differences, and the reasons for those differences, between such disclosure and the corresponding disclosure it also makes, as required, under Canadian securities laws (its **Required Canadian Disclosure**), within or proximate to the Filer's US Disclosure; and

   (b) the Filer’s US Disclosure:

      (i) complies with the US Disclosure Requirements;

      (ii) is identified as having been prepared in accordance with US Disclosure Requirements;

      (iii) discloses the effective date of the estimates disclosed therein; and

      (iv) is based on reserves estimates which have been prepared or audited by a qualified reserves evaluator or auditor.

2. This decision will terminate on the effective date of any amendment to the Legislation in respect of disclosure of the nature contemplated by paragraph 1 of the Decision section of this Order.

“Denise Weeres”
Manager, Legal
Corporate Finance

2.2 Orders

2.2.1 Keith MacDonald Summers 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
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.

ORDER
(Section 127)

WHEREAS on February 27, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on February 27, 2014, to consider whether it in in the public interest to make certain orders against Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing set a hearing in this matter for March 27, 2014 at 11:00 a.m.;

AND WHEREAS on March 24, 2014, a Notice from the Secretary was issued rescheduling the hearing of this matter to March 27, 2014 at 10:30 a.m.;

AND WHEREAS on March 27, 2014, counsel for the Respondents and Staff attended the hearing;

AND WHEREAS the Commission ordered that the matter was adjourned to a status update to be held on June 2, 2014 at 11:00 a.m.;

AND WHEREAS on June 2, 2014, Staff and counsel for the Respondents attended the status update;

AND WHEREAS the Panel considered the submissions from Staff and counsel for the Respondents and the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED that this matter is adjourned to a status update to be held on September 9, 2014 at 3:00 p.m.

DATED at Toronto this 3rd day of June, 2014.

"Alan J. Lenczner"

2.2.2 Paul Azeff et al.

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

ORDER

WHEREAS on September 22, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*"), accompanied by a Statement of Allegations of Staff of the Commission ("Staff") with respect to the respondents Howard Jeffrey Miller ("Miller") and Man Kin Cheng ("Cheng");

AND WHEREAS on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations of Staff which added the respondents Paul Azeff ("Azeff"), Korin Bobrow ("Bobrow") and Mitchell Finkelstein ("Finkelstein");

AND WHEREAS on April 18, 2011, Staff filed an Amended Amended Statement of Allegations with respect to the respondents Azeff, Bobrow, Finkelstein, Miller and Cheng;

AND WHEREAS on June 3, 2014, the Commission heard a motion brought by Staff seeking the direction of the Commission authorizing Staff's application to the Ontario Superior Court of Justice for an Order appointing a person to take the evidence of Hillel Frankel, Howard Greenspoon and Leon Krantzberg (the "Québec Witnesses");

AND WHEREAS the Québec Witnesses have relevant evidence to provide at the hearing of this proceeding;

IT IS HEREBY ORDERED THAT Staff may make an application to the Ontario Superior Court of Justice for an Order:

(a) appointing the members of the Hearing Panel to take the evidence of Hillel Frankel, Howard Greenspoon and Leon Krantzberg (the "Québec Witnesses") for use in this proceeding before the Commission;

(b) providing for the issuance of a letter of request directed to the judicial authorities of the Québec Superior Court (the "Québec Court"), requesting the issuance

of such process as is necessary to compel the Québec Witnesses to attend before the members of the Hearing Panel to give testimony on oath or otherwise and to produce documents and things relevant to the subject matter of this proceeding;

(c) providing that the examinations of the Québec Witnesses (the "Examinations") shall take place during the Hearing on the Merits in this matter on a date as advised by Staff upon reasonable notice;

(d) prescribing that the procedural and evidentiary rules of Ontario will apply to the Examinations to the extent permissible by the laws of Québec;

(e) providing that, pursuant to section 152(2) of the *Securities Act,* the practice and procedure in connection with the appointment of the Hearing Panel members, the taking of evidence and the certifying and return of the appointment shall, as far as possible, be the same as those that govern similar matters in civil proceedings in the Superior Court of Justice;

(f) providing that, pursuant to Rule 34.07(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the Examinations are to take place at 20 Queen Street West, 17th Floor, Toronto, Ontario at the Hearing on the Merits in this matter;

(g) providing that if, in the alternative, the Québec Court orders that the evidence of the Québec Witnesses shall be taken in Québec, the Examinations shall be conducted via video and audio link from Montréal to the Commission's hearing in this matter so that the members of the Hearing Panel in the proceeding, sitting in Toronto, are able to observe and participate in the Examinations and make any required evidentiary rulings; and

(h) providing that any of the Québec Witnesses who voluntarily attend to testify in person on oath or otherwise at the Hearing on the Merits in this matter in Toronto on a date as advised by Staff upon reasonable notice shall not be considered in breach of any process issued by the Québec Court to compel the Québec Witnesses to attend for the Examinations in Montréal via video and audio link.

DATED at Toronto this 3rd day of June, 2014.

"Alan J. Lenczner"

"AnneMarie Ryan"

"Catherine E. Bateman"

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

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

AND

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

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

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

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

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

AND WHEREAS on August 6, 2013, the Commission ordered pursuant to subsection 127(8) of the Act, that the Temporary Order is extended until February 5, 2014, or until further order of the Commission;

AND WHEREAS Staff of the Commission ("Staff") appeared on February 3, 2014 and advised that counsel for the Respondents consented to a further six month extension of the Temporary Order;

AND WHEREAS the Commission ordered that the Temporary Order extended until August 8, 2014 and that the hearing of the matter was adjourned to August 6, 2014;

AND WHEREAS Staff and counsel for the Respondents appeared at a status update on June 2, 2014 at 11:00 a.m.;

AND WHEREAS after considering submissions from Staff and counsel for the Respondents, the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that the August 6, 2014 hearing date for the continuation of the Temporary Order is vacated;

IT IS FURTHER ORDERED that the Temporary Order is extended until September 11, 2014 or until further order of the Commission;

IT IS FURTHER ORDERED that the hearing of this matter is adjourned to September 9, 2014 at 3:00 p.m. or to such other date or time as provided by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 3rd day of June, 2014.

"Alan J. Lenczner"

2.2.4 Gryphon Gold Corporation et al. – s. 144(1)

Headnote

Section 144(1) – Application to vary a cease trade order – cease trade order varied to permit individual beneficial shareholders, who are not insiders or control persons, to sell securities outside of Canada, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
GRYPHON GOLD CORPORATION (THE "ISSUER")

AND

JON HUEMILLER AND RALPH KRUMME
(THE "APPLICANTS")

ORDER
(Section 144(1) of the Act)

WHEREAS the Ontario Securities Commission (the "**Commission**") issued an order on July 23, 2013, under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, ordering that trading in the securities of the Issuer cease trading for a period of fifteen days from the date of the order;

AND WHEREAS the Commission issued a further order dated August 2, 2013, pursuant to paragraph 2 of subsection 127(1) of the Act, ordering that all trading in the securities of the Issuer shall cease until revoked by a further order (the "**Cease Trade Order**");

AND WHEREAS the Applicants have made an application to the Commission pursuant to section 144(1) of the Act to vary the Cease Trade Order;

AND WHEREAS the Issuer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario and its head office is in the state of Nevada, U.S.A.

AND WHEREAS the trading of the Issuer's common shares have also been cease traded by the British Columbia Securities Commission since July 12, 2013, the Manitoba Securities Commission since August 8, 2013 and the Alberta Securities Commission since October 11, 2013;

AND WHEREAS the Issuer publicly disclosed in a material change report dated July 31, 2013 that on July 29, 2013, it had filed a voluntary petition in the United States Bankruptcy Court for the District of Nevada seeking relief under the provisions of Chapter 11 of Title 11 of the United States Bankruptcy Code. The Issuer also disclosed it remains in possession of its assets and continues to operate its business as a debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court;

AND WHEREAS the Applicants have represented to the Commission that:

1. The Applicants purchased their common shares in the capital of the Issuer prior to the issuance of the Cease Trade Order, when the Issuer's common shares were trading on the Toronto Stock Exchange.

2. Jon Huemiller presently owns 66,000 common shares in the capital of the Issuer, which were purchased on June 27, 2013 (the "**Huemiller Shares**").

3. Ralph Krumme presently owns 22,500 common shares in the capital of the Issuer, of which 2,500 common shares were purchased on January 25, 2013 and 20,000 common shares were purchased on June 28, 2013 (the "**Krumme Shares**", and together with the Huemiller Shares, the "**Subject Shares**")

4. The Issuer's securities are not listed on and do not trade on any exchange in Canada.

5. The Issuer's securities are not subject to cease trade orders in jurisdictions outside of Canada. The Issuer's securities currently trade on the OTC Markets Group.

6. Neither of the Applicants is an insider or control person of the Issuer, or has been employed by or in any way affiliated with the Issuer.

7. The Applicants are seeking a variation of the Cease Trade Order under section 144(1) of the Act permitting the Applicants to dispose of the Subject Shares outside of Canada.

AND UPON the Commission being satisfied that:

a) the terms and conditions to the Cease Trade Order put the Applicants in disadvantage to non-Canadian share-holders who are free to trade their shares on OTC Markets Group; and

b) it is not prejudicial to the public interest to vary the Cease Trade Order under section 144(1) of the Act;

IT IS ORDERED that, pursuant to section 144(1) of the Act, the Cease Trade Order be varied by including the following section:

Despite this order, Jon Huemiller and Ralph Krumme, who are not, and were not at the date of this order, insiders or control persons of Gryphon Gold Corporation, may sell securities of Gryphon Gold Corporation acquired before the date of this order, if:

1. the sale is made through the OTC Markets Group; and

2. the sale is made through an investment dealer registered in Ontario.

DATED this 28th day of May, 2014.

"Kathryn Daniels"
Deputy Director, Corporate Finance Branch

2.2.5 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.) ("MRS"), Americo DeRosa ("DeRosa"), Ronald Sherman ("Sherman"), Edward Emmons ("Emmons"), Ivan Cavric ("Cavric") and Primequest Capital Corporation (collectively, the "Respondents") breached the Act and acted contrary to the public interest;

AND WHEREAS on March 25, 2008, 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 on May 7, 8, 11, 13, June 10, 11, 12, 22, 26, September 3, 4 and October 7, 2009 (the "Merits Hearing");

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 which addressed 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 was premature;

AND WHEREAS on September 5 and 13, 2013, October 17, 2013 and November 7 and 20, 2013, confidential pre-hearing conferences were held before the Commission;

AND WHEREAS on September 24, 2013, the Commission ordered that the Sanctions and Costs Hearing in this matter would 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 the Sanctions and Costs Hearing took place on November 28 and 29, 2013, December 18, 2013 and February 11, 2014;

AND WHEREAS the Commission considers it in the public interest to make this order, with reasons to follow;

IT IS ORDERED that:

1. With respect to DeRosa:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, DeRosa shall cease trading in securities for a period of 10 years;

   (b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to DeRosa for a period of 10 years;

(c) pursuant to clause 6 of subsection 127(1) of the Act, DeRosa is reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, DeRosa shall resign from all positions that he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, DeRosa is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

(f) pursuant to clause 9 of subsection 127(1) of the Act, DeRosa shall pay an administrative penalty of $200,000 for his failure to comply with Ontario securities law, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to section 127.1 of the Act, DeRosa shall pay costs in the amount of $126,216.04, jointly and severally with Sherman, Emmons and Cavric.

2. With respect to Cavric:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Cavric shall cease trading in securities for a period of 10 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to Cavric for a period of 10 years;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Cavric is reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Cavric shall resign from all positions that he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Cavric is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

(f) pursuant to clause 9 of subsection 127(1) of the Act, Cavric shall pay an administrative penalty of $200,000 for his failure to comply with Ontario securities law, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to section 127.1 of the Act, Cavric shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Emmons and Sherman.

3. With respect to Emmons:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Emmons shall cease trading in securities for a period of 10 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law shall not apply to Emmons for a period of 10 years;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Emmons is reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Emmons shall resign from all positions that he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Emmons is prohibited for a period of 10 years from becoming or acting as a director or officer of any issuer;

(f) pursuant to clause 9 of subsection 127(1) of the Act, Emmons shall pay an administrative penalty of $30,000, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to section 127.1 of the Act, Emmons shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Cavric and Sherman.

4. With respect to Sherman:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, Sherman shall cease trading in securities for a period of 10 years;

   (b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to Sherman for a period of 10 years;

   (c) pursuant to clause 6 of subsection 127(1) of the Act, Sherman is reprimanded;

   (d) pursuant to clause 7 of subsection 127(1) of the Act, Sherman shall resign from all positions that he may hold as a director or officer of an issuer;

   (e) pursuant to clause 8 of subsection 127(1) of the Act, Sherman is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

   (f) pursuant to clause 9 of subsection 127(1) of the Act, Sherman shall pay an administrative penalty of $150,000, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

   (g) pursuant to section 127.1 of the Act, Sherman shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Cavric and Emmons.

5. With respect to MRS:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, MRS shall cease trading in securities permanently; and

   (b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to MRS permanently.

DATED at Toronto this 4th day of June, 2014.

“Mary G. Condon”

“Christopher Portner”

2.2.6 Tranzeo Wireless Technologies Inc. – s. 144

Headnote

Application by an issuer for a full revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Statutes Cited

Securities Act , R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
TRANZEO WIRELESS TECHNOLOGIES INC.

ORDER
(SECTION 144)

WHEREAS the securities of Tranzeo Wireless Technologies Inc. (the "**Applicant**") are subject to a cease trade order dated May 24, 2013 issued by the Director of the Ontario Securities Commission (the "**Commission**") pursuant to paragraph 2 of subsection 127(1) of the Act (the "**Ontario Cease Trade Order**") directing that trading in securities of the Applicant cease, whether direct or indirect, until further order by the Director;

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

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a revocation of the Ontario Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the *Canada Business Corporations Act*. The Applicant's head office address is located at 19473 Fraser Way, Pitt Meadows, British Columbia, V3Y 2V4.

2. The Applicant is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "**Reporting Jurisdictions**"). The British Columbia Securities Commission is the principal regulator of the Applicant. The Applicant is not a reporting issuer in any other jurisdiction in Canada.

3. The common shares of the Applicant are listed and posted for trading on the NEX board of the TSX Venture Exchange under the symbol TZT.H, with trading on the common shares of the Applicant currently suspended.

4. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its audited annual financial statements, the related management's discussion and analysis (**MD&A**) and certification of annual filings as required by National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") for the year ended December 31, 2012 (the "**2012 Annual Filings**").

5. As a result of the failure to make the filings described in the Ontario Cease Trade Order the Applicant was also subject to similar cease trade orders issued by the British Columbia Securities Commission (the "**BCSC**") on May 8, 2013 (the "**BC Cease Trade Order**"), the Autorité des Marchés Financiers (the "**AMF**") on May 28, 2013 (the "**AMF Cease Trade Order**") and the Alberta Securities Commission (the "**ASC**") on August 7, 2013 (the "**ASC Cease Trade Order**"). The BC Cease Trade Order, the AMF Cease Trade Order and the ASC Cease Trade Order were revoked on May 30, 2014.

6. Since the issuance of the Ontario Cease Trade Order, the Applicant has filed the following continuous disclosure documents with the Reporting Jurisdictions:

   a. The 2012 Annual Filings;

   b. the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Applicant for the periods ended March 31, 2013, June 30, 2013, September 30, 2013 and March 31, 2014; and

   c. audited annual financial statements, MD&A and NI 52-109 certificates of the Applicant for the year ended December 31, 2013.

7. As of the date hereof, the Applicant (i) is up-to-date with all of its continuous disclosure obligations; (ii) is not in default of any of its obligations under the Ontario Cease Trade Order; and (iii) is not in default of any requirements under the Act or the rules and regulations made pursuant thereto, other than as set out in representation 8 below.

8. On March 6, 2014 the Applicant entered into a definitive business combination agreement with

Charlotte Resources Ltd. ("**Charlotte**") pursuant to which Charlotte will acquire all of the issued and outstanding shares of the Applicant through a statutory plan of arrangement. The Applicant subsequently held a shareholders' meeting on May 20, 2014, where it sought and obtained shareholder approval for the business combination. The Applicant's actions in entering into a definitive agreement and holding a shareholders' meeting to approve the business combination may have contravened the terms of the Ontario Cease Trade Order.

9. The Applicant has filed all outstanding continuous disclosure documents that are required to be filed in the Reporting Jurisdictions.

10. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid.

11. The Applicant's SEDAR profile and SEDI issuer profile supplement are current and accurate.

12. Upon revocation of the Ontario Cease Trade Order, the Applicant will issue a news release announcing the revocation of the Ontario Cease Trade Order. The Applicant will concurrently file the news release and a material change report regarding the revocation of the Ontario Cease Trade Order on SEDAR.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is revoked.

DATED at Toronto, Ontario on this 2nd day of June, 2014.

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

2.2.7 Portfolio Capital Inc. et al.

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

AND

IN THE MATTER OF
PORTFOLIO CAPITAL INC., DAVID ROGERSON
and AMY HANNA-ROGERSON

ORDER

WHEREAS on March 25, 2013, 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 March 25, 2013 with respect to Portfolio Capital Inc. ("**Portfolio Capital**"), David Rogerson ("**Rogerson**") and Amy Hanna-Rogerson ("**Hanna-Rogerson**") (collectively, the "**Respondents**");

AND WHEREAS the Notice of Hearing set a hearing in this matter for April 17, 2013;

AND WHEREAS on April 17, 2013, Staff and counsel to Rogerson appeared before the Commission and no one appeared on behalf of Hanna-Rogerson or Portfolio Capital;

AND WHEREAS on April 17, 2013, the Commission ordered that a pre-hearing conference take place on May 27, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on May 27, 2013, the Commission ordered that a pre-hearing conference take place on June 24, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, the parties agreed that at the pre-hearing conference scheduled for June 24, 2013 at 9:00 a.m., the parties would be prepared to set the following dates:

(a) a date in September 2013 for a pre-hearing conference, by which time the Respondents and Staff will have provided witness lists and disclosure to the other parties;

(b) a date in October 2013 for a further pre-hearing conference to prepare for the hearing on the merits; and

(c) dates in November 2013 for the hearing on the merits;

AND WHEREAS on June 4, 2013, Staff filed an Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on June 24, 2013, Staff appeared and made submissions and counsel to Rogerson appeared and made submissions on behalf of his client and on behalf of counsel to Hanna-Rogerson and Portfolio Capital;

AND WHEREAS on June 24, 2013, the Commission ordered that:

(a) Staff shall provide any additional disclosure to the Respondents by July 12, 2013;

(b) Staff shall provide its witness list and hearing briefs to the Respondents by September 12, 2013;

(c) the Respondents shall provide their witness lists and hearing briefs to Staff by September 25, 2013;

(d) the hearing be adjourned to a further pre-hearing conference to be held on September 27, 2013 at 10:00 a.m. to prepare for the hearing on the merits; and

(e) the hearing on the merits in this matter shall commence on November 4, 2013 at 10:00 a.m. and shall continue on November 6, 7, 8 and 11, 2013;

AND WHEREAS on June 26, 2013, Staff filed an Amended Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on September 27, 2013, Staff appeared and made submissions and counsel to Rogerson and Portfolio Capital appeared and made submissions on behalf of his clients and on behalf of counsel to Hanna-Rogerson;

AND WHEREAS on September 27, 2013, the Commission ordered that the hearing be adjourned to a further pre-hearing conference to be held on October 9, 2013 at 2:00 p.m.;

AND WHEREAS on October 9, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on October 9, 2013, the Commission ordered that:

(a) the hearing dates of November 4, 6, 7 and 8, 2013 be vacated;

(b) the hearing on the merits in this matter shall commence on November 11, 2013 at 10:00 a.m. and shall continue on November 13, 14 and 15, 2013;

(c) the hearing be adjourned to a further pre-hearing conference to be held on October 17, 2013 at 2:00 p.m.;

(d) the motion brought by counsel to Rogerson and Portfolio Capital to adjourn the commencement date of November 11, 2013 for the hearing on the merits (the "**Motion**") would be heard immediately following the pre-hearing conference scheduled for October 17, 2013; and

(e) the Respondents shall be granted one last indulgence and shall provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013;

AND WHEREAS counsel to Rogerson and Portfolio Capital filed a Notice of Motion, dated October 15, 2013, and Staff filed the Affidavit of Stephanie Collins, sworn October 16, 2013, in relation to the Motion;

AND WHEREAS on October 17, 2013, Staff and counsel to the Respondents appeared and made submissions for a pre-hearing conference;

AND WHEREAS on October 17, 2013, following the pre-hearing conference, the Commission held a hearing with respect to the Motion, which Staff opposed and counsel to Hanna-Rogerson supported;

AND WHEREAS the Commission considered the factors to grant an adjournment set out in Rule 9.2 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071, along with the motion materials and submissions of the parties, and ordered that:

(a) the hearing on the merits scheduled to commence on November 11, 2013 will commence on February 10, 2014 and shall continue on February 12, 13, 14 and 18, 2014; and

(b) the hearing be adjourned to a further pre-hearing conference to be held on December 18, 2013 at 10:00 a.m.;

AND WHEREAS the Respondents failed to provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013, as ordered by the Commission on October 9, 2013;

AND WHEREAS on November 29, 2013, Staff and counsel to Rogerson, who also appeared as a representative for Hanna-Rogerson and Portfolio Capital, appeared and made submissions before the Commission at a confidential pre-hearing conference;

AND WHEREAS the Panel informed the parties that any documents that the Respondents wish to rely on at the hearing on the merits must be submitted by January 3, 2014, and that the Respondents would be precluded from submitting any further documents for the hearing on the merits after that date;

AND WHEREAS on November 29, 2013, the Commission ordered that:

