The Ontario Securities Commission

OSC Bulletin

September 18, 2014

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

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1.1 Notices

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NOTICE OF MINISTERIAL APPROVAL OF
AMENDMENTS TO NATIONAL INSTRUMENT 81-102 *MUTUAL FUNDS*,
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*,
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*,
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS* AND
CONSEQUENTIAL AMENDMENTS

On July 28, 2014, the Minister of Finance approved

- amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102), National Instrument 81-106 *Investment Fund Continuous Disclosure*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and National Instrument 41-101 *General Prospectus Requirements*;
- changes to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure*; and
- related consequential amendments and changes to reflect the change in the name of NI 81-102;

(collectively, the Amendments).

The Amendments were made by the Ontario Securities Commission on May 6, 2014.

The Amendments have an effective date of September 22, 2014 and were previously published in the Bulletin on June 19, 2014.

The text of the Amendments is reproduced in Chapter 5 of this Bulletin.

1.1.2 OSC Staff Notice 33-744 – Availability of registration exemptions to foreign dealers in connection with trades in options and futures contracts under the Commodity Futures Act (Ontario)

OSC STAFF NOTICE 33-744

AVAILABILITY OF REGISTRATION EXEMPTIONS TO FOREIGN DEALERS IN CONNECTION WITH TRADES IN OPTIONS AND FUTURES CONTRACTS UNDER THE COMMODITY FUTURES ACT (ONTARIO)

September 18, 2014

Purpose of this Notice

Staff of the Ontario Securities Commission (**staff** or **we**) have issued this notice (the **Notice**) to assist foreign dealers and other market participants in determining whether certain exemptions from the dealer registration requirement under the *Commodity Futures Act*, R.S.O. 1990, c. 20 (the **CFA**) are available to them.

Specifically, this Notice describes staff's view of the following:

- the circumstances in which the "unsolicited trade" exemption (as described below) is available, and activities that we consider inconsistent with the parameters of this exemption;
- the circumstances in which the "hedger" exemption (as described below) is available, and a market participant's obligations when relying on this exemption;
- the fee payment obligations of unregistered market participants that seek to trade with Ontario residents; and
- our expectations on foreign dealers and other unregistered market participants that intend to rely on exemptions from the registration requirement and actions that we may take where these expectations are not satisfied.

In this Notice, a reference to a "dealer" or "other market participant" includes both:

- a dealer or other market participant that is registered under the CFA, and
- an unregistered dealer or other market participant that is situate outside of Ontario but deals with customers in Ontario in reliance on an exemption from the registration requirement under the CFA.

We remind dealers and other market participants that there may be important differences in the regulatory treatment of exchange-traded futures and options across Canada and that market participants should review the specific requirements of securities, commodity futures and/or derivatives legislation in these jurisdictions prior to trading with customers in these jurisdictions.

Staff expect that this Notice will assist foreign dealers and other market participants in complying with the requirements of Ontario law until such time as the Canadian Securities Administrators (the CSA) develop a harmonized CSA approach to the regulation of exchange-traded options and futures contracts.

Background

Overview of regulatory regime in Ontario

In Ontario, exchange-traded futures and options are regulated as "commodity futures contracts" and "commodity futures options" under the CFA, and also, in some circumstances, as securities under the *Securities Act*, R.S.O. 1990, c. S.5 (the **OSA**).

Under the CFA, no person may trade[1] in a commodity futures contract or a commodity futures option (collectively, a **contract**) unless the person is registered as a dealer [*Futures Commission Merchant*], or as a representative of the dealer, or an exemption from the registration requirement is available.

Under the CFA, a "trade" is defined to include[2]

(a) entering into contracts, whether as principal or agent,

[1] See s. 22 of the CFA.

[2] See s. 1(1) of the CFA.

(b) acting as a floor trader,

(c) any receipt by a registrant of an order to effect a transaction in a contract,

(d) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract, and

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

Accordingly, under the CFA, a person who wishes to trade a contract is required to register as a dealer unless a registration exemption is available for the trade.

Registered dealers are required to be members of the Investment Industry Regulatory Organization of Canada (**IIROC**)[3] and to comply with IIROC rules. The most commonly used registration exemptions are considered below.

The "unsolicited trade" exemption

The CFA includes an exemption[4] from the registration requirement for a trade in a contract that is "unsolicited" and that meets certain other conditions (the **unsolicited trade exemption**). In order for a trade to meet the conditions of the unsolicited trade exemption, the trade must

- be executed on an exchange situate outside Ontario; and
- result from an order that
  - is placed with a dealer who does not carry on business in Ontario; and
  - did not involve any solicitation by or on behalf of the dealer.

Indicia of activities we consider to be "carrying on business" in Ontario

We consider each of the following to be indicia of a person "carrying on business" in Ontario:

- the establishment of an office or place of business in Ontario;
- the establishment of a relationship with an affiliated entity or third party in Ontario to conduct marketing or other activities that are in furtherance of a trade with a customer in Ontario;
- payment of commissions, fees or similar compensation to "introducing brokers", "finders", "referral agents" or other persons in connection with the trade with a customer in Ontario;
- trading with regularity with customers in Ontario, whether in reliance on the unsolicited trade exemption and/or in reliance on other exemptions, including exemptions contained in a discretionary exemptive relief order granted by the Commission under the CFA or the OSA.

Staff are of the view that the unsolicited trade exemption in the CFA was intended to apply to occasional, isolated trades by customers in Ontario that are not solicited by or on behalf of the foreign dealer. We do not believe that the exemption is available to permit the operation of unsolicited order-execution-only accounts by non-registered foreign dealers with customers in Ontario as we believe this would constitute trading with regularity with customers in Ontario and therefore carrying on business in Ontario.

Staff are generally prepared to recommend exemptive relief under the CFA to unregistered foreign dealers on terms and conditions that are similar to the terms and conditions contained in the international dealer exemption (the **international dealer exemption**) in section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

However, if a foreign dealer has obtained an order under the CFA exempting the foreign dealer from the requirement to be registered under the CFA by analogy to the international dealer exemption in NI 31-103, and the foreign dealer relies on that order to trade with regularity with customers in Ontario, staff take the view that the foreign dealer is carrying on business in Ontario and is therefore unable to also rely on the unsolicited trade exemption in Ontario.

3 See s. 10 of the General Regulation under the CFA, R.R.O. 1990, Reg. 90 (the **CFA Regulation**).

4 See s. 32 of the CFA.

Indicia of activities we consider to be a "solicitation" in a jurisdiction

We consider each of the following to be indicia of activities that may be considered a "solicitation" in Ontario:

- any advertising or promotional activities that are directed to persons in Canada during the six months preceding the trade, including attendance at industry group conferences in Canada to promote the foreign dealer's products and services to Canadians;
- website disclosure that is addressed to Canadians or that provides information, including tax information, which is tailored to Canadians; and
- payment of commissions, fees or similar compensation to "introducing brokers", "finders", "referral agents" or other persons, whether situate in Ontario or not, in connection with a trade with a customer in Ontario.

If an unregistered foreign dealer undertakes any of these activities, staff take the view that the foreign dealer has solicited the trade, and is therefore unable to rely on the unsolicited trade exemption for that trade.

The "hedger" exemption

In Ontario, if a customer meets the definition of a "hedger" for the purposes of a trade, the customer may trade in a contract without registration if the trade is made through a dealer,[5] including an unregistered foreign dealer.

The term "hedger" is defined in the CFA as follows:

> "hedger" means a person or company who carries on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, becomes exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offsets that risk through trading in contracts for the commodity or related commodities whether or not any particular trade is effected for that purpose, but a person or company is a hedger only as to trades in contracts for such commodity or related commodities;

The hedger exemption in subsection 32(a) of the CFA is an exemption for "a trade … by a hedger through a dealer". By its terms, the hedger exemption is only available to a customer who meets the definition of hedger for the purposes of that trade.

Staff are of the view that the hedger exemption is not available to an unregistered foreign dealer that wishes to trade with the hedger. An unregistered foreign dealer may trade with a customer in reliance on another exemption, such as the unsolicited trade exemption, the exemption for a trade made through a registered dealer[6] or an exemption in an exemptive relief order, provided the foreign dealer complies with the terms of such exemption.

Obligation to determine that a customer is a bona fide hedger for the trade

Where a dealer seeks to trade with a customer on the basis that the customer is a hedger, we expect the dealer to take reasonable steps to confirm that the customer is a *bona fide* hedger for such trading activities.

We generally would not consider it sufficient for a dealer to simply rely on the customer's self-certification in account-opening documentation. Collecting and documenting this information is more than just a "tick the box" exercise. Instead, we would expect the dealer to review with the customer the nature and extent of the risk that is sought to be hedged through trading in contracts, and to confirm that the trading is primarily for hedging purposes and not also for speculative or investment purposes.

We would also recommend that the dealer include in customer documentation appropriate representations that the customer:

(a) is a hedger;

(b) acknowledges that this representation is deemed to be repeated by the customer each time it enters an order for a contract and that the customer must be a hedger for the purposes of each trade resulting from such an order;

(c) agrees to notify the dealer if it ceases to be a hedger;

(d) represents that it will only enter orders for its own account.

5 See section 32(a) of the CFA.

6 See section 32(b) of the CFA.

We expect the dealer to periodically verify that the customer's trading activities are consistent with the terms of the hedger exemption and the above recommended representations.

Books and records obligations of an unregistered foreign dealer

We consider a foreign dealer or other market participant that seeks to trade with customers in Ontario in reliance on a registration exemption to be a "market participant" for the purposes of the CFA and OSA. Accordingly, we expect these entities

- to provide appropriate risk disclosure to a customer that explains, among other things, the structure, features and risks of the products being offered and the regulatory protections that are provided, or not provided, to the client, including whether client assets are protected under the Canadian Investor Protection Fund (**CIPF**), the U.S. Securities Investor Protection Corporation, or equivalent protections, or if there are no equivalent protections, a clear statement in plain language to this effect;

- to keep such books, records and other documents as are necessary for the proper recording of their business transactions and financial affairs, and the transactions that they execute on behalf of others; and

- to keep such books, records and documents as may otherwise be required by the laws of their home jurisdiction in connection with the trade.

We expect these books and records to include books and records that demonstrate the extent of the firms' compliance with applicable requirements of all applicable legislation and identify all transactions conducted on behalf of the entity and each of their clients, including the name and address of all parties to the transaction and its terms. For example, if a foreign dealer seeks to trade with a customer on the basis that the customer is a "hedger", we expect the entity to keep books and records that demonstrate how the entity determined the customer was a hedger for the purposes of that transaction.

Staff may, from time to time, conduct a compliance review of a foreign dealer or other unregistered entity to determine whether the firm is in compliance with the terms of any exemptions being relied upon and/or may contact the firm's home jurisdiction regulator for assistance.

Forms and Fees

A foreign dealer or other unregistered market participant that applies for exemptive relief in Ontario in order to trade with a customer in Ontario will generally be required, as a condition of the relief, to file a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* and to pay a participation fee under OSC Rule 13-502 *Fees*.

The participation fees under OSC Rule 13-502 *Fees* are for "capital market activities" which includes "activities for which registration under the *Commodity Futures Act*, or an exemption from registration under the *Commodity Futures Act*, is required". Accordingly, a firm is required to pay participation fees in respect of activities under both the OSA and the CFA.

Questions

If you have questions regarding this Notice, please refer them to any of the following:

Compliance and Registrant Regulation
Paul Hayward
Senior Legal Counsel
416-593-3657
phayward@osc.gov.on.ca

Derivatives
Aaron Unterman
Legal Counsel
416-593-8090
aunterman@osc.gov.on.ca

General Counsel's Office
Victoria Carrier
Senior Legal Counsel
416-593-8329
vcarrier@osc.gov.on.ca

1.3 News Releases

1.3.1 OSC Proposes Amendments to Fee Rules

FOR IMMEDIATE RELEASE
September 18, 2014

OSC PROPOSES AMENDMENTS TO FEE RULES

TORONTO – The Ontario Securities Commission (OSC) published today proposed amendments to OSC Rule 13-502 *Fees* and OSC Rule 13-503 (*Commodity Futures Act*) *Fees* for a 90-day comment period. While the OSC typically re-evaluates its fee levels only once every three years, the Commission is re-examining its fee rules early to consider important issues raised by market participants. The OSC wishes to be responsive to its stakeholders and ensure that its fee rates remain appropriate.

The proposed rules introduce changes to simplify and streamline the process for calculating participation fees. One key proposed amendment is that market participants would calculate their participation fees based on their most recent financial year, rather than using a reference year. The main advantage to this model for market participants is that fees will track more closely to their current fiscal situation, with fees rising or falling based on changes in their respective business conditions or performance.

The proposed approach may reduce the predictability of OSC revenues, however, recent growth in the markets, coupled with the OSC's ongoing cost controls, allows the OSC to avoid implementing the increased rates that were to come into effect April 1, 2015 and to maintain participation fee rates at current rate levels.

"The proposed rules carefully considered comments from our stakeholders as well as our funding needs," said Maureen Jensen, Executive Director and Chief Administrative Officer of the OSC. "As a result, the proposed amendments establish a new model that better reflects current market activity and is less complex to administer."

The OSC continues to operate on a cost-recovery basis, is committed to efficient, ongoing cost control and continues to align decision-making with Government directions on fiscal responsibility.

The proposed amendments have been published to address comments from our stakeholders on the understanding that changes to the current regulatory structure in Canada are underway, specifically progress toward a Cooperative Capital Market Regulator.

Comments on the proposed amendments to Rule 13-502 and Rule 13-503 are encouraged and should be submitted by December 17, 2014. Please send your comments to:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

For Media Inquiries:
media_inquiries@osc.gov.on.ca

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For Investor Inquiries:

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1.4 Notices from the Office of the Secretary

1.4.1 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
September 9, 2014

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that a further confidential pre-hearing conference shall take place on December 2, 2014 at 3:00 p.m., or on such other date as may be ordered by the Commission.

A hearing under section 127(10) of the *Securities Act* shall commence on June 22, 2015 and continue on the following dates in June 2015: 23-26, 29-30, or on such other dates as may be ordered by the Commission.

A copy of the Order dated September 9, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSEE TURCOTTE
ACTING SECRETARY

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

For investor inquiries:

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

1.4.2 Powerwater Systems, Inc. et al.

FOR IMMEDIATE RELEASE
September 10, 2014

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

AND

IN THE MATTER OF
POWERWATER SYSTEMS, INC.,
DUNCAN CLEWORTH and
POWERWATER USA LTD.

TORONTO – The Commission issued an Order in the above named matter which provides that the Respondents' responding materials, if any, shall be served and filed no later than November 10, 2014; and Staff's reply materials, if any, shall be served and filed no later than November 17, 2014.

A copy of the Order dated September 8, 2014 is available at www.osc.gov.on.ca.

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1-877-785-1555 (Toll Free)

1.4.3 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
September 10, 2014

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

AND

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

TORONTO – The Commission issued 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 September 9, 2014 are available at www.osc.gov.on.ca.

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1-877-785-1555 (Toll Free)

1.4.4 Fawad Ul Haq Khan and Khan Trading Associates

FOR IMMEDIATE RELEASE
September 10, 2014

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED

AND

IN THE MATTER OF
FAWAD UL HAQ KHAN and
KHAN TRADING ASSOCIATES INC.
carrying on business as MONEY PLUS

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits shall continue, commencing at 10:00 a.m. on October 22, 2014, and continuing on October 23, 2014, if required, for the purpose of hearing oral closing submissions of the parties.

A copy of the Order dated September 9, 2014 is available at www.osc.gov.on.ca.

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media_inquiries@osc.gov.on.ca

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

1.4.5 Northern Securities Inc. et al.

FOR IMMEDIATE RELEASE
September 12, 2014

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

AND

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

AND

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

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

A copy of the Reasons and Decision on Sanctions and Costs dated September 11, 2014; and the Order on Sanctions and Costs dated September 11, 2014 are available at www.osc.gov.on.ca.

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JOSÉE TURCOTTE
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1-877-785-1555 (Toll Free)

1.4.6 North American Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
September 12, 2014

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI
AND LUIGINO ARCONTI

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

A copy of the Reasons and Decision on Sanctions and Costs dated September 11, 2014; and the Order on Sanctions & Costs dated September 11, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSEE TURCOTTE
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For investor inquiries:

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

1.4.7 Marc McQuillen

FOR IMMEDIATE RELEASE
September 15, 2014

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

AND

IN THE MATTER OF
UNIVERSAL MARKET INTEGRITY RULES

AND

IN THE MATTER OF
MARC MCQUILLEN

TORONTO – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated September 12, 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

For investor inquiries:

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

1.4.8 Gold-Quest International and Sandra Gale

FOR IMMEDIATE RELEASE
September 15, 2014

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL and SANDRA GALE

TORONTO – The Commission issued an Order on Sanctions dated September 10, 2014; and its Oral Reasons and Decision on Sanctions dated September 11, 2014 in the above named matter.

A copy of the Order dated September 10, 2014 and the Oral Reasons and Decision dated September 11, 2014 are available at www.osc.gov.on.ca.

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JOSÉE TURCOTTE
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1.4.9 Eric Inspektor

FOR IMMEDIATE RELEASE
September 15, 2014

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

AND

IN THE MATTER OF
ERIC INSPEKTOR

TORONTO – The Commission issued an Order in the above named matter which provides that the Withdrawal Motion be heard in writing; and that Crawley Mackewn Brush LLP is granted leave to withdraw as representative for the Respondent.

A copy of the Order dated September 15, 2014 is available at www.osc.gov.on.ca.

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1.4.10 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
September 9, 2014

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

AND

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MYRON I. GOTTLIEB

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

A copy of the Order dated September 9, 2014 and the Settlement Agreement dated August 22, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Element Financial Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from requirement to provide audited financial statements of the acquired business in a business acquisition report. Filer granted relief to include alternative financial information, comprising an audited statement of assets acquired and liabilities assumed, a 12 month audited financial forecast and additional information about the acquisition as financial statement disclosure for a significant acquisition.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.4, 13.1.