(a) the Respondents shall provide their hearing briefs, will-say statements and witness list to Staff by 4:30 p.m. on January 3, 2014;

(b) the pre-hearing conference scheduled for December 18, 2013 at 10:00 a.m. be vacated; and

(c) the hearing be adjourned to a further pre-hearing conference to be held on January 10, 2014 at 10:00 a.m.;

AND WHEREAS on January 3, 2014, the Respondents served their hearing brief on Staff (the "**Respondents' Hearing Brief**");

AND WHEREAS on January 10, 2014, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS Staff and counsel to the Respondents consented to submit an agreed statement of facts by January 17, 2014, and the parties agreed that Staff would provide the Respondents with the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014;

AND WHEREAS on January 10, 2014, the Commission ordered that:

(a) an agreed statement of facts shall be submitted by the parties in this matter by January 17, 2014, and, in the event that an agreed statement of facts was not reached, the parties will communicate with the Registrar of the Office of the Secretary to schedule a further appearance in this matter; and

(b) Staff shall provide to the Respondents the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014;

AND WHEREAS Staff and the Respondents entered into an agreed statement of facts;

AND WHEREAS on January 28, 2014, the Commission received notice that the Respondents discharged their counsel and that the Respondents elected to act in person in respect of this matter;

AND WHEREAS on January 29, 2014, Staff served and filed the particulars of its allegations of securities fraud made against the Respondents;

AND WHEREAS the hearing on the merits commenced on February 10, 2014 and continued on February 12, 13, and 14, 2014;

AND WHEREAS on February 14, 2014, the Commission ordered that:

(a) the hearing date of February 18, 2014 be vacated;

(b) Staff shall serve and file its written closing submissions by March 14, 2014;

(c) the Respondents shall serve and file any written closing submissions by March 28, 2014; and

(d) if the Respondents serve and file written closing submissions, the hearing on the merits shall continue for the purpose of hearing oral closing submissions on a date and time to be set by the Office of the Secretary;

AND WHEREAS on March 13, 2014, Staff served and filed its written closing submissions;

AND WHEREAS on March 28, 2014, the Respondents served and filed their written closing submissions and attached several documents that they wished to rely on at the hearing on the merits (the "**March 2014 Documents**");

AND WHEREAS on April 14, 2014, Rogerson requested that he be permitted to introduce documentary and oral evidence before the Panel at the hearing on the merits (the "**Evidence Motion**");

AND WHEREAS on April 22, 2014, the Commission informed the parties that a hearing would be held on May 1, 2014 at 10:00 a.m. for the sole purpose of hearing the Respondents' Evidence Motion and any other matters related to the completion of the hearing on the merits;

AND WHEREAS on April 29, 2014, Staff served and filed a Memorandum of Fact and Law, a Brief of Authorities and the Affidavit of Julia Ho, sworn April 23, 2014;

AND WHEREAS on May 1, 2014, Rogerson served and filed responding materials, including copies of certain documents that he wished to introduce, which included all or substantially all of the documents included in the Respondents' Hearing Brief, several of the March 2014 Documents and certain additional documents (the "**Additional Documents**");

AND WHEREAS on May 1, 2014, Staff attended in person, Rogerson and Hanna-Rogerson attended by telephone conference and the parties made submissions with respect to the Evidence Motion;

AND WHEREAS on May 14, 2014, the Commission ordered that, in order to make a determination on the Evidence Motion, a further appearance would be held at 10:00 a.m. on May 29, 2014 to discuss the conduct of the hearing, including the use, if any, of videoconferencing;

AND WHEREAS on May 29, 2014, Staff attended in person, and Rogerson and Hanna-Rogerson attended by telephone conference;

AND WHEREAS the Respondents identified three witnesses located in British Columbia, including Rogerson and Hanna-Rogerson, whose evidence they wish to introduce at the hearing on the merits (the "**British Columbia Witnesses**");

AND WHEREAS the Respondents identified a fourth potential witness located in Alberta (the "**Alberta Witness**"), whose availability to participate in the hearing on the merits was unknown as of the May 29, 2014 hearing;

AND WHEREAS the Commission directed the Respondents to notify the Office of the Secretary of the Alberta Witness's availability to participate in the hearing on the merits by June 5, 2014 so that testimony by video link from Alberta could be facilitated;

AND WHEREAS the Respondents have not provided confirmation that the Alberta Witness is available to participate in the hearing on the merits;

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 on the merits will continue on June 24 and 25, 2014, beginning at 1:00 p.m. both days, on which dates the Respondents will be permitted to introduce evidence, as follows;

(a) the three British Columbia Witnesses will be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary;

(b) the Alberta Witness will be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary, or to testify at the offices of the Commission in Toronto; and

(c) the Respondents may introduce documentary evidence from the March 2014 Documents and the Additional Documents.

DATED at Toronto this 6th day of June, 2014.

"Christopher Portner"

2.2.8 Ground Wealth Inc. et al. – Rule 1.5.3(3) of the OSC Rules of Procedure

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER 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
(Rule 1.5.3(3) of the Commission's Rules of Procedure (2012), 33 O.S.C.B. 10071)

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 was 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 would 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 would 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 would 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 would 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 would 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 would 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 would 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 on November 5, 2013, the Commission ordered that:

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

2. A motion requested by Staff would be heard at a confidential hearing on February 6, 2014 at 10:00 a.m. ("Staff's Motion");

3. The hearing on the merits would commence on April 14, 2014 at 10:00 a.m. and 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 was 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;

AND WHEREAS on January 15, 2014, the Commission held a confidential pre-hearing conference, and Staff and counsel to GWI, Dunk and DeBoer appeared and made submissions;

AND WHEREAS Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearing;

AND WHEREAS Staff undertook to make its best efforts to serve on each party and file its motion materials, in connection with Staff's Motion, by January 22, 2014;

AND WHEREAS on January 15, 2014, the Commission ordered that the pre-hearing conference be adjourned and would continue on March 24, 2014 at 10:00 a.m.;

AND WHEREAS on January 21, 2014, at the request of Staff and counsel to GWI, Dunk and DeBoer, the Commission held a confidential pre-hearing conference;

AND WHEREAS Staff and counsel to GWI, Dunk and DeBoer appeared and made submissions, and Smith, Webster, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear;

AND WHEREAS Staff requested that the scheduled date for Staff's Motion on February 6, 2014 be re-scheduled and counsel to GWI, Dunk and DeBoer consented;

AND WHEREAS, on January 21, 2014, the Commission ordered that the scheduled date for Staff's Motion on February 6, 2014 be vacated and the hearing for Staff's Motion would be held on March 4, 2014 at 10:00 a.m.

AND WHEREAS Staff's Motion did not proceed on March 4, 2014;

AND WHEREAS on March 20, 2014, Staff applied to convert the Merits Hearing from an oral hearing to a written hearing, pursuant to Rule 11 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*");

AND WHEREAS on March 24, 2014, the Commission held a further confidential pre-hearing conference, and Staff and counsel to GWI, Dunk, DeBoer and Webster appeared and made submissions;

AND WHEREAS Smith, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearing;

AND WHEREAS on March 24, 2014, the Commission ordered that the pre-hearing conference be adjourned and would continue on March 28, 2014 at 9:45 a.m.;

AND WHEREAS on March 28, 2014, the Commission held a further confidential pre-hearing conference, and Staff and counsel to GWI, Dunk, DeBoer and Webster appeared and made submissions;

AND WHEREAS Smith, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear, although properly served with notice of the hearing;

AND WHEREAS on April 7, 2014, the Commission ordered that:

1. the Merits Hearing was converted to a hearing in writing, pursuant to Rule 11 of the *Rules of Procedure* and would proceed on the following schedule:

    a. Staff shall serve and file evidence briefs by May 2, 2014 at 4:00 p.m.;

    b. counsel to GWI, Dunk, DeBoer and Webster shall advise Staff by May 23, 2014 if he intends to examine any of his former clients in this matter;

    c. the Respondents shall serve and file evidence briefs by June 13, 2014 at 4:00 p.m.;

    d. Staff shall serve and file any evidence brief in reply by June 25, 2014 at 4:00 p.m.;

    e. Staff shall serve and file its written submissions by July 11, 2014 at 4:00 p.m.;

    f. the Respondents shall serve and file their written submissions by August 1, 2014 at 4:00 p.m.; and

    g. Staff shall serve and file any written submissions in reply by August 11, 2014 at 4:00 p.m.;

2. the Respondents shall have 10 days from the date of the Order to serve any notice of objection under Rule 11.7 of the *Rules of Procedure*; and

3. the dates scheduled for the oral Merits Hearing, being April 14, 15, 21, 23-25, 28-30 and May 1-2, 5 and 7, 2014, were vacated;

AND WHEREAS on April 28, 2014, Staff delivered correspondence to the Commission (the "April 2014 Letter") advising that on April 25, 2014, Staff received a substantial new volume of evidence that it was unable to review and analyze prior to the deadline of May 2, 2014 for the service and filing of Staff's evidence briefs;

AND WHEREAS Staff requested that the schedule set out in the Commission's Order dated April 7, 2014 for the Merits Hearing be amended to move each deadline to two weeks into the future;

AND WHEREAS Staff advised the Commission that counsel to GWI, Dunk, DeBoer and Webster stated that he had no objection to Staff's requested amendment to the schedule;

AND WHEREAS Staff advised the Commission that the April 2014 Letter was delivered to Armadillo Texas, Armadillo Nevada and Smith, and Staff did not receive a response from these respondents;

AND WHEREAS Staff submitted that Armadillo Oklahoma could not be served with the April 2014 Letter;

AND WHEREAS on April 30, 2014, the Commission ordered that:

1. The Merits Hearing shall proceed on the following schedule:

    a. Staff shall serve and file evidence briefs by May 16, 2014 at 4:00 p.m.;

    b. counsel to GWI, Dunk, DeBoer and Webster shall advise Staff by June 6, 2014 if he intends to examine any of his former clients in this matter;

    c. the Respondents shall serve and file evidence briefs by June 27, 2014 at 4:00 p.m.;

    d. Staff shall serve and file any evidence brief in reply by July 9, 2014 at 4:00 p.m.;

e. Staff shall serve and file its written submissions by July 25, 2014 at 4:00 p.m.;

f. the Respondents shall serve and file their written submissions by August 15, 2014 at 4:00 p.m.; and

g. Staff shall serve and file any written submissions in reply by August 25, 2014 at 4:00 p.m;

AND WHEREAS on May 16, 2014, Staff filed the Affidavit of Steve Carpenter, together with six volumes of documents (collectively, the "Carpenter Affidavit");

AND WHEREAS the Affidavit of Tia Faerber sworn on May 16, 2014 states that the copy of the Carpenter Affidavit sent to Armadillo Oklahoma by courier had been returned as undeliverable and that Staff had no other means of serving Armadillo Oklahoma;

AND WHEREAS Staff has previously filed materials confirming they were unable to serve Armadillo Oklahoma with the Notice of Hearing and Amended Notice of Hearing and confirming that Armadillo Oklahoma is listed as inactive;

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

IT IS HEREBY ORDERED that all further service of notice or proceeding documents in this matter on Armadillo Oklahoma is waived.

DATED at Toronto this 2nd day of June, 2014.

"Christopher Portner"

2.2.9 Heritage Education Funds Inc.

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

AND

IN THE MATTER OF
HERITAGE EDUCATION FUNDS INC.

ORDER

WHEREAS on August 13, 2012, the Ontario Securities Commission (the "Commission") ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"), with the consent of Heritage Education Funds Inc. ("HEFI"), that the terms and conditions set out in Schedule "A" to the Commission order (the "Terms and Conditions") be imposed on HEFI (the "Temporary Order");

AND WHEREAS on August 21, 2012, the Commission extended the Temporary Order until November 23, 2012;

AND WHEREAS the Terms and Conditions required HEFI to retain a consultant (the "Consultant") to prepare and assist HEFI in implementing plans to strengthen their compliance systems, and to retain a monitor (the "Monitor") to review applications of New Clients and contact New Clients as defined and set out in the Terms and Conditions;

AND WHEREAS HEFI retained Deloitte & Touche LLP ("Deloitte") as its Monitor and its Consultant;

AND WHEREAS by Order dated October 10, 2012, the Commission clarified certain matters with respect to the Temporary Order;

AND WHEREAS on November 22, 2012, the Commission ordered that the Temporary Order be extended to December 21, 2012 and that the hearing be adjourned to December 20, 2012;

AND WHEREAS on December 20, 2012, the Commission ordered that certain of the Terms and Conditions be amended and that the Temporary Order be extended to March 22, 2013;

AND WHEREAS on January 28, 2013, the Manager of the Compliance and Registrant Regulation Branch (the "OSC Manager") approved the compliance plan dated January 14, 2013 (the "Plan") submitted by the Consultant;

AND WHEREAS on March 21, 2013, the Commission ordered that the Temporary Order be extended to April 19, 2013;

AND WHEREAS on April 8, 2013, HEFI filed a motion with the Commission to vary the terms of the Temporary Order by, among other matters, suspending the on-going monitoring by the Monitor of HEFI's compliance with the Terms and Conditions (the "Motion");

AND WHEREAS on April 18, 2013, the Commission heard oral submissions from the parties and ordered that: (i) the Motion be dismissed; (ii) the Temporary Order be extended to May 31, 2013, or until such further order of the Commission; (iii) the hearing be adjourned to May 27, 2013 at 11:00 a.m. for the purpose of providing the Commission with an update on the work completed by the Monitor and the Consultant; and (iv) the Monitor, Staff and HEFI may seek further direction from the Commission, if necessary or desirable;

AND WHEREAS on May 23, 2013, the Commission ordered on consent of the parties that: (i) the Temporary Order be extended to June 17, 2013 or until such further order of the Commission; (ii) the hearing be adjourned to June 14, 2013 at 10:00 a.m.; and (iii) the hearing date of May 27, 2013 be vacated;

AND WHEREAS by letter dated June 12, 2013, the OSC Manager approved Compliance Support Services to replace Deloitte as Consultant subject to three conditions;

AND WHEREAS on June 14, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; and (ii) the hearing be adjourned to July 18, 2013 at 10:00 a.m.;

AND WHEREAS on July 17, 2013, the Commission ordered that: (i) the Temporary Order be extended to September 9, 2013; (ii) the hearing be adjourned to September 6, 2013 at 10:00 a.m.; and (iii) the hearing date of July 18, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on September 6, 2013, the Commission ordered that: (i) the role and activities of the Monitor and HEFI set out in paragraphs 5, 6, 7 and 8 of the Terms and Conditions, as amended by Commission order dated December 20, 2012, be suspended as of the start of business on September 16, 2013; (ii) the resumption of any future monitoring shall take place on the recommendation of the Consultant with the agreement of the OSC Manager and the parties may seek the direction from the Commission; (iii) the Temporary Order be extended to October 22, 2013; and (iv) the hearing be adjourned to October 18, 2013 at 10:00 a.m;

AND WHEREAS on October 15, 2013, the Commission ordered that: (i) the hearing date of October 18, 2013 at 10:00 a.m. be vacated; (ii) the Temporary Order be extended to December 19, 2013 or until such further order of the Commission; and (iii) the hearing is adjourned to December 16, 2013 at 10:00 a.m.;

AND WHEREAS on December 12, 2013, the Commission ordered that: (i) the hearing date of December 16, 2013 be vacated; (ii) paragraphs 11 and 12 of the Terms and Conditions be deleted and replaced with new paragraphs 11.1 and 12.1; (iii) the Temporary Order be

extended to March 7, 2014; and (iv) the hearing be adjourned to March 5, 2014 at 10:00 a.m. for the purpose of providing the Commission with an update on the work completed by Compliance Support Services;

AND WHEREAS on March 5, 2014, Staff filed an affidavit of Lina Creta sworn March 4, 2014 setting out the work completed by the Consultant;

AND WHEREAS on March 5, 2014, the Commission ordered that: (i) the Temporary Order be extended to April 28, 2014; and (ii) the hearing be adjourned to April 23, 2014 at 9:00 a.m. for the purpose of providing the Commission with an update on the work completed by the Consultant and to consider vacating the Temporary Order;

AND WHEREAS on April 23, 2014, Staff filed an affidavit of Lina Creta sworn April 22, 2014 attaching the Consultant's attestation letter dated April 21, 2014 and the Consultant's Chart of Progress Against Action Plan Spreadsheet dated March 31, 2014;

AND WHEREAS on April 23, 2014, the Commission ordered that: (i) the Temporary Order be extended to May 20, 2014; and (ii) the hearing be adjourned to May 16, 2014 at 10:00 a.m. to consider any issues that prevent Staff from agreeing to an Order vacating the remaining Terms and Conditions imposed by the Temporary Order;

AND WHEREAS on May 15, 2014, the Commission ordered that: (i) the Temporary Order, as amended by previous Commission orders, be extended to June 9, 2014; (ii) the hearing be adjourned to June 6, 2014; and (iii) the hearing date of May 16, 2014 be vacated;

AND WHEREAS the Consultant has confirmed that the Amended Consultant's Plan has been implemented and confirmed that the Consultant has tested the implementation of the recommendations in the Amended Consultant's Plan and it is working effectively;

AND WHEREAS on June 6, 2014, Staff and counsel to HEFI appeared and made submissions;

AND WHEREAS the parties agree that the Terms and Conditions, as amended by previous Commission orders, should be deleted and the Temporary Order revoked;

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

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

1. The Terms and Conditions imposed by the Temporary Order, as amended by previous Commission orders, are deleted.

2. The Temporary Order is revoked.

DATED at Toronto this 6th day of June, 2014.

"James E. A. Turner"

2.2.10 Boost Capital Corp. – s. 144

Headnote

Application by an issuer for a full revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
BOOST CAPITAL CORP.

ORDER
(Section 144)

WHEREAS the securities of Boost Capital Corp. (the "**Applicant**") are subject to a cease trade order dated August 19, 2013 issued by the Director of the Ontario Securities Commission (the "**Commission**") pursuant to paragraph 2 of subsection 127(1) of the Act (the "**Ontario Cease Trade Order**") directing that trading in securities of the Applicant cease, whether direct or indirect, until the order is revoked by the Director;

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

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act to revoke the Ontario Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the *Business Corporations Act* (Ontario) on June 9, 2011.

2. The Applicant's head office and registered and records office address is located at Brookfield Place, 181 Bay Street, Suite 4400, Toronto, Ontario M5J 2T3.

3. The Applicant is a reporting issuer in the provinces of Ontario, British Columbia and Alberta (the "**Reporting Jurisdictions**"). The Applicant is not a reporting issuer in any other jurisdiction in Canada.

4. The Applicant's authorized share capital consists of an unlimited number of common shares, without nominal or par value, of which 6,000,000 common shares are issued and outstanding. The Applicant has 600,000 stock options exercisable for 600,000 common shares at $0.10 per common share until February 2, 2022. The Applicant has no other securities, including debt securities, issued and outstanding.

5. The Applicant is classified as a Capital Pool Company by the TSX Venture Exchange (the "**Exchange**") and its common shares are listed on the Exchange under the symbol BST.P but are currently suspended from trading. The Applicant is only listed on the Exchange at this time and is not listed on any other exchange, marketplace or facility.

6. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its audited annual financial statements, the related management's discussion and analysis (**MD&A**) and certification of annual filings as required by National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") for the year ended March 31, 2013 (the "**Annual Filings**").

7. The Applicant (i) is up-to-date with all of its continuous disclosure obligations; (ii) is not in default of any of its obligations under the Ontario Cease Trade Order; and (iii) is not in default of any requirements under the Act or the rules and regulations made pursuant thereto, other than as set out in representations 8 and 9 below.

8. On May 6, 2014, the Applicant filed its management information circular (the "**Circular**"), dated April 28, 2014, in connection with the June 2, 2014 shareholders' meeting. In the Circular, the Applicant proposed an approval of its rolling stock option plan as required by the Exchange. Staff of the Commission have advised that this may have been an act in furtherance of a trade in contravention of the Ontario Cease Trade Order.

9. The Circular also failed to properly include the disclosure required by item 7.2(a) of Form 51-102F5 *Information Circular* regarding the Cease Trade Orders. However, information regarding the Cease Trade Orders is disclosed elsewhere on page 5 of the Circular.

10. The Applicant is also subject to similar cease trade orders issued by the British Columbia Securities Commission (the "**BCSC**") on August 7, 2013 (the "**BC Cease Trade Order**") and by the Alberta Securities Commission (the "**ASC**") on April 1, 2014 (the "**Alberta Cease Trade Order**",

together with the Ontario Cease Trade Order and the BC Cease Trade Order, collectively, the "**Cease Trade Orders**"), as a result of its failure to make the Annual Filings. The Applicant has concurrently applied to the BCSC and the ASC for orders for revocation of the BC Cease Trade Order and the Alberta Cease Trade Order.

11. Since the issuance of the Ontario Cease Trade Order, the Applicant has filed the following continuous disclosure documents with the Reporting Jurisdictions on May 23, 2014:

    (i) Form 13-502F1 – *Class 1 Reporting Issuer – Participation Fee* for the year ended March 31, 2013;

    (ii) Annual Filings;

    (iii) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Applicant for the period ended June 30, 2013;

    (iv) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Applicant for the period ended September 30, 2013; and

    (v) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Applicant for the period ended December 31, 2013.

12. As of the date hereof, the Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid.

13. The Applicant is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in any of the Reporting Jurisdictions, except for the existence of the Cease Trade Orders.

14. Since the issuance of the Cease Trade Orders, there have been no material changes in the business, operations or affairs of the Applicant which have not been disclosed by news release and/or material change report.

15. The Applicant has filed all outstanding continuous disclosure documents that are required to be filed in the Reporting Jurisdictions.

16. The Applicant's SEDAR issuer profile and SEDI issuer profile supplement are current and accurate.

17. Upon the revocation of the Ontario Cease Trade Order, the Applicant will issue a news release and concurrently file a material change report on SEDAR announcing the revocation of the Ontario Cease Trade Order.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is revoked.

DATED at Toronto, Ontario on this 30th day of May, 2014.

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

2.2.11 Andrea Lee McCarthy 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
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC.,
and LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.)

ORDER
(Subsection 127(1) of the Securities Act)

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

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

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

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

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

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

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

AND WHEREAS on October 28 and December 10, 2013, Staff and counsel for McCarthy appeared before the Commission for a hearing on the merits with respect to the Respondents;

AND WHEREAS Staff and counsel for McCarthy made submissions and filed the Affidavit of Andrea Lee McCarthy sworn October 23, 2013 and the "Joint Submission re: Liability of Andrea Lee McCarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)";

AND WHEREAS following the hearing on the merits with respect to the Respondents, the Commission issued its reasons and decision on January 3, 2014 (the "**Merits Decision**") and ordered that the Temporary Order be extended as against the Respondents until the conclusion of this proceeding;

AND WHEREAS the Commission determined that the Respondents had not complied with Ontario securities law and had acted contrary to the public interest, as described in the Merits Decision;

AND WHEREAS on March 12, 2014, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter;

AND WHEREAS on June 9, 2014, the Commission released its Reasons and Decision on Sanctions and Costs in this matter;

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

IT IS HEREBY ORDERED that:

(a) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by McCarthy shall cease for a period of 15 years;

(b) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by BFM and Liquid Gold shall cease permanently;

(c) pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by McCarthy shall be prohibited for a period of 15 years;

(d) pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by BFM and Liquid Gold shall be prohibited permanently;

(e) pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to McCarthy for a period of 15 years;

(f) pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to BFM or Liquid Gold permanently;

(g) pursuant to clause 6 of subsection 127(1) of the *Act*, McCarthy shall be reprimanded;

(h) pursuant to clause 7 of subsection 127(1) of the *Act*, McCarthy shall resign any position that she holds as a director or officer of any issuer;

(i) pursuant to clause 8 of subsection 127(1) of the *Act*, McCarthy shall be prohibited from becoming or acting as a director or officer of any issuer for a period of 15 years;

(j) pursuant to clause 8.5 of subsection 127(1) of the *Act*, McCarthy shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 15 years;

(k) pursuant to clause 9 of subsection 127(1) of the *Act*, McCarthy shall pay an administrative penalty of $10,000 for her failure to comply with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the *Act*; and

(l) as an exception to the provisions of paragraphs (a) and (c), above, McCarthy is permitted to: trade and acquire securities for the account of her Registered Retirement Savings Plan, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "***Income Tax Act***"), and any Registered Education Savings Plan, as defined in the *Income Tax Act* and of which she is the subscriber and her daughter is the beneficiary, provided that the administrative penalty payment set out in paragraph (k), above, has been paid in full. If the amount remains unpaid, McCarthy shall cease trading and acquiring securities until the expiry of the aforementioned period of 15 years, without exception.

DATED at Toronto this 9th day of June, 2014.

"James D. Carnwath"

This page intentionally left blank

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 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

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	November 28 and 29, 2013 December 18, 2013 February 11, 2014		
Decision:	June 4, 2014		
Panel:	Mary G. Condon	–	Vice-Chair and Chair of the Panel
	Christopher Portner	–	Commissioner
Appearances:	Peter-Paul E. DuVernet	–	For MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo Derosa, Ronald Sherman, Edward Emmons and Ivan Cavric
	Derek J. Ferris	–	For Staff of the Commission

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

I. HISTORY OF THE PROCEEDING

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make an order against MRS Sciences Inc. (formerly Morningside Capital Corp.) ("MRS"), Americo DeRosa ("DeRosa"), Ronald Sherman ("Sherman"), Edward Emmons ("Emmons"), Ivan Cavric ("Cavric") and Primequest Capital Corporation ("Primequest") (collectively, the "Respondents").

[2] This proceeding was commenced by a Notice of Hearing issued by the Secretary of the Commission on November 30, 2007 following the filing of a Statement of Allegations dated November 29, 2007 by Staff of the Commission ("Staff"). On March 25, 2008, Staff filed an Amended Statement of Allegations. On April 14, 2009, Staff filed an Amended Amended Statement of Allegations. An Amended Notice of Hearing was issued by the Secretary on April 15, 2009.

[3] The hearing on the merits in this matter took place on May 7, 8, 11, 13, June 10, 11, 12, 22, 26, September 3, 4, and October 7, 2009 (the "MRS Merits Hearing"), and the decision on the merits was issued on February 2, 2011 (*Re MRS Sciences Inc.* (2011), 34 O.S.C.B. 1547 (the "Merits Decision")).

[4] Following the release of the Merits Decision, a motion hearing was held on November 2, 2011 to address the issue of the composition of the "Sanctions and Costs Panel" (the "2011 Motion"). The Respondents argued that a new Panel that is comprised of Commissioners who were not the members of the Panel for the hearing on the merits (the "MRS Merits Panel") did not have jurisdiction to make a determination on sanctions and costs in this matter. The Commission dismissed the 2011 Motion and issued its Reasons and Decision on the 2011 Motion on December 6, 2011 (*Re MRS Sciences Inc.* (2011) 34 O.S.C.B. 12288 (the "2011 Motion Decision")).

[5] On January 3, 2012, the Respondents filed a Notice of Appeal with respect to the 2011 Motion Decision. On February 24, 2012, the Respondents filed an Application to the Divisional Court for Judicial Review of the 2011 Motion Decision. On December 17, 2012, the Divisional Court heard the Application for Judicial Review and rendered its decision that the Application for Judicial Review was premature and that "[t]he procedural fairness issue is best determined after the sanctions hearing is completed" (*Re MRS Science Inc.* (2012) ONSC 7189 (Div. Ct.) (CanLII) at paras. 2 and 3 (the "Divisional Court Decision")).

[6] Following the Divisional Court Decision, the Commission ordered on September 24, 2013 that the sanctions and costs hearing in this matter would commence on November 28, 2013 (the "Sanctions and Costs Hearing").

[7] The Sanctions and Costs Hearing took place over four hearing days, November 28 and 29, 2013, December 18, 2013 and February 11, 2014. Evidence was led on the first three days of the Sanctions and Costs Hearing. During that time a motion was brought requesting the Panel to make a determination as to the admissibility of the transcripts of the MRS Merits Hearing. The parties provided oral submissions and case law on this issue. Closing submissions on sanctions and costs were heard on February 11, 2014.

[8] Staff and Counsel for the Respondents attended the Sanctions and Costs Hearing. There was some confusion as to whether Sherman was represented. We address this in our reasons as a preliminary issue. In addition, three of the individual Respondents, Emmons, DeRosa and Cavric, attended portions of the Sanctions and Costs Hearing in person. Staff called one witness, Sherry Lynn Brown, a Senior Forensic Accountant. DeRosa was also cross-examined by Staff on his affidavit dated November 26, 2013.

[9] Staff provided written submissions dated January 17, 2014 and a Book of Authorities. Schedule C to Staff's written submissions contained Staff's Bill of Costs for this matter. On February 7, 2014, Staff filed Reply Submissions and an Affidavit of Yolanda Leung (sworn February 7, 2014), which contained more fulsome information to support Staff's request for costs as required by subrule 18.1(2) of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "Rules").

[10] The Respondents provided the "Respondents' Submissions to Staff's Sanctions Submissions" dated February 3, 2014 and a document from Fogler, Rubinoff LLP entitled "Securities Law Update" dated September 24, 2001. In addition, on February 11, 2014, the Respondents provided an additional document entitled "Schedule of References - Respondents' Submissions to Staff's Sanctions Submissions".

[11] These are our Reasons and Decision as to the appropriate sanctions and costs to order against the Respondents.

II. THE MERITS DECISION

[12] The Merits Decision addressed the following issues:

- Did MRS, DeRosa, Sherman, Emmons and Cavric breach the registration and prospectus requirements of the Act by trading in MRS shares contrary to subsections 25 and 53 of the Act in circumstances where the "accredited investor" exemption was not available under OSC Rule 45-501?
- Did MRS and its director(s), officers and/or its salespersons give any undertaking relating to the future value or price of MRS shares with the intention of effecting trades in MRS shares, contrary to subsection 38(2) of the Act?
- Did MRS and its director(s), officers and/or its salespersons make any representation regarding the future listing of MRS shares with the intention of effecting trades in MRS shares, contrary to subsection 38(3) of the Act?
- Did DeRosa, Cavric, Sherman and/or Emmons, as directors or officers or *de facto* directors or officers of MRS, authorize, permit or acquiesce in breaches of sections 25, 38 and 53 of the Act by MRS and its salespersons contrary to subsection 129.2 of the Act?
- Did Cavric, DeRosa and/or Primequest trade MRS shares, where they knew or ought to have known that such trades would result in or contribute to a misleading appearance of trading activity in, or an artificial price for, MRS shares contrary to section 3.1(a) of NI 23-101?
- Was the conduct of MRS, DeRosa, Sherman, Emmons, Cavric and Primequest contrary to the public interest?
- (Merits Decision, *supra* at para. 9)

[13] The MRS Merits Panel made findings against the Respondents of breaches of Ontario securities law and conduct contrary to the public interest. Certain of the allegations against the Respondents were held by the MRS Merits Panel not to have been made out. No findings were made against a sixth respondent, Primequest Capital Corporation, against which Staff had also brought allegations. Specifically, the MRS Merits Panel made the following findings:

- MRS, DeRosa, Cavric, Sherman and Emmons traded in MRS shares without registration and without a registration exemption being available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- MRS, DeRosa, Cavric, Sherman and Emmons distributed securities when a prospectus receipt had not been issued to qualify the distribution, and without a prospectus exemption being available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- As officers and directors or *de facto* officers and directors of MRS, DeRosa, Cavric, Sherman and Emmons authorized, permitted or acquiesced in the breaches by MRS of subsections 25(1)(a) and 53(1) of the Act, and are therefore deemed to have breached subsections 25(1)(a) and 53(1) of the Act pursuant to section 129.2 of the Act and acted contrary to the public interest;
- The MRS Merits Panel was not satisfied that MRS, DeRosa, Cavric, Sherman or Emmons gave a prohibited undertaking as to the future value or price of MRS shares, contrary to subsection 38(2) of the Act, or made a prohibited representation as to the future listing of MRS shares on an exchange, contrary to subsection 38(3) of the Act; and
- The MRS Merits Panel was not satisfied that Primequest, Cavric and DeRosa knew or ought to have known that the trades in MRS shares, directly or indirectly, had the effect of creating or contributing to a misleading appearance of trading activity in or an artificial price for MRS shares, contrary to section 3.1 of NI 23-101.

[14] It is the foregoing conduct and the findings and conclusions of the MRS Merits Panel that we must consider when determining the appropriate sanctions to impose in this matter.

III. SANCTIONS AND COSTS REQUESTED

1. Staff's Position

[15] Staff has requested that the following sanctions be imposed on each of the Respondents as a result of their respective breaches of the Act:

DeRosa

[16] DeRosa breached subsections 25(1) and 53(1) of the Act. Pursuant to section 129.2 of the Act, he is deemed to have not complied with securities law by authorizing, permitting or acquiescing in the misconduct of MRS and he acted contrary to the public interest. As such, Staff submits that the following sanctions are appropriate and in the public interest in respect of DeRosa:

- an order that DeRosa cease trading in securities for a period of 15 years pursuant to clause 2 of subsection 127(1) of the Act;
- an order that any exemptions contained in Ontario securities law do not apply to DeRosa for a period of 15 years pursuant to clause 3 of subsection 127(1) of the Act;
- an order reprimanding DeRosa pursuant to clause 6 of subsection 127(1) of the Act;
- an order that DeRosa resign from all positions that he may hold as a director or officer of an issuer for a period of 15 years pursuant to clause 7 of subsection 127(1) of the Act;
- an order that DeRosa be prohibited for a period of 15 years from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;
- an order requiring DeRosa to pay an administrative penalty of $200,000 pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;
- pursuant to clause 10 of subsection 127(1) of the Act, an order requiring disgorgement to the Commission by DeRosa and Cavric jointly of $319,325.04 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and
- a costs order in the amount of $169,106.79, jointly and severally with the other Respondents, pursuant to section 127.1 of the Act.

Cavric

[17] Cavric breached subsections 25(1) and 53(1) of the Act. Pursuant to section 129.2 of the Act, he is deemed to have not complied with securities law by authorizing, permitting or acquiescing in the misconduct of MRS and he acted contrary to the public interest. As such, Staff submits that the following sanctions are appropriate and in the public interest:

- an order that Cavric cease trading in securities for a period of 15 years pursuant to clause 2 of subsection 127(1) of the Act;
- an order that any exemptions contained in Ontario securities law do not apply to Cavric for a period of 15 years pursuant to clause 3 of subsection 127(1) of the Act;
- an order reprimanding Cavric pursuant to clause 6 of subsection 127(1) of the Act;
- an order that Cavric resign from all positions that he may hold as a director or officer of an issuer pursuant to clause 7 of subsection 127(1) of the Act;
- an order that Cavric be prohibited for a period of 15 years from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

- an order requiring Cavric to pay an administrative penalty of $200,000 pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

- pursuant to clause 10 of subsection 127(1) of the Act, an order requiring disgorgement to the Commission by DeRosa and Cavric jointly of $319,325.04 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

- a costs order in the amount of $169,106.79, jointly and severally with the other Respondents, pursuant to section 127.1 of the Act.

Emmons

[18] Emmons breached subsections 25(1) and 53(1) of the Act. Pursuant to section 129.2 of the Act, he is deemed to have also not complied with securities law by authorizing, permitting or acquiescing in the misconduct of MRS and he acted contrary to the public interest. As such, Staff submit that the following sanctions are appropriate and in the public interest:

- an order that Emmons cease trading in securities for a period of 10 years pursuant to clause 2 of subsection 127(1) of the Act;

- an order that any exemptions contained in Ontario securities law do not apply to Emmons for a period of 10 years pursuant to clause 3 of subsection 127(1) of the Act;

- an order reprimanding Emmons pursuant to clause 6 of subsection 127(1) of the Act;

- an order that Emmons resign from all positions that he may hold as a director or officer of an issuer pursuant to clause 7 of subsection 127(1) of the Act;

- an order that Emmons be prohibited for a period of 10 years from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

- an order requiring Emmons to pay an administrative penalty of $30,000 pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

- pursuant to clause 10 of subsection 127(1) of the Act, an order requiring disgorgement to the Commission by Emmons of $41,969.25 obtained as a result of this non-compliance with Ontario securities law to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

- a costs order in the amount of $169,106.79, jointly and severally with the other Respondents, pursuant to section 127.1 of the Act.

Sherman

[19] Sherman breached subsections 25(1) and 53(1) of the Act. Pursuant to section 129.2 of the Act, he is deemed to have not complied with securities law by authorizing, permitting or acquiescing in the misconduct of MRS and he acted contrary to the public interest. As such, Staff submits that the following sanctions are appropriate and in the public interest:

- an order that Sherman cease trading in securities for a period of 13 years pursuant to clause 2 of subsection 127(1) of the Act;

- an order that any exemptions contained in Ontario securities law do not apply to Sherman for a period of 13 years pursuant to clause 3 of subsection 127(1) of the Act;

- an order reprimanding Sherman pursuant to clause 6 of subsection 127(1) of the Act;

- an order that Sherman resign from all positions that he may hold as a director or officer of an issuer pursuant to clause 7 of subsection 127(1) of the Act;

- an order that Sherman be prohibited for a period of 13 years from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

- an order requiring Sherman to pay an administrative penalty of $150,000 pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to section 3.4(2)(b) of the Act;

- pursuant to clause 10 of subsection 127(1) of the Act, an order requiring disgorgement to the Commission by Sherman of $223,500.75 obtained as a result of his non-compliance with Ontario securities laws to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

- a costs order in the amount of $169,106.79, jointly and severally with the other Respondents pursuant to section 127.1 of the Act.

MRS

[20] The Commission found that MRS breached subsections 25(1) and 53(1) of the Act and acted contrary to the public interest. Given the illegal distribution of MRS shares, Staff submits that the following sanctions against MRS are appropriate and in the public interest:

- an order that MRS cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act; and

- an order than any exemptions contained in Ontario securities law do not apply to MRS permanently pursuant to clause 3 of subsection 127(1) of the Act.

[21] Initially, as set out above, Staff requested $169,106.79 in costs (jointly and severally from the Respondents); however, on February 11, 2014, Staff amended their costs request and reduced it to $157,037.29, to be paid jointly and severally by the Respondents.

[22] Staff submits that the proposed sanctions: (i) are proportionate to the Respondents' misconduct; (ii) will deter the Respondents and other like-minded persons from engaging in the same or similar conduct in the future by attaching meaningful consequences to the Respondents' actions; and (iii) are justified by the gravity of the Respondents' actions, the findings made by this Commission and the uses made of investor monies.

2. The Respondents' Position

[23] The Respondents take the position that the sanctions sought by Staff are out of proportion to the circumstances.

[24] They emphasize that this is not a massive fraud, nor a continuing "boiler room" operation. Specifically, the Respondents submit at paragraphs 4 and 5 of their written submissions:

> Unlike the cases referred to by Staff, these Respondents didn't just issue shares and disappear or stop. Rather, they built a business, stayed with the business long after the funding activities were over, continued to support shareholders and transitioned the business into the successful merger with Biosource.
>
> Unlike the cases referred to by Staff, the Respondents didn't just issue shares, and pocket or divert the funds. Rather, Mr. DeRosa and Mr. Cavric contributed their services for years, and received almost no compensation. Mr. Emmons provided his services for almost 3 years, and received less than $42,000 from which he paid his expenses. Mr. Sherman provided his services for over 2 years, until he succumbed to illness, and alone received something approximating significant compensation, from which he paid his expenses.

[25] As a result, the Respondents argue that the sanctions requested by Staff are inappropriate and do not take into consideration that the Respondents were involved in a legitimate business venture. In the Respondents' view, their conduct was not so abusive as to merit the sanctions requested by Staff. They emphasize that while non-compliance with the Act may be considered to be serious, the conduct in issue, particularly in comparison to the case law relied upon by Staff, is at the least serious end of the spectrum. Unlike the cases referred to by Staff, the Respondents point out that they did not set out, and did not intend, to defy or ignore the requirements of the Act. Rather, they intended to comply, and attempted to do so, and were guided by their understanding of the standard for compliance with the accredited investor exemption at the time. Their efforts at compliance miscarried, and the standards were found to fall short of what was required, as since clarified by the Commission.

[26] In the circumstances of this case, the Respondents take the position that trading bans and other bans from participating in the capital markets are not warranted. Specifically, as explained at paragraphs 175 and 176 of the Respondents' written submissions:

> In the unique circumstances of this case, there is no need to be prescient. the [sic] conduct was not so abusive as in any of the other cases referred to by Staff, and sufficient time has passed as to demonstrate that there is no basis for apprehension of future conduct detrimental to the integrity of the capital markets.
>
> In this case, the process has been the punishment. These Respondents have been subjected to these proceedings for almost eight years now. They have in effect been subject to the scrutiny of the Commission. They have, in effect, already been subjected to severe sanctions.

[27] With respect to monetary sanctions, the Respondents take the position that no disgorgement and no administrative penalty is warranted and there is no need for specific or general deterrence.

[28] With respect to costs, the Respondents take the position that they should not be responsible for costs especially since a number of allegations were dismissed and the Respondents should not be responsible for Staff's failure to prove them.

IV. PRELIMINARY ISSUES

1. Sherman's Representation Status

[29] During the hearing, on December 18, 2013, a question arose as to whether Sherman was represented.

[30] The Rules provide at Rule 1.7.1 that "In any proceeding a party may be self-represented or may be represented by a representative". When a party is represented in a proceeding, there is a requirement that the representative notify the Commission if they are withdrawing as a representative. Specifically, Rule 1.7.4 states:

> **1.7.4. Withdrawal by a Representative – (1)** A representative for a party in a proceeding may withdraw as representative for the party only with leave of the Panel.
>
> (2) A notice of motion seeking leave to withdraw as representative must be served on the party and filed, and must state all facts material to a determination of the motion, including a statement of the reasons why leave should be given. The notice must not disclose any solicitor client communication in which solicitor client privilege has not been waived.
>
> (3) The notice of motion shall include:
>
> (a) the client's last known address or the address for service, if different; and
>
> (b) the client's telephone number, facsimile number and e-mail address, as applicable, unless the Panel orders otherwise.

[31] Staff submitted that no leave under Rule 1.7.4 was sought in respect of Sherman in this proceeding. As a result, Staff has been proceeding on the basis that Respondents' counsel acts on Sherman's behalf. Counsel for the Respondents submitted that there is no continuity of representation for different hearings.

[32] We note that in this proceeding, counsel represented Sherman during the MRS Merits Hearing and the 2011 Motion hearing. In addition, counsel represented Sherman during the hearing before the Divisional Court.

[33] At the outset of the Sanctions and Costs Hearing, Staff submitted that it was their understanding that counsel for the Respondents represented MRS and all the individual Respondents. During opening submissions on November 28, 2013, counsel for the Respondents did not specify that he was not representing Sherman. In fact, counsel made submissions in his opening remarks directly relating to Sherman (see pages 29 and 30 of the November 28, 2013 Transcript).

[34] As counsel was the representative for Sherman in previous hearings which took place in the proceeding relating to MRS, specifically the MRS Merits Hearing and the 2011 Motion hearing, we would expect that a change in Sherman's representation in the same proceeding would have been communicated to the Commission in conformity with Rule 1.7.4. Therefore, we find that counsel for the Respondents did not formally withdraw as Sherman's counsel in this proceeding.