September 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
ELEMENT FINANCIAL CORPORATION
(the "Filer" or "Element")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption (the "**Exemption Sought**") from the financial statement requirements in Section 8.4 of National Instrument 51-102 Continuous Disclosure Obligations ("**NI 51-102**") for the business acquisition report ("**BAR**") to be prepared and filed with the applicable Canadian securities regulatory authorities in connection with the acquisition by the Filer of certain railcars (the "Railcars") and underlying leases (the "**Leases**" and, together with the Railcars, the "**Railcar Assets**") pursuant to a vendor finance program with Trinity Industries Inc. (the "**Trinity Vendor Program**").

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 51-102 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

The Filer

1. The Filer is a corporation formed under the *Business Corporations Act* (Ontario).

2. The principal and head office of the Filer is located in Toronto, Ontario.

3. The financial year end of the Filer is December 31.

4. The Filer is an equipment finance company in the business of providing financing to customers to facilitate purchases of equipment by its customers. Financing provided by the Filer typically involves the provision of equipment loans and leases. The Filer originates business through vendor finance programs established with equipment manufacturers.

5. The Filer is a reporting issuer in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

6. To its knowledge, the Filer is not in default of securities legislation in any such jurisdiction in Canada in which it is a reporting issuer.

7. The common shares, Cumulative 5-Year Rate Reset Preferred Shares, Series A, Cumulative 5-Year Rate Reset Preferred Shares, Series C, Cumulative 5-Year Rate Reset Preferred Shares, Series E and 5.125% Extendible Convertible Unsecured Subordinated Debentures of the Filer are listed on the Toronto Stock Exchange under the symbols "EFN", "EFN.PR.A", "EFN.PR.C", "EFN.PR.E" and "EFN.DB", respectively.

The Trinity Vendor Program and the Prior Tranches

8. On December 9, 2013, Element established the Trinity Vendor Program with Trinity Industries Inc. ("**Trinity**") to acquire Railcar Assets from Trinity and/or its affiliates over a two year period.

9. Under the terms of the Trinity Vendor Program, Element and Trinity formed a strategic alliance whereby Element is presented with preferred opportunities from time to time to acquire Railcar Assets from Trinity on financial terms to be agreed upon by the parties at the time of offer.

10. The identification of the Railcar Assets offered by Trinity to Element under the Trinity Vendor Program may include Leases for: (a) newly manufactured Railcars; (b) existing Railcars; and (c) secondary market purchases of Railcars from third parties identified by Trinity, and is based on predetermined diversification criteria, including limits on Railcar type, use, Lease duration, average age and credit quality of the lessee. Offers of qualifying Railcar Assets are to be made to Element by Trinity from time to time for the duration of the Trinity Vendor Program. Trinity and Element meet on a quarterly basis to report on and consult with respect to material business and process issues under the Trinity Vendor Program.

11. In connection with the Trinity Vendor Program, Element previously acquired approximately US$619 million of Railcar Assets (collectively, the "**Prior Tranches**") pursuant to an approximately US$105 million tranche completed on December 19, 2013, an approximately US$396 million second tranche completed on January 28, 2014 and an approximately US$118 million third tranche completed on March 27, 2014.

12. On May 26, 2014, the OSC, on behalf of the Canadian Securities Administrators, granted an order in response to an exemptive relief application made by the Filer in connection with the Prior Tranches (the "**Prior Relief**"). The Prior Relief provided that in lieu of historical financial statements required by Part 8 of NI 51-102 the Filer would provide alternative financial information in the BAR in respect of the Prior Tranches comprised of: (a) an audited statement of assets acquired and liabilities assumed as at the date of each Prior Tranche; (b) a 12 month financial forecast accompanied by an independent auditor's report reflecting the financial impact of the Prior Tranches; and (c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the Prior Tranche which includes disclosure of the Leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining Lease terms of the Leases acquired and average initial Lease rates.

13. On May 27, 2014, the Filer filed a BAR in connection with the Prior Tranches.

The New Tranche

14. In connection with the Trinity Vendor Program, on June 27, 2014, Element acquired approximately US$121.4 million of additional Railcars Assets from Trinity (the "**New Tranche**").

15. When aggregated with the Prior Tranches pursuant to Section 8.3(12) of NI 51-102, the New Tranche constitutes a "significant acquisition" under Part 8 of NI 51-102.

16. Sections 8.4(1) and 8.4(2) of NI 51-102 require that the Filer include in the BAR the following annual financial statements in respect of the business acquired:

    (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for (i) the year ended December 31, 2013 (audited); and (ii) the year ended December 31, 2012 (not required to be audited);

    (b) a statement of financial position as at December 31, 2013 (audited) and December 31, 2012 (not required to be audited); and

    (c) notes to the required financial statements.

17. Sections 8.4(3) and 8.4(3.1) of NI 51-102 require that the Filer include in the BAR the following interim financial statements in respect of the business acquired:

    (a) a balance sheet as at March 31, 2014;

    (b) an income statement, a statement of retained earnings and a cash flow statement for the three month period ended March 31, 2014 and comparative financial information for the three month period ended March 31, 2013; and

    (c) notes to the required financial statements.

18. Section 8.4(5) of NI 51-102 requires that the Filer include the following pro forma financial statements of the Filer:

    (a) a pro forma statement of financial position of the Filer as at December 31, 2013 that gives effect, as if the New Tranche and prior tranches had taken place as at the date of the pro forma statement of financial position, to the New Tranche;

    (b) a pro forma statement of financial position of the Filer as at March 31, 2014 that gives effect, as if the New Tranche and prior tranches had taken place as at the date of the pro forma statement of financial position, to the New Tranche and prior tranches;

    (c) a pro forma income statement of the Filer that gives effect to the New Tranche and prior tranches as if they had taken place on January 1, 2013 for the year ended December 31, 2013; and

    (d) a pro forma income statement of the Filer that gives effect to the New Tranche and prior tranches as if they had taken place on January 1, 2014 for the three month period ended March 31, 2014.

19. The purchase price for the New Tranche was determined by Element based on the contractual rental payments for each of the individual Leases, the credit profile of the individual lessees underlying the Leases and the Filer's estimates of the residual value of the Railcars forming the Railcar Assets at the end of their respective lease term.

20. The Filer did not acquire any physical facilities, employees, marketing systems, sales forces, operating rights, production techniques or trade names of Trinity in connection with the New Tranche. Such items remained with Trinity following the completion of the New Tranche.

21. Element did not acquire a separate entity, a subsidiary or a division of Trinity. Pursuant to the Trinity Vendor Program, Trinity presents Element with opportunities from time to time to purchase Railcars and underlying Leases. The acquisition of the Leases and Railcars is an equipment financing transaction under the Trinity Vendor Program consistent with Element's business as a finance company.

22. The financial information in respect of the individual Railcar Assets and operations of Trinity necessary to produce historical financial statements for the New Tranche has not been made available to Element. Trinity did not prepare

financial statements in respect of the Railcar Assets. The Filer has made every reasonable effort to obtain historical financial statements for the Railcar Assets and has been unable to do so.

23. The Filer has established a financing program whereby it expects to securitize substantially all of the Railcar Assets acquired in the New Tranche through the sale of such Railcar Assets to a special purpose vehicle or other entity, which entity issues notes secured by such Railcar Assets.

24. The Filer does not believe that historical financial statements for the New Tranche would be relevant to investors or assist investors in understanding the New Tranche or the Trinity Vendor Program as any such historical financial statements would require extensive assumptions regarding Trinity and would not reflect the financial impact of the Railcar Assets in the hands of the Filer.

25. In lieu of the historical financial statements required by Part 8 of 51-102, the Filer proposes to provide alternative financial information (the "**Alternative Financial Information**") in respect of the New Tranche as follows:

    (a) an audited statement of assets acquired and liabilities assumed as at June 27, 2014 that:

        (i) is comprised of the Railcar Assets acquired and liabilities assumed in the New Tranche, such information to be presented in a single statement;

        (ii) includes a statement that the statement of assets acquired and liabilities assumed is prepared using accounting policies that are permitted by IFRS and would apply to those line items if those line items were presented as part of a complete set of financial statements prepared in accordance with IFRS;

        (iii) includes a description of the accounting policies used to prepare the statement;

        (iv) is accompanied by an independent auditor's report that reflects the fact the statement was prepared in accordance with the basis of accounting disclosed in the notes to the statement;

    (b) a 12 month financial forecast covering the period from July 1, 2014 to June 30, 2015 accompanied by an independent auditor's report on the financial forecast reflecting the financial impact of the New Tranche; and

    (c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the New Tranche which includes disclosure of the leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining lease terms of the leases acquired and average initial lease rates.

26. The Exemption Sought is consistent with the Prior Relief.

27. The Filer submits that the Exemption Sought would not be prejudicial to the public interest because the Alternative Financial Information will provide investors with the information material to their understanding of the New Tranche and the Filer believes that the presentation of financial statements prepared strictly in compliance with Section 8.4 of NI 51-102 would not be more meaningful or relevant to investors than the Alternative Financial Information.

28. Any subsequent acquisition under the Trinity Vendor Program that qualifies as a significant acquisition pursuant to Part 8 of NI 51-102 shall not be part of the exemptive relief sought hereunder.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted in respect of the New Tranche, provided that the BAR for the New Tranche includes the Alternative Financial Information.

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

2.1.2 Bullion Management Services Inc. and BMG GOLD Advantage Return BullionFund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund reorganization – Approval required because the merger does not meet the criteria for pre-approval – merger conducted on a taxable basis – Securityholders provided with timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6(1)(a), 5.6(1)(b).

August 28, 2014

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

AND

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

AND

IN THE MATTER OF
BULLION MANAGEMENT SERVICES INC.
(the Filer or BMS)

AND

BMG GOLD ADVANTAGE RETURN BULLIONFUND
(the Merging Fund and together with BMS, the Filers)

DECISION

Background

The principal regulator in the Principal Jurisdiction has received an application from BMS, the investment fund manager of each of the funds discussed below for a decision under the securities legislation of the Principal Jurisdiction (the **Legislation**) for approval of the merger (the **Merger Approval**) pursuant to clause 5.5(1)(b) of National Instrument 81-102 – *Mutual Funds.*

The funds proposed to be merged are set forth below:

Merging Fund	Continuing Fund
BMG Gold Advantage Return BullionFund	BMG Gold BullionFund

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

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

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

Interpretation

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

The following terms shall have the following meanings:

"**2009 Relief**" refers to the exemptive relief dated September 14, 2009 obtained by the Continuing Fund to invest substantially all of its assets in gold bullion.

"**BMS**" refers to Bullion Management Services Inc.

"**Circular**" refers to the management information circular with respect to the Merger.

"**Continuing Fund**" refers to BMG Gold BullionFund.

"**Declaration of Trust**" refers, collectively, to the amended and restated master declaration of trust dated August 24, 2011, as amended, and the applicable regulations of the Funds.

"**Funds**" refers, collectively, to the Continuing Fund and the Merging Fund.

"**IRC**" means the independent review committee of the Funds.

"**MER**" means management expense ratio.

"**Meeting**" refers to the special meeting of untiholders of the Merging Fund.

"**Merger**" refers to the proposed merger of the Merging Fund with the Continuing Fund to be effective on the Merger Effective Date subject to the receipt of applicable unitholder and regulatory approvals.

"**Merger Effective Date**" refers to August 28, 2014, the expected date for effecting the Merger.

"**Merging Fund**" refers to BMG Gold Advantage Return BullionFund.

"**SWP**" means the systematic withdrawal plan.

"**Tax Act**" refers to the *Income Tax Act* (Ontario).

Representations

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

The Filers

1. The head office of each of the Filers is located in Markham, Ontario.

2. The Filers are not in default of securities legislation in any jurisdiction in Canada subject to the comment noted in representation 6 below.

3. Each of the Funds is an open-end mutual fund trust established under the laws of the Province of Ontario by the Declaration of Trust.

4. BMS is the investment fund manager and trustee of the Funds and is registered as an investment fund manager in Ontario.

5. of the Funds is a reporting issuer under applicable securities legislation of each jurisdiction in Canada.

6. The Continuing Fund invests substantially all of its assets in gold bullion pursuant to the 2009 Relief. The Principal Regulator has indicated that the Merging Fund should also have obtained such relief at the time of its inception.

The Merger

7. The Filers currently propose to effect the Merger on or about the Merger Effective Date.

8. Pursuant to National Instrument 81-107 – *Independent Review Committee for Investment Funds*, the IRC reviewed the Merger, and advised BMS that in the IRC's opinion, having reviewed the Merger as a potential conflict of interest, following the process proposed, the Merger, if implemented, achieves a fair and reasonable result for each of the Funds.

9. BMS has determined that the Merger does not constitute a material change for the Continuing Fund due to the small size of the Merging Fund relative to the Continuing Fund.

10. The Merging Fund currently invests almost all of its assets in class I units of the Continuing Fund, and the Merger reflects the merger of a two-tiered fund-on-fund structure.

11. Approval of unitholders of the Merging Fund is required because the Merger does not satisfy all of the criteria for circumstances under which approval of unitholders is not required as set out under the Legislation and the Declaration of Trust.

12. BMS will be responsible for all costs associated with the Merger.

13. There will be no sales charges payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Merging Fund.

14. BMS will waive any redemption-related costs such as redemption fees and short-term trading fees for investors who redeem their units of the Merging Fund between June 24, 2014, the date that the Merger was announced, and the Merger Effective Date.

15. Unitholders of the Merging Fund have the right to redeem their units of the Merging Fund at any time up to the close of business on the business day prior to the Merger Effective Date.

16. Subsequent to the Merger, unitholders of the Merging Fund who become unitholders of the Continuing Fund will have the right to redeem their units of the Continuing Fund for 60 days after the Merger Effective Date. BMS will waive any redemption-related costs such as redemption fees and short-term trading fees for investors who previously held units of the Merging Fund who redeem their units of the Continuing Fund during this 60 day period.

17. Subject to paragraph 16, units of the Continuing Fund received by unitholders of the Merging Fund as a result of the Merger will have the same sales charge option and, for units purchased under the low load option, remaining deferred sales charge schedule as their units in the Merging Fund.

18. All unitholders of the Continuing Fund (including former unitholders of the Merging Fund) may open a SWP under which a unitholder can pre-arrange with their dealer/adviser to automatically redeem units held by the unitholder so as to receive withdrawals of $0.07 per unit per month or any other amount as the unitholder deems appropriate. Therefore, current unitholders of the Merging Fund who receive $0.07 per unit per month as a return of their capital may choose to redeem units of the Continuing Fund after the Merger representing the same dollar amount that they currently receive each month until such time as the unitholder's original investment has been used up. If the units of the Merging Fund were held by a unitholder as capital property for income tax purposes before the Merger, a return of capital would have reduced the adjusted cost base of the unitholder's units, but would not have resulted in an income inclusion. However, if the return of capital before the Merger had exceeded the adjusted cost base of the unitholder's units, the excess would have been taxed as a capital gain. After the Merger, under the SWP, a unitholder redeeming a portion of their units will realize a capital gain or a capital loss depending on whether or not the amount paid to the unitholder exceeds or is less than the adjusted cost base of the units being redeemed by the unitholder. The foregoing tax consequences will be disclosed in a press release by BMS on behalf of the Funds.

19. Notice of the Meeting and the Circular were mailed to unitholders of the Merging Fund and filed on SEDAR in accordance with applicable securities legislation.

20. The Circular describes the relevant facts concerning the Merger, including a comparison of the investment objectives and strategies, distribution policy, fees and expenses and MER of the Funds, the tax consequences of the Merger and the IRC's recommendation of the Merger. The Circular also includes disclosure where unitholders can obtain the most recent continuous disclosure documents of the Funds.

21. The Circular states that, if an affirmative vote of untiholders of the Merging Fund or regulatory approval is not received, the Merging Fund will be terminated. Accordingly, unitholders had an opportunity to consider this information prior to voting on the Merger.

22. The Meeting of unitholders of the Merging Fund was held on August 22, 2014. All necessary unitholder approvals under the Legislation and Declaration of Trust were sought and received from unitholders of the Merging Fund at the Meeting.

Reasons for Merger Approval

23. The Filers require Merger Approval because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers as set out in the Legislation. Specifically, the Merger will not be a qualifying exchange or a tax deferred transaction within the meaning of the Tax Act.

24. The Merger will be effected on a taxable basis. The Merging Fund has sufficient loss carry-forwards to shelter any net capital gains that could arise for it on the taxable disposition of its portfolio assets on the Merger. Substantially all of the unitholders of the Merging Fund have accrued capital loss on their units or hold their units in registered plans and effecting the Merger on a taxable basis will afford taxable unitholders of the Merging Fund, realization of that loss and the ability to use it against current capital gains or even carry it back as permitted under the Tax Act. For the Continuing Fund, effecting the Merger on a taxable basis would preserve the net losses and loss carry-forwards in the Continuing Fund and will have no other tax impact on the Continuing Fund or its unitholders.

25. BMS believes that the Merger will be beneficial to unitholders of the Funds for the following reasons:

(a) The implementation of the Merger is expected to result in a merged Continuing Fund with potentially lower MER, increased economies of scale and cost synergies for unitholders;

(b) As of August 1, 2014, the MER of the Merging Fund and the Continuing Fund was as follows:

	Merging Fund (%)	Continuing Fund (%)
Class A	8.30	3.06
Class F	7.52	2.02
Class G1	7.74	3.06

The higher MER of the Merging Fund compared to the Continuing Fund is a result of significantly higher operating expenses (excluding management fee and inclusive of HST) of the Merging Fund as compared to the operating expenses (excluding management fee and inclusive of HST) of the Continuing Fund, as set out below.

Merging Fund

	Management Fee plus related HST (%)	Operating Expense plus related HST (%)
Class A	2.52	5.78
Class F	1.40	6.12
Class G1	2.35	5.39

Continuing Fund

	Management Fee plus related HST (%)	Operating Expense plus related HST (%)
Class A	2.41	0.65
Class F	1.38	0.64
Class G1	2.41	0.65

The merged Continuing Fund may benefit from a possible reduction of its MER as the non-trading portion of its operating costs and its regulatory costs will be paid by a larger number of unitholders; and

(c) The operating, administrative and regulatory costs of the Merging Fund operating as a separate mutual fund will be eliminated.