[35] We note that Sherman did not attend the Sanctions and Costs Hearing in person. The fact that this respondent did not attend in person makes it all the more important that counsel specify from the outset of the hearing that they are not representing an absent respondent and comply with Rule 1.7.4 if there is a change in representation status in a proceeding.

[36] While Sherman did not attend the Sanctions and Costs Hearing, we were informed that Sherman was aware that the Sanction and Costs Hearing was taking place. According to Respondents' counsel:

> Mr. Emmons who spoke to Mr. Sherman, and he spoke to Mr. Sherman before we commenced the sanctions hearing, indicating that we were commencing. I understand from Mr. Emmons that Mr. Sherman has also indicated that periodically he checks the OSC web site where the orders are posted and so on and the dates are posted. Mr. Emmons spoke to him about two weeks ago, and he was aware of today's date.
>
> (Transcript, February 11, 2014 at page 19 lines 5 to 13)

[37] Accordingly, while more clarity about whether or not Sherman was represented would have been preferable, we are satisfied that he had notice of the Sanctions and Costs Hearing and had the opportunity to participate if he so wished.

2. Motion Regarding Use of Merits Hearing Transcripts

A. Introduction

[38] The Sanctions and Costs Hearing commenced on November 28, 2013. As the members of the Sanctions and Costs Panel are not the same panel members as in the MRS Merits Hearing (2011 Motion Decision, *supra* at paras. 4 and 54), the parties took the position that a new evidentiary record must be created before the Sanctions and Costs Panel. As a result, when the Sanctions and Costs Hearing commenced on November 28, 2013, evidence was led before the Sanctions and Costs Panel.

[39] In the context of creating this new evidentiary record before the Sanctions and Costs Panel, a dispute arose with respect to the transcripts of the MRS Merits Hearing (the "Merits Hearing Transcripts"). On November 29, 2013, we heard submissions from Staff and counsel for the Respondents about the admissibility of the Merits Hearing Transcripts.

[40] On December 5, 2013, we issued an Order with reasons to follow with respect to the admissibility of the Merits Hearing Transcripts (*Re MRS Sciences Inc.* (2013), 36 O.S.C.B. 11825). We ordered that:

1. Volume 5, containing the transcripts of the evidence portion of the Merits Hearing is admissible;

2. Volume 5 in its entirety is marked as Exhibit 30;

3. Each of the parties shall provide a document indicating the portions of the transcripts, relevant to the determination of sanctions and/or costs, on which they intend to rely, and such documents shall be filed by noon on December 16, 2013;

4. The Sanctions and Costs Hearing shall continue on December 18, 2013 at 10:00 a.m.

[41] In order to provide the parties with instructions regarding the transcripts and to move the hearing forward with as little delay as possible, the order was issued with reasons to follow and we informed the parties that reasons would be included in our Reasons for Sanctions and Costs. We are cognizant of the long procedural history of this matter and we did not want the resumption of the Sanctions and Costs Hearing to be delayed further pending the issuance of our written reasons. In our view, it was in the public interest to issue a decision regarding the Merits Hearing Transcripts as quickly as possible in order to resume the Sanctions and Costs Hearing and complete the evidence portion of the hearing.

[42] These are our reasons for our Order dated December 5, 2013.

B. The Issue

[43] The issue before us is whether the transcripts of the evidence portion of the MRS Merits Hearing are admissible in the Sanctions and Costs Hearing.

[44] The parties agreed that to create the fairest possible hearing, there should be a determination made on this motion prior to the Respondents' Counsel determining whether he should call his clients to testify.

C. Positions of the Parties

i. Staff

[45] Staff took the position that the evidence transcripts from the MRS Merits Hearing should form part of the Sanctions and Costs Hearing record, given that this is a unique situation, in which there is a new Sanctions and Costs Panel. To support their position, Staff filed a "Brief of Authorities of Staff of the Ontario Securities Commission Concerning the Admissibility of Transcripts" and referred us to the relevant excerpts of those cases in their oral submissions.

[46] Staff referred us to the Ontario *Evidence Act*, R.S.O. 1990, c. E.23, as amended, (the 'Evidence Act"), which provides at section 5 that:

> **Recordings and transcripts of evidence**
>
> **Recording**
>
> 5. (1) Despite any Act, regulation or the rules of court, a stenographic reporter, shorthand writer, stenographer or other person who is authorized to record evidence and proceedings in an action in a court or in a proceeding authorized by or under any Act may record the evidence and the proceedings by any form of shorthand or by any device for recording sound of a type approved by the Attorney General.
>
> **Admissibility of transcripts**
>
> (2) Despite any Act or regulation or the rules of court, a transcript of the whole or a part of any evidence that has or proceedings that have been recorded in accordance with subsection (1) and that has or have been certified in accordance with the Act, regulation or rule of court, if any, applicable thereto and that is otherwise admissible by law is admissible in evidence whether or not the witness or any of the parties to the action or proceeding has approved the method used to record the evidence and the proceedings and whether or not he or she has read or signed the transcript.
>
> …

[47] In addition, Staff submitted that, pursuant to subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA"), as amended, the Merits Hearing Transcripts are admissible. Section 15 of the SPPA states:

> **Evidence**
>
> **What is admissible in evidence at a hearing**
>
> **15. (1)** Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[48] According to Staff, the Merits Hearing Transcripts are relevant insofar as they were the founding documents and founding evidence upon which the Merits Decision was made.

[49] Staff emphasized that the purpose of providing the Merits Hearing Transcripts is not to re-litigate issues from the MRS Merits Hearing. Instead, the purpose is to refer the Sanctions and Costs Panel to aggravating or mitigating factors mentioned in those transcripts that will impact the imposition of sanctions and costs.

[50] Specifically, Staff explained that the first three volumes of the Merits Hearing Transcripts dealt with eight witnesses who testified. Staff intends to refer the Sanctions and Costs Panel to aggravating factors with respect to the imposition of sanctions that were raised during the testimony of those eight witnesses.

[51] In the fourth volume of the Merits Hearing Transcripts, two witnesses testified by video conference (one from England and one from Sweden). Staff does not intend to rely of the content of that fourth volume as the testimony from those witnesses was not accepted by the MRS Merits Panel. However, in Staff's view this material is still relevant because Staff's Bill of Costs will have to be discounted as a result of the fact that certain portions of the evidence were not accepted or established on a balance of probabilities. Since the Panel will need to make an assessment of what the appropriate reduction of costs is, the Sanctions and Costs Panel needs to understand how the MRS Merits Hearing proceeded. The best way to accomplish this, in Staff's view, is for the Sanctions and Costs Panel to have access to the Merits Hearing Transcripts.

[52] Further, Staff pointed out that volumes 5 to 8 of the Merits Hearing Transcripts dealt with the allegation of market manipulation, an allegation for which the MRS Merits Panel did not find sufficient evidence. As a result, Staff submitted that they

will reduce their Bill of Costs accordingly and take out a portion of Staff's time, including a portion of hearing time. As a result, these three volumes of the Merits Hearing Transcripts are important to allow an assessment of the amount of time spent on this issue which will affect the quantum of costs.

[53] A portion of volume 8 and the totality of volumes 9, 10 and 11 of the Merits Hearing Transcripts deal with the evidence of the Respondents. According to Staff, statements made by the Respondents in these transcripts are relevant to the sanctioning factors listed in the case law (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746).

[54] In particular, Staff submitted that the transcripts contain testimony relevant to the Respondents' activity and experience in the marketplace as well as mitigating factors.

[55] Moreover, Staff pointed out that the parties agreed to provide the Sanctions and Costs Panel with a number of exhibits that were before the MRS Merits Panel. These exhibits were discussed by witnesses and it would be helpful for the Sanctions and Costs Panel to access the Merits Hearing Transcripts where those exhibits are discussed in order to have a full factual foundation.

[56] Overall, Staff emphasized that providing the Sanctions and Costs Panel with the evidence transcripts from the MRS Merits Hearing will make for a fairer sanctions hearing, and that *prima facie* the transcripts should be available and should be before the Sanctions and Costs Panel as part of the evidentiary record. These transcripts will assist Staff to put forward aggravating factors relevant to sanctions and costs and assist the Respondents to put forward mitigating factors relevant to sanctions and costs.

ii. Respondents

[57] The Respondents submitted that a decision made by the Sanctions and Costs Panel cannot be informed by the transcripts of the MRS Merits Hearing.

[58] First, the Respondents point out that the Merits Decision in this matter did not make any findings on market manipulation (MRS Merits Decision, *supra* at para. 233). Therefore, any transcripts where evidence about market manipulation was led should not be put before the Sanctions and Costs Panel. According to the Respondents, the transcripts referring to evidence about market manipulation are irrelevant since no market manipulation findings were made. Further, the Respondents submit that there would be a prejudicial effect if the entire transcript from the MRS Merits Hearing is simply filed.

[59] Second, the Respondents took issue with Staff's position that the Merits Hearing Transcripts were necessary to provide evidence about what investors were told about the company. According to the Respondents, this is prejudicial because that was not an issue at the MRS Merits Hearing. There was no allegation in the Notice of Hearing or Statement of Allegations about misleading representations, about misleading press releases, or about anything that investors were told. There was also no allegation about the underlying business. The Respondents emphasized that it is important that the Sanctions and Costs Hearing be confined to its purpose which is to consider appropriate sanctions for the conduct that was found to have occurred, not for conduct that was not in issue at the MRS Merits Hearing, and not for conduct with respect to which the MRS Merits Panel made no findings.

[60] The Respondents submitted that it is unfair to them to import the Merits Hearing Transcripts that were generated in a different context (the MRS Merits Hearing) for some new and different purpose now (the Sanctions and Costs Hearing). They took the position that if all the Merits Hearing Transcripts are before the Sanctions and Costs Panel, then effectively it is re-opening the MRS Merits Hearing.

[61] The Respondents emphasized in oral argument that:

> … the concern from the Respondents' standpoint is Staff is now going off in a new direction trying to use the transcript in circumstances where there wasn't an issue at the time, where there wasn't cross-examination about the issue. They want to now make arguments from evidence that was given that wasn't dealt with in the merits decision. And really the starting point, in my respectful submission, for this tribunal is the merits decision. That's what this is about. That's where it begins from. And now we can adduce evidence as you found in your ruling to deal with the factors that are going to be considered by this panel. That's what we're doing here. We're not revisiting the merits hearing. We're not going in a different direction or urging different results based upon evidence that, as it happens, was given at the merits hearing.
>
> (Transcript, November 29, 2013 at page 51 line 24 to page 52 line 14)

[62] With respect to Staff's position that the Merits Hearing Transcripts are needed to assist with the assessment of costs, the Respondents stated that:

> But in arguing costs, you don't need to have the transcript in evidence for the truth of its contents. All that's going to be pertinent to cost is how much time was spent, what did it ultimately signify; that you get from the merits decision. And I don't think we're going to have any dispute about how much time was spent; that doesn't make the transcript an exhibit. What it does is make the transcript an artifact that you consider as reflecting time spent or whatever the case may be.
>
> (Transcript, November 29, 2013 at page 61 lines 11 to 19)

[63] The Respondents did not file any materials or case law to support their position. However, they took the position that the criminal cases referred to by Staff are not relevant. In their view, the criminal context is quite different as there is a specific statutory provision for a different decision-maker to continue on a hearing mid-trial or to deal with sentencing, subject to rulings as to fairness.

D. Analysis

[64] In our view, it is appropriate for the Sanctions and Costs Panel to have access to the evidence transcripts from the MRS Merits Hearing. This view was also articulated by the Commission in the 2011 Motion Decision:

> We do not find any unfairness or perceived unfairness to the Respondents in holding the sanctions and costs hearing before a Panel constituted differently from the MRS Merits Panel. As we noted in our analysis with respect to the arguments on jurisdiction, it is not open to the sanctions and costs Panel to reconsider the merits decision because it is presiding over a separate hearing. The transcript of the merits hearing will be available to the sanctions and costs Panel and the Panel will have the benefit of the written reasons in the MRS Merits Decision.
>
> (2011 Motion Decision, *supra* at para. 72 [emphasis added])

[65] Pursuant to subsection 15(1) of the SPPA, a tribunal is permitted to admit any document or other thing relevant to the subject-matter, and this encompasses the evidence transcripts from the MRS Merits Hearing. In our view, such transcripts are relevant because there is content in those transcripts that sheds some light on the applicability of the sanctioning factors set out in *Re M.C.J.C. Holdings*, *supra* and *Re Belteco Holdings Inc.*, *supra*.

[66] We also note that, in the criminal context, the sentencing judge has access to the transcripts from the trial. Specifically, as explained in the decision *R. v. Wilson* (2004), BCSC 1233 at paragraphs 5 and 6:

> This issue is somewhat complicated because I did not hear the evidence myself and must rely solely on my review of the transcripts. Madam Justice Quijano fell ill after the trial and before sentencing. She is unable to conduct the sentencing hearing. It fell to me under s. 669.2(2) of the *Criminal Code* to conduct the sentencing hearing and now to impose sentence.
>
> I reviewed the transcripts of the evidence before hearing submissions on sentencing and, after hearing submissions, have partially reviewed them again. Before setting out my findings of fact for the purpose of sentencing, I wish to set out the principles that govern when there is a dispute about the jury's findings or about unresolved evidentiary issues. [emphasis added]

[67] In addition, in *R. Skalbania* [1997] 3 S.C.R. 995, the Supreme Court stated at paragraph 15 that:

> In our view, there is no merit in this submission. Section 686(4)(b)(ii) provides that the case be remitted to the "trial court", not the "trial judge". Section 669.2 confirms this. The constitutionality of these provisions in relation to whether a particular judge can pass sentence was not challenged. Any other system would be unworkable. We note, without prejudice to any outstanding proceedings in relation to sentence, that transcripts of the trial were available and the hearing occupied three days. [emphasis added]

[68] Therefore, in the criminal context, when a different judge is dealing with sentencing, it has been recognized that trial transcripts are relevant to the sentencing process.

[69] Even though the Commission is a regulatory tribunal and not a criminal court, access to the transcripts provides the new panel imposing sanctions and costs with a full factual foundation to understand the conduct in the matter which will allow for the imposition of appropriate and proportionate sanctions.

[70] Evidence from the transcripts may be relevant to factors to be considered at sanctions, such as aggravating and mitigating circumstances. Evidence with respect to such circumstances needs to be before a panel imposing sanctions in order for that panel to craft appropriate and proportionate sanctions. Further, we accept Staff's submission that the transcripts will be helpful with respect to a decision to impose costs as they provide a sense of how much time was spent on the various issues raised in the MRS Merits Hearing.

[71] Having access to the Merits Hearing Transcripts is simply a fairer process for everybody. It is fairer to Staff. It is fairer to the Respondents. It is fairer to the panel as the decision-maker to have the Merits Hearing Transcripts form part of the record for the Sanctions and Costs Hearing.

[72] It is important to reiterate that any sanctions imposed by the Commission must be based on findings made in the Merits Decision. The Merits Hearing Transcripts are not to be used to re-litigate issues on the merits. As stated in paragraph 44 of the 2011 Motion Decision:

> In our view, as long as both parties are provided with the opportunity to lead evidence and make submissions at the sanctions hearing, the requirement of the maxim of *audi alteram partem* will be satisfied. A corollary to this is that a sanctions Panel should not reopen issues that have been disposed of by the merits Panel that heard the relevant evidence as to the merits of Staff's allegations. [emphasis added]

[73] The Merits Hearing Transcripts are to be used to provide evidence as to the factors to consider in sanctions, as set out in *Re M.C.J.C. Holdings*, *supra* and *Re Belteco Holdings Inc.*, *supra*. It is recognized that during a sanctions hearing there will be:

> … adequate opportunity to all parties to provide evidence relevant to sanctions and costs. In *Sussman Mortgage Funding Inc. v. Ontario (Superintendent of Financial Services)*, [2005] O.J. No. 4806 at para. 3, the Ontario Court of Appeal found that the panel making the determination as to penalty would base it on the earlier reasons of the tribunal, but could hear additional evidence relevant to penalty:
>
> > The assessment of penalty will proceed before a differently constituted Tribunal. Penalty will be determined based on the findings made by the Tribunal in its reasons of August 8, 2002, in so far as those findings describe Sussman's conduct. *The Tribunal is at liberty to hear any evidence relevant to penalty, including evidence of events that arose after August 8, 2002.* [emphasis added in original]
>
> (2011 Motion Decision, *supra* at para. 75)

[74] In addition, as stated in the case *R. v. Amara* (2010) ONSC 251 (Sup. Ct.) (CanLII) at para. 22, "Where there is a dispute with respect to any fact that is relevant to the determination of sentence, the party wishing to rely on a relevant fact, […] has the burden of proving it."

[75] Therefore, evidence may be led before a Sanctions and Costs Panel to prove facts relevant to the determination of sanctions and/or costs.

[76] At the Sanctions and Costs Hearing, the role of the Panel is to consider evidence only relevant to the determination of sanctions and/or costs. It is the responsibility of each party to make its case as to appropriate sanctions and costs, and provide evidence and submissions as to the appropriate sanctioning and costs factors the Sanctions and Costs Panel should consider. This can be facilitated by referring the Panel to the relevant excerpts of the Merits Hearing Transcripts which may contain such evidence.

[77] In the present case, the Merits Hearing Transcripts comprise 11 volumes from the evidence portion of the MRS Merits Hearing. In our Order, we required the parties to provide us with a document indicating the portions of the transcripts relevant to the determination of sanctions and/or costs on which they intend to rely. The Sanctions and Costs Panel's review of the Merits Hearing Transcripts filed should not be a fishing expedition. The parties must specify each excerpt from the Merits Hearing Transcripts on which they intend to rely that is relevant to the determination of sanctions and/or costs.

[78] We note that Staff also made submissions about the admissibility of compelled transcripts and the Commission's case law relating to compelled testimony. The Merits Hearing Transcripts are not compelled transcripts obtained under the Commission's investigative powers in the Act. As such we find that those cases referred to us by Staff are not applicable to the circumstances before us.

E. Conclusion

[79] For the foregoing reasons, we find that it is in the public interest to admit the transcripts of the evidence portion of the MRS Merits Hearing. To facilitate our review of such transcripts, the parties were required to specifically refer us to the portions of the transcripts on which they sought to rely that are relevant to the determination of sanctions and/or costs.

V. THE LAW ON SANCTIONS

[80] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.
>
> …
>
> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation.
>
> (*Asbestos*, *supra* at paras. 43 and 45 [emphasis added])

[81] In determining the appropriate sanctions to order in this matter, it is important to keep in mind the Commission's preventive and protective mandate set out in section 1.1 of the Act, and to consider the specific circumstances in this case in order to ensure that the sanctions are proportionately appropriate to both the Respondents' conduct and the range of sanctions ordered in similar cases (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[82] The case law sets out the following non-exhaustive list of factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit gained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) whether a particular sanction will have an impact on the respondent and be effective;

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(*Re M.C.J.C. Holdings*, *supra* at 1136 and *Re Belteco Holdings Inc.*, *supra* at 7746)

[83] The applicability and importance of each factor will vary according to the facts and circumstances of the case.

[84] Deterrence is another important factor for the Commission to consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*"), the Supreme Court of Canada explained that deterrence is "… an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court emphasized that deterrence may be specific to the respondent or general so as to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[85] The Commission has also recognized the importance of deterrence in *Re Momentas Corp.* (2007) 30 O.S.C.B. 6475 ("*Momentas*"):

> [i]n order to promote both general and specific deterrence we found it necessary to impose severe sanctions including permanent cease trade orders, permanent exclusions from exemptions, and a permanent prohibition from acting as an officer or director of a reporting issuer.
>
> (*Momentas*, *supra* at para. 51-52)

[86] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra* at 1610 and 1611)

VI. APPROPRIATE SANCTIONS IN THIS CASE

1. Specific Sanctioning Factors Applicable in this Matter

[87] In both written and oral submissions, the Respondents emphasized that the Sanctions and Costs Panel should not take into account arguments by Staff that relate to matters that were not: (i) raised by Staff's allegations, (ii) in issue at the MRS Merits Hearing, and (iii) the subject of findings by the MRS Merits Panel.

[88] As stated above, any sanctions imposed by the Commission must be based on findings made in the Merits Decision. In considering the sanctioning factors set out in the case law above, the findings in the Merits Decision and the evidence adduced before us at the Sanctions and Costs Hearing, the following specific factors and circumstances are relevant in this matter:

(a) The Seriousness of the Allegations: The Respondents breached a number of key provisions of the Act, namely, the registration and prospectus requirements. Individually and collectively, these are serious breaches. The registration requirements in the Act serve an important role in protecting investors and ensuring that the public deals with individuals who meet the necessary proficiency requirements and who engage in honest and responsible conduct. In addition, the prospectus requirement ensures that investors receive disclosure about the products in which they are investing. In this case, the Respondents engaged in unregistered trading and an illegal distribution of securities without a prospectus (Merits Decision, *supra* at paras. 155 to 158). In particular, the Merits Decision emphasized that such breaches are contrary to the public interest at paragraph 235:

> We find that by issuing MRS shares to unsophisticated investors who fell far short of qualifying for the Accredited Investor Exemption and by failing to exercise reasonable diligence to ensure that only Accredited Investors subscribed, the Respondents denied investors the protection the registration and prospectus requirements are intended to provide. We find that the Respondents' conduct was contrary to the public interest. [emphasis added]

(b) The Respondents' experience in the marketplace: The Commission has held that a breach of Ontario securities law by a registrant is serious because the offender is aware of the importance of securities law to the capital markets (*Re Rowan* (2010), 33 O.S.C.B. 91 at para. 145). Each of Cavric, Emmons and Sherman were previously registered with the Commission. As set out in the Agreed Statement of Facts dated May 7, 2009 and the Merits Decision at paragraph 7:

- Sherman was registered with the Commission on numerous occasions between January 25, 1962 and November 13, 2001 but was not registered with the Commission in any capacity between November 2003 and May 2005;
- Cavric was registered with the Commission as a securities salesperson from February 3, 1992 to November 17, 2000 but was not registered with the Commission in any capacity between November 2003 and May 2005; and
- Emmons acted as a vice-president of MRS. He was registered with the Commission as a securities salesperson from May 17, 1977 to November 13, 1996 but was not registered with the Commission in any capacity between November 2003 and May 2005.

As former registrants, these individuals were expected to have a high level of awareness of securities law requirements and the importance of those requirements to the functioning of the capital markets. They were well positioned to understand the regulatory regime, including the importance of the registration and prospectus requirements, and the impact of their actions on investors. This is an important consideration to take into account when imposing sanctions on Cavric, Emmons and Sherman.

(c) Whether or Not There has been a Recognition of the Seriousness of the Improprieties: As set out in paragraph 13 of the Merits Decision and in paragraphs 7 to 10 of the Agreed Statement of Facts, the Respondents admitted that they engaged in the following conduct:

> 7. In selling MRS shares to Ontario residents and residents of other jurisdictions, MRS has sought to rely on the exemption for selling securities to accredited investors contained in OSC Rule 45-501 (now National Instrument 45-106).
>
> 8. MRS did not file any Form 45-501F1 – report of exempt distribution with the Commission relating to the distribution of common shares of MRS to investors as required by section 7.5 of OSC Rule 45-501 (now National Instrument 45-106).
>
> 9. MRS sold and offered MRS shares to residents of Ontario.
>
> 10. No prospectus receipt has been issued to qualify the sale of MRS shares.

In addition, in their written submissions on sanctions and costs, at paragraph 7, the Respondents submitted that:

> … they attempted to, and attempted to comply, and were guided by the understanding of the standard for compliance with the Accredited Investor at the time. Their efforts at compliance miscarried, and the standards were found to fall short of what the exemption required, since clarified by the Commission.

While we note that the Respondents do acknowledge their misconduct which breached the Act, submissions were also made at the Sanctions and Costs Hearing that attempted to minimize the seriousness of these breaches of the Act. In particular, the Respondents submitted that this was not a fraud case and that the misconduct that occurred in this case falls on the less serious side of the spectrum. Nevertheless, as discussed above in paragraph (a), repeated breaches of the Act relating to unregistered trading and illegal distributions are taken very seriously by the Commission because they deny investors the protections provided by the Act.

(d) Deterrence: As set out above in paragraphs 84 and 85 of our Reasons and Decision, deterrence is an important factor to consider, particularly in this case, as Cavric, Emmons and Sherman were former registrants who should have possessed a high level of awareness of securities law requirements and the importance of those requirements to the capital markets, yet they still engaged in conduct which breached securities law. General deterrence is also important to consider when imposing sanctions because the Commission wants to ensure that all market participants understand the consequences of unacceptable behaviour. Specifically, deterrence plays an important role as a protective mechanism in our capital markets to ensure that conduct harmful to investors is not repeated in the future.

(e) The Size of any Profit Made or Loss Avoided from the Illegal Conduct: A large number of investors were affected by the conduct of the Respondents in this matter. As set out in the Merits Decision at paragraphs 160 and 161:

> The MRS Shareholder Report, dated June 8, 2005, indicates that 19,496,343 shares have been issued to 231 shareholders. This is also the number given in the Cripps Agreed Statement of Facts, based on Capital Transfer's shareholder records and the records Capital Transfer received from Select Fidelity when it became transfer agent for MRS.
>
> The Subscription Agreements evidence the sale of 2,144,553 MRS shares, which raised $838,760 from approximately 210 individual investors in approximately 300 trades between November 2003 and May 2005.

(f) Whether the Violations are Isolated or Recurring: We note that the Respondents' conduct was not an isolated event; the solicitation of investors was prolonged and widespread. The Respondents' misconduct took place over a period of 19 months from October 2003 to May 2005 through three private placement offerings (see paragraphs 162 to 164 of the Merits Decision). In the first private placement offering, MRS shares were sold at $0.35 per share, with a minimum purchase of 10,000 shares ($3,500). Investors were informed that MRS sought to raise $1.05 million and would use the proceeds to invest in "select penny stocks", and that it targeted "returns of 200 percent plus" through a "High Return Venture Fund" "with little downside risk". The second private placement offering sought to raise $1.75 million from the sale of five million shares at $0.35 per share. The offering document described the company as "an emerging growth Generic drug development firm [sic]", working on a new psoriasis treatment and a product related to early cancer treatment. The third private placement offering sought to raise $3.5 million from the sale of five million shares at $0.70 per share, with a minimum investment of $1,400. In addition to the psoriasis treatment product, MRS was now said to be investing in another company to allow it to acquire an interest in a Russian oil field.

(g) The Effect any Sanction may have on the Ability of the Respondents to Participate in the Capital Markets: The Divisional Court of Ontario has held that "[p]articipation in the capital markets is a privilege, not a right" (*Erikson v. Ontario (Securities Commission)* (2003), 26 O.S.C.B. 1622 (Div. Ct.) at paras. 55 and 56). In our view, the right to participate in the capital markets should be restricted when individuals who are in a position to know better breach multiple sections of the Act.

2. Trading and Director and Officer Prohibitions

Staff's Position on Trading and Director and Officer Prohibitions

[89] Staff requested that MRS be permanently cease traded and requested that the individual Respondents be subject to a trading prohibition as well as prohibitions from acting as an officer and director of an issuer, for the following durations:

- DeRosa 15 years
- Cavric 15 years
- Emmons 10 years
- Sherman 13 years

[90] Staff explained that they are requesting longer timeframes for DeRosa and Cavric as they were integral to setting up and organizing MRS's activities, they ran the operation and they had higher level responsibilities in MRS.

[91] Sherman and Emmons were both salespersons for MRS. Although both Sherman and Emmons were involved in selling MRS securities to investors who were not accredited, the Merits Decision found that Sherman was the "main securities salesperson at MRS" (Merits Decision, *supra* at para. 179). As a result, Staff is seeking a longer period of prohibition for Sherman as compared to Emmons.

[92] With respect to the trading prohibition, Staff did not object to a trading carve-out that would allow the individual Respondents to engage in limited trading for personal purposes in registered accounts, on the condition that any such carve-out would only become effective once all monetary sanctions and costs are paid.

Respondents' Position on Trading and Director and Officer Prohibitions

[93] The Respondents take the position that trading bans and officer and director bans are not warranted in this case. They point out that Staff has never, at any time, since the conduct complained of came to an end in 1995, seen any need to seek a temporary cease trade order, and there has been none. Accordingly, there is no need to impose a cease trade order now. In addition, the Respondents submit that nine years have passed since the events in this matter took place without any further allegation of conduct detrimental to the capital markets. Therefore, there is no need for specific deterrence. To support this argument, the Respondents referred us to *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2013 ONLSAP 0041, in which a Law Society of Upper Canada Appeal Panel acknowledged that the passage of time without a recurrence of misconduct is a mitigating factor (at paras. 342 and 343). The Appeal Panel reduced the sanction by half because substantial time had passed without the respondent repeating the misconduct.

[94] The Respondents also point out, that in 1996, MRS was re-domiciled to Nevada and merged with Biosource. As there has never been a cease trade order imposed on MRS shares, the holders of these shares have been able to exchange, and have exchanged, their share certificates for Biosource shares. According to the Respondents, to impose a permanent cease trade order on MRS shares now would serve only to unjustifiably penalize and impede those who, through inattention or lack of awareness, have not yet exchanged their shares.

[95] The Respondents submit that lengthy bans are not appropriate in this case as the individual Respondents are of mature years. Specifically, Emmons is at retirement age and Sherman is 74 years old. In addition, as the individual Respondents are nearing or past retirement age, carve-outs should be provided to allow them to receive their retirement income. However, when asked about the specific terms of the carve-out to be considered, the Respondents were not able to provide a detailed proposal.

Conclusions on Trading Prohibitions

[96] We find that it is appropriate to cease trade MRS permanently and to impose a cease trade order on the individual Respondents for a period of 10 years.

[97] There were three MRS offerings and each one was found to be an illegal distribution. This is repetitive misconduct. Since MRS shares were never distributed in compliance with Ontario securities law in the first place, MRS shares should not circulate and trade freely. It follows that current MRS shares should not be traded. The Respondents argued that current MRS shareholders would be prejudiced by such an order. In our view, permitting shares distributed illegally to be traded freely would undermine the integrity of the statutory scheme and is not an appropriate remedy for those shareholders.

[98] With respect to the individual Respondents, we find it appropriate to impose a 10 year trading prohibition in conjunction with the other sanctions to be discussed below. In light of submissions made about the individual Respondents' ages, a 10-year trading prohibition will remove them from the capital markets for a significant period of time and will provide adequate specific deterrence to impress upon them the seriousness of their actions.

[99] We do not find it appropriate to provide any trading carve-outs to the individual Respondents. While we acknowledge that the Respondents are nearing or past retirement age, we were not provided with adequate submissions about the accounts to which the carve-outs would apply or the conditions under which a carve-out would operate. In our view, when requesting a

trading carve-out, the onus is on the requesting party to provide the Commission with detailed information about the affected accounts and the securities held in them so that the Commission can make an informed decision about the form of carve-out that is appropriate in the circumstances.

Conclusions on Officer and Director Prohibitions

[100] We find that it is appropriate to impose on all of the individual Respondents a 10-year prohibition on acting as a director and officer of any issuer.

[101] As set out in paragraphs 208 and 209 of the Merits Decision:

> DeRosa identified himself, Cavric, Sherman and Emmons as the directors of MRS in his January 13, 2006 letter to Staff. Cavric and Emmons also testified that the four Individual Respondents were all directors and attended meetings of the board of directors. Cheques for directors' fees were made payable to Emmons and Sherman. We accept that Cavric, Sherman and Emmons were *de facto* directors of MRS.
>
> In addition to their personal breaches of subsections 25(1)(a) and 53(1) of the Act, we find that DeRosa, as a director, and Cavric, Sherman and Emmons, as *de facto* directors, authorized, permitted or acquiesced in MRS's contraventions of subsections 25(1)(a) and 53(1), and are therefore are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law. [emphasis added]

[102] While in positions of control at MRS as directors or *de facto* directors, the individual Respondents engaged in conduct that breached Ontario securities law and caused harm to investors. We find it appropriate to prohibit such individuals from acting as officers and directors of issuers in the future to prevent the occurrence of similar abuses.

[103] We find it appropriate to impose a prohibition on acting as an officer or director of any issuer for 10 years. In considering the submissions made about the individual Respondents' ages, a 10-year prohibition on acting as an officer and director will remove the individual Respondents from the capital markets for a significant period of time and will prevent the individual Respondents from directing issuers in such a way as to put investors at risk of harm.

3. Administrative Penalties

[104] Paragraph 9 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to "pay an administrative penalty of not more than $1 million for each failure to comply".

[105] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. The goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter. Important considerations in determining an administrative penalty may include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases (*Re Goldpoint Resources Corporation et al* (2013), 36 O.S.C.B. 1464 at para. 75; and *Limelight*, (2008), 31 O.S.C.B. 12030 ("*Limelight*") at paras. 71 and 78).

[106] In *Limelight*, the Commission considered the administrative penalty sanction. The Commission stated that the purpose of the administrative penalty is to "deter the particular respondents from engaging in the same or similar conduct in the future, and to send a clear deterrent message to other participants that the conduct in question will not be tolerated in Ontario capital markets"(at para. 67).

[107] The Commission observed that paragraph 9 of subsection 127(1) of the Act empowered the Commission to impose an administrative penalty of not more than $1 million in connection with each failure to comply with the Act. The Commission found that "as a matter of principle, a respondent who commits multiple breaches of the Act should know that continuing breaches of the Act will have consequences in terms of the sanctions ultimately imposed" (*Sabourin*, (2010), 33 O.S.C.B. 5299 ("*Sabourin*") at para. 75). The Commission noted that in imposing administrative penalties, it must consider the specific conduct of each respondent and the level of administrative penalties that the Commission has imposed in other similar cases.

Staff's Position on Administrative Penalty

[108] In this case, Staff seeks an administrative penalty of $200,000 against each of DeRosa and Cavric and a $150,000 administrative penalty against Sherman, each of whom were found to have breached the Act. Each of these Respondents were directors or *de facto* directors of MRS and at the centre of MRS's activities soliciting investors.

[109] Staff seeks an administrative penalty of $30,000 against Emmons in order to keep the amount of the administrative penalty proportional to the level of activity engaged in by Emmons.

[110] Staff submits that the administrative penalties sought reflect the multiple breaches perpetrated by the Respondents and will serve the necessary deterrent purpose. Staff also requests that any administrative penalties ordered under paragraph 9 of subsection 127(1) be designated by the Commission to or for the benefit of third parties under subsection 3.4(2)(b) of the Act.

[111] Staff referred us to case law from the Commission in which administrative penalties have been imposed to provide us with a reference point for the appropriate quantum of administrative penalties in this case. Staff also referred us to Limelight which sets out the principle that an administrative penalty must be more than a mere "cost of doing business" for those who breach multiple provisions of the Act (*Limelight*, *supra* at para. 78).

Respondents' Position on Administrative Penalty

[112] The Respondents take the position that no administrative penalty is warranted in this case and that the amounts requested by Staff are disproportionate to the Respondents' conduct.

[113] In addition, the Respondents argue that the case law relied on by Staff relates to fact scenarios which dealt with more serious breaches of the Act such as fraud, and are therefore not on point. In the Respondents' view, if the Commission were to impose administrative penalties in the range of the cases referred to by Staff such as *Sabourin*, *supra*, *Ochnik* (2006), 29 O.S.C.B. 3929, *Momentas*, *supra*, *XI Biofuels* (2010), 33 O.S.C.B. 10963 and *MP Global* (2012), 35 O.S.C.B. 9001, this would be disproportionate, punitive and inappropriate.

Conclusions on Administrative Penalty

[114] We find that it is appropriate to order the following administrative penalties as requested by Staff:

- DeRosa $200,000
- Cavric $200,000
- Sherman $150,000
- Emmons $30,000

[115] In our view, there are a number of aggravating factors present in this case which support the imposition of these administrative penalties, as a result of the breaches of the Act found by the MRS Merits Panel.

[116] First, as set out in paragraph 88(f) above, the conduct in this matter took place over a prolonged period of time. It spanned 19 months from October 2003 to May 2005, and included three private placements. This was not an isolated event, which is an important aggravating factor to consider. As set out in *Sabourin*, *supra* at para. 75, continuing misconduct and multiple breaches of the Act will have consequences in terms of the sanctions ultimately imposed in order to deter future conduct.

[117] Another aggravating factor which applies to all of the Respondents is the fact that adequate efforts were not taken to ascertain whether investors were accredited investors. Specifically, as set out in paragraph 195 of the Merits Decision:

> On any interpretation of OSC Rule 45-501CP, we are not satisfied that the Respondents exercised reasonable diligence to ensure that investors were Accredited Investors. Indeed, we find that the Respondents offered and sold MRS shares without any regard as to whether the investor was an Accredited Investor and in some cases, with the knowledge that the investor was not an Accredited Investor.

[118] This concern is compounded by the fact that Cavric, Emmons and Sherman were all former registrants and as such were expected to possess a high level of awareness of securities law requirements and the importance of those requirements to the protection of investors.

[119] We also considered the conduct and role of each Respondent in this matter when determining an appropriate administrative penalty.

[120] DeRosa's conduct is summarized at paragraph 166 of the Merits Decision as follows:

- DeRosa acknowledged that he and Cavric decided to raise funds for MRS using the Accredited Investor Exemption, and that he prepared the Subscription Agreement;
- DeRosa acknowledged that he and Cavric prepared a script to be used by Sherman and Emmons when contacting prospective investors;
- DeRosa's name appears as the signatory on MRS's press releases and other promotional material, and he acknowledged that he and Cavric prepared the press releases and promotional material;
- DeRosa acknowledged that it was his role to review Subscription Agreements and his signature appears on some of the Subscription Agreements that were returned to investors indicating MRS's acceptance of the subscription;
- DeRosa acknowledged that he signed treasury directions authorizing the transfer agent to issue share certificates in the names of investors;
- DeRosa's signature appears on many of the share certificates sent to MRS investors;
- DeRosa acknowledged that he and Cavric decided on the compensation for Sherman and Emmons;
- DeRosa signed the MRS cheques that [the MRS Merits Panel found] were commission payments to MRS qualifiers and salespersons; and
- DeRosa had signing authority on the MRS bank account.

[121] As a director, DeRosa was intimately involved in MRS's conduct. As such, the quantum of the administrative penalty imposed on him should reflect the level of his involvement in MRS, which conducted a series of illegal distributions without providing adequate disclosure to investors.

[122] Cavric's conduct is summarized at paragraph 169 of the Merits Decision as follows:

- Cavric acknowledged that he approached DeRosa with the idea of using MRS to market the psoriasis cream, a venture he had been involved with at Otis-Winston, and that they decided to raise funds for MRS using the Accredited Investor Exemption;
- Cavric acknowledged that he and DeRosa prepared documents describing MRS's business for distribution to investors, and that he was responsible for the MRS website;
- Cavric acknowledged that he hired Sherman and Emmons, who were former registrants, because of their experience as securities salespersons;
- Cavric acknowledged that he had discussions with Sherman and Emmons about MRS's share subscription process;
- Cavric acknowledged that he had discussions with DeRosa about the Accredited Investor Exemption and the process to be followed in reviewing the Subscription Agreements submitted by investors;
- Cavric incorporated Select Fidelity, MRS's transfer agent during the Relevant Time, which operated out of MRS's offices;
- Cavric acknowledged that he signed treasury directions authorizing the transfer agent to issue MRS share certificates in the name of investors when DeRosa was not available;
- Cavric acknowledged that he signed many of the share certificates corresponding to MRS shares distributed to investors; and
- Cavric acknowledged that he and DeRosa decided on the allocation of MRS funds to Sherman and Emmons and other MRS qualifiers or salespersons.

[123] As a director, Cavric was also intimately involved in MRS's conduct, especially relating to MRS's fundraising (Merits Decision, *supra* at para. 169). As such, the quantum of the administrative penalty imposed on him should reflect the level of his involvement in MRS, which conducted a series of illegal distributions without providing adequate disclosure to investors.

[124] Sherman and Emmons were found to be *de facto* directors of MRS (Merits Decision, *supra* at para. 209) and the Merits Decision also found that both were involved in selling MRS securities to investors (Merits Decision, *supra* at para. 174 and 179).

[125] Emmons' conduct is summarized at paragraph 171 of the Merits Decision as follows:

- It was Emmons who called Investor Seven about an investment opportunity relating to psoriasis cream, and Emmons was Investor Seven's contact throughout;
- Emmons acknowledged that he brought a list of leads to MRS;
- Emmons acknowledged that he explained the private placement to prospective investors and solicited expressions of interest from them, sent promotional material and Subscription Agreements to prospective investors, explained how the Subscription Agreement and investment cheque should be completed, and contacted existing MRS shareholders to determine whether they wanted to invest more money in MRS; and
- Emmons received Subscription Agreements and cheques from investors, on behalf of MRS, which he forwarded to DeRosa.

[126] Sherman's conduct is summarized at paragraph 177 and 178 of the Merits Decision as follows:

- cold-called investors to solicit investments in Morningside;
- told some investors that Morningside shares were trading at a price much higher than the $0.35 per share private placement price;
- when an initial call was unsuccessful, made repeated calls to at least one investor, Investor Three, and told him he was running out of time to invest;
- sent or caused to be sent promotional material and Subscription Agreements to prospective investors;
- told an investor who told him he was not an Accredited Investor that this did not matter (Investor One); told another investor, who told him he was unemployed, not to worry about "all that mumbo-jumbo" (Investor Three); and in another case (Investor Two), he failed to make any enquiries about the investor's Accredited Investor status; and
- there was evidence from Cavric and Emmons that Sherman brought MRS a list of leads that is corroborated by the April 14, 2004 cheque for $1,087.78 with "reimburse re leads" in the memo line. Investor names appear on many MRS cheques that are made payable to Sherman.

[127] While both Sherman and Emmons were involved in selling MRS securities to investors who were not accredited, the Merits Decision did find that Sherman was the "main securities salesperson at MRS" (Merits Decision, *supra* at para. 179). As a result, a higher administrative penalty is appropriate for Sherman as compared to Emmons.

[128] In addition, we reviewed the case law regarding administrative penalties imposed in other matters. We note that in many cases involving unregistered trading and illegal distributions, the Commission has awarded significant administrative penalties in order to have the intended deterrent effect (see for example: *Re Energy Syndications Inc. et al* (2013), 36 O.S.C.B. 11595; *Re MBS Group (Canada) Ltd et al* (2013), 36 O.S.C.B. 3915; *Re Mohinder Ahluwalia* (2013), 36 O.S.C.B. 617) and *Re MP Global Financial Ltd. et al* (2012), 35 O.S.C.B. 9061).

[129] In imposing an administrative penalty, the Commission must consider the level of administrative penalties imposed in other similar cases in which comparable harm was done to investors (*Limelight*, *supra* at para. 71). In the case before us, $838,760 was raised from approximately 210 individual investors. We have considered the cases referred to us by Staff and the Respondents. We find that the administrative penalty amounts requested by Staff in this case are consistent with the orders imposed in other Commission cases dealing with similar misconduct and are proportional to the circumstances and conduct of each Respondent.

[130] Considering the totality of the sanctions we are imposing, the number of investors affected, the amount of funds raised and the aggravating factors present in this case, we find that the administrative penalty amounts requested by Staff will serve the necessary specific and general deterrent purposes and are proportionate to the conduct of each individual Respondent.

4. Disgorgement

[131] Paragraph 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance.