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 Merger Approval is granted.

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

2.1.3 PFSL Fund Management Ltd. and PFSL Investments Canada Ltd.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2(2), NI 81-101 to deliver a fund facts document to investors for subsequent purchases of mutual fund securities made pursuant to pre-authorized investment plans, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2(2), 6.1.

September 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
PFSL FUND MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
PFSL INVESTMENTS CANADA LTD.
(the Representative Dealer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each Existing Fund (as defined below) and all future mutual funds that will be managed from time to time by the Filer or by an affiliate or successor of the Filer (each, a **Future Fund** and, together with each Existing Fund, each, a **Fund** and, collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the requirement in the Legislation to send or deliver the most recently filed fund facts document (**Fund Facts**) at the same time and in the same manner as otherwise required for the prospectus (the **Fund Facts Delivery Requirement**), not apply in respect of purchases of securities of the Funds pursuant to a pre-authorized investment plan, including employee purchase plans, capital accumulation plans, or any other contracts or arrangements for the purchase of a specified amount on a dollar or percentage basis of securities of the Funds on a regularly scheduled basis (each an **Investment Plan**) (the **Exemption Sought**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with Ontario, the **Jurisdictions**).

Interpretation

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

Existing Fund means any of Primerica Aggressive Growth Fund, Primerica Growth Fund, Primerica Moderate Growth Fund, Primerica Conservative Growth Fund, Primerica Income Fund and Primerica Canadian Money Market Fund.

Representations

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

1. The head office of the Filer is located in Ontario.

2. The Funds are, or will be, reporting issuers in one or more of the Jurisdictions. Securities of the Funds are, or will be, qualified for sale on a continuous basis pursuant to a simplified prospectus.

3. Neither the Filer nor the Funds are in default of any of the requirements of securities legislation in any Jurisdiction.

4. Securities of the Funds are, or will be, distributed exclusively through the Representative Dealer.

5. The Representative Dealer is registered as a dealer in one or more of the Jurisdictions.

6. Each of the investors may be offered the opportunity to invest in a Fund on a regular or periodic basis pursuant to an Investment Plan.

7. Under the terms of an Investment Plan, an investor instructs the Representative Dealer to accept additional contributions on a pre-determined frequency and/or periodic basis and to apply such contributions on each scheduled investment date to additional investments in specified Funds. The investor authorizes the Representative Dealer to debit a specified account or otherwise makes funds available in the amount of the additional contributions. An investor may terminate the instructions, or give amended instructions, at any time.

8. Currently, an investor who wishes to establish an Investment Plan (a **Participant**) will receive a copy of the latest Fund Facts relating to the relevant securities of the Fund at the time an Investment Plan is established.

9. An agreement of purchase and sale of mutual fund securities is not binding on the purchaser if the Representative Dealer receives notice of the intention of the purchaser not to be bound by the agreement of purchase and sale within a specified time period.

10. The terms of an Investment Plan are such that a Participant can terminate the instructions to the Representative Dealer at any time. Therefore, there is no agreement of purchase and sale until a scheduled investment date arrives and the instructions have not been terminated. At this point, the securities are purchased.

11. Pursuant to the Fund Facts Delivery Requirement, the Representative Dealer who receives an order or subscription for a security of a Fund offered in a distribution to which the Legislation applies, must, unless it has previously done so, send to the purchaser the latest Fund Facts filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement.

12. Currently, the Fund Facts Delivery Requirement obligates the Representative Dealer (not acting as agent for the applicable investor) to send or deliver to all Participants who purchase securities of the Funds pursuant to an Investment Plan, the latest Fund Facts of the applicable Funds at the time the investor enters into the Investment Plan and thereafter, any subsequent Fund Facts (a **Renewal Fund Facts**).

13. The proposed amendments to NI 81-101 and consequential amendments as described in Stage 3 of the Point of Sale Disclosure for Mutual Funds – Point of Sale Delivery of Fund Facts, and published for comment on March 26, 2014, contemplate an exception from the Fund Facts Delivery Requirement for Investment Plans (**Proposed Exception**).

14. Until the Canadian Securities Administrators publish final amendments to implement the Proposed Exception, the Filer would like the Fund Facts Delivery Requirement not to apply in respect of purchases of securities of the Funds pursuant to an Investment Plan.

Decision

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

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

1. Investors who become Participants and invest in any Funds will be sent or delivered the most recently filed Fund Facts and a one-time notice advising the Participants:

   (a) that they will not receive the Fund Facts when they subsequently purchase securities of the applicable Fund under the Investment Plan unless they request the Fund Facts at the time they initially invest in an Investment Plan or subsequently request the Fund Facts by calling a specified toll-free number or by sending a request via mail or e-mail to a specified address or email address;

   (b) that the most recently filed Fund Facts will be sent or delivered to any Participant that requests it at no cost to the Participant;

   (c) that the most recently filed Fund Facts may be found either on the SEDAR website or on the Filer's website;

   (d) that they will not have the right to withdraw from an agreement of purchase and sale in respect of a purchase of securities of any Funds made pursuant to an Investment Plan, other than in respect of the initial purchase and sale, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into any Renewal Fund Facts contains a misrepresentation (a **Misrepresentation Right**), whether or not they request the Fund Facts; and

   (e) that they have the right to terminate an Investment Plan at any time before a scheduled investment date.

2. Following 1 above, Participants will be advised annually in writing as to how they can request the Fund Facts and that they have a Misrepresentation Right.

The decision, as it relates to a Jurisdiction, will terminate on the effective date following any applicable transition period for any legislation or rule dealing with the Proposed Exception.

"Raymond Chan"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.4 TD Sponsored Companies Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of closed-end mutual funds under paragraph 5.5(1)(a) of NI 81-102 – change of manager is not detrimental to investors or the public interest.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(a), 5.5(3), 5.7 and 19.1.

September 10, 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
TD SPONSORED COMPANIES INC.
("TDSCI")

AND

IN THE MATTER OF
TD SPLIT INC., 5 BANC SPLIT INC AND BIG 8 SPLIT INC

AND

IN THE MATTER OF
TIMBERCREEK ASSET MANAGEMENT LTD.
("Timbercreek", together with TDSCI, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from TDSCI, the administrator and investment fund manager of TD Split Inc., 5Banc Split Inc. and Big 8 Split Inc. (collectively, the "**Funds**" and each, a "**Fund**") and Timbercreek for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") for approval pursuant to section 5.5(1)(a) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") of a change in the manager of the Funds (the "**Approval Sought**").

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

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

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

Interpretation

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

Representations

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

1. TDSCI and Timbercreek entered into a definitive purchase and sale agreement dated June 24, 2014 (the "Purchase Agreement") under which Timbercreek agreed to acquire the rights to act as administrator and investment fund manager to the Funds under (i) the administration agreement dated November 15, 2010 between TD Split Inc. and TDSCI, (ii) the administration agreement dated December 15, 2011 between 5Banc Split Inc. and TDSCI and (iii) the administration agreement dated December 15, 2013 between Big 8 Split Inc. and TDSCI (collectively, the "**Administration Agreements**" and each, an "**Administration Agreement**"). The completion of the transaction (the "**Transaction**") contemplated by the Purchase Agreement is subject to the satisfaction of closing conditions which include obtaining all required regulatory approvals and approval of shareholders of the Funds.

2. TDSCI and Timbercreek announced the Transaction by press release disseminated on June 24, 2014 and filed on SEDAR by each of the Funds on the same date. A material change report related to the announcement of the Transaction was filed on SEDAR by each of the Funds on July 3, 2014.

3. TDSCI is a corporation incorporated under the *Business Corporations Act* (Ontario) and is the administrator and investment fund manager of the Funds. The head office of TDSCI is located at 66 Wellington Street West, 9th floor, Toronto-Dominion Bank Tower, Toronto, Ontario, M5K 1A2.

4. Neither TDSCI nor any of the Funds is in default of the securities legislation in any jurisdiction of Canada. TDSCI has determined that the proposed change of manager does not constitute a conflict of interest matter within the meaning of National Instrument 81-107 – *Independent Review Committee for Investment Funds*.

5. The Funds, which are closed-end mutual funds, are reporting issuers in the Jurisdictions. The Capital Shares and the Preferred Shares of each of the Funds were qualified for distribution in the Jurisdictions by prospectus and are listed on the Toronto Stock Exchange.

6. Timbercreek is a corporation incorporated under the *Business Corporations Act* (Ontario). Timbercreek has a value oriented investment philosophy, and specializes in providing conservatively managed, risk averse alternative asset class investment opportunities to institutions, trusts and endowment funds, discretionary investment advisors and qualified individuals. Timbercreek, a wholly owned subsidiary of Timbercreek Asset Management Inc., is an investment management company that employs a conservative and risk averse approach to real estate based investments. Timbercreek Asset Management Inc. is principally owned by 2314716 Ontario Limited, which in turn is principally owned, directly or indirectly, by R. Blair Tamblyn, Ugo Bizzarri and Tye Bousada. Its head office is located at 1000 Yonge Street, Suite 500, Toronto, Ontario, M4W 2K2.

7. Timbercreek is an exempt market dealer in the provinces of Alberta, British Columbia, Ontario and Quebec, and is an investment fund manager and portfolio manager in the province of Ontario.

8. Timbercreek is not in default of the securities legislation in any jurisdiction of Canada.

9. Following the completion of the Transaction, the current directors and officers of the Funds will resign and be replaced by representatives of Timbercreek, as follows.

Name	Position(s)
Corrado Russo	Director, Chief Executive Officer
David Melo	Director, Chief Financial Officer
Michelle McCarthy	Director
Chris Slightham	Director
Kenneth Thomson	Director

10. Each of Timbercreek's director and officer nominees has the requisite experience and integrity to manage the Funds. Prior to their conversion to non-investment fund reporting issuers in 2013, Timbercreek managed (and still manages) Timbercreek Mortgage Investment Corporation and Timbercreek Senior Mortgage Investment Corporation during their

existence as non-redeemable investment Funds subject to National Instruments 81-106 and 81-107. In addition, Timbercreek currently manages Timbercreek Global Real Estate Fund (TSX:TGF), a non-redeemable investment fund subject to National Instruments 81-106 and 81-107 (and NI 81-102 starting September 22, 2014), Timbercreek Global Real Estate Income and Growth Fund, a privately held mutual fund, and Timbercreek acts as sub-advisor to Counsel Global Real Estate Fund, a public mutual fund subject to National Instruments 81-102, 81-106 and 81-107.

11. Following the completion of the Transaction, the current members of the Independent Review Committee (the "**IRC**") for each of the Funds will cease to be members of each IRC and Timbercreek will appoint its existing IRC consisting of Michelle McCarthy, Chris Slightham and Kenneth Thomson to act as IRC to the Funds.

12. The Transaction will be a benefit to shareholders of the Funds because:

    (a) Timbercreek and its affiliates have approximately $4 billion of assets under management and over 500 employees in 18 offices globally. In addition to investing in, owning and managing global real estate and related assets for its investors, Timbercreek currently manages or provides sub-advisory services to other public investment funds.

    (b) Timbercreek is currently active in the closed-end fund market and enjoys broad support and participation from the investment dealer community in its offerings; and

    (c) Timbercreek can provide the Funds with access to its broad network of systems, resources and people.

13. The Funds will not bear any of the costs and expenses associated with the change in the manager of the Funds from TDSCI to Timbercreek.

14. Timbercreek has provided a notice to the securities administrators pursuant to section 11.9 of NI 31-103 in respect of the Transaction.

15. Shareholders of each of the Funds have approved the Transaction at a special meetings of shareholders of the Funds held on August 22, 2014. In connection with the solicitation of proxies in respect of the meetings, TDSCI prepared and mailed to shareholders an information circular containing the disclosure regarding the change in manager of the Funds required by applicable law.

16. The Funds will continue to operate under their current legal names. Timbercreek's current intention is to maintain the Funds' existing investment objectives and investment strategies and the current 0.25% per annum administration fee of the Funds. In addition, Timbercreek currently has no intention to make any changes to the provisions of the Capital Shares or the Preferred Shares of the Funds or to change the Funds' custodian or transfer agent. Accordingly, the Transaction is not expected to have any material impact on the business, operations or affairs of the Funds or the shareholders of the Funds.

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 Approval Sought is granted.

"Vera Nunes"
Manager
Investment Funds and Structured Products
Ontario Securities Commission

2.1.5 Cap Gemini S.A.

Headnote

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74.
National Instrument 45-106 Prospectus and Registration Exemptions.

TRANSLATION

August 29, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF QUÉBEC AND ONTARIO
(THE "FILING JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
CAP GEMINI S.A.
(THE "FILER")

DECISION

Background

The securities regulatory authority or regulator in each of the Filing Jurisdictions (the **"Decision Maker"**) has received an application from the Filer for a decision under the securities legislation of the Filing Jurisdictions (the **"Legislation"**) for:

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

   (a) trades in units (the **"Units"**) of ESOP Leverage NP 2014 (the **"Compartment"**), a compartment of an FCPE named ESOP Capgemini (the **"Fund"**), which is a *fonds commun de placement d'entreprise* or "FCPE" (a form of collective shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee-investors) made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) of Canadian Affiliates (as defined below) resident in the Filing Jurisdictions and in British Columbia and Alberta (collectively, the **"Canadian Employees"**) who elect to participate in the Employee Share Offering (such Canadian Employees who subscribe for Units referred to herein as the **"Canadian Participants"**);

   (b) trades in ordinary shares of the Filer (the **"Shares"**) by the Compartment and another compartment of the Fund named Fonds Actionnariat Capgemini (the **"Transfer Compartment"**) to or with Canadian Participants upon the redemption of Units and Transfer Compartment Units (as defined below), respectively, as requested by Canadian Participants;

(c) trades in Transfer Compartment Units made pursuant to the Employee Share Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the Compartment to the Transfer Compartment at the end of the Lock-Up Period (as defined below);

2. an exemption from the dealer registration requirements of the Legislation (the **"Registration Relief"**) so that such requirements do not apply to the Cap Gemini Group (as defined below), the Compartment and the Transfer Compartment, as applicable, and AMUNDI (the **"Management Company"**) in respect of the following:

   (a) trades in Units made pursuant to the Employee Share Offering to or with Canadian Employees not resident in Ontario;

   (b) trades in Shares by the Compartment and the Transfer Compartment to or with Canadian Participants upon the redemption of Units and Transfer Compartment Units, respectively, as requested by Canadian Participants; and

   (c) trades in Transfer Compartment Units made pursuant to the Employee Share Offering to or with Canadian Participants, including upon transfer of the Canadian Participants' assets in the Compartment to the Transfer Compartment at the end of the Lock-Up Period;

   (the Prospectus Relief and the Registration Relief, collectively, the **"Offering Relief"**).

3. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application),

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

   (b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (**"Regulation 11-102"**) is intended to be relied upon in British Columbia and Alberta (the **"Other Jurisdictions"** and, together with the Filing Jurisdictions, the **"Jurisdictions"**); and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, *Regulation 45-102 respecting Resale of Securities*, *Regulation 45-106 respecting Prospectus and Registration Exemptions* and *Regulation 11-102* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions. The head office of the Filer is located in France. The Shares are listed on NYSE Euronext Paris. The Filer is not in default of the Legislation or the securities legislation of the Other Jurisdictions.

2. Certain affiliates of the Filer employ Canadian Employees (collectively, the **"Canadian Affiliates"** and, together with the Filer and other affiliates of the Filer, the **"Cap Gemini Group"**), including Capgemini Canada Inc., New Horizon System Solutions LP, Inergi LP, Societé en Commandite Capgemini Québec - Capgemini Québec Limited Partnership, and Capgemini Financial Services Canada Inc.

3. Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions. The Canadian Affiliates are not in default of the Legislation or the securities legislation of the Other Jurisdictions.

4. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartment and the Transfer Compartment on behalf of Canadian Participants) more than 10% of the Shares issued and outstanding and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Filer.

5. The Filer has established a global employee share offering for employees of the Cap Gemini Group (the **"Employee Share Offering"**). The Employee Share Offering involves an offering of Shares to be subscribed through the Compartment.

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

7. The Compartment was established for the purpose of implementing the Employee Share Offering and the Transfer Compartment was especially established in order to receive assets transferred, at the end of the applicable Lock-Up Period, from other compartments of the Fund established within the framework of employee share plans implemented by the Filer similar to the Employee Share Offering. The Compartment and the Transfer Compartment have limited liability under French law. There is no current intention for the Compartment or the Transfer Compartment to become a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions.

8. The Fund, the Compartment and the Transfer Compartment have been registered with, and approved by, the Autorité des marchés financiers in France (the **"French AMF"**).

9. Canadian Participants will subscribe for Units, and the Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Société Générale (the **"Bank"**), which is a bank governed by the laws of France.

10. The subscription price for the Shares will be the average of the opening price of the Shares on NYSE Euronext Paris (expressed in Euros) on the 20 trading days preceding the date of the fixing of the subscription price by the Board of Directors of the Filer (the **"Reference Price"**), less a 12.5% discount.

11. Canadian Participants will contribute 10% of the price of each Share (expressed in Euros) they wish to subscribe for to the Compartment (the **"Employee Contribution"**). The Compartment will enter into a swap agreement (the **"Swap Agreement"**) with the Bank. Under the terms of the Swap Agreement, the Bank will contribute the remaining 90% of the price of each Share (expressed in Euros) to be subscribed for by the Compartment (the **"Bank Contribution"**).

12. The Compartment will apply the cash received from the Employee Contribution and the Bank Contribution to subscribe for Shares.

13. The Units will be subject to a hold period of five years (the **"Lock-Up Period"**), subject to certain exceptions prescribed by French law and adopted under the Employee Share Offering in Canada (such as death, disability or termination of employment).

14. Pursuant to the Redemption Formula (described below), Canadian Participants effectively receive a share appreciation potential entitlement in the increase in value, if any, of the Shares subscribed on behalf of Canadian Participants, including the Shares financed by the Bank Contribution. Canadian Participants receive Units in the Compartment representing the Euro amount of the Employee Contribution and a multiple of the average increase in the Share price calculated in accordance with the Redemption Formula.

15. Under the terms of the Swap Agreement, the Compartment will remit to the Bank an amount equal to the net amounts of any dividends paid on the Shares held in the Compartment during the Lock-Up Period. At the end of the Lock-Up Period, the Compartment will owe to the Bank an amount equal to A - [B+C], where

    (1) "A" is the market value of all the Shares at the end of the Lock-Up Period that are held in the Compartment (as determined pursuant to the terms of the Swap Agreement),

    (2) "B" is the aggregate amount of all Employee Contributions,

    (3) "C" is an amount (the **"Appreciation Amount"**) equal to

        (a) P (as defined below) multiplied by the quotient obtained from dividing the Reference Price by the Average Trading Price (as defined below), and further multiplied by the difference (if positive) between the Average Trading Price and the Reference Price where

            (i) **"P"** is a percentage under 100% which has not yet been determined (the final value of P will be determined and communicated to Canadian Participants prior to the finalization of their subscriptions); and

(ii) **"Average Trading Price"** is the average price of the Shares based on the last closing price of the Shares on the last trading day of each month over the Lock-Up Period (i.e. a total of 60 share price readings over the Lock-Up Period) (the **"Average Price"**). In the event a closing price is less than the Reference Price, it will be substituted with the Reference Price for purposes of the calculation of the Average Price.

and further multiplied by

(b) the number of Shares held in the Compartment.

16. If, at the end of the Lock-Up Period, the market value of the Shares held in the Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the Compartment to make up any shortfall.

17. At the end of the Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:

(a) the Canadian Participant's Employee Contribution; and

(b) the Canadian Participant's portion of the Appreciation Amount, if any

(the **"Redemption Formula"**).

18. If a Canadian Participant does not request the redemption of his or her Units in the Compartment at the end of the Lock-Up Period, his or her investment in the Compartment will be transferred to the Transfer Compartment (subject to the decision of the supervisory board of the Fund and the approval of the French AMF).

19. Units of the Transfer Compartment (the **"Transfer Compartment Units"**) will be issued to such Canadian Participants in recognition of their assets transferred to the Transfer Compartment. Canadian Participants may request the redemption of the Transfer Compartment Units whenever they wish. However, following a transfer to the Transfer Compartment, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement (including the Bank's guarantee contained therein).

20. Pursuant to the terms of the guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution at the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in certain strictly defined conditions where it is in the best interests of the holders of Units of the Compartment. The Management Company is required under French law to act in the best interests of the holders of the Units of the Compartment. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the holders of the Units of the Compartment, then such holders would have a right of action under French law against the Management Company. Under no circumstances will a Canadian Participant be responsible to contribute an amount greater than his or her Employee Contribution.

21. In the event of an early unwind resulting from the Canadian Participant satisfying one of certain exceptions to the Lock-Up Period and meeting the applicable criteria, a Canadian Participant may request the redemption of Units from the Compartment. The value of the Units will be calculated in accordance with the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the unwind instead.

22. Under no circumstances will a Canadian Participant be liable to any of the Compartment, the Transfer Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Employee Share Offering.

23. For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.

24. The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer on the proposition of the Board of Directors. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

25. To respond to the fact that, at the time of the initial investment decision relating to participation in the Employee Share Offering, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Canadian Affiliates are prepared to indemnify each Canadian Participant for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of Euros per calendar year per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Compartment on his or her behalf under the Employee Share Offering.

26. At the time the Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Compartment, on behalf of the Canadian Participant to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

27. The Compartment's portfolio will almost exclusively consist of Shares as well as the rights and associated obligations under the Swap Agreement. The Compartment may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

28. As indicated above, a Canadian Participant's assets in the Compartment will only be transferred to the Transfer Compartment if such Canadian Participant does not elect to request the redemption of his or her Units at the end of the Lock-Up Period. A Canadian Participant will be able to request the redemption of Transfer Compartment Units at any time in consideration of the underlying Shares or a cash payment equal to the then market value of the Shares held by the Transfer Compartment.

29. Any dividends paid on the Shares held in the Transfer Compartment will be contributed to the Transfer Compartment and used to purchase additional Shares on the stock market. To reflect this reinvestment, either new Transfer Compartment Units (or fractions thereof) will be issued to Canadian Participants or no additional Transfer Compartment Units will be issued and the net asset value of Transfer Compartment will be increased.

30. The Transfer Compartment's portfolio will almost entirely consist of Shares, but may also include, from time to time, cash in respect of dividends paid on the Shares pending reinvestments in Shares as well as cash or cash equivalents pending investments in the Shares and for the purposes of Transfer Compartment Unit redemptions.

31. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depositary, for any violation of the rules and regulations governing the FCPE, any violation of the rules of the FCPE, or for any self-dealing or negligence. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions and is not in default under the Legislation or the securities legislation of the Other Jurisdictions.

32. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartment are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement. The Management Company's portfolio management activities in connection with the Transfer Compartment will be limited to purchasing Shares from the Filer using a Canadian Participant's Employee Contribution plus his or her portion of the Appreciation Amount, if any, based on the Redemption Formula, and selling Shares held by the Transfer Compartment as necessary in order to fund redemption requests.

33. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents in respect of the Compartment and the Transfer Compartment. The Management Company's activities will not affect the value of the Shares.

34. None of the Filer, the Management Company, the Canadian Affiliates or any of their directors, officers, employees, agents or representatives will provide investment advice to the Qualifying Employees with respect to investments in the Shares or the Units.

35. Shares issued in the Employee Share Offering will be deposited in the Compartment's accounts or the Transfer Compartment's accounts, as the case may be, with CACEIS Bank France (the **"Depositary"**), a large French commercial bank subject to French banking legislation.

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

37. The total amount that may be invested by a Canadian Employee in the Employee Share Offering cannot exceed 25% of a Canadian Employee's estimated gross annual compensation (the 25% investment limit takes into account the Bank Contribution).

38. The Shares, Units and Transfer Compartment Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares, Units or Transfer Compartment Units so listed. As there is no market for the Shares in Canada, and as none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of an exchange outside of Canada.

39. The Filer will retain a securities dealer registered as a broker/investment dealer (the **"Registrant"**) under the securities legislation of Ontario to provide advisory services to Canadian Employees resident in Ontario who express an interest in the Employee Share Offering and to make a determination, in accordance with industry practices, as to whether an investment in the Employee Share Offering is suitable for each such Canadian Employee based on his or her particular financial circumstances.

40. Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a description of the terms of the Employee Share Offering and a description of Canadian income tax consequences of subscribing to and holding the Units and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package will also include a risk statement which will describe certain risks associated with an investment in Units. Canadian Employees may also consult the Filer's *Document de Référence* (in French and English) filed with the French AMF in respect of the Shares and a copy of the Compartment's rules (which are analogous to company by-laws). Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares generally.

41. Canadian Participants will receive an initial statement of their holdings under the Employee Share Offering together with an updated statement at least once per year.

42. There are approximately 1407 Qualifying Employees resident in Canada, with the largest number residing in the Province of Ontario (approximately 1330), and the remainder in the provinces of Quebec, British Columbia and Alberta, who represent, in the aggregate, less than 2% of the number of employees in the Cap Gemini Group worldwide.

43. The Filer is not, and none of the Canadian Affiliates are, in default of the Legislation or the securities legislation of the Other Jurisdictions. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of the Other Jurisdictions.

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 Offering Relief is granted provided that

1. the prospectus requirements of the Legislation will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision, unless the following conditions are met:

    (a) the issuer of the security

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

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

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

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

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

(c) the first trade is made

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

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

"Lucie J. Roy"
Senior Director, Corporate Finance

2.1.6 Whitecap Resources Inc.

Headnote

MI 11-102 and NP 11-203 – issuer made acquisition that satisfied the asset test and the profit or loss test under Part 8 of NI 51-102, necessitating the filing of a business acquisition report – prior to acquisition acquired company underwent reorganization resulting in it owning 10% of what it previously owned – on a post-reorganization basis only the profit or loss test satisfied – issuer submitted that acquisition not significant from a practical, commercial or financial perspective – in addition to significance test results, issuer supplied oil and gas reserve and production information of acquired company versus itself – issuer relieved from the obligation to file a business acquisition report.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.2(1), 8.4(5), 13.

Citation: Re Whitecap Resources Inc., 2014 ABASC 357

September 9, 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
WHITECAP RESOURCES 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 (the **Exemptions Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirement under subsection 8.2(1) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to file a business acquisition report (**BAR**) in connection with the Acquisition (as defined below), and from the requirement to disclose the Acquisition in any future pro forma statements prepared pursuant to subsection 8.4(5) of NI 51-102.

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in the Provinces of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, and Newfoundland and Labrador; 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 National Instrument 14-101 *Definitions*, NI 51-102 or MI 11-102 have the same meaning in this decision unless otherwise defined herein.

Representations

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

The Filer

1. The Filer, a corporation formed under the *Business Corporations Act* (Alberta) with its head office in Alberta, is a reporting issuer in each of the provinces of Canada other than Prince Edward Island. The Filer is not in default of securities legislation in any jurisdiction of Canada.

The Acquisition

2. Pursuant to a share purchase agreement, the Filer acquired on June 27, 2014 (the **Acquisition**) all of the issued and outstanding shares of Trident Exploration Corp. (**TEC**) for a purchase price of $107 million. Prior to the Acquisition, TEC was a private company owned by five private and affiliated companies (the **Sellers**).

Significance of the Acquisition

3. Pursuant to subsection 8.2(1) of NI 51-102, if a reporting issuer makes a significant acquisition it must file a BAR within 75 days after the acquisition date. The tests for determining whether an acquisition is a significant acquisition are set out in section 8.3 of NI 51-102 and are referred to as the asset test, the investment test and the profit or loss test. An acquisition by the Filer is a significant acquisition if any of the three foregoing tests yield a result that exceeds 20%.

4. The Acquisition is not a significant acquisition under the investment test in paragraph 8.3(2)(b) of NI 51-102 as the Filer's consolidated investment in TEC represents approximately 5.2% of the consolidated assets of the Filer as stated on its Audited Financial Statements (as defined below).

5. The Acquisition is a significant acquisition under the asset test in paragraph 8.3(2)(a), as the consolidated assets of TEC represent approximately 20% of the Filer's consolidated assets as stated on its Audited Financial Statements.

6. The Acquisition is a significant acquisition under the profit or loss test in paragraph 8.3(2)(c) of NI 51-102 as loss from continuing operations of TEC represents approximately 389.8% of the Filer's income from continuing operations as stated on its Audited Financial Statements.

The Reorganization

7. Prior to the Acquisition, on June 26, 2014, the Sellers completed an internal reorganization of various subsidiaries and affiliates of the Sellers, including TEC (the **Reorganization**). Immediately following the Reorganization, TEC had no business, no liabilities and no assets other than a 10% partnership interest in an Alberta limited partnership. This interest represents 10% of TEC's pre-Reorganization business.

8. Accordingly, TEC retained 10% of the consolidated assets of its pre-Reorganization business and is entitled to earn 10% of the consolidated specified profit (or loss) of its pre-Reorganization business.

9. The audited financial statements of TEC for the year ended December 31, 2013 (the **Audited Financial Statements**) do not reflect the Reorganization.

Significance Tests Post-Reorganization

10. On a post-Reorganization basis, the Acquisition does not satisfy the asset test, the results of such test being approximately 2%.

11. On a post-Reorganization basis, the Acquisition does not satisfy the investment test, the results of such test being approximately 5%.

12. On a post-Reorganization basis, the Acquisition satisfies the profit or loss test, the results of such test being approximately 39%.

The Significance of the Acquisition from a Practical, Commercial, or Financial Perspective

13. Overall, the Filer is of the view that the Acquisition is not a significant acquisition to it from a practical, commercial or financial perspective, due to the results on a post-Reorganization basis of the asset test and the investment test and other metrics put forward by the Filer, namely the Filer's proved and probable reserves and production in barrels of oil equivalent per day compared to those on a post-Reorganization basis of TEC.

Decision

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

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

"Denise Weeres"
Manager, Legal
Corporate Finance

2.2 Orders

2.2.1 Garth H. Drabinsky et al. – ss. 127 and 127.1

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

AND

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

ORDER
(Sections 127 and 127.1)

WHEREAS on February 20, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to an Amended Statement of Allegations issued by Staff of the Commission ("Staff") regarding Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that an initial hearing before the Commission would be held on March 19, 2013;

AND WHEREAS on March 19, 2013, the Commission convened a hearing and ordered that the matter be adjourned to a confidential pre-hearing conference on May 23, 2013;

AND WHEREAS on May 23, 2013, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

AND WHEREAS counsel for Drabinsky requested that a motion be scheduled respecting certain portions of Staff's Statement of Allegations (the "Motion") and a date for the motion was scheduled for July 10, 2013;

AND WHEREAS on July 2, 2013, counsel for Drabinsky communicated to the Commission that he would no longer be proceeding with the Motion;

AND WHEREAS on July 3, 2013, the Commission ordered that the July 10, 2013 Motion date be vacated;

AND WHEREAS on September 8, 2014, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

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

IT IS HEREBY ORDERED that:

1. A further confidential pre-hearing conference shall take place on December 2, 2014 at 3:00 p.m., or on such other date as may be ordered by the Commission.

2. A hearing under section 127(10) of the Securities Act shall commence on June 22, 2015 and continue on the following dates in June 2015: 23-26, 29-30, or on such other dates as may be ordered by the Commission.

3. The parties shall disclose any expert evidence according to the following schedule:

    a. Respondents shall identify any expert witness that they intend to call by March 9, 2015;

    b. Respondents shall serve any expert report(s) on Staff by April 8, 2015;

    c. Staff shall serve any expert report(s) in response on the Respondents by May 8, 2015; and

    d. Respondents shall serve any expert report(s) in reply on Staff by May 25, 2015.

4. The parties shall disclose witness lists and witness summaries by May 4, 2015.

5. The parties shall serve and file hearing briefs by June 1, 2015.

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

"Mary G. Condon"

2.2.2 Powerwater Systems, Inc. et al. – ss. 127(1) and 127(10)

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

AND

IN THE MATTER OF
POWERWATER SYSTEMS, INC., DUNCAN CLEWORTH a
nd POWERWATER USA LTD.

ORDER
(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS on May 14, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Powerwater Systems, Inc., ("PSI"), Duncan Cleworth ("Cleworth") and Powerwater USA Ltd. ("PUL") (together, the "Respondents");

AND WHEREAS on May 14, 2014, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on June 26, 2014, the Commission heard an application by Staff to convert the matter to a written hearing (the "Application"), in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4095, and subsection 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Respondents consented to the Application as indicated by their filed written consent;

AND WHEREAS Staff and the Respondents agreed upon a timetable for the submission of written hearing materials, subject to the Commission's approval;

AND WHEREAS on June 26, 2014, the Commission granted Staff's application to proceed by way of written hearing, pursuant to Rule 11 of the *Rules of Procedure* and set down a schedule for the submission of materials, without the necessity of the attendance of the Respondents;

AND WHEREAS Staff filed written submissions, a brief of authorities, a hearing brief, supplementary written submissions, a supplementary brief of authorities, and affidavits of service;

AND WHEREAS on August 29, 2014, the Respondents requested an extension of time to file their responding materials, and Staff have consented to the Respondents' request;

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 Respondents' responding materials, if any, shall be served and filed no later than November 10, 2014; and Staff's reply materials, if any, shall be served and filed no later than November 17, 2014.

DATED at Toronto this 8th day of September, 2014.

"James E. A. Turner"

2.2.3 Garth H. Drabinsky et al. – ss. 127(1) and 127(10)

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

AND

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MYRON I. GOTTLIEB

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 3, 2001, 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") with respect to Garth H. Drabinsky ("Drabinsky"), Myron I. Gottlieb ("Gottlieb"), Gordon Eckstein ("Eckstein"), Robert Topol ("Topol"), and Livent Inc. ("Livent");

AND WHEREAS on February 1, 2002, Gottlieb gave an interim undertaking to the Director of Enforcement of the Commission (the "Director") that pending the conclusion of the Commission proceeding, he would not apply to become a registrant or an employee of a registrant, or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking, as described in the Order of the Commission made on February 22, 2002;

AND WHEREAS on October 22, 2002, the Royal Canadian Mounted Police initiated a criminal proceeding against Drabinsky, Gottlieb, Eckstein and Topol for multiple counts of criminal fraud in relation to their conduct as directors and officers of Livent (the "Criminal Proceeding");

AND WHEREAS by Order dated November 15, 2002, the Commission adjourned the hearing sine die pending the conclusion of the Criminal Proceeding, or until such further order as might be made by the Commission;

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

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

AND WHEREAS the Supreme Court of Canada dismissed an application brought by Drabinsky to appeal the ruling of the Ontario Court of Appeal on March 29, 2012;

AND WHEREAS on February 19, 2013, Staff filed an Amended Statement of Allegations against Drabinsky, Gottlieb, and Eckstein;

AND WHEREAS on February 20, 2013, Staff withdrew its allegations against Livent and Topol;

AND WHEREAS on March 8, 2013, pursuant to conditions of his parole, Gottlieb was prohibited from, among other things, owning or operating a business or being in a position of responsibility for the management of finances or investments for any other individual, charity, business or institution until September 10, 2015;

AND WHEREAS on August 22, 2014, Gottlieb entered into a Settlement Agreement with Staff (the "Settlement Agreement"), subject to the approval of the Commission;

AND WHEREAS on September 09, 2014, the Commission held a hearing to consider whether to approve the Settlement Agreement, and the Commission heard submissions from counsel for Staff and counsel for Gottlieb;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) of the Act;

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, Gottlieb is prohibited from trading in securities for a period of 15 years, effective the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any Registered Retirement Savings Plan ("RRSP") and/or any Registered Retirement Income Fund ("RRIF") (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership, provided that:

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

ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

iii. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, Gottlieb is prohibited from the acquisition of securities for a period of 15 years, effective the date of the Order of the Commission, subject to a carve-out to allow him to acquire securities for the account of any Registered Retirement Savings Plan ("RRSP") and/or any Registered Retirement Income Fund ("RRIF") (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership, provided that:

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

ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

iii. he carries out any permitted acquisition through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Gottlieb;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an issuer;

(f) pursuant to clause 8.2 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of a registrant;

(g) pursuant to clause 8.4 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an investment fund manager; and

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a registrant, an investment fund manager, or as a promoter of any issuer.