[132] The Commission has previously held that "all money illegally obtained from investors can be ordered to be disgorged, not just the 'profit' made as a result of the activity". As explained in *Limelight*, *supra* at paragraph 49:

> We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[133] The *Limelight* case sets out a non-exhaustive list of disgorgement factors to consider at paragraph 52, which include:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[134] The *Limelight* case also states that Staff has the onus of proving on a balance of probabilities the amount obtained by a respondent as a result of his or her noncompliance with the Act. Subject to that onus, any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty (*Limelight*, *supra* at para. 53).

[135] Further, in *Re Sabourin*, the Commission emphasized that:

> In our view, a disgorgement order is appropriate in these circumstances because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct. In our view, it is appropriate that a disgorgement order in these circumstances relate to the full amount that we determined in the Merits Decision to have been obtained by each of the Respondents from investors.
>
> (*Re Sabourin*, *supra* at paras. 69 and 71)

Staff's Position on Disgorgement

[136] Staff takes the position that, in this case, the disgorgement orders should coincide with the amounts received by the Respondents or by companies controlled by the Respondents. As a result, Staff seeks disgorgement of the following amounts:

- Emmons $41,969.25
- Sherman $223,500.75
- Cavric/DeRosa (jointly) $319,325.04

[137] Staff is seeking disgorgement jointly from Cavric and DeRosa in the amount of $319,325.04 because they submit that this represents the amount of commissions or management fees paid by MRS and received indirectly by Cavric and DeRosa

through payments made to companies which they controlled (Select Fidelity Transfer Services Ltd. ("Select") and Associated Financial Corporation ("Associated")) as a result of the illegal sale of MRS shares to the public.

[138] During the Sanctions and Costs Hearing, Staff's investigator testified at some length about the method used by Staff to calculate these amounts.

[139] According to Staff, three of the *Limelight* disgorgement factors are particularly relevant to this case. First, all of the funds at issue were obtained as a result of the Respondents' unlawful activity. Second, the amounts obtained as a result of the non-compliance with the Act are ascertainable from MRS's bank records. Third, the disgorgement orders sought would achieve the goals of specific and general deterrence.

[140] In addition, Staff submits that investor monies in this case were used for purposes which were not disclosed to investors. As such, the disgorgement approach taken in *Limelight* should be applied as a result of which, the Commission should order disgorgement from MRS's principals of the total amounts raised from investors.

Respondents' Position on Disgorgement

[141] The Respondents take the position that disgorgement is inappropriate in this case.

[142] With respect to Cavric and DeRosa, the Respondents submit that it is problematic to seek the disgorgement of funds that were ultimately paid to Select and Associated. It was submitted that amounts paid to Select and Associated were for services provided by those entities. For example, the Respondents submit that DeRosa provided financial services that were essential to the operation of MRS, and received only nominal, recorded and fully disclosed payments for these services. Further, the Respondents point out that Select and Associated were not named as respondents in this proceeding.

[143] In addition, the Respondents take issue with Staff's calculations of disgorgement amounts for all the Respondents. They take the position that Staff grouped payments to the Respondents from MRS so as to create the impression that the payments amounted to a percentage of the funds raised from investors (20 to 25%) and thereby constituted a commission payment. The Respondents submitted that such calculations are improper as not all the cheques were paid out to the Respondents for the purpose for commissions. The Respondents pointed out while cross-examining Staff's investigator that, while some cheques were commission payments and referenced the names of investors in the subject line, other cheques did not make reference to any investor names. Therefore, it is inappropriate to assume that those are commission payments. Other cheques made out to the Respondents reference other legitimate purposes in the subject lines such as director fees, management fees, accounting services and board fees.

[144] The Respondents also submit that it is not possible to ascertain with any precision any amounts obtained as a result of non-compliance, given that the majority of the investors were accredited.

[145] As a result, the Respondents submit that there is some uncertainty surrounding the calculation of the disgorgement amounts, as the amounts cannot be accurately ascertained, and therefore, a disgorgement order should not be made.

Conclusions on Disgorgement

[146] We find that it is inappropriate to order disgorgement in this case. We agree with the Respondents that there is too much uncertainty concerning the amounts obtained by the Respondents as a result of their non-compliance with Ontario securities law.

[147] We note that the MRS Merits Panel found that MRS salespersons and qualifiers were paid on a commission basis, usually in the range of 20-25 percent of the amounts invested by the investors who were named on the subject line of MRS paycheques. However, when we reviewed the cheques in evidence before us, not all of them referenced investor names in the subject line. Some of them were illegible while others listed business expenses such as moving, rent, labels, transfer agency services and so on. As a result, it is not possible for us to ascertain the exact amounts paid out as commissions.

[148] With respect to the Respondents' submission that there were actually accredited investors who participated in MRS's offerings, we had no evidence of this before us at the Sanctions and Costs Hearing, and we note that the Merits Decision does not include any findings that certain investors were accredited.

[149] However, in light of the uncertainties relating to the cheques and the difficulties of ascertaining the exact amounts of commissions paid, we find that this is not an appropriate case to order disgorgement. We acknowledge that Staff's investigator attempted diligently to reconcile the amounts and sources of funds moving in and out of MRS's bank accounts, but in light of uncertainties regarding the source and use of those funds and in the absence of definitive findings on these issues in the Merits Decision, we do not find these efforts persuasive.

VII. COSTS

[150] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the Rules sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[151] A costs order pursuant to section 127.1 of the Act is not a sanction. An order of costs is a method of recovering the costs of a hearing or investigation from persons or companies who have breached Ontario securities law or acted contrary to the public interest. It is recognized that a costs order will not necessarily recover the entirety of the costs incurred by the Commission, but the Legislature has deemed it appropriate that a respondent contribute to the costs of a hearing where there has been a finding that the respondent has contravened Ontario securities law.

Staff's Position on Costs

[152] As set out above, initially Staff requested $169,106.79 in costs. However, on February 11, 2014, Staff amended their costs request and reduced it to $157,037.29. Staff explained that this reduction was due to a change in the number of hours claimed for Staff's litigator Derek Ferris, whose hours during the period of February 23, 2006 to November 30, 2008 were reduced from 192.50 hours to 142.50 hours. According to Staff, the Amended Bill of Costs now accurately sets out the case assessment, investigation and litigation hours and the disbursements incurred in this matter.

[153] At the hearing on February 11, 2014, Staff filed an Affidavit of Yolanda Leung, which included the Amended Bill of Costs. This specified Staff's total costs incurred and costs sought by Staff. Also included were timesheets setting out the number of hours and the categories of tasks performed by each individual on Staff's team, as well as documentation supporting Staff's disbursements.

[154] The following table sets out the total costs incurred by Staff in this matter:

TOTAL COSTS INCURRED			
Staff	**Total Hours**	**Rate ($)**	**Total Costs($)**
Case Assessment (April 11, 2005 to July 7, 2005)			
Kim Berry	66.00	175	11,550.00
Investigation (July 8, 2005 to February 22, 2006)			
Larry Masci	166.50	185	30,802.50
Shauna Flynn	39.25	205	8,046.25
Litigation (February 23, 2006 to October 7, 2009)			
Derek Ferris	347.25	205	71,186.25
Larry Masci	222.25	185	41,116.25
Rima Pilipavicius	169.00	185	31,265.00
Mehran Shahviri	80.50	185	14,892.50
Kim Berry	32.75	175	5,731.25
Litigation (October 8, 2009 to December 18, 2013)			
Sherry Brown	215.25	185	39,821.25
		Total	254,411.25
		Total Disbursements	13,003.43
		TOTAL COSTS	267,414.68

[155] Staff submitted that in preparing the Amended Bill of Costs, a very conservative approach was taken for costs sought by Staff. The following table sets out the costs sought by Staff:

COSTS SOUGHT			
Staff	**Total Hours**	**Rate ($)**	**Total Costs($)**
Investigation (July 8, 2005 to February 22, 2006)			
Larry Masci	166.50	185	30,802.50
Litigation (February 23, 2006 to November 30, 2008)			
Derek Ferris	142.50	205	29,212.50
Larry Masci	83.75	185	15,493.75
Litigation (May 1, 2009 to October 7, 2009			
Derek Ferris	148.50	205	30,442.50
Larry Masci	90.00	185	16,650.00
Litigation (October 8, 2009 to December 18, 2013)			
Sherry Brown	215.25	185	30,821.25
		Total	146,725.00
		Total Disbursements	10,312.29
		TOTAL COSTS	157,037.29

[156] Staff explained that the reduction of costs from $267,414.68 to $157,037.29 takes into account that Staff is not seeking costs related to the period of time from February 2008 to May 2008. This is the period covering Staff's work relating to the unproven allegations that Cavric, Primequest and DeRosa engaged in market manipulation. Staff further explained that they only used the hours incurred by Derek Ferris and Larry Masci up to November 30, 2008 during the litigation phase, which amount to $64,223.75. They billed two-thirds of their time associated with the MRS Merits Hearing and the period leading up to the MRS Merits Hearing so as to exclude time associated with the market manipulation claim. The two-third ratio is based on Staff's assertion that one-third of the evidence called during the hearing on the merits related to the market manipulation allegation.

[157] In addition, Staff's costs sought only relate to the following Staff members:

- Derek Ferris, Senior Litigation Counsel, who has been with the Enforcement Branch of the Commission since January, 2006. He had carriage of and primary responsibility for the litigation in respect of this matter;
- Larry Masci, an Investigator, who had been with the Enforcement Branch since 1987 and left the Commission in 2012, who was the primary investigator; and
- Sherry Brown, a senior forensic accountant, who has been with the Enforcement Branch since 2003, who prepared a use of funds and commission analysis and testified at the sanctions hearing.

[158] As in previous Commission cases, Staff's Bill of Costs uses the hourly rates approved by the Commission, and excludes any time spent by case assessment investigators, students-at-law and/or law clerks.

[159] On this basis, Staff submitted that DeRosa, Cavric, Sherman and Emmons should be ordered to pay costs of $157,037.29, on a joint and several basis, and that this request is both proportionate and reasonable in the circumstances.

Respondents' Position on Costs

[160] The Respondents take the position that they should not pay any costs in this matter.

[161] The Respondents point to the following factors which, in their view, support no costs being awarded or a reduction in costs:

- there was never any suggestion of any failure by any of the Respondents to comply with any procedural order or direction;
- the proceeding was complex only in relation to the market manipulation allegations against the Respondents that were ultimately dismissed. According to the Respondents, Staff should be responsible for those complexities, and should be responsible for the failure to prove those allegations. The Respondents were put to considerable expense, which although not recoverable against the Commission, should be taken into account in their favour;
- Staff's conduct contributed to the costs of the investigation and the proceeding by leading technical evidence regarding the market manipulation allegation which was ultimately dismissed, and imposed a requirement to respond to this evidence. The Respondents point out that in the Merits Decision, it was found at paragraph 233 that:

  > We find that Staff's knowledge of the Pink Sheets was lacking and that Staff's evidence lacked specifics and detail on material points. As a result of these gaps in the evidence, Staff's analysis was not sufficiently concise and compelling as to its accuracy and conclusions. The explanation offered by DeRosa and Cavric – that the trades were necessary to maintain the MRS symbol and as a requirement of the Pink Sheets market maker – was not rebutted by Staff.

- the Respondents contributed in every way to a shorter, more efficient and more effective hearing, for example by entering into agreed statements of fact;
- the Respondents participated in a responsible, informed and well prepared manner and cooperated with Staff during the investigation and hearing.

[162] In addition to the above factors, the Respondents take the position that Staff's Bill of Costs was lacking in detail, Staff's summary of costs provides unsegregated amounts of time where it is impossible to parse how all of Staff's time was spent. Nor was there any way to assess how Staff calculated their disbursements.

[163] Further, the Respondents submitted that while Staff is proposing to discount certain costs by a third to account for Staff's unsuccessful attempt to prove the market manipulation allegation, the discount should be greater than a third.

Conclusions on Costs

[164] We have reviewed Staff's documents in support of their costs request and while Staff's original Bill of Costs was lacking in detail, we find that the Amended Bill of Costs which was provided to us on February 11, 2014 contained sufficient detail to comply with subrule 18.1(2) of the Rules. The Amended Bill of Costs included detailed dockets for all Staff team members working on this case and supporting documents for all disbursements incurred.

[165] In the circumstances, we find that it is appropriate to order that the Respondents pay costs, jointly and severally, in the amount of $126,216.04.

[166] Since certain allegations were not proven by Staff, we find that it is appropriate that Staff discounted their request for costs and disbursements to exclude work pertaining to the unproven allegations regarding market manipulation. While the Respondents argued that a reduction greater than one third is warranted, we were not provided with any specific submissions as to where additional reductions should be made and the specific rationale for additional reductions. As such, we find that the calculations followed by Staff to reduce costs are appropriate in this case.

[167] We have also discounted Staff's original costs request of $157,037.29 by $30,821.25, which represents the costs sought in relation to the work done by Staff's investigator, Sherry Brown. We discounted the costs associated with Sherry Brown's work as we did not accept all of her evidence regarding the source and use of funds.

[168] We also note that Staff took a conservative approach in calculating costs. They claimed costs for the lead litigator and investigator with respect to the MRS Merits Hearing and the accountant who testified at the Sanctions and Costs Hearing (whose costs we have ultimately excluded). Staff did not seek costs for other members of Staff's team who worked on this case.

[169] Therefore, we find it appropriate that the Respondents pay costs, jointly and severally, in the amount of $126,216.04. Section 127.1 of the Act enables us to impose costs where respondents have not complied with Ontario securities law. In this

case, the Respondents did not comply with Ontario securities law in that they engaged in unregistered trading and illegal distributions.

VIII. DECISION ON SANCTIONS AND COSTS

[170] We consider that it is important in this case to: (i) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (ii) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[171] We will issue a separate order giving effect to our decision on sanctions and costs, as follows:

1. With respect to DeRosa:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, DeRosa shall cease trading in securities for a period of 10 years;

   (b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to DeRosa for a period of 10 years;

   (c) pursuant to clause 6 of subsection 127(1) of the Act, DeRosa is reprimanded;

   (d) pursuant to clause 7 of subsection 127(1) of the Act, DeRosa shall resign from all positions that he may hold as a director or officer of an issuer;

   (e) pursuant to clause 8 of subsection 127(1) of the Act, DeRosa is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

   (f) pursuant to clause 9 of subsection 127(1) of the Act, DeRosa shall pay an administrative penalty of $200,000 for his failure to comply with Ontario securities law, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

   (g) pursuant to section 127.1 of the Act, DeRosa shall pay costs in the amount of $126,216.04, jointly and severally with Sherman, Emmons and Cavric.

2. With respect to Cavric:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, Cavric shall cease trading in securities for a period of 10 years;

   (b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to Cavric for a period of 10 years;

   (c) pursuant to clause 6 of subsection 127(1) of the Act, Cavric is reprimanded;

   (d) pursuant to clause 7 of subsection 127(1) of the Act, Cavric shall resign from all positions that he may hold as a director or officer of an issuer;

   (e) pursuant to clause 8 of subsection 127(1) of the Act, Cavric is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

   (f) pursuant to clause 9 of subsection 127(1) of the Act, Cavric shall pay an administrative penalty of $200,000 for his failure to comply with Ontario securities law, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

   (g) pursuant to section 127.1 of the Act, Cavric shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Emmons and Sherman.

3. With respect to Emmons:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, Emmons shall cease trading in securities for a period of 10 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law shall not apply to Emmons for a period of 10 years;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Emmons is reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Emmons shall resign from all positions that he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Emmons is prohibited for a period of 10 years from becoming or acting as a director or officer of any issuer;

(f) pursuant to clause 9 of subsection 127(1) of the Act, Emmons shall pay an administrative penalty of $30,000, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to section 127.1 of the Act, Emmons shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Cavric and Sherman.

4. With respect to Sherman:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Sherman shall cease trading in securities for a period of 10 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to Sherman for a period of 10 years;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Sherman is reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Sherman shall resign from all positions that he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Sherman is prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years;

(f) pursuant to clause 9 of subsection 127(1) of the Act, Sherman shall pay an administrative penalty of $150,000, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to section 127.1 of the Act, Sherman shall pay costs in the amount of $126,216.04, jointly and severally with DeRosa, Cavric and Emmons.

5. With respect to MRS:

(a) pursuant to clause 2 of subsection 127(1) of the Act, MRS shall cease trading in securities permanently; and

(b) pursuant to clause 3 of subsection 127(1) of the Act, exemptions contained in Ontario securities law shall not apply to MRS permanently.

DATED at Toronto this 4th day of June, 2014.

"Mary G. Condon"
Mary G. Condon

"Christopher Portner"
Christopher Portner

i

3.1.2 Andrea Lee McCarthy et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC., and
LIQUID GOLD INTERNATIONAL CORP. (aka LIQUID GOLD INTERNATIONAL INC.)

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and Section 127.1 of the Securities Act)

Hearing:	March 12, 2014		
Decision:	June 9, 2014		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Jonathon Feasby	–	For Staff of the Ontario Securities Commission
	Naomi Lutes	–	Counsel for Andrea Lee McCarthy
		–	No one appeared on behalf of BFM Industries Ltd. or Liquid Gold International Corp. (aka Liquid Gold International Inc.)

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

PART I. INTRODUCTION

1. Background

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***") to determine whether it is in the public interest to order sanctions against Andrea Lee McCarthy ("**McCarthy**"), BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (aka Liquid Gold International Inc.) ("**Liquid Gold**") (collectively, the "**Respondents**").

[2] On January 27, 2012, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Act* in connection with a Statement of Allegations filed by Enforcement Staff of the Commission ("**Staff**") on January 27, 2012, to consider whether it is in the public interest to make certain orders against Sandy Winick ("**Winick**"), McCarthy, Kolt Curry, Laura Mateyak ("**Mateyak**"), Gregory J. Curry ("**Greg Curry**"), American Heritage Stock Transfer Inc. ("**AHST Ontario**"), American Heritage Stock Transfer, Inc. ("**AHST Nevada**"), BFM, Liquid Gold and Nanotech Industries Inc. ("**Nanotech**") (collectively, the "**Original Respondents**"). On November 2, 2012, Staff filed an Amended Statement of Allegations against the same parties and the Commission issued an Amended Notice of Hearing.

[3] On April 1, 2011, the Commission issued a temporary cease trade order (the "**Temporary Order**") against BFM, AHST Ontario, AHST Nevada, Denver Gardner Inc., which is an investment bank from Singapore ("**Denver Gardner**"), Winick, McCarthy, Kolt Curry and Mateyak. The Temporary Order was extended and amended from time to time. On March 23, 2012, the Temporary Order was extended until the conclusion of the hearing on the merits, which was scheduled to commence on November 12, 2012, and Denver Gardner was removed as a respondent in the matter. The Temporary Order was subsequently amended on October 29, 2012 to permit McCarthy to sell securities in her Registered Retirement Savings Plan ("**RRSP**"), as defined in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "***Income Tax Act***").

[4] On October 17, 2012, the Commission granted Staff's request to convert the oral hearing on the merits to a written hearing, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (the "***Rules of Procedure***"). Through their respective counsel, Kolt Curry, Mateyak, AHST Ontario, AHST Nevada, McCarthy, BFM and Liquid Gold consented to have the matter proceed as a hearing in writing. Winick, Greg Curry and Nanotech did not object to Staff's request to the matter proceeding as a written hearing, though duly notified by Staff.

[5] On January 11, 2013, Staff filed a motion, pursuant to Rule 3 of the *Rules of Procedure*, seeking to sever the proceeding against the Respondents. On January 21, 2013, on consent of Staff and counsel for the Respondents at the time, the Commission granted an application to sever the matter, as against the Respondents, and adjourned that matter to a date to be fixed by the Office of the Secretary of the Commission in consultation with counsel (*Re Sandy Winick et al.* (2013), 36 O.S.C.B. 1065).

[6] On October 28 and December 10, 2013, Staff and counsel for McCarthy appeared before the Commission for a hearing on the merits with respect to the Respondents (the "**Merits Hearing**"). Staff and counsel for McCarthy made submissions and filed the Affidavit of McCarthy sworn October 23, 2013 (the "**McCarthy Affidavit**") and the "Joint Submission re: Liability of Andrea Lee McCarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)" (the "**Joint Submission**"). On January 3, 2014, I issued my reasons and decision on the merits with respect to the Respondents (*Re McCarthy* (2014), 37 O.S.C.B. 510 (the "**Merits Decision**")). In the Merits Decision, I accepted that the contents in the McCarthy Affidavit to be accurate and true and I also accepted that the Joint Submission was entered into and agreed to by Staff and McCarthy (Merits Decision, above at para. 6).

[7] On March 12, 2014, Staff and counsel for McCarthy appeared and made submissions on sanctions and costs (the "**Sanctions and Costs Hearing**"). McCarthy also appeared and testified on her own behalf.

[8] BFM and Liquid Gold did not participate in the Sanctions and Costs Hearing, nor did they make any submissions. McCarthy, a director and/or officer of BFM and Liquid Gold, did not make any submissions on behalf of either BFM or Liquid Gold. In the order that accompanied the Merits Decision dated January 3, 2014, the Commission ordered, *inter alia*, that "upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding." (*Re Andrea Lee McCarthy et al.* (2014), 37 O.S.C.B. 498). I note that the Merits Decision and the orders in this matter have been posted and made available to the public on the Commission's website. I am therefore satisfied that BFM and Liquid Gold received notice of the Sanctions and Costs Hearing and that I may proceed in the absence of these respondents, in accordance with section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission's *Rules of Procedure*.