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

"Alan Lenczner"

2.2.4 Morgan Dragon Development Corp. et al.

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

AND

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

ORDER

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 22, 2012, to consider whether it is in the public interest to make certain orders against Morgan Dragon Development Corp. ("MDDC"), John Cheong (aka Kim Meng Cheong) ("Cheong"), Herman Tse ("Tse"), Devon Ricketts ("Ricketts") and Mark Griffiths ("Griffiths");

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

AND WHEREAS on March 25, 2013, at Staff's request and on consent of counsel for MDDC, Cheong, Tse and Ricketts, the Commission ordered that the hearing on the merits proceed as a written hearing pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*") and set a schedule for written submissions by the parties (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 3166);

AND WHEREAS on April 9, 2013, the Commission granted leave for Crawley Meredith Brush Mackewn LLP to withdraw as representative for Ricketts, pursuant to Rule 1.7.4 of the *Rules of Procedure* (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4211);

AND WHEREAS on April 10, 2013, Commission approved a settlement agreement between Staff and MDDC, Cheong and Tse (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4212);

AND WHEREAS on April 15, 2014, following a written hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits (*Re Morgan Dragon Development Corp. et al.* (2014), 37 O.S.C.B. 4141);

AND WHEREAS on June 12, 2014, a hearing on sanctions and costs in this matter was held before the Commission;

AND WHEREAS on September 9, 2014, the Commission issued its Reasons and Decision with respect to sanctions and costs;

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

IT IS ORDERED that:

1. With respect to Ricketts:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Ricketts cease for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may trade in securities for the account of any registered retirement savings plan as defined in the *Income Tax Act*, R.S.C. 1985, c. 1., as amended ("RRSP"), in which he has sole legal and beneficial ownership;

   (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Ricketts is prohibited for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

   (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Ricketts for a period of five years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, that Ricketts is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, that Ricketts resign any position he holds as a director or officer of an issuer;

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

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of a registrant;

(h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any registrant for a period of seven years;

(i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of any investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any investment fund manager for a period of seven years;

(k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of seven years;

(l) pursuant to clause 9 of subsection 127(1) of the Act, that Ricketts pay an administrative penalty of $30,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(m) pursuant to clause 10 of subsection 127(1) of the Act, that Ricketts disgorge to the Commission a total of $177,094.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(n) pursuant to subsection 127.1(2) of the Act, that Ricketts pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Griffiths.

2. With respect to Griffiths:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Griffiths cease for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may trade in securities for the account of any RRSP, in which he has sole legal and beneficial ownership;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Griffiths is prohibited for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

(c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Griffiths for a period of three years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, that Griffiths is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, that Griffiths resign any position he holds as a director or officer of an issuer;

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

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of a registrant;

(h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any registrant for a period of five years;

(i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of any investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any investment fund manager for a period of five years;

(k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;

(l) pursuant to clause 9 of subsection 127(1) of the Act, that Griffiths pay an administrative penalty of $15,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(m) pursuant to clause 10 of subsection 127(1) of the Act, that Griffiths disgorge to the Commission a total of $51,192.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(n) pursuant to subsection 127.1(2) of the Act, that Griffiths pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Ricketts.

DATED this 9th day of September, 2014.

"Edward P. Kerwin"

2.2.5 Northern Securities Inc. et al. – ss. 21.7 and 8(3)

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

AND

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

AND

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

ORDER
(Section 21.7 and Subsection 8(3) of the Securities Act)

WHEREAS on August 20, 2012, Northern Securities Inc. ("NSI"), Victor Philip Alboini ("Alboini"), Douglas Michael Chornoboy ("Chornoboy") and Frederick Earl Vance ("Vance") (collectively the "Applicants") filed with the Ontario Securities Commission (the "Commission") a notice of application (the "Application") pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing and review of the decisions of a hearing panel (the "Hearing Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") dated July 23, 2012 and November 10, 2012 (the "Decision");

AND WHEREAS the Hearing and Review was heard over three days on February 14, 15, and 20, 2013, and the Commission released its decision and reasons on December 19, 2013, in which, among other matters, it set aside the sanctions and costs imposed on the Applicants by the IIROC Hearing Panel and ordered that the Commission would hold a hearing de novo solely on the question of the appropriate sanctions and costs to be imposed on the Applicants based on the findings of the IIROC Hearing Panel, other than its finding with respect to one Count;

AND WHEREAS the Sanctions and Costs Hearing was held on June 9, 10 and 11, 2014 and upon considering the evidence and the submissions, the Commission issued its reasons and decision on sanctions and costs on the date hereof;

AND WHEREAS the Commission has concluded that it is in the public interest to make the following order;

IT IS HEREBY ORDERED THAT:

1. The following sanctions and costs are imposed on Alboini:

   (a) Alboini shall pay a fine of $250,000 to IIROC, such fine to be paid within 30 days of the date of this order;

   (b) Alboini shall disgorge to IIROC commissions of $244,985, such amount to be paid within 30 days of the date of this order;

   (c) Alboini shall be suspended for one year from approval by, or registration with, IIROC in all categories anywhere in the industry, commencing 14 days after the date of this order;

   (d) Alboini shall be suspended for two years from approval by, or registration with, IIROC as an Ultimate Designated Person anywhere in the industry, commencing 14 days after the date of this order;

   (e) Alboini is reprimanded; and

   (f) Alboini shall pay to IIROC costs in the amount of $62,500, such costs to be paid within 30 days of the date of this order;

2. The following sanctions and costs are imposed on NSI:

   (a) NSI shall pay a fine of $50,000 to IIROC, such fine to be paid within 30 days of the date of this order;

(b) NSI is reprimanded; and

(c) NSI shall pay to IIROC costs in the amount of $10,000;

3. The following sanctions are imposed on Vance:

(a) Vance shall be suspended for three months from approval by, or registration with, IIROC in any supervisory capacity, including acting as Chief Compliance Officer anywhere in the industry, commencing 14 days after the date of this order;

(b) Vance is reprimanded; and

4. Chornoboy is reprimanded.

DATED at Toronto this 11th day of September, 2014.

"James E. A. Turner"

"Judith N. Robertson"

2.2.6 North American Financial Group Inc. et al. – ss. 127 and 127.1

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI AND LUIGINO ARCONTI

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 28, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "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"), accompanied by a Statement of Allegations dated December 28, 2011 filed by Staff of the Commission ("Staff") with respect to North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti ("Flavio Arconti") and Luigino Arconti ("Gino Arconti") (collectively, the "Respondents");

AND WHEREAS a hearing on the merits in this matter was held before the Commission on April 29 and 30, May 1-3, 6, 8-10, 22 and 23 and September 11, 2013;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on December 11, 2013;

AND WHEREAS on December 11, 2013, the Commission ordered that:

(a) Staff shall file and serve written submissions on sanctions and costs by February 14, 2014;

(b) the Respondents shall file and serve written submissions on sanctions and costs by March 7, 2014;

(c) Staff shall file and serve written reply submissions on sanctions and costs by March 14, 2014; and

(d) the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, commencing on March 24, 2014 at 10:00 a.m.;

AND WHEREAS on January 22, 2014, counsel for the Respondents, Ian R. Smith ("Smith"), brought a motion for leave to withdraw as representative for the Respondents, pursuant to Rule 1.7.4 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "Motion"), which Motion was unopposed by Staff;

AND WHEREAS on January 31, 2014, the Commission granted leave to Smith to withdraw as counsel of record for the Respondents;

AND WHEREAS on February 14, 2014, Staff filed and served its written submissions on sanctions and costs, a Brief of Authorities and a Sanction Brief;

AND WHEREAS on March 6, 2014, Staff filed and served the Affidavit of Marcel Tillie sworn on March 6, 2014;

AND WHEREAS on March 6, 2014, Alexander Gillespie notified the Commission that he had been retained to act for the Respondents, that the Respondents requested an adjournment of the hearing to determine sanctions and costs to March 28, 2014, that the Respondents requested modifications to the timetable for the delivery of submissions as set out in the Order of the Commission dated December 11, 2013 and that Staff did not oppose the Respondents' requests;

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

(a) the hearing to determine sanctions and costs, scheduled for March 24, 2014 at 10:00 a.m., be adjourned and shall be held on March 28, 2014 at 10:00 a.m.;

(b) Staff shall file and serve any additional evidence and supplementary submissions on sanctions and costs by March 10, 2014;

(c) the Respondents shall file and serve written submissions on sanctions and costs by March 21, 2014; and

(d) Staff shall file and serve any reply submissions on sanctions and costs by March 26, 2014;

AND WHEREAS on March 20, 2014, the Respondents requested an adjournment of the hearing to determine sanctions and costs from March 28, 2014 to April 2, 2014 and Staff did not object to this request;

AND WHEREAS on March 20, 2014, the Commission granted the Respondents' request to adjourn the hearing on sanctions and costs to April 2, 2014;

AND WHEREAS on March 26, 2014, prior to a formal order being issued in relation to the adjournment of the hearing on sanctions and costs to April 2, 2014, the Respondents sought a further adjournment of the hearing on sanctions and costs to allow counsel for the Respondents additional time to review the file he received from the Respondents' former counsel and to prepare his clients' written submissions on sanctions and costs;

AND WHEREAS Staff objected to a further adjournment of the hearing on sanctions and costs;

AND WHEREAS on March 27, 2014, the Commission ordered that:

(a) the hearing to determine sanctions and costs be adjourned and shall be held on May 7, 2014 at 10:00 a.m.;

(b) the Respondents shall file and serve written submissions on sanctions and costs by April 25, 2014; and

(c) Staff shall file and serve any reply submissions on sanctions and costs by May 2, 2014;

AND WHEREAS on May 5, 2014, counsel for the Respondents requested an appearance before the Commission to seek permission for the late delivery of the Respondents' written submissions on sanctions and costs;

AND WHEREAS on May 6, 2014, Staff and counsel for the Respondents attended before the Commission, at which time counsel for the Respondents advised the Commission that he required additional time to May 16, 2014 to complete his clients' written submissions on sanctions and costs, and therefore the Respondents sought an adjournment of the hearing on sanctions and costs scheduled for May 7, 2014;

AND WHEREAS on May 6, 2014, Staff objected to a further adjournment of the hearing on sanctions and costs;

AND WHEREAS on May 6, 2014, the Commission ordered that:

(a) the hearing to determine sanctions and costs be adjourned and shall be held on June 23, 2014 at 10:00 a.m.;

(b) the Respondents shall file and serve written submissions on sanctions and costs by June 9, 2014; and

(c) Staff shall file and serve any reply submissions on sanctions and costs by June 16, 2014;

AND WHEREAS on June 16, 2014, Staff filed and served the Affidavit of Marcel Tillie sworn on June 16, 2014;

AND WHEREAS on June 20, 2014, the Respondents filed and served their written submissions, the Affidavit of Gino Arconti sworn on June 20, 2014 and a Sanction and Cost Submissions Brief;

AND WHEREAS on June 23, 2014, Staff and counsel for the Respondents attended at a hearing to consider

AND WHEREAS on June 23, 2014, a hearing to consider sanctions and costs in this matter was held before the Commission, Staff and counsel for the Respondents made oral submissions, and Flavio Arconti and Gino Arconti attended in person;

AND WHEREAS on September 11, 2014, the Commission released its Reasons and Decision on Sanctions and Costs with respect to the Respondents;

AND WHEREAS, upon considering the submissions of Staff and the Respondents on the appropriate sanctions and costs, the Commission is of the opinion that the following Orders are in the public interest;

IT IS HEREBY ORDERED that:

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

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to the Respondents permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, the Respondents are reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, Flavio Arconti and Gino Arconti shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to paragraph 8 of subsection 127(1) of the Act, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of a registrant;

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondents shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(j) pursuant to paragraph 9 of subsection 127(1) of the Act, NAC, Flavio Arconti and Gino Arconti shall each pay an administrative penalty of $600,000 for their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 10 of subsection 127(1) of the Act, Flavio Arconti and Gino Arconti shall, on a joint and several basis, disgorge to the Commission a total of $2,052,691.16 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(l) pursuant to paragraph 10 of subsection 127(1) of the Act, NAC, Flavio Arconti and Gino Arconti shall, on a joint and several basis, disgorge to the Commission a total of $1,042,000 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(m) pursuant to subsection 127.1 of the Act, NAC, Flavio Arconti and Gino Arconti shall jointly and severally pay $200,000 for the costs incurred in the investigation and hearing of this matter.

DATED at Toronto this 11th day of September 11, 2014.

"James D. Carnwath", Q.C.

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

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED

AND

IN THE MATTER OF
FAWAD UL HAQ KHAN and KHAN TRADING ASSOCIATES INC.
carrying on business as MONEY PLUS

ORDER

WHEREAS on December 20, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 60 and 60.1 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended, in relation to a Statement of Allegations filed on December 19, 2012, in respect of Fawad Ul Haq Khan ("Khan") and Khan Trading Associates Inc. carrying on business as Money Plus ("KTA" and, together with Khan, the "Respondents");

AND WHEREAS on January 28, 2014, Staff of the Commission ("Staff") filed an Amended Statement of Allegations;

AND WHEREAS the Commission conducted the hearing on the merits on May 5, 8, 9, 12 to 16, 21 to 23 and 27 to 30, 2014 and June 9 to 12, 2014;

AND WHEREAS on June 12, 2014, the Commission ordered that: 1. the hearing on the merits dates of June 19, 20 and 27, 2014 are vacated; 2. Staff shall serve and file written closing submissions by July 11, 2014; 3. the Respondents shall serve and file written closing submissions, if any, by August 8, 2014; 4. Staff shall serve and file written closing submissions in reply, if any, by August 22, 2014; and 5. the hearing on the merits shall continue, commencing at 10:00 a.m. on August 26, 2014, and continuing on August 27, 2014, if required, for the purpose of hearing oral closing submissions of the parties (the "Original Closing Submission Hearing");

AND WHEREAS on August 24, 2014, the Respondents requested that the Original Closing Submission Hearing be adjourned due to a death in Khan's immediate family;

AND WHEREAS Staff requested that, if an adjournment was granted by the Commission, the hearing be rescheduled to occur as soon as possible;

AND WHEREAS on August 25, 2014, the Commission adjourned the Original Closing Submission Hearing, *sine die*;

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 shall continue, commencing at 10:00 a.m. on October 22, 2014, and continuing on October 23, 2014, if required, for the purpose of hearing oral closing submissions of the parties.

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

"Vern Krishna"

"James D. Carnwath"

2.2.8 Western Asset Management Company

Headnote

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

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

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 13-502 Fees.
Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 80.

Instruments Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.26.

September 9, 2014

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

AND

IN THE MATTER OF
WESTERN ASSET MANAGEMENT COMPANY

ORDER
(Section 80 of the CFA)

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

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

AND WHEREAS for the purposes of this Order;

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

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

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

"Foreign Contract" means a Contract that is primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

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

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

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

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

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

"SEC" means the United States Securities and Exchange Commission;

"specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*; and

"U.S. Advisers Act" means the *United States Investment Advisers Act of 1940*.

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the laws of the State of California, United States and was established in 1972. The Applicant's principal place of business is located in Pasadena, California.

2. The Applicant is an indirect wholly-owned subsidiary of Legg Mason Inc. a global asset management company listed on the New York Stock Exchange.

3. The Applicant engages in the business of an adviser with respect to securities and with respect to Contracts in Pasadena, California and its other offices in the United States, Asia, the Middle East, Australia and South America. As of March 31, 2014, the Applicant managed approximately US $468 billion in assets.

4. Permitted Clients seek to access certain specialized portfolio management services provided by the Applicant, including advice as to trading in Foreign Contracts.

5. The Applicant is registered in the United States with the SEC as an investment adviser under the U.S. Advisers Act and as a commodity trading adviser with the CFTC.

6. The Applicant advises Ontario clients that are Permitted Clients with respect to securities in reliance on the International Adviser Exemption and is therefore not registered under the OSA.

7. The Applicant has filed Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service with the Commission in order to rely on the exemption in section 8.26 of NI 31-103.

8. There are no regulatory actions of the type required by the Notice of Regulatory Action set out in Appendix B hereto which have not already been disclosed to the Commission.

9. The Applicant is not, and will not be, registered as an adviser under the OSA.

10. The Applicant is currently registered as an adviser in the category of commodity trading manager under the CFA. Pursuant to its registration under the CFA, the Applicant advises Permitted Clients in Ontario in respect of Foreign Contracts, in connection principally with respect to fixed income futures, on a fully discretionary basis.

11. Pursuant to its registration under the CFA, the Applicant does not advise clients other than Permitted Clients nor does it advise the Permitted Clients in respect of Contracts other than Foreign Contracts.

12. The Applicant wishes to continue to advise Permitted Clients in Ontario in respect of Foreign Contracts, in reliance on an exemption from the CFA Adviser Registration Requirement.

13. If the Applicant is granted the Order it will surrender its registration as an adviser under the CFA.

14. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients as to trading in Foreign Contracts, in the absence of this Order, the Applicant would be required to satisfy the CFA Adviser Registration Requirement and would have to continue to be registered in Ontario as an adviser under the CFA in the category of commodity trading manager.

15. To the best of the Applicant's knowledge, the Applicant confirms that there are currently no regulatory actions of the type contemplated by the Notice of Regulatory Action attached as Appendix "B", except as otherwise disclosed to the Commission, in respect of the Applicant or any predecessors or specified affiliates of the Applicant.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to make this Order,

IT IS ORDERED pursuant to section 80 of the CFA that the Applicant and its Representatives are exempt, for a period of five years, from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of providing advice to Permitted Clients as to the trading of Foreign Contracts provided that:

(a) the Applicant provides advice to Permitted Clients only as to trading in Foreign Contracts and does not advise any Permitted Client as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to its providing advice on Foreign Contracts;

(b) the Applicant's head office or principal place of business remains in the United States;

(c) the Applicant is registered or operates under an exemption from registration, under the applicable securities and commodity futures legislation in the United States, in a category of registration that permits it to carry on the activities in the United States that registration under the CFA as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;

(d) the Applicant continues to engage in the business of an adviser, as defined in the CFA, in the United States;

(e) as at the end of the Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of the Applicant if the affiliate or affiliated partnership is registered under securities legislation, commodities legislation or derivatives legislation in a jurisdiction of Canada) is derived from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related and commodity-futures-related activities);

(f) before advising a Permitted Client with respect to Foreign Contracts, the Applicant notifies the Permitted Client of all of the following:

  (i) the Applicant is not registered in the local jurisdiction to provide the advice described under paragraph (a) of this Order;

  (ii) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;

  (iii) all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) there may be difficulty enforcing legal rights against the Applicant because of the above; and

  (v) the name and address of the Applicant's agent for service of process in Ontario;

(g) the Applicant has submitted to the Commission a completed Submission to jurisdiction and appointment of agent for service in the form attached as Appendix "A";

(h) the Applicant notifies the Commission of any regulatory action initiated after the date of this Order with respect to the Applicant or any predecessors or specified affiliates of the Applicant by completing and filing Appendix "B" within 10 days of the commencement of each such action; and

(i) the Applicant complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 Fees.

DATED at Toronto, Ontario this 9th day of September, 2014

"Christopher Portner"
Commissioner
Ontario Securities Commission

"Sarah B. Kavanagh"
Commissioner
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:

   E-mail address:

   Phone:

   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   [ ] Section 8.18 [*international dealer*]

   [ ] Section 8.26 [*international adviser*]

   [ ] Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    (a) a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

    (b) an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____

_____

_____

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form is to be emailed to the following address:

Email: registration@osc.gov.on.ca

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Attention: Registration Supervisor

Telephone: 1-877-785-1555 (General)

APPENDIX B

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates {1} of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity

Regulator/organization

Date of settlement (yyyy/mm/dd)

Details of settlement

Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
(a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	_____	_____
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	_____	_____
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	_____	_____
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(g)	Issued an order (other than en exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	_____	_____

If yes, provide the following information for each action:

Name of Entity

Type of Action

Regulator/organization

Date of action (yyyy/mm/dd)

Reason for action

Jurisdiction

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity

Reason or purpose of investigation

Regulator/organization

Date investigation commenced (yyyy/mm/dd)

Jurisdiction

Name of firm

Name of firm's authorized signing officer or partner

Title of firm's authorized signing officer or partner

Signature

Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness

Title of witness

Signature

_____

Date

This form is to be emailed to the following address:

Email: registration@osc.gov.on.ca

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Attention: Registration Supervisor

Telephone: 1-877-785-1555 (General)

{1} In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

2.2.9 TriAusMin

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

September 12, 2014

TriAusMin Limited
Suite 702, Level 7
191 Clarence Street
Sydney, New South Wales 2000
Australia

Dear Sirs/Mesdames:

Re: TriAusMin (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the Securities Act (Ontario) (the Act) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

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

The Applicant has represented to the Commission that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario 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 not in default of any of its obligations under the Legislation as a reporting issuer; and

(d) the Applicant will not be a reporting issuer in any jurisdiction of Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

"Sonny Randhawa"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.2.10 Gold-Quest International and Sandra Gale – s. 127(1)

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL and SANDRA GALE[1]

ORDER
(Section 127(1))

AND WHEREAS on March 3, 2009, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act, accompanied by a Statement of Allegations dated March 12, 2009, filed by Staff of the Commission ("Staff") with respect to Gold-Quest International ("Gold-Quest"), 1725587 Ontario Inc. carrying on business as Health and HarMONEY, the Harmoney Club, Donald Iain Buchanan, Lisa Buchanan and Sandra Gale ("Gale");

AND WHEREAS on March 16, 2013, Staff of the Commission filed an Amended Statement of Allegations with respect to Gold-Quest and Gale;

AND WHEREAS Gold-Quest is subject to an order dated June 18, 2010 made by the Alberta Securities Commission that imposes sanctions, restrictions or requirements upon it within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS Gale entered into an Agreed Statement of Fact dated June 27, 2014 (the "Agreed Statement of Fact") with Staff in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued an Order dated June 4, 2014 setting out that a sanctions hearing will be scheduled on September 10, 2014 in the event that an Agreed Statement of Fact was entered into by Staff and Gale;

AND WHEREAS Staff filed the Agreed Statement of Fact in which Gale admitted to certain acts in contravention of the Act and conduct contrary to the public interest;

AND WHEREAS the Commission is satisfied that Gale did not comply with Ontario securities law and acted contrary to the public interest;

AND WHEREAS on September 10, 2014 the Commission heard submissions from Gale, through her counsel, and from Staff of the Commission;

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

IT IS HEREBY ORDERED:

1. With respect to Gale:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Gale shall cease for a period of 15 years, with the exception that Gale is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which she has sole legal and beneficial ownership, provided that:

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

      (ii) Gale does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

[1] The Commission issued Reasons and Decision and an Order dated November 26, 2010 imposing sanctions on Iain Buchanan and Lisa Buchanan, each of whom had originally been named as a respondent in a Statement of Allegations dated March 12, 2009. Further, Staff withdrew the allegations against 1725587 Ontario Inc., carrying on business as Health and Harmoney, and Harmoney Club Inc., each of whom were also originally named as respondents to this matter, in a Notice of Withdrawal dated March 4, 2013.

(iii) Gale carries out any permitted trading through a registered dealer and through trading accounts opened in her name or the name of her spouse only (and she must close any trading accounts that are not in her name or the name of her spouse only);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Gale is prohibited for a period of 15 years, except to allow trading in securities permitted by and in accordance with paragraph 1(a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to Gale for a period of 15 years, except to allow trading in securities permitted by and in accordance with paragraph 1(a) of this Order;

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

(e) pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Gale shall resign all positions she holds as an officer or director of any issuer, of any registrant, or of any investment fund manager; and

(f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Gale is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager.

2. With respect to Gold-Quest:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities of or by Gold-Quest cease permanently;

(b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Gold-Quest permanently.

DATED at Toronto this 10th day of September, 2014.

"Alan Lenczner"

2.2.11 Eric Inspektor – Rules 1.7.4 and 11 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
ERIC INSPEKTOR

ORDER
(Rules 1.7.4 and 11 of the Ontario Securities Commission Rules of Procedure (2014), 37 O.S.C.B. 4168)

WHEREAS on March 28, 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 March 28, 2014, to consider whether it is in the public interest to make certain orders against Eric Inspektor (the "Respondent");

AND WHEREAS the Notice of Hearing set a hearing in this matter for April 15, 2014 at 10:00 a.m.;

AND WHEREAS on April 8, 2014, the hearing was rescheduled by the Commission to commence on April 30, 2014 at 10:00 a.m.;

AND WHEREAS on April 30, 2014, Staff submitted *inter alia* that its disclosure to the Respondent would be substantially completed before the end of May 2014;

AND WHEREAS on April 30, 2014, the Commission ordered that the hearing be adjourned to June 18, 2014;

AND WHEREAS on June 18, 2014, Staff confirmed that disclosure to the Respondent was substantially complete, and counsel to the Respondent submitted that it would require some time to review Staff's disclosure and address any issues arising from such disclosure;

AND WHEREAS on June 20, 2014, the Commission ordered that the hearing be adjourned to September 17, 2014;

AND WHEREAS on September 2, 2014, counsel for the Respondent, Crawley Mackewn Brush LLP, filed a notice of motion, pursuant to Rule 1.7.4 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168, for leave to withdraw as representative for the Respondent and requesting that the motion be heard in writing (the "Withdrawal Motion");

AND WHEREAS the affidavit filed by Crawley Mackewn Brush LLP states that the Respondent intends to represent himself;

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

IT IS ORDERED that the Withdrawal Motion be heard in writing; and

IT IS FURTHER ORDERED that Crawley Mackewn Brush LLP is granted leave to withdraw as representative for the Respondent.

DATED at Toronto, this 15th day of September, 2014.

"Mary G. Condon"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Garth H. Drabinsky et al.

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

AND

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

SETTLEMENT AGREEMENT OF
MYRON I. GOTTLIEB

PART I – INTRODUCTION

1. By Notices of Hearing dated July 3, 2001 and February 20, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it was in the public interest to make certain orders against Myron I. Gottlieb ("Gottlieb") and other respondents, as set forth below.

2. These Notices of Hearing were issued in connection with the Statement of Allegations filed by Staff of the Commission ("Staff") against Gottlieb, Garth H. Drabinsky ("Drabinsky"), Gordon Eckstein ("Eckstein"), Robert Topol ("Topol") and Livent Inc. ("Livent") on July 3, 2001 (the "Original Statement of Allegations") and continued pursuant to an Amended Statement of Allegations against Drabinsky, Gottlieb and Eckstein (together, the "Respondents") on February 20, 2013.

3. The Commission will issue a new Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement ("the Settlement Agreement") between Staff and Gottlieb and to make certain orders in respect of Gottlieb.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement to the Commission of the proceeding commenced by the Original Statement of Allegations and continued pursuant to the Amended Statement of Allegations against Gottlieb according to the terms and conditions set out below. Gottlieb agrees to the making of an order by the Commission in the form attached as Schedule "A" to this Settlement Agreement, based on the facts set out below.

PART III – AGREED FACTS

5. Prior to May 1993, Gottlieb and Drabinsky operated and controlled several privately-held entities involved in the live entertainment business, including Live Entertainment of Canada Inc. ("LECI"), MyGar Partnership, and MyGar Realty Inc. During that time, Gottlieb held various positions with these entities, including positions as General Partner of MyGar Partnership, as Director of MyGar Realty Inc., and as Director, President and Chief Operating Officer of LECI.

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

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

8. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Act, publicly announcing that an internal investigation had revealed serious irregularities in the company's financial records. The

announcement stated that it was virtually certain that Livent's financial results for 1996 and 1997 and the first quarter of 1998 would need to be restated.

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

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

11. On February 6, 2001, shares of Livent were cease traded by the Commission in response to the company's failure to file the financial statements required by the Act.

12. On July 3, 2001, Staff issued a Notice of Hearing and the Original Statement of Allegations against Gottlieb and the other Respondents in relation to their conduct as directors and officers of Livent.

13. On February 1, 2002, Gottlieb gave an undertaking to the Director of Enforcement of the Commission that pending the conclusion of the Commission proceeding, he would not apply to become a registrant, an employee of a registrant, or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission.

14. On October 22, 2002, the Royal Canadian Mounted Police charged Gottlieb and the other Respondents with multiple counts of criminal fraud, and the Commission proceeding against the Respondents was adjourned sine die on November 15, 2002 pending resolution of the criminal charges.

15. On May 5, 2008, a criminal trial commenced in the Superior Court of Justice against Gottlieb and Drabinsky before Madam Justice Benotto sitting alone. The trial was held over 65 days and, on March 25, 2009, Gottlieb and Drabinsky were found guilty of two counts of fraud and one count of forgery.

16. The first fraud conviction related to Gottlieb's participation in a kickback scheme at one of Livent's privately-held predecessor entities. This kickback scheme concealed the true state of the company's assets, resulting in a misrepresentation in the financial statements of Livent's IPO prospectus. The second fraud conviction and forgery conviction related to Gottlieb's participation in misrepresentations that Livent made in its financial statements after it became a public company. These misrepresentations reduced reported expenses and increased reported net income, so that the company would appear to be meeting its financial projections.

17. Pursuant to his convictions, Gottlieb received a sentence of 4 years of incarceration for misrepresentations related to Livent's IPO prospectus and 6 years of incarceration for misrepresentations related to Livent's post-IPO period, to be served concurrently.

18. Gottlieb appealed his convictions and his sentences. On September 13, 2011, the Ontario Court of Appeal upheld the convictions, but reduced Gottlieb's sentences to a total of 3 years and 4 years, to be served concurrently.

19. The Supreme Court of Canada dismissed an application brought by Drabinsky to appeal the ruling of the Ontario Court of Appeal on March 29, 2012.

20. On March 8, 2013, pursuant to conditions of his parole, Gottlieb was prohibited from, among other things, owning or operating a business or being in a position of responsibility for the management of finances or investments for any other individual, charity, business or institution until September 10, 2015.

PART IV – CONTRAVENTIONS OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

21. Pursuant to section 127(10) of the Act, and to facilitate protection of the capital markets in a timely, open and efficient manner, the Commission is entitled to consider convictions related to securities when deciding whether to make orders in the public interest.

22. Gottlieb's convictions, as set out in Part III above, constitute a basis pursuant to s. 127(10) of the Act for an order in the public interest under s. 127(1) of the Act.

PART V – TERMS OF SETTLEMENT

23. This proceeding will be settled on the terms set out below.

24. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Gottlieb agrees with the facts set out in Part III of this Settlement Agreement.

25. Staff will tender documents to the Commission evidencing the convictions entered against Gottlieb, as summarized in Part III above.

26. The Commission will make an order pursuant to section 127(1) of the Act stating that:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, Gottlieb is prohibited from trading in securities for a period of 15 years, effective the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any Registered Retirement Savings Plan ("RRSP") and/or any Registered Retirement Income Fund ("RRIF") (as defined in the Income Tax Act (Canada)) in which he has sole legal and beneficial ownership, provided that:

i. t he securities traded are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges), or are issued by a mutual fund that is a reporting issuer or are debt securities;

ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

iii. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, Gottlieb is prohibited from the acquisition of securities for a period of 15 years, effective the date of the Order of the Commission, subject to a carve-out to allow him to acquire securities for the account of any Registered Retirement Savings Plan ("RRSP") and/or any Registered Retirement Income Fund ("RRIF") (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership, provided that:

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

ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

iii. he carries out any permitted acquisition through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Gottlieb;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an issuer;

(f) pursuant to clause 8.2 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of a registrant;

(g) pursuant to clause 8.4 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an investment fund manager; and

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a registrant, an investment fund manager, or as a promoter of any issuer.

PART VII – STAFF COMMITMENT

27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against Gottlieb in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 28 below.

28. If the Commission approves this Settlement Agreement and Gottlieb fails to comply with any of the terms of the Settlement Agreement, Staff may bring a proceeding under Ontario securities law against Gottlieb. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of the Settlement Agreement at a hearing before the Commission to be conducted according to the procedures set out in the Settlement Agreement and the Commission's Rules of Procedure.

30. If the Commission approves the Settlement Agreement, Gottlieb agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

31. If the Commission approves the Settlement Agreement, neither party will make any public statement that is inconsistent with the Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

32. Whether or not the Commission approves the Settlement Agreement, Gottlieb will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

33. If the Commission does not approve the Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    i. the Settlement Agreement and all discussions and negotiations between Staff and Gottlieb before the settlement hearing takes place will be without prejudice to Staff and Gottlieb; and

    ii. Staff and Gottlieb will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to this agreement.

34. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

35. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

36. A faxed or emailed copy of any signature will be treated as an original signature.

Dated this "22nd" day of August, 2014

"Myron I. Gottlieb"
Myron I. Gottlieb

"Sharon Lavine"
Witness

Dated this "22nd" day of August, 2014

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

3.1.2 Morgan Dragon Development Corp. et al. – ss. 127 and 127.1

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

AND

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

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)

Hearing:	June 12, 2014		
Decision:	September 9, 2014		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
Appearances:	Jonathon T. Feasby	–	For Staff of the Ontario Securities Commission
	No one appeared for	–	Devon Ricketts
		–	Mark Griffiths

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I. INTRODUCTION

[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 with respect to sanctions and costs against Devon Ricketts ("**Ricketts**") and Mark Griffiths ("**Griffiths**") (collectively, the "**Respondents**").

[2] The hearing on the merits was held in writing (the "**Merits Hearing**") and the decision on the merits was issued on April 15, 2014 (*Re Morgan Dragon Development Corp. et al* (2014), 37 O.S.C.B. 4141 (the "**Merits Decision**")). On that date, the

Commission ordered that the hearing with respect to sanctions and costs be held on June 12, 2014 (the "**Sanctions and Costs Hearing Order**").

[3] Prior to the Merits Hearing, Morgan Dragon Development Corp. ("**MDDC**"), John Cheong ("**Cheong**"), Herman Tse ("**Tse**") (collectively, the "**Settling Respondents**"), settled with the Commission in respect of conduct stemming from the same statement of allegations as this matter (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4233 (the "**Settlement Agreement**")). Their settlement agreement was approved by order of April 10, 2013 (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4212 (the "**Settlement Order**")).

[4] On June 12, 2014, the Commission held the hearing to consider submissions from Staff and the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**").

[5] On May 5, 2014, Staff filed written submissions on sanctions and costs. Staff also appeared and made oral submissions at the Sanctions and Costs Hearing.

[6] The Respondents were not represented and did not participate in the Sanctions and Costs Hearing or the Merits Hearing. In the Merits Decision, I decided that I was satisfied that the Respondents had been given reasonable notice of the Merits Hearing. I am also satisfied that the Sanctions and Costs Hearing Order was posted on the Commission's website and by the Affidavit of Tia Faerber, sworn May 6, 2014, that Staff served the Respondents with Staff's written submissions on sanctions and costs. Therefore, I proceeded with the Sanctions and Costs Hearing in the absence of the Respondents who did not appear, in accordance with subsection 7(1) 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* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***").

II. THE MERITS DECISION

[7] In the Merits Decision, I concluded that:

(a) The Respondents traded in securities and/or engaged in acts in furtherance of trades in securities without having been registered under the Act to do so, contrary to subsection 25(1)(a), for conduct predating September 28, 2009 and subsection 25(1), for conduct on and after September 28, 2009, of the Act; and

(b) The Respondents engaged in an illegal distribution of securities contrary to subsection 53(1) of the Act.