[9] This matter is related to two other proceedings. First, on May 16, 2013, the Commission accepted an Agreed Statement of Facts for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**"), and found that the Curry Respondents contravened Ontario securities law and *Act*ed contrary to the public interest. The Curry Respondents were involved in a scheme involving Nanotech, and were not involved in the misconduct related to the Respondents. The Commission ordered that the matter be severed from the original proceeding and scheduled a sanctions and costs hearing for August 27, 2013. On December 20, 2013, the Commission issued its reasons and decision on sanctions and costs with respect to the Curry Respondents (*Re Curry* (2013), 37 O.S.C.B. 220 (the "**Curry Sanctions and Costs Decision**")). Staff did not request any disgorgement orders against the Curry Respondents, nor did the Commission order any such orders against these respondents.

[10] Regarding the second related proceeding to this matter, on August 7, 2013, the Commission issued its reasons and decision on the merits with respect to the remaining Original Respondents, being Winick and Greg Curry (the "**Winick Respondents**") (*Re Winick* (2013), 36 O.S.C.B. 8202). On December 30, 2013, the Commission issued its reasons and decision on sanctions and costs with respect to the Winick Respondents (*Re Winick* (2013), 37 O.S.C.B. 501 (the "**Winick**

Sanctions and Costs Decision")). In the order that accompanied the Winick Sanctions and Costs Decision, the Commission ordered that Winick disgorge to the Commission a total of $359,200 obtained as a result of his non-compliance with Ontario securities law, of which USD$78,000 was jointly and severally payable with Greg Curry. Greg Curry was ordered to disgorge to the Commission a total of USD$78,000 obtained as a result of his non-compliance with Ontario securities law, which was jointly and severally payable with Winick (*Re Sandy Winick et al.* (2013), 37 O.S.C.B. 485).

2. The Merits Decision

[11] The distribution of BFM securities occurred from June 2009 to December 2010 (the "**BFM Material Time**"). In the Merits Decision, I found that during the BFM Material Time, 28 foreign individual investors purchased previously unissued BFM securities through telephone representatives claiming to work for Denver Gardner, a non-existent investment bank purportedly operating out of Singapore, by wiring funds directly to the bank accounts of BFM (the "**BFM Scheme**"). The investors of BFM wired money totaling over $360,000 to the bank accounts of BFM as payment for their purchase of BFM shares (Merits Decision, above at para. 25).

[12] The distribution of Liquid Gold securities occurred from June 2009 to November 2010 (the "**Liquid Gold Material Time**"). In the Merits Decision, I found that during the Liquid Gold Material Time, Liquid Gold sold previously unissued securities to at least four foreign individual investors through telephone representatives claiming to work for Denver Gardner (the "**Liquid Gold Scheme**"). Investors wired their funds directly to the Liquid Gold bank accounts to pay for their shares. Approximately $85,000 was raised through the sale of Liquid Gold shares (Merits Decision, above at para. 25).

[13] During the BFM Material Time and the Liquid Gold Material Time, McCarthy was involved with both the BFM Scheme and the Liquid Gold Scheme. The McCarthy Affidavit contained comprehensive admissions with respect to McCarthy's misconduct in this matter, and the Joint Submission set out her admitted breaches of Ontario securities laws.

[14] Based on the admissions in the McCarthy Affidavit, I made the following findings in the Merits Decision:

(a) During the BFM Material Time, McCarthy and BFM traded securities, engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the *Act*, on or after September 28, 2009, and contrary to the public interest;

(b) During the Liquid Gold Material Time, McCarthy and Liquid Gold traded securities, engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the *Act*, on or after September 28, 2009, and contrary to the public interest;

(c) During the BFM Material Time, McCarthy and BFM engaged in a distribution of BFM securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the *Act* and contrary to the public interest;

(d) During the Liquid Gold Material Time, McCarthy and Liquid Gold engaged in a distribution of Liquid Gold securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the *Act* and contrary to the public interest;

(e) During the BFM Material Time, BFM, directly or indirectly, engaged or participated in acts, practices or courses of conduct relating to securities of BFM that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the *Act* and contrary to the public interest;

(f) During the Liquid Gold Material Time, Liquid Gold, directly or indirectly, engaged or participated in *Act*s, practices or courses of conduct relating to securities of Liquid Gold that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the *Act* and contrary to the public interest; and

(g) McCarthy, being a director and/or officer of BFM and Liquid Gold, authorized, permitted or acquiesced in the non-compliance of Ontario securities law of BFM and Liquid Gold, and is therefore deemed under section 129.2 to have contravened Ontario securities law and *Act*ed contrary to the public interest.

(Merits Decision, above at para. 38)

PART II. SUBMISSIONS OF THE PARTIES

1. Staff's Submissions

[15] Staff submits in its written submissions that the following sanctions are appropriate and in the public interest:

(a) an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in securities by McCarthy cease for a period of 15 years, except that, once McCarthy has fully satisfied the conditions in clauses (k) and (l), below, she may trade securities for the account of any [RRSP] or Registered Education Savings Plan ("**RESP**"), both as defined in the [*Income Tax Act*], in which she has sole legal and beneficial ownership;

(b) an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in securities by BFM and Liquid Gold cease permanently;

(c) an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that acquisition of any securities by McCarthy is prohibited for a period of 15 years, except that, once McCarthy has fully satisfied the conditions in clauses (k) and (l), below, she may acquire securities for the account of any RRSP or RESP in which she has sole legal and beneficial ownership;

(d) an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that acquisition of any securities by BFM and Liquid Gold is prohibited permanently;

(e) an order pursuant to clause 3 of subsection 127(1) of the *Act* that any exemptions in Ontario securities law do not apply to McCarthy for a period of 15 years;

(f) an order pursuant to clause 3 of subsection 127(1) of the *Act* that any exemptions in Ontario securities law do not apply to BFM or Liquid Gold permanently;

(g) an order pursuant to clause 6 of subsection 127(1) of the *Act* that McCarthy be reprimanded;

(h) an order pursuant to clause 7 of subsection 127(1) of the *Act* that McCarthy resign any position that she holds as a director or officer of an issuer;

(i) an order pursuant to clause 8 of subsection 127(1) of the *Act* that McCarthy be prohibited from becoming or acting as an officer or director of any issuer for a period of 15 years;

(j) an order pursuant to clause 8.5 of subsection 127(1) of the *Act* that McCarthy be prohibited from becoming or acting as a registrant, an investment fund manager or as a promoter for a period of 15 years;

(k) an order pursuant to clause 9 of subsection 127(1) of the *Act* that McCarthy pay an administrative penalty of $50,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*;

(l) an order pursuant to clause 10 of subsection 127(1) of the *Act* that McCarthy disgorge to the Commission a total of $93,700 jointly and severally with BFM and Winick, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*;

(m) an order pursuant to clause 10 of subsection 127(1) of the *Act* that McCarthy disgorge to the Commission a total of $8,525.55 jointly and severally with Liquid Gold and Winick, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*;

(n) an order pursuant to clause 10 of subsection 127(1) of the *Act* that BFM disgorge to the Commission a total of $365,000 jointly and severally with Winick, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*; and

(o) an order pursuant to clause 10 of subsection 127(1) of the *Act* that Liquid Gold disgorge to the Commission a total of $85,000 jointly and severally with Winick, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*.

[16] Staff does not seek any costs against the Respondents. Staff has considered McCarthy's cooperation during the proceeding and investigation, along with her agreement with respect to the facts in this matter.

[17] In Staff's written submissions, Staff has indicated that Staff and counsel for McCarthy agreed that Canadian and U.S. dollar funds may be treated as equivalent and valued as Canadian funds. Accordingly, I have valued all relevant U.S. dollar amounts as Canadian dollar amounts in this decision.

2. The Respondents' Evidence and Submissions

[18] In her written submissions, McCarthy stated that she does not contest Staff's request for the trading bans requested at subparagraphs 15(a), (c), (e), (g), (h), (i) and (j). However, McCarthy submits that she should be permitted to deal with an RESP prior to the complete payment of any sanctions imposed against her, in order to allow her to plan for her daughter's future education.

[19] In her written submissions, McCarthy also submits that she should be required to disgorge an amount in the range of $20,000 for her violations of securities law with respect to BFM. She submits that she should not be ordered to disgorge any amounts in connection to Liquid Gold, and that she should further be ordered to pay a nominal administrative penalty of $5,000. At the Sanctions and Costs Hearing, counsel for McCarthy submitted that the appropriate and reasonable amount for McCarthy to disgorge would be the amounts related solely to the accounts over which McCarthy had exclusive control, namely the account for a company she controlled called Lee Freed Holdings and her personal chequing account. The total amount in these accounts is $23,300.

[20] McCarthy has in her possession a number of money orders totaling $30,000, which had been purchased with funds from the bank accounts of Liquid Gold. These funds were provided by McCarthy to her counsel to be held in trust for payment to the Commission as part of any order of the Commission in this proceeding.

[21] McCarthy provided evidence by testifying at the Sanctions and Costs Hearing. She began her evidence by confirming the contents of the McCarthy Affidavit, which formed the basis of my findings in the Merits Hearing.

[22] Since the date that the McCarthy Affidavit was sworn, McCarthy sold her home in Stoney Creek, Ontario. The transaction closed on March 11, 2014, the day before the Sanctions and Costs Hearing. The net proceeds were approximately $210,000 divided 50/50 between McCarthy and her father as joint owners. The closing documents of the sale of McCarthy's home were filed as Exhibit 1 at the Sanctions and Costs Hearing.

[23] McCarthy confirmed that she has lived in Stoney Creek for the past 10 years. She completed high school in Hamilton, Ontario and attended the University of Ottawa for two years, but did not obtain a degree. She then worked for a retail store, the Gap, and subsequently worked at Bell Canada from 1998 to 2003 in the billing and collections department.

[24] In 2003, McCarthy left Bell Canada to work with her then husband who started a new company called the Flight Network. She originally set up the office and, as the company grew, McCarthy had more responsibility completing administrative tasks. She left the company in 2008 and did not work thereafter, having entered into a romantic relationship with Winick, whom she met while working for the Flight Network. She said that when she first met Winick, she did not understand what his business was or his financial situation.

[25] McCarthy then testified that Winick asked McCarthy to list herself as a director of BFM. She stated that she set up the website of BFM and later outsourced the technical work needed for the website to a company in India.

[26] McCarthy was not paid a salary for the services performed by her at Winick's direction, but explained that Winick supported her "akin to the way a husband would support a wife" (Transcript, Sanctions and Costs Hearing, p. 22, ll. 13-14). As she put it, she "had to be available to do things for him. [She] had to be available to travel to see him. There was no question that [she] would get a job; that wasn't something to be done" (Transcript, Sanctions and Costs Hearing, p. 22, ll. 19-21). She stated that she had to be available at a moment's notice to carry out Winick's instructions.

[27] During the BFM Material Time and the Liquid Gold Material Time, McCarthy had a personal VISA, a personal CIBC credit card, a personal line of credit with CIBC, a personal account with the Bank of Montreal and a joint American Express account with Winick. McCarthy and Winick also had a joint chequing account with TD Bank. She explained that the joint chequing account with Winick was used to permit Winick to deposit money and pay bills. When asked why she had a joint account with Winick, rather than maintaining a separate bank account, McCarthy explained that this was a natural progression of their relationship. In effect, McCarthy said that she did most of the banking out of the joint account at Winick's instructions. McCarthy testified that for all bank accounts, Winick would give her a list of things that needed to be paid and would indicate when and how much to pay.

[28] McCarthy completed her testimony by confirming that she has no assets and no savings accounts. She also stated that she cashed in her RRSP to pay her legal bills and she does not have any other investments. Moreover, as a result of the publicity surrounding this matter, McCarthy testified that she was asked to close her accounts at CIBC. CIBC closed her bank

accounts and demanded immediate payment of all her outstanding loans. McCarthy stated that she was compelled to sell her home to make payments on her outstanding lines of credit and credit cards.

[29] McCarthy confirmed that she has no desire to be a market participant or be involved in the capital markets in any capacity in the future.

[30] In cross-examination, McCarthy stated that she was not in a position to allocate how much of the funds in the joint accounts she held with Winick were spent on her own expenses versus those of Winick and his family. However, she testified that her living expenses were relatively small compared to those of Winick and his family. That completed her cross-examination. There was no reply.

[31] As previously mentioned, BFM and Liquid Gold did not attend the Sanctions and Costs Hearing, nor did they provide any written submissions. McCarthy takes no position with respect to BFM and Liquid Gold, other than to stress that their activities were directed by Winick, whose instructions she followed.

PART III. THE APPLICABLE LAW

[32] In making an order in the public interest under subsection 127 of the *Act*, the Commission's jurisdiction should be exercised in a protective and preventive manner as described in *Re Mithras Management Ltd.*:

> … the role of this Commission is to protect the public interest be removing from the capital market – 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 the capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the *Act*. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[33] This view was endorsed by the Supreme Court of Canada in the following terms:

> … the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43)

[34] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit made (or loss avoided) from the illegal conduct;

(h) the size of any financial sanction or voluntary payment when considered with other factors;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the shame, or financial pain, that any sanction would reasonably cause to the respondent;

(m) the remorse of the respondent; and

(n) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746; *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.); *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at 1135-1136)

[35] The Supreme Court of Canada has held that it is appropriate for the Commission to consider general deterrence in crafting sanctions which are designed to preserve the public interest. The Court stated that the "weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64).

[36] In terms of disgorgement, pursuant to paragraph 10 of subsection 127(1) of the *Act*, the Commission may order a person or company who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance" with Ontario securities law. This Commission has described the purpose of the disgorgement remedy as follows:

> … the objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits.
>
> […]
>
> … the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the *Act* to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity.
>
> (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Re Limelight***") at paras. 47 and 49)

[37] In *Re Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the *Act*;

(b) the seriousness of the misconduct and the breaches of the *Act* and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the *Act* is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Re Limelight*, above at para. 52)

[38] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the *Act*.

PART IV. ANALYSIS

1. BFM and Liquid Gold

(a) Market Bans

[39] I find that the non-monetary sanctions sought by Staff against BFM and Liquid Gold are entirely appropriate. Approximately $445,000 was fraudulently obtained from investors through the BFM Scheme and the Liquid Gold Scheme (Merits Decision, above at para. 25). Applying the principles set out in subparagraphs 32 to 35, above, I order that permanent trading, acquisition and exemption application bans shall be imposed against BFM and Liquid Gold.

(b) Disgorgement

[40] With regards to the disgorgement orders against BFM and Liquid Gold, Staff submitted in its written submissions that BFM should disgorge to the Commission a total of $365,000 jointly and severally with Winick, to be designated for the allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*, and that Liquid Gold should disgorge to the Commission a total of $85,000 jointly and severally with Winick, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*. At the Sanctions and Costs Hearing, I asked how BFM and Liquid Gold could be required to pay any disgorgement orders jointly and severally with Winick, a respondent in a separate proceeding.

[41] In support of its requested joint and several disgorgement orders, Staff relied on *Re Sulja Bros. Building Supplies Ltd.* (2011), 34 O.S.C.B. 7515 ("***Re Sulja Bros.***"). In *Re Sulja Bros.*, the Panel dealt with sanctions and costs orders against three groups of respondents. Each of the three groups of respondents was subject to a separate merits hearing. However, a single sanctions and costs hearing was held for the three proceedings, and a single joint and several disgorgement order was made against four respondents who were parties in two of the three proceedings.

[42] The circumstances in this case differ from those in *Re Sulja Bros.* For instance, three separate sanctions and costs hearings have been held against the Respondents, the Winick Respondents and the Curry Respondents. Additionally, prior to the Sanctions and Costs Hearing, the Commission issued the Winick Sanctions and Costs Decision and the Curry Sanctions and Costs Decision. I note that Staff has not indicated that it has initiated an application to revoke or vary the Winick Sanctions and Costs Decision, pursuant to section 144 of the *Act*. Any joint and several disgorgement orders made in this matter would therefore unilaterally impose conditions on Winick, against whom sanctions and costs have already been ordered. With respect, I disagree with the conclusion in *Re Sulja Bros.*, if it stands for the proposition that a disgorgement order can be made on a joint and several basis against respondents in separate proceedings.

[43] Ultimately, I find that it is not appropriate to order any disgorgement orders against BFM or Liquid Gold. The Respondents in this matter and the Winick Respondents were involved in substantially the same misconduct that involved similar amounts of funds, including: (a) $360,000, which was wired by investors to the bank accounts of BFM as payment for their purchase of BFM shares; and (b) approximately $85,000, which was raised from investors through the sale of Liquid Gold shares (Merits Decision, above at para. 25; Winick Sanctions and Costs Decision, above at paras. 12 and 17). As previously mentioned in paragraph 10, above, the Commission ordered Winick to disgorge a total of $359,200 obtained as a result of his non-compliance with Ontario securities law, of which USD$78,000 was jointly and severally payable with Greg Curry, and Greg Curry was ordered to disgorge to the Commission a total of USD$78,000 obtained as a result of his non-compliance with Ontario securities law, which was jointly and severally payable with Winick.

[44] Staff has not provided sufficient evidence to prove that its requested disgorgement orders against BFM and Liquid Gold exclude the amounts that the Commission previously ordered Winick and Greg Curry to disgorge. Staff also has not provided any evidence to support a finding that BFM and Liquid Gold should be treated separately from their directing mind, Winick, and should therefore be subject to separate disgorgement orders. Without the provision of such evidence, the amounts available for any disgorgement orders against BFM and Liquid Gold cannot be reasonably ascertained (*Re Limelight*, above at para. 52). Any disgorgement orders made against these respondents could therefore run the risk of double counting the amounts included in the disgorgement orders made against the Winick Respondents. In the circumstances of this case, where the amounts obtained are not reasonably ascertainable, I find that it is not appropriate nor in the public interest to make any disgorgement orders against BFM or Liquid Gold.

2. McCarthy

(a) Market Bans

[45] McCarthy takes no issue with respect to the non-monetary sanctions sought by Staff, as set out in subparagraphs 15(e), (g), (h), (i) and (j), above. I find that these sanctions meet the needs of specific and general deterrence. I therefore order that any exemptions in Ontario shall not apply to McCarthy for a period of 15 years, McCarthy shall be reprimanded, McCarthy shall resign any position that she holds as a director or officer of an issuer, McCarthy shall be prohibited for 15 years from

becoming or acting as an officer or director of any issuer and McCarthy shall be prohibited for 15 years from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[46] As mentioned in subparagraph 15(a) and (c), above, Staff seeks orders prohibiting McCarthy from trading or acquiring any securities for a period of 15 years. Staff qualifies these requested sanctions by providing that once McCarthy has satisfied any disgorgement or administrative penalty orders, she may trade and acquire securities for the account of any RRSP or RESP in which she has sole legal and beneficial ownership. I find that it is in the public interest to issue 15-year trading and acquisition bans against McCarthy, except that McCarthy is permitted to trade and acquire securities for the account of her RRSP and any RESP, of which she is the subscriber and her daughter is the beneficiary, provided that the administrative penalty payment, as discussed below, has been paid in full. If any amount remains unpaid, McCarthy shall cease trading and acquiring any securities until the expiry of the aforementioned period of 15 years, without exception.

(b) Disgorgement

[47] Staff seeks an order that McCarthy disgorge to the Commission a total of $93,700 jointly and severally with BFM and Winick, to be designated for the benefit of third parties. Staff also seeks an order that McCarthy disgorge to the Commission $8,525.55 jointly and severally with Liquid Gold and Winick, to be designated for the benefit of third parties

[48] For the reasons set out in paragraphs 41 and 42, above, there will be no joint and several orders made in this matter that include Winick. I also find that the amounts that McCarthy obtained as a result of her non-compliance with the *Act* are not reasonably ascertainable on two grounds.

[49] First, for the same reasons discussed in paragraphs 43 and 44, above, I find that Staff has not provided sufficient evidence to demonstrate that its requested disgorgement orders against McCarthy exclude the amounts that the Commission previously ordered against the Winick Respondents.

[50] Second, Staff has not provided sufficient evidence to support its calculations for its requested disgorgement orders against McCarthy, which total $102,225.55. At the Sanctions and Costs Hearing, Staff filed Exhibit 2 ("**Ex. 2**"), an analysis of the funds that Staff submits were directly received by McCarthy from the bank accounts of BFM and Liquid Gold.[1] Regarding the funds withdrawn as cash and the funds that were transferred to the accounts jointly held by Winick and McCarthy, Staff attributed 50% of such withdrawals and transfers to McCarthy. However, Staff did not present any evidence to show how it determined this percentage allocation. Based on McCarthy's testimony at the Sanctions and Costs Hearing and her written submissions, I find that a lower percentage allocation to her of the joint accounts and the cash withdrawals is more reasonable. Winick had an expensive lifestyle and received the lion's share of the benefits of the funds in the BFM and Liquid Gold bank accounts. Although I find that a lower percentage allocation than 50% would be more reasonable, on the evidence presented, I cannot determine the appropriate percentage allocation to apply to the joint accounts or the cash withdrawals. The amounts obtained by McCarthy are not reasonably ascertainable (*Re Limelight*, above at para. 52).

[51] I do not find that it is in the public interest to make any disgorgement orders against McCarthy.

(c) Administrative Penalty

[52] Staff seeks an order that McCarthy pay to the Commission an administrative penalty of $50,000. Staff cites several cases which, Staff submits, support the penalty Staff seeks. I do not accept this submission. The respondents in the cases cited by Staff were actively engaged in selling securities and/or had experience in the capital markets. McCarthy's situation is more akin to that of Mateyak, in that both carried out instructions from persons with whom they were in a spousal relationship.

[53] When I review the factors to be taken into account in mitigation, I note the following:

- McCarthy's cooperation with Staff was complete, voluntary and assisted in Staff's pursuit of the Winick Respondents;
- McCarthy has no experience in the any securities-related activities, except investing in the account of her personal RRSP;
- McCarthy has expressed remorse over her activities;
- McCarthy participated in a voluntary interview with Staff on May 18, 2011;

[1] A copy of Ex. 2 is annexed hereto and marked as Appendix "A".