(Merits Decision, *supra* at para. 115)

III. SANCTIONS AND COSTS REQUESTED

[8] Staff has requested that the following sanctions and costs orders be made against Ricketts:

(a) an order pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Ricketts cease for a period of 7 years, except that, once Ricketts has fully satisfied the conditions in clauses (l), (m) and (n), below, he may trade in securities for the account of any Registered Retirement Savings Plan ("**RRSP**") as defined in the *Income Tax Act*, R.S.C. 1985, c. 1., as amended (the "***Income Tax Act***"), in which he has sole legal and beneficial ownership;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the Act that the acquisition of any securities by Ricketts is prohibited for a period of 7 years, except that, once Ricketts has fully satisfied the conditions in clauses (l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

(c) an order pursuant to clause 3 of subsection 127(1) of the Act that any exemptions in Ontario securities law do not apply to Ricketts for a period of 7 years;

(d) an order pursuant to clause 6 of subsection 127(1) of the Act that Ricketts is reprimanded;

(e) an order pursuant to clause 7 of subsection 127(1) of the Act that Ricketts resign any position he holds as a director or officer of an issuer;

(f) an order pursuant to clause 8 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any issuer for a period of 7 years;

(g) an order pursuant to clause 8.1 of subsection 127(1) of the Act that Ricketts resign any position he holds as director or officer of a registrant;

(h) an order pursuant to clause 8.2 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any registrant for a period of 7 years;

(i) an order pursuant to clause 8.3 of subsection 127(1) of the Act that Ricketts resign any position he holds as director or officer of any investment fund manager;

(j) an order pursuant to clause 8.4 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any investment fund manager for a period of 7 years;

(k) an order pursuant to clause 8.5 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 7 years;

(l) an order pursuant to clause 9 of subsection 127(1) of the Act that Ricketts 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) of the Act;

(m) an order pursuant to clause 10 of subsection 127(1) of the Act that Ricketts disgorge to the Commission a total of $177,094.50, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(n) an order pursuant to clause 127.1 of the Act that Ricketts pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Griffiths.

[9] Staff has requested that the following sanctions and costs orders be made against Griffiths:

(a) an order pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Griffiths cease for a period of 5 years, except that, once Griffiths has fully satisfied the conditions in clauses (l), (m) and (n), below, he may trade in securities for the account of any RRSP in which he has sole legal and beneficial ownership;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the Act that the acquisition of any securities by Griffiths is prohibited for a period of 5 years, except that, once Griffiths has fully satisfied the conditions in clauses (l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

(c) an order pursuant to clause 3 of subsection 127(1) of the Act that any exemptions in Ontario securities law do not apply to Griffiths for a period of 5 years;

(d) an order pursuant to clause 6 of subsection 127(1) of the Act that Griffiths is reprimanded;

(e) an order pursuant to clause 7 of subsection 127(1) of the Act that Griffiths resign any position he holds as a director or officer of an issuer;

(f) an order pursuant to clause 8 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any issuer for a period of 5 years;

(g) an order pursuant to clause 8.1 of subsection 127(1) of the Act that Griffiths resign any position he holds as director or officer of a registrant;

(h) an order pursuant to clause 8.2 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any registrant for a period of 5 years;

(i) an order pursuant to clause 8.3 of subsection 127(1) of the Act that Griffiths resign any position he holds as director or officer of any investment fund manager;

(j) an order pursuant to clause 8.4 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any investment fund manager for a period of 5 years;

(k) an order pursuant to clause 8.5 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years;

(l) an order pursuant to clause 9 of subsection 127(1) of the Act that Griffiths pay an administrative penalty of $20,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(m) an order pursuant to clause 10 of subsection 127(1) of the Act that Griffiths disgorge to the Commission a total of $51,192.50, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(n) an order pursuant to clause 127.1 of the Act that Griffiths pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Ricketts.

IV. STAFF'S SUBMISSIONS

[10] Staff submits that the Respondents' conduct involved serious contraventions of the Act by engaging in unregistered trading and an illegal distribution of securities. Staff notes that Ricketts also assisted with training and managing of sales staff who were engaged in the illegal activities of MDCC.

[11] Staff submits that neither of the Respondents was registered from September 2007 to July 2011 (the "**Material Time**"). However, Staff submits that Ricketts admitted that he was studying for the limited market dealer course because he was told that, due to a change in the law, he could not sell limited partnership units of MD Land Pool Limited Partnership ("**Phase 1**"), MD Land Pool Phase 2 Limited Partnership ("**Phase 2**"), and MD Land Pool Dundurn Limited Partnership ("**Dundurn**") (collectively, the "**LP Units**") until he is licensed. Staff also refers the Panel to Ricketts' admission that he took the Canadian Securities Course, but did not pass the exam, and understood that investors with MDDC were "accredited". This, Staff argues, supports their submission that Ricketts ought to have been aware of the registration and prospectus requirements of the Act.

[12] In written submissions, Staff argues that the Respondents' conduct was organized and prolonged over the Material Time of four years and resulted in MDDC illegally raising over $5 million. At the Sanctions and Costs Hearing, Staff acknowledged that Ricketts was found to have engaged in such conduct for four years, but Griffiths only for two years. Staff submits that each profited from their violations of the Act, Ricketts in the amount of $177,094.50 in commission payments and Griffiths in the amount of $51,192.50 in commission payments. Staff attributes Ricketts greater earnings partially to his more prolific sales activity and partially due to additional managerial and training responsibilities.

[13] In support of its submissions on market bans, Staff relies upon findings with respect to conduct of salespersons in Simply Wealth, Imagin, Allen and Sabourin (*Re Simply Wealth Financial Group Inc.* (2013), 36 O.S.C.B. 5099 ("***Simply Wealth***"), *Re IMAGIN Diagnostic Centres Inc.* (2009), 32 O.S.C.B. 1441 ("***Imagin***"), Re Allen (2006), 29 O.S.C.B. 3944 ("***Allen***") and *Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin***")). Staff submits that in those cases the Commission ordered market bans ranging from five years to permanent bans. Staff also refers the Panel to five-year bans ordered against the Settling Respondents.

[14] Staff submits that, given the Respondents' conduct, Ricketts should be subject to seven-year trading, acquisition and exemption application bans and Griffiths should be subject to five-year trading, acquisition and exemption application bans, both subject to a carve-out for certain personal trading upon payment of any order for disgorgement, administrative penalty and/or costs. Staff also submits that Ricketts should be subject to seven-year director and officer bans and Griffiths should be subject to five-year director and officer bans. Staff submits that the Commission has noted that, in the absence of fraud, a five-year market ban is appropriate (*Simply Wealth, supra* at paras. 29 and 47). However, Staff also submits that in Sabourin, salespersons who were found to have solicited clients to invest, met with clients to provide promotional material and explain investment schemes, helped clients complete required paperwork and received clients' investment cheques were ordered to be subject to permanent bans (Sabourin, supra at paras. 7 and 64). Staff submits that the periods of bans sought for the Respondents are appropriate, and distinguish Ricketts's conduct on basis of his greater knowledge of the markets, more prolific sales and managerial and training roles.

[15] Staff relies upon Simply Wealth, Majestic and Sabourin, as well as the Settlement Order, in support of its submissions with respect to appropriate administrative penalties (*Re Majestic Supply Co.* (2013), 36 O.S.C.B. 11642 ("***Majestic***")). Staff submits that in those cases the Commission ordered administrative penalties ranging from $15,000 to $150,000. Staff argues that, taking into account the disgorgement and totality of the sanctions, administrative penalties in the amount of $50,000 for Ricketts and $20,000 for Griffiths are proportional.

[16] Staff further submits that Ricketts should be ordered to disgorge $177,094.50 and Griffiths to disgorge $51,192.50 because the amounts were obtained as a result of non-compliance with the Act, amounts were reasonably ascertained by Staff and were found to be obtained by the Respondents in the Merits Decision and the order would have a deterrent effect on both the Respondents.

[17] In support of its submission on costs Staff filed the Affidavit of Kathleen McMillan, sworn on May 2, 2014, which attaches time dockets of Staff pertaining to this matter. Staff submits that it employed a conservative approach to its calculation of costs, which accounts for time spent by senior litigation counsel in preparation for the Merits Hearing after the Settlement Agreement was signed. Therefore, Staff is claiming $22,447.50 in costs and submits that Ricketts and Griffiths should be jointly and severally liable for those costs.

V. THE LAW ON SANCTIONS

[18] The Commission's mandate is 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 (section 1.1 of the Act). The Commission's role is to protect the public interest by preventing conduct in the future that may be detrimental to the integrity of the capital markets, not to punish past conduct (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at p. 10).

[19] The Commission must ensure that the sanctions imposed are proportionate to the circumstances of the case and conduct of each respondent. Factors the Commission has considered in determining appropriate sanctions include:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been 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) any mitigating factors;

(g) the size of any profit made or loss avoided from the illegal conduct;

(h) the size of any financial sanctions or voluntary payment when considering other factors;

(i) the effect any sanction might have on the livelihood of a respondent;

(j) the restraint any sanctions may have on the ability of a 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; and

(m) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("***Belteco***") at paras. 23-26; *Re M.C.J.C. Holdings Inc*. (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at para. 26)

[20] Deterrence is an important factor that the Commission may consider when determining appropriate sanctions. In Cartaway, the Supreme Court of Canada stated that: "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[21] The panel in Limelight Sanctions considered the deterrent purpose of administrative penalties. Specifically the Commission stated:

> The purpose of an 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 market participants that the conduct in question will not be tolerated in Ontario capital markets.
>
> (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions***") at para. 67)

[22] There is no formula for determining an administrative penalty. Factors to be considered in determining an appropriate administrative penalty include: the seriousness of the misconduct; whether there were multiple and/or repeated breaches of the

Act; the amount of money raised from investors; and the level of administrative penalties imposed in other cases (*Limelight Sanctions*, supra at paras. 71 and 78).

[23] Subsection 127(1)10 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". When determining the appropriate disgorgement orders, the Commission is guided by a non-exhaustive list of factors set out in Limelight Sanctions at para. 52, including:

(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.

VI. SPECIFIC SANCTIONING FACTORS

[24] In determining appropriate sanctions, the Commission is guided by the factors set out in *Belteco* and *M.C.J.C. Holdings*. I have considered the factors summarized in the following paragraphs to be applicable in this matter.

A. Seriousness of Misconduct and Breaches of the Act

[25] The Respondents participated in serious contraventions of the Act by engaging in unregistered trading, contrary to section 25 of the Act, and the distribution of securities without a prospectus, contrary to section 53 of the Act. Registration is a cornerstone of securities law which serves as a gate-keeping function to ensure only properly qualified individuals are permitted to trade with, or on behalf of, the public (*Re Limelight Entertainment Inc. et al.* (2008), 31 O.S.C.B. 1727 at para. 135; *Majestic, supra* at para. 82). The prospectus fulfills an important disclosure requirement to ensure that investors are able to make informed decisions (*Simply Wealth*, *supra* at para. 30).

[26] During the Material Time, Ricketts solicited investors, provided investors with instructions on how to make payments, assisted investors with filling out subscription agreements and sent investors promotional materials (Merits Decision, supra at para. 100). Griffiths was found to have solicited investors, sent a subscription agreement to an investor, provided investors with instructions on how to make payments and assisted investors with filling out the paperwork and confirmed receipt of payment from investors (Merits Decision, *supra* at para. 104). I note, however, that neither was a directing mind of MDDC.

B. The Respondents' Experience in the Marketplace

[27] Neither of the Respondents was registered under the Act in any capacity during the Material Time (Merits Decision, *supra* at paras. 101 and 105). However, I accept that Ricketts had some experience in the marketplace by virtue of his own admission that he studied the limited market dealer course manual and took the Canadian Securities Course exam, albeit not passed (Merits Decision, *supra* at para. 67). Ricketts also admitted that he was advised that due to a change in the law he could not sell the LP Units until he became registered (*Ibid*).

C. Level of Activity in the Marketplace

[28] Over a prolonged period of three to four years MDDC raised over $5 million from investors from the distribution of LP Units (Merits Decision, *supra* at para. 44). The evidence presented in the Merits Hearing supports that Ricketts's participation occurred throughout the Material Time, while Griffiths compensation began nearly two years later in July 2009 (Merits Decision, *supra* at para. 78).

D. Specific and General Deterrence

[29] Given the seriousness of the conduct, it is important that the Respondents and like-minded individuals should be deterred from doing so in the future by imposing appropriate sanctions. I find that specific deterrence is necessary for both the Respondents in this case. However, I am attuned to the fact that the Respondents were not proponents of a scheme or in this case not even principals of MDDC. On the other hand, both of the Respondents actively promoted and sold the securities in contravention of the Act and Ricketts managed certain sales activities in furtherance of the illegal enterprise.

E. Size of Profit Gained or Loss Avoided from Illegal Conduct

[30] I found that Ricketts was paid $177,094.50 during the Material Time for commissions based on the value of the securities he sold in this matter and that a portion of that compensation was for his training of sales staff and managerial duties at MDDC (Merits Decision, supra at para. 100). I found that Griffiths was paid $51,192.50 during the Material Time, via Halfatree Enterprises ("**Halfatree**"), a sole proprietorship registered by Griffiths, as commissions based on the value of the securities he sold in this matter (Merits Decision, *supra* at para. 104). The Respondents' conduct in those respects constituted trading or acts in furtherance of trading LP Units and, therefore, compensation received was obtained as a result of non-compliance with the Act.

F. The Effect any Sanction Might Have on the Livelihood of a Respondent

[31] Aside from the fact that Ricketts has taken the Canadian Securities Course exam and gave evidence that he was studying for the limited market dealer course when he was working for MDDC, the Respondents have provided no indication that they wish to continue to pursue a career in the capital markets.

VII. APPROPRIATE SANCTIONS IN THIS MATTER

[32] In determining the appropriate sanctions, I have remained cognizant of the particular conduct of each of the Respondents.

A. Trading, Acquisition and Exemption Prohibitions

[33] I have considered decisions cited by Staff in which the Commission determined appropriate sanctions following findings that salesperson respondents engaged in unregistered trading and the illegal distribution of securities. I agree that the conduct of the Respondents warrants the imposition of certain trading, acquisition and exemption prohibitions that are commensurate each one's conduct.

[34] In *Simply Wealth*, the Commission considered circumstances in which respondents solicited and promoted investments for a forex trading program that, in reality, was a ponzi scheme (*Simply Wealth, supra* at paras. 1-2). In that matter, the Commission ordered five-year prohibitions on trading in or acquisition of securities and exemption application, in circumstances where respondents were found to have violated sections 25 and 53 of the Act (Simply Wealth, supra at paras. 3 and 54). The panel also permitted the individual respondents to have a trading, acquisition and exemption application carve-out for an RRSP after they fully satisfy orders for administrative penalties, disgorgement and costs (Simply Wealth, supra at paras. 47 and 54).

[35] In *Allen*, the salesperson respondents, who were found to have contravened sections 25 and 53 of the Act, were ordered to cease trading in securities and that exemptions contained in Ontario securities law would not apply to them for a period of seven years, subject to a carve-out for personal trading or the account of an RRSP under certain terms (*Allen, supra* at paras. 5 and 58-60). I note that in the Allen decision, the panel considered aggravating factors, including that two of the respondents were previously registered and the other had a lengthy criminal record, which are not present in this case.

[36] Although cited by Staff, I do not find the permanent prohibitions ordered against salesperson respondents in Sabourin to be of assistance here as that matter dealt with respondents who were former registrants, at least one of whom misled Staff and another who told investors to ignore inquiries from the Commission, they sold "sham" investments and continued to do so after being interviewed by Staff (*Sabourin, supra* at paras. 7, 61 and 64). Deceptive conduct has not been found in the circumstances of this case; the illegal trades were in units of limited partnerships that hold and develop interests in real estate in the Province of Saskatchewan.

[37] The Settling Respondents, who were the directing minds of MDDC and responsible for conduct of the company pursuant to section 129.2 of the Act, were ordered to cease trading or acquiring securities and that exemptions would not apply to them for a period of five years, subject to a carve-out for personal trading in an RRSP (Settlement Agreement, *supra* at paras. 10-11, 30 and 32; Settlement Order, *supra*). I accept Staff's oral submissions that the Settling Respondents genuinely aspired to comply, they had been the subject of a compliance investigation by Staff, had received lifetime prohibition from becoming registered and, therefore, the sanctions imposed upon them reflect a degree of cooperation and considerations relevant to the settlement context, which are not present for Ricketts and Griffiths. Nevertheless, I am mindful that the Settling Respondents were principals of MDDC and registrants.

[38] As noted above, the Respondents engaged in acts in furtherance of trades, without being registered to do so, over a sustained period of time and resulting in a distribution of securities, contrary to sections 25 and 53 of the Act (Merits Decision, *supra* at para. 115). These are serious breaches of the Act. I acknowledge, however, that the Respondents were not principals of MDDC and there were no findings of deceptive conduct. Further, I distinguish between Ricketts, who managed sales staff and engaged in the conduct for a longer period of time, and Griffiths. Therefore, in the circumstances of this matter and in view of the decisions noted above, I find that it is in the public interest to order that they cease trading in securities, be prohibited from

acquiring securities and that exemptions contained in Ontario securities law not apply to them, in the case of Ricketts for a period of five years and in the case of Griffiths for a period of three years.

[39] The Commission has previously granted a carve-out from a cease trade order for personal trading in an RRSP where the panel found that such carve-out would not significantly increase the risk to the capital markets (*Re Foreign Capital Corp.* (2005), 28 O.S.C.B. 4221 at para. 51 and *Re Duic* (2008), 31 O.S.C.B. 9531 at para. 60). As the panel determined in Simply Wealth, I find that the Respondents should be granted a carve-out for personal trading in an RRSP trading upon full satisfaction of payments ordered in respect of administrative penalties, disgorgement and costs for each (*Simply Wealth, supra* at paras. 47 and 54). In my view, such an exception would not significantly increase the risk to the capital markets given the circumstances.

B. Other Market Prohibitions and Director and Officer Bans

[40] Given their misconduct, I agree that certain market and director and officer prohibitions should be imposed upon the Respondents.

[41] In *Simply Wealth*, the Commission ordered the individual respondents to resign and prohibited them from becoming or acting as directors of officers of any issuer, registrant or investment fund manager for five years, in circumstances where certain of respondents authorized, permitted or acquiesced in breaches of sections 25 and 53 of the Act by corporate respondents in their respective capacities as directors of those companies (*Simply Wealth, supra* at paras. 3 and 54).