- McCarthy had in her possession a number of money orders totaling $30,000 of investors' funds, which had been purchased with funds from the bank accounts of Liquid Gold. These funds were provided by McCarthy to her counsel and will be treated as a voluntary payment;
- McCarthy cashed in her RRSP to pay her legal fees;
- McCarthy was required to sell the house she jointly owned with her father, in order to meet her financial obligations;
- McCarthy retains no financial benefit from her involvement in this matter; and
- McCarthy has no assets and is of limited financial means.

[54] McCarthy is not blameless in this matter. She acknowledges that she should have been more alert to the activities of Winick. Considering the mitigating factors listed in paragraph 53, above, I find that it is in the public interest to order McCarthy to pay an administrative penalty of $10,000 to the Commission.

[55] In its written submissions, Staff submitted that its requested administrative penalty against McCarthy be "designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b)(i) of the *Act*". I find no reason to eliminate subsection 3.4(2)(b)(ii) of the *Act* from consideration. I raised this issue with Staff at the Sanctions and Costs Hearing, and Staff had no objections to any order made in accordance with subsection 3.4(2)(b) of the *Act*. I therefore order McCarthy to pay an administrative penalty of $10,000 to the Commission, to be designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the *Act*.

PART V. CONCLUSION

[56] For the reasons above, I conclude that it is in the public interest to make the order set out below. In my view, the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future and the sanctions are proportionate to the circumstances and conduct of each Respondent in this matter.

[57] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by McCarthy shall cease for a period of 15 years;

(b) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by BFM and Liquid Gold shall cease permanently;

(c) pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by McCarthy shall be prohibited for a period of 15 years;

(d) pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by BFM and Liquid Gold shall be prohibited permanently;

(e) pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to McCarthy for a period of 15 years;

(f) pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to BFM or Liquid Gold permanently;

(g) pursuant to clause 6 of subsection 127(1) of the *Act*, McCarthy shall be reprimanded;

(h) pursuant to clause 7 of subsection 127(1) of the *Act*, McCarthy shall resign any position that she holds as a director or officer of any issuer;

(i) pursuant to clause 8 of subsection 127(1) of the *Act*, McCarthy shall be prohibited from becoming or acting as a director or officer of any issuer for a period of 15 years;

(j) pursuant to clause 8.5 of subsection 127(1) of the *Act*, McCarthy shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 15 years;

(k) pursuant to clause 9 of subsection 127(1) of the *Act*, McCarthy shall pay an administrative penalty of $10,000 for her failure to comply with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the *Act*; and

(l) as an exception to the provisions of subparagraphs 57(a) and (c), above, McCarthy is permitted to: trade and acquire securities for the account of her RRSP, as defined in the Income Tax *Act*, and any RESP, as defined in the Income Tax *Act* and of which she is the subscriber and her daughter is the beneficiary, provided that the administrative penalty payment set out in 57(k), above, has been paid in full. If the amount remains unpaid, McCarthy shall cease trading and acquiring securities until the expiry of the aforementioned period of 15 years, without exception.

[58] I dismiss Staff's requests for disgorgement orders against the Respondents.

DATED at Toronto this 9th day of June, 2014.

"James D. Carnwath"

Appendix "A"

A. BFM Accounts:

	Personal Benefit	Joint Cash Withdrawals[2]	Joint Bank Accounts with Winick[3]	**TOTAL**
Cash Amounts Obtained		$16,750 See note (ii)		$16,750
Non-Cash Amounts Obtained	$23,300 See note (i)		$53,650 See note (iii)	$76,950
				$93,700

B. Liquid Gold Accounts:[4]

	Personal Benefit	Joint Cash Withdrawals[5]	Joint Bank Accounts with Winick	**TOTAL**
Cash Amounts Obtained		$1,130.25 See note (v)		$1,130.25
Non-Cash Amounts Obtained	$7,395.30 See note (iv)			$7,395.30
				$8,525.55

(i) This amount was generated from the sum of the following amounts set out in the McCarthy Affidavit: $4,700[6] + $18,600[7] = $23,300

(ii) This amount was generated from the sum of the following amounts set out in the McCarthy Affidavit: $21,000[8] + 12,500[9] = 33,500 ÷ 2 = $16,750

(iii) This amount was generated from the sum of the following amounts set out in the McCarthy Affidavit: $24,500[10] + $54,800[11] + $28,000[12] = $107,300 ÷ 2 = $53,650

(iv) This amount was generated from the sum of the following amounts set out in the McCarthy Affidavit: $66,100[13] + $60,000[14] + $50,000[15] + $48,000[16] = $224,100 x 0.033 = $7,395.30

(v) This amount was generated from the sum of the following amounts set out in the McCarthy Affidavit: $68,500[17] x 0.033 ÷ 2 = $1,130.25

2 Staff have attributed 50% of the cash withdrawn from joint McCarthy/Winick accounts to McCarthy.

3 Where funds have been deposited to an account or credit card held jointly by McCarthy and Winick, Staff have attributed 50% of the total amount to McCarthy.

4 The Liquid Gold Investor Funds comprised only 3.3% of the funds in the Liquid Gold Accounts. Accordingly, Staff have attributed a *pro-rata* reduction to McCarthy's liability by a factor of 0.033.

5 See note 2.

6 McCarthy Affidavit at para 42(f).

7 McCarthy Affidavit at para 43(a).

8 McCarthy Affidavit at para 42(c).

9 McCarthy Affidavit at para 43(e).

10 McCarthy Affidavit at para 42(b).

11 McCarthy Affidavit at para 43(a).

12 McCarthy Affidavit at para 43(b).

13 McCarthy Affidavit at para 57(d).

14 McCarthy Affidavit at para 57(e).

15 McCarthy Affidavit at para 57(g).

16 McCarthy Affidavit at para 58(e).

17 McCarthy Affidavit at para 57(c).

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
B&A Fertilizers Limited	21 May 14			9 June 14
Cash Store Financial Services Inc., The	6 June 14	18 June 14		
China Goldcorp Ltd.	9 June 14	20 June 14		
Everfront Ventures Corp.	9 June 14	20 June 14		
GAR Limited	9 June 14	20 June 14		

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
Family Memorials Inc.	2 May 14	14 May 14	14 May 14	2 June 14	

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
Carpathian Gold Inc.	4 April 14	16 April 14	16 April 14		
Family Memorial Inc.	2 May 14	14 May 14	14 May 14	2 June 14	
Matica Graphite Inc.	12 May 14	23 May 14	23 May 14	4 June 14	
Pacific Vector Holdings Inc.	8 May 14	20 May 14	20 May 14		
Red Tiger Mining Inc.	2 May 14	14 May 14	14 May 14		
Sendero Mining Corp.	5 May 14	16 May 14	16 May 14		
Sonomax Technologies Inc.	9 May 14	21 May 14	21 May 14		

This page intentionally left blank

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

The Reports of Trades Submitted on Forms 45-16F1 and 45-501F1 are not available this week.

This page intentionally left blank

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
5N Plus Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$60,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures Due June 30, 2019
Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
CIBC World Markets Inc.
TD Securities Inc.
Laurentian Bank Securities Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #2220501

Issuer Name:
BTB Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 4, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
$22,003,800.00 - 4,836,000 Unites
Price: $4.55 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Dundee Securities Ltd.
Laurentian Bank Securities Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Euro Pacific Canada Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Promoter(s):
-
Project #2217232

Issuer Name:
Caldwell High Income Equity Fund
Caldwell Balanced Fund
Caldwell Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated June 5, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
Series F Units
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
-
Project #2221654

Issuer Name:
CI Financial Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$2,275,200,000.00 - 72,000,000 Common Shares
Price: $31.60 per Offered Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
GOLDMAN SACHS CANADA INC.
BARCLAYS CAPITAL CANADA INC.
Promoter(s):
-
Project #2216130

Issuer Name:
DataWind Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
Cdn$ * - * Common Shares
Price: Cdn$ * per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
CORMARK SECURITIES INC
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #2211126

Issuer Name:
DIRTT Environmental Solutions Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$16,177,866 - 6,222,256 Common Shares
Price: $2.60 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
National Bank Financial Inc.
Cormark Securities Inc.
Paradigm Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2220677

Issuer Name:
Edgefront Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated May 30, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
$ * - * Units
Price: $ * per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Ltd.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Promoter(s):
-
Project #2218648

Issuer Name:
Element Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 5, 2014
NP 11-202 Receipt dated June 5, 2014
Offering Price and Description:
$825,052,500.00
64,710,000 Subscription Receipts, each representing the right to receive one Common Share
and
$300,000,000.00
5.125% Extendible Convertible Unsecured Subordinated Debentures
and
$125,000,000.00
5,000,000 6.40% Cumulative 5-Year Rate Reset Preferred Shares, Series E
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
GMP Securities L.P.
National Bank Financial Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
Cormark Securities Inc.
Manulife Securities Incorporated.
Scotia Capital Inc.
Barclays Capital Canada Inc.
Credit Suisse Securities (Canada) Inc.
Promoter(s):
-
Project #2220491

Issuer Name:
ENBRIDGE GAS DISTRIBUTION INC.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 4, 2014
NP 11-202 Receipt dated June 5, 2014
Offering Price and Description:
$1,000,000,000.00
MEDIUM TERM NOTES
(UNSECURED)
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
MERRILL LYNCH CANADA INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #2221120

Issuer Name:
Genworth MI Canada Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 6, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
$1,500,000,000.00
Debt Securities
Preferred Shares
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2221745

Issuer Name:
Madalena Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 4, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
$50,031,000.00 - 98,100,000 Subscription Receipts
each representing the right to receive one Common Share
Price: $0.51 per Subscription Receipt
Underwriter(s) or Distributor(s):
Dundee Securities Ltd.
RBC Dominion Securities Inc.
Haywood Securities Inc.
Beacon Securities Limited
National Bank Financial Inc.
FirstEnergy Capital Corporation
Mackie Research Capital Corporation
TD Securities Inc.
Canaccord Genuity Corp.
Jennings Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2217173

Issuer Name:
Maestro Capital Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
Offering: $400,000.00 - 4,000,000 common shares
Price: $0.10 per common share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Sean Caulfeild
Project #2220972

Issuer Name:
Manulife Asia Total Return Bond Fund
Manulife Canadian Bond Plus Fund
Manulife Canadian Focused Class
Manulife Canadian Opportunities Class
Manulife Corporate Bond Fund
Manulife Dividend Income Fund
Manulife Floating Rate Income Fund
Manulife Global Dividend Class
Manulife Global Dividend Fund
Manulife Global Infrastructure Fund
Manulife Global Real Estate Fund
Manulife Global Strategic Balanced Yield Fund
Manulife Global Tactical Credit Fund
Manulife High Yield Bond Fund
Manulife Strategic Balanced Yield Fund
Manulife Strategic Income Fund
Manulife U.S. All Cap Equity Fund
Manulife U.S. Dollar Floating Rate Income Fund
Manulife U.S. Dollar Strategic Balanced Yield Fund
Manulife U.S. Monthly High Income Fund
Manulife U.S. Tactical Credit Fund
Manulife Yield Opportunities Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated June 4, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
Advisor Series, Series D, Series F, Series FT6, Series I and Series T6 Securities
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #2221024

Issuer Name:
Mosaic Capital Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$ * - * per Unit
Price: $ * per Unit
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
National Bank Financial Inc.
Mackie Research Capital Corporation
Promoter(s):
-
Project #2220702

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
$750,000,000.00
Units
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2220817

Issuer Name:
Quest Rare Minerals Ltd.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
$5,000,000.00 - * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Desjardins Securities Inc.
Maison Placements Canada Inc.
Jones, Gable & Company Limited
Promoter(s):
-
Project #2220895

Issuer Name:
ShawCor Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
CDN $500,000,000.00
Common Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2220773

Issuer Name:
Spartan Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$130,012,500.00 - 34,670,000 Common Shares
Price: $3.75 per Common Share
Underwriter(s) or Distributor(s):
PETERS& CO. LIMITED
CLARUS SECURITIES INC.
GMP SECURITIES L.P.
TD SECURITIES INC.
DUNDEE SECURITIES LTD.
DESJARDINS SECURITIES INC.
FIRSTENERGY CAPITAL CORP.
ALTACORP CAPITAL INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
PARADIGM CAPITAL INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #2215061

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$2,000,000,000.00
Series 5 Medium Term Notes
(Unsecured)
Underwriter(s) or Distributor(s):
AltaCorp Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2220789

Issuer Name:
The Toronto-Dominion Bank
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 6, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
$2,000,000,000.00
Senior Medium Term Notes
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2221732

Issuer Name:
The Trendlines Group Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 6, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
C$ * - * Ordinary Shares
Price: C$ * per Ordinary Share
Underwriter(s) or Distributor(s):
OCTAGON CAPITAL CORPORATION
EURO PACIFIC CANADA INC.
PARADIGM CAPITAL INC.
M PARTNERS INC.
Promoter(s):
-
Project #2221721

Issuer Name:
True North Apartment Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
$20,000,000.00 - 5.75% Extendible Convertible Unsecured Subordinated Debentures
Price: $1,000.00 per Debnture
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RAYMOND JAMES LTD.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
Promoter(s):
STARLIGHT INVESTMENTS LTD.
Project #2217441

Issuer Name:
Vista Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated June 4, 2014
NP 11-202 Receipt dated June 5, 2014
Offering Price and Description:
US$50,000,000.00
Common Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2221359

Issuer Name:
Whiteknight Acquisitions III Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
Minimum of $500,000 - 2,500,000 Common Shares
Maximum of $1,000,000 - 5,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
BBS Securities Inc.
Promoter(s):
-
Project #2220578

Issuer Name:
Americas Petrogas Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
$14,999,999.00
16,666,666 Units
Price: $0.90 per Unit
Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #2211696

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated June 5, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
$2,000,000,000.00 - Medium Term Notes (Principal At Risk Notes)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
DUNDEE SECURITIES LTD.
Promoter(s):
-
Project #2217842

Issuer Name:
Brompton Dividend & Income Class
Brompton Resource Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 30, 2014
NP 11-202 Receipt dated June 4, 2014
Offering Price and Description:
Series A, Series B and Series F Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Limited
Project #2196709

Issuer Name:
Canadian Scholarship Trust Family Savings Plan
Canadian Scholarship Trust Group Savings Plan 2001
Canadian Scholarship Trust Individual Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 29, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
C.S.T. CONSULTANTS INC.
Promoter(s):
-
Project #2180188; 2180169; 2180176

Issuer Name:
Chemtrade Logistics Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
$110,000,000.00
5.25% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2214064

Issuer Name:
First Asset Government Bond Barbell Index ETF
(formerly First Asset DEX Government Bond Barbell Index ETF)
First Asset Corporate Bond Barbell Index ETF
(formerly First Asset DEX Corporate Bond Barbell Index ETF)
First Asset All Canada Bond Barbell Index ETF
(formerly First Asset DEX All Canada Bond Barbell Index ETF)
First Asset Provincial Bond Index ETF
(formerly First Asset DEX Provincial Bond Index ETF)
First Asset 1-5 Year Laddered Government Strip Bond Index ETF
(formerly First Asset DEX 1-5 Year Laddered Government Strip Bond Index ETF)
(Common Units and Advisor Class Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 5, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
Common Units and Advisor Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
First Asset Investment Management Inc.
Project #2199365

Issuer Name:
High Arctic Energy Services Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$25,002,450.00
5,051,000 Subscription Receipts each
representing the right to receive one Common Share
Price $4.95 per Subscription Receipt
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
PI Financial Corp.
Altacorp Capital Inc.
Lightyear Capital Inc.
Promoter(s):
-
Project #2212595

Issuer Name:
INTELLIPHARMACEUTICS INTERNATIONAL INC.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated June 4, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
U.S.$100,000,000.00
Common Shares
Preference Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2211935

Issuer Name:
Ivanhoe Mines Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 2, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
$125,001,000.00
83,334,000 Units
Price: $1.50 per Unit
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RBC DOMINION SECURITIES INC.
MERRILL LYNCH CANADA INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2212013

Issuer Name:
Kinaxis Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 3, 2014
NP 11-202 Receipt dated June 3, 2014
Offering Price and Description:
$100,616,295.00
7,739,715 Common Shares
Price: Cdn$13.00 per Offered Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #2203436

Issuer Name:
Marquest Monthly Pay Fund (Class A, F, T8, AA and F-AA Units)
Marquest Monthly Pay Fund (Corporate Class*) (Series A, F, T-F8 and T8 Shares)
*A series of shares of Marquest Corporate Class Funds Ltd., a mutual fund corporation
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 16, 2014 to the Simplified Prospectuses and Annual Information Form dated July 9, 2013
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2130868

Issuer Name:
RBC Institutional Cash Fund
RBC Institutional Government - Plus Cash Fund
RBC Institutional Long Cash Fund
RBC Institutional US$ Cash Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 29, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
Series I, Series J and Series O units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2195865

Issuer Name:
Series A, Series F and Series I Shares (unless otherwise indicated) of:
Sprott Canadian Equity Class
Sprott Gold and Precious Minerals Class
Sprott Resource Class
Sprott Silver Equities Class
Sprott Tactical Balanced Class (Series T and Series FT Shares also available)
Sprott Diversified Yield Class (Series T and Series FT Shares also available)
Sprott Short-Term Bond Class
Sprott Gold Bullion Class
Sprott Silver Bullion Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 30, 2014
NP 11-202 Receipt dated June 2, 2014
Offering Price and Description:
Series A, Series F, Series I, Series T and Series FTShares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sprott Asset Management LP
Project #2201814

Issuer Name:
The Toronto-Dominion Bank
Type and Date:
Final Base Shelf Prospectus dated June 6, 2014
Receipted on June 6, 2014
Offering Price and Description:
U.S. $20,000,000,000.00 - Senior Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2215972

Issuer Name:
UBS (Canada) Global Allocation Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectusdated June 3, 2014
NP 11-202 Receipt dated June 6, 2014
Offering Price and Description:
Series A, D and F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2197978

Issuer Name:
Aurigen Capital Limited
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Long Form PREP Prospectus dated April 7, 2014
Amended and Restated Preliminary Long Form PREP Prospectus dated April 24, 2014
Second Amended and Restated Preliminary Long Form PREP Prospectus dated May 16, 2014
Withdrawn on June 4, 2014
Offering Price and Description:
$ * - * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Canaccord Genuity Corp.
TD Securities Inc.
CIBC World Markets Inc.
Goldman Sachs Canada Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #2190709

Issuer Name:
CardioComm Solutions, Inc.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated November 22, 2013
Withdrawn on June 4, 2014
Offering Price and Description:
$8,000,000.00
Common Shares
Warrants
Units
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2136705

This page intentionally left blank

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Sun Life Investment Management Inc.	From: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer and Commodity Trading Manager	June 4, 2014

This page intentionally left blank

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 OSC Staff Notice of Request for Comment – IIROC – Margin requirements for debt security obligations of supranational entities – Amendments to Dealer Member Rule 100.2(a)(ii)

OSC STAFF NOTICE OF REQUEST FOR COMMENT

THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

MARGIN REQUIREMENTS FOR DEBT SECURITY OBLIGATIONS OF SUPRANATIONAL ENTITIES

AMENDMENTS TO DEALER MEMBER RULE 100.2(a)(ii)

On May 7, 2014, the Board of Directors of the Investment Industry Regulatory Organization of Canada ("IIROC") approved the publication for amendments to margin requirements for debt security obligations of supranational entities to Dealer Member Rule 100.2(a)(ii) ("proposed amendments"). The objective of the proposed amendments is to extend the margin requirements that currently apply solely to debt securities issued by the International Bank for Reconstruction and Development, to debt securities issued by other comparable supranational entities.

A copy of the IIROC Notice including the amended documents was also published on our website at http://www.osc.gov.on.ca. The comment period ends on September 10, 2014.

13.1.2 OSC Staff Notice of Request for Comment – Proposed Amendments to MFDA Rules 2.8.3 (Rates of Return), 5.3 (Client Reporting) and 5.4 (Trade Confirmations)

OSC STAFF NOTICE OF REQUEST FOR COMMENT

MUTUAL FUNDS DEALERS ASSOCIATION OF CANADA (MFDA)

AMENDMENTS TO MFDA RULES 2.8.3 (RATES OF RETURN), 5.3 (CLIENT REPORTING) AND 5.4 (TRADE CONFIRMATIONS)

The MFDA and British Columbia Securities Commission ("BCSC") are publishing for public comment proposed amendments to MFDA Rules 2.8.3 (Rates of Return), 5.3 (Client Reporting) and 5.4 (Trade Confirmations). The objective of the above-noted amendments is to conform MFDA Rules to requirements introduced into National Instrument 31-*103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") in the areas of: client statements, charges and compensation disclosure and performance reporting. The amendments to NI 31-103 came into force on July 15, 2013.

A copy of the MFDA Notice including the amended documents was also published on our website at http://www.osc.gov.on.ca.

Chapter 25

Other Information

25.1 Exemptions

25.1.1 Aston Hill Capital Markets Inc. and Euro Banc Capital Securities Trust

Application under National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – extension granted of the 90-day time period prescribed under section 2.3(1) of NI 41-101 for filing a first amendment to the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1), 19.1, 19.2, 19.3.

May 12, 2014

Attention: Emma Parker

Dear Ms.:

Re: Aston Hill Capital Markets Inc. (the Filer) and Euro Banc Capital Securities Trust (the Fund)

Exemptive Relief Application under Part 19 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)

Application No. 2014/0410; SEDAR Project Number 2159643

By letter dated April 29, 2014 (the Application), the Filer, as manager of the Fund, applied on behalf of the Fund to the Director of the Ontario Securities Commission (the Director) under section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1) of NI 41-101, which prohibits an issuer from filing its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the final prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the first amendment to the preliminary prospectus for the Fund, subject to the condition that the first amendment to the preliminary prospectus be filed by no later than May 23, 2014.

Yours very truly,

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

This page intentionally left blank

Index

This page intentionally left blank