[42] In Imagin, the salesperson respondents engaged in unregistered trading of securities contrary to section 25 of the Act and one respondent specifically, Allan McCaffrey ("**McCaffrey**"), oversaw the sales team's conduct in that respect (*Imagin, supra* at paras. 9 and 12). McCaffrey was prohibited from becoming or acting as a registrant or a director or officer of any issuer, registrant or investment fund manager for a period of 10 years and similar prohibitions were ordered against the other salesperson respondents for a period of five years (*Imagin, supra* at paras. 31-34). I note that in Imagin the Commission was approving settlement agreements between Staff and each of those respondents (*Imagin, supra* at para. 3).

[43] The Settling Respondents were prohibited from becoming or acting as a registrant for five years. Cheong and Tse, the directing minds of MDDC, were also were prohibited from becoming or acting as investment fund managers or promoters for the same period (Settlement Order, supra). Cheong and Tse were further ordered to resign and were prohibited from becoming or acting as directors or officers of MDDC and certain other prohibited companies for five years (Settlement Order, *supra*). Lastly, Cheong and Tse were prohibited from becoming or acting as directors or officers of a registrant or investment fund manager for five years (Settlement Order, *supra*). I accept Staff's submission that Tse and Cheong had previously been the subject of a compliance review by Staff and were permanently prohibited from becoming registrants prior to the approval of the Settlement Agreement.

[44] Having reviewed the above-noted cases, I am guided by previous findings of the Commission that market prohibitions and director and officer bans are found to be appropriate in matters involving unregistered trading and an illegal distribution. I find that the Respondents should not be entitled to become or act as registrants, investment fund managers or as promoters for a period of seven years for Ricketts and five years for Griffiths. Ricketts had some experience in the marketplace through his involvement in studying the limited market dealer manual and having taken the Canadian Securities Course exam, which I find to be an aggravating factor (Merits Decision, *supra* at para. 67). Ricketts' conduct in breach of the Act also occurred for a longer period relative to Griffiths (Merits Decision, *supra* at para. 78).

[45] While neither of the Respondents were officers, directors and/or directing minds of corporate entities in this matter, I agree with Staff's submission that the Respondents should resign and be prohibited from becoming directors or officers of any registrant or investment fund manager for a period of seven years for Ricketts and five years for Griffiths. In my view, those positions engage the precise registerable activities that were at issue in this matter. However, given that the Respondents were not principals of the companies that distributed the securities, I find that an order that the Respondents resign and be prohibited from becoming directors or officers of an issuer for a period of five years for Ricketts and three years for Griffiths is proportionate and will serve sufficient specific and general deterrence in the circumstances.

[46] In my view, the orders for resignation, the imposition of varying director and officer bans and other market prohibitions will ensure that the Respondents will not be placed in a position of control or trust with respect to issuers, registrants or investment fund managers in the near future. These orders serve to ensure general and specific deterrence for the Respondents and like-minded individuals.

C. Disgorgement

[47] I have considered the non-exhaustive list of factors set out in Limelight Sanctions in determining appropriate disgorgement orders (*Limelight Sanctions, supra* at para. 52). The Commission has decided that, in considering what is the appropriate disgorgement, "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" (*Limelight Sanctions, supra* at para. 43).

[48] Ricketts was paid $177,094.50 during the Material Time as commissions based on the value of the securities he sold in this matter, a portion of which related to his training of sales staff and managerial duties at MDDC (Merits Decision, *supra* at para. 100). Griffiths was paid $51,192.50 during the Material Time, via Halfatree, as commissions based on the value of the securities he sold in this matter (Merits Decision, *supra* at para. 104). The Respondents' conduct in those respects constituted trading or acts in furtherance of trading LP Units and, therefore, I find that the compensation received was obtained as a result of non-compliance with the Act. The amounts of $177,094.50 for Ricketts and $51,192.50 for Griffiths are reasonably ascertainable based on the evidence and findings in the Merits Decision.

[49] The Respondents participated in serious contraventions of the Act (Merits Decision, *supra* at para. 115). There is no evidence that particular investors were seriously harmed by the Respondents' conduct and therefore it is not known whether there would be a need for investors to obtain redress. However, I accept Staff's submission that violations of the Act, including illegal distributions, are harmful to the capital markets.

[50] The Respondents should not be permitted to profit from their conduct contrary to the Act. In the circumstances, I find that it is appropriate to order Ricketts to disgorge $177,094.50 and Griffiths to disgorge $$51,192.50, obtained by each as a result of their non-compliance with the Act.

D. Administrative Penalties

[51] I have considered the factors noted above to be considered in determining an appropriate administrative penalty (Limelight Sanctions, supra at paras. 71 and 78).

[52] Each of the Respondents committed multiple, serious and repeated violations of the Act. The sales of LP Units raised over $5 million from investors over a period of three to four years (Merits Decision, *supra* at para. 44).

[53] In matters involving unregistered trading and illegal distributions, the Commission has ordered individual salesperson respondents to pay administrative penalties in varying amounts, including $15,000 in Simply Wealth and $75,000 in Majestic (*Simply Wealth, supra* at para. 54; *Majestic, supra* at para. 158). In Imagin, the Commission approved a settlement agreement in which McCaffery, who held a managerial position similar to Ricketts, was ordered to pay a $15,000 administrative penalty (*Imagin, supra* at paras. 9 and 31). I note that the *Imagin* decision was premised upon a settlement agreement in that matter, which took into account mitigating factors that are not present in this matter.

[54] As a result of the approved settlement agreement related to this matter, Cheong and Tse were ordered by the Commission to pay $37,500 each as administrative penalties (Settlement Order, *supra*). I accept Staff's submission that the Settlement Agreement reflects cooperation by Tse and Cheong, including payments made towards administrative penalties and costs orders prior to the settlement hearing and that they genuinely aspired to comply with the Act. However, I continue to distinguish between the Respondents and the directing minds who operated MDDC from its inception and employed the Respondents to engage in the conduct contrary to the Act. The Respondents were in sales positions more akin to respondents in the matters considered above.

[55] I also find the fact that Ricketts had more experience in the marketplace and that his conduct occurred for a longer period relative to Griffiths, to be aggravating factors requiring more specific deterrence (Merits Decision, *supra* at paras. 67 and 78). Further, I note that Ricketts held a managerial position with MDDC (Merits Decision, *supra* at para. 100).

[56] Staff requests that Ricketts be order to pay $50,000 and Griffiths $30,000 as administrative penalties. I disagree. In considering the factors above and the level of administrative penalties imposed in other cases and Settlement Agreement, I find that orders for administrative penalties against Ricketts in the amount of $30,000 and Griffiths in the amount of $15,000 are proportional and appropriate in the circumstances. The scope and seriousness of the Respondents' misconduct warrants strong deterrence for each of them, which, in my view, is served by the imposition of these administrative penalties.

VIII. COSTS

[57] The Commission has discretion to order a person to pay the costs of an investigation and hearing if the Commission is satisfied that the person has not complied with the Act or has not acted in the public interest (section 127.1 of the Act). I have considered the factors at Rule 18.2 of the Commission's *Rules of Procedure* in exercising my discretion to order costs.

[58] I find that the costs sought and apportioned by Staff to be generally reasonable and conservative. Staff seeks to recover $22,447.50 in costs for the time spent by one senior litigation counsel in this matter. Staff does not claim time of counsel during the investigation, time preparing for the Sanctions and Costs Hearing or disbursements. Further, Staff's claim for costs is made after the Settlement Agreement to avoid seeking costs that may be attributable to the Settling Respondents.

[59] In support of this request, Staff provided written submissions and filed the Affidavit of Kathleen McMillan, sworn on May 2, 2014, which attaches time dockets of Staff for time incurred in the Merits Hearing litigation phase of the proceeding, as

required by Rule 18.1(2)(b) of the Rules of Procedure. The time docket records numbers of hours worked and details of the tasks performed by senior litigation counsel and the affidavit speaks to hourly rate of counsel. I am satisfied that the evidence supports an adequate record of costs.

[60] This was not a complex proceeding and Staff presented its case efficiently by way of a written hearing. Neither of the Respondents participated or contributed to the Merits Hearing or the Sanctions and Costs Hearing. While Ricketts did appear for an examination by Staff during the investigation stage, Griffiths did not respond in any way (Merits Decision, *supra* at para. 60).

[61] Taking into account the foregoing, I accept that Ricketts and Griffiths should be ordered to pay a total of $22,447.50 relating to hearing costs incurred by the Commission, for which they shall be jointly and severally liable, pursuant to subsection 127.1(2) of the Act.

IX. CONCLUSION

[62] In my view, the sanctions imposed in this matter reflect the seriousness of the misconduct that occurred and should deter the Respondents and like-minded individuals from engaging in future conduct that violates securities law. Accordingly, I conclude that following sanctions are proportionate to the circumstances and conduct of each of the Respondents and that it is in the public interest to make these orders:

1. With respect to Ricketts:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Ricketts cease for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may trade in securities for the account of any RRSP as defined in the *Income Tax Act*, in which he has sole legal and beneficial ownership;

   (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Ricketts is prohibited for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

   (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Ricketts for a period of five years;

   (d) pursuant to clause 6 of subsection 127(1) of the Act, that Ricketts is reprimanded;

   (e) pursuant to clause 7 of subsection 127(1) of the Act, that Ricketts resign any position he holds as a director or officer of an issuer;

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

   (g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of a registrant;

   (h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any registrant for a period of seven years;

   (i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of any investment fund manager;

   (j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any investment fund manager for a period of seven years;

   (k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of seven years;

   (l) pursuant to clause 9 of subsection 127(1) of the Act, that Ricketts pay an administrative penalty of $30,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(m) pursuant to clause 10 of subsection 127(1) of the Act, that Ricketts disgorge to the Commission a total of $177,094.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(n) pursuant to subsection 127.1(2) of the Act, that Ricketts pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Griffiths.

2. With respect to Griffiths:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Griffiths cease for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may trade in securities for the account of any RRSP as defined in the *Income Tax Act*, in which he has sole legal and beneficial ownership;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Griffiths is prohibited for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;

(c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Griffiths for a period of three years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, that Griffiths is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, that Griffiths resign any position he holds as a director or officer of an issuer;

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

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of a registrant;

(h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any registrant for a period of five years;

(i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of any investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any investment fund manager for a period of five years;

(k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;

(l) pursuant to clause 9 of subsection 127(1) of the Act, that Griffiths pay an administrative penalty of $15,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(m) pursuant to clause 10 of subsection 127(1) of the Act, that Griffiths disgorge to the Commission a total of $51,192.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(n) pursuant to subsection 127.1(2) of the Act, that Griffiths pay a total of $22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Ricketts.

[63] I will issue a separate order giving effect to my decision on sanctions and costs.

Dated this 9th day of September, 2014.

"Edward P. Kerwin"

3.1.3 North American Financial Group Inc. et al.

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC., NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI AND LUIGINO ARCONTI

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act)

Hearing:	June 23, 2014		
Decision:	September 11, 2014		
Panel:	James D. Carnwath, Q.C.	–	Chair of the Panel and Commissioner
Appearances:	Michelle Vaillancourt	–	For Staff of the Commission
	Alexander Gillespie	–	For North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti and Luigino Arconti

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. Background

[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 determine whether it is in the public interest to order sanctions and costs against North American Financial Group Inc. ("**NAFG**"), North American Capital Inc. ("**NAC**"), Alexander Flavio Arconti ("**Flavio Arconti**") and Luigino Arconti ("**Gino Arconti**") (together, the "**Respondents**"). In this decision, I will refer to Flavio Arconti and Gino Arconti collectively as the "**Arcontis**".

[2] On December 28, 2011, a Notice of Hearing was issued by the Commission in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") on the same day. The hearing on the merits in this matter was held on April 29 and 30, May 1-3, 6, 8-10, 22 and 23 and September 11, 2013 (the "**Merits Hearing**"). The Commission's Reasons and Decision on the merits were issued on December 11, 2013 (*Re North American Financial Group Inc.* (2013), 36 O.S.C.B. 12095 (the "**Merits Decision**")).

[3] A separate hearing was held on June 23, 2014 to consider submissions regarding the sanctions and costs to be imposed on the Respondents (the "**Sanctions and Costs Hearing**"). Staff and counsel for the Respondents appeared and made oral submissions. The Arcontis also appeared in person.

B. History of the Proceeding

1. The Respondents' Application under Section 144 of the Act

[4] On November 10, 2010, the Commission issued a temporary cease trade order against the Respondents (the "Temporary Order"). The Temporary Order was amended and extended from time to time. Pursuant to an Order of the Commission dated July 5, 2012, the Temporary Order was extended, as amended, against the Respondents until the final disposition of this matter, including, if appropriate, any final determination with respect to sanctions and costs.

[5] On October 15, 2010, NAFG filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA") on the basis that it was an insolvent person, pursuant to subsection 50.4(1) of the BIA.

[6] On January 6, 2014, Melotel Inc. ("**Melotel**") applied to the Commission, pursuant to section 144 of the *Act* (the "Application"), for a partial revocation of the Temporary Order to allow the holders of NAFG debentures to have an opportunity to vote on a bankruptcy proposal concerning the exchange of NAFG debentures for shares in Melotel (the "**Melotel Proposal**"). Pursuant to the Melotel Proposal, all creditors of NAFG would be issued shares in Melotel in exchange for debts owed to them by NAFG in varying quantities proportionate to the nature and amount of their debt. The Application provided that NAFG would forward a copy of the Melotel Proposal to the Commission once it was finalized and ready for presentation to the investors of NAFG. Staff opposed the Application and provided written submissions in support of its position, and counsel for Melotel provided further written submissions in response to Staff's submissions. The Respondents did not provide any submissions on the Application.

[7] On February 12, 2014, counsel for Melotel filed a copy of a proposal of NAFG made under subsections 50(2) and 62(1) of the BIA. On February 13, 2014, the Commission ordered that the Temporary Order be amended to permit the Melotel Proposal to be put before NAFG's creditors on certain conditions (the "**Melotel Carve-Out**") (*Re North American Financial Group Inc. et al.*, (2014) 37 O.S.C.B. 1920).

[8] A meeting of creditors was held on May 8, 2014, regarding a proposal in bankruptcy of NAFG. The creditors of NAFG refused the proposal, and therefore NAFG was assigned into bankruptcy on that date.

2. The Respondents' Adjournment Requests

[9] In the Commission's Order accompanying the Merits Decision dated December 11, 2013, the Commission ordered that the Sanctions and Costs Hearing would be held on March 24, 2014 and set a schedule for the delivery of written submissions of the parties (the "**Schedule**").

[10] On January 31, 2014, after receiving a Notice of Motion from former counsel for the Respondents to withdraw as their representative, the Commission granted leave to counsel to withdraw as counsel of record for the Respondents.

[11] On March 6, 2014, Alexander Gillespie notified the Commission that he had been retained to act for the Respondents. He requested an adjournment of the Sanctions and Costs Hearing from March 24, 2014 to March 28, 2014, and requested a modification to the Schedule. Staff did not oppose the Respondents' requests. On March 10, 2014, the Commission ordered that the Sanctions and Costs Hearing be adjourned to March 28, 2014 and updated the Schedule to provide an extension to the parties for their written submissions.

[12] On March 20, 26 and May 6, 2014, the Respondents requested three additional adjournments, along with corresponding requests to alter the Schedule. Staff did not object to the Respondents' requests made on March 20, 2014, but Staff did object to the requests made on March 26 and May 6, 2014. However, the Commission granted all requests made by the Respondents regarding the three adjournments of the Sanctions and Costs Hearing and the corresponding requests to vary the Schedule.

[13] On May 6, 2014, the Sanctions and Costs Hearing was most recently adjourned to June 23, 2014 and the Commission set an amended Schedule for the Respondents' written submissions (due on June 9, 2014) and Staff's reply submissions (due on June 16, 2014). On June 20, 2014, the Respondents filed their written submissions, the Affidavit of Gino Arconti sworn on June 20, 2014 (the "Affidavit of Gino Arconti") and a Sanction and Cost Submissions Brief. Staff did not file any written reply submissions on sanctions and costs.

II. THE MERITS DECISION

[14] NAFG is a finance company in the business of the acquisition and servicing of subprime car leases in respect of cars that were acquired through 970910 Ontario Inc., operating as Prestige Motors, a used car dealership ("**Prestige Motors**"). NAC was organized to finance car leases that were conducted through NAFG. NAFG and NAC are not reporting issuers and are not registered under the *Act*.

[15] The misconduct of the Respondents involved the sale of non-prospectus qualified securities to investors. From September, 2007 to September, 2010, NAFG and/or NAC securities were sold by Carter Securities Inc. ("**Carter**"), a company that is not a named respondent in this matter. From September 17, 2007 until September 28, 2009, Flavio Arconti and Gino Arconti were registered as Officers and Directors (Trading Residents) and Shareholders of Carter. Flavio Arconti was also registered as the Designated Compliance Officer of Carter. Starting on September 28, 2009, Flavio Arconti was registered as the Chief Compliance Officer, Ultimate Designated Person and Dealing Representative of Carter, and Gino Arconti was registered as a Dealing Representative of Carter.

[16] On September 22, 2010, the Director issued a decision suspending Carter's registration as an Exempt Market Dealer (the "**Director's Decision**"). Although the Respondents were not named parties in the Director's Decision, the Arcontis' registration was automatically suspended as a result of that decision.

[17] Flavio Arconti and Gino Arconti are brothers and were registrants from September 17, 2007 to September 22, 2010. Flavio Arconti and Gino Arconti jointly owned NAFG, NAC, Carter and Prestige Motors and were the actual and/or *de facto* directors and officers of each of these entities. In a document entitled "Admissions of the Respondents" (Merits Hearing, Exhibit 1), the Respondents admitted that the Arcontis were the directing minds of NAFG, NAC, Carter and Prestige Motors.

[18] In the Merits Decision, I concluded that:

(a) during the period September 29, 2009 to September 24, 2010, Carter's actions constituted a breach of section 13.3 of [National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations* ("**NI 31-103**")] and was contrary to the public interest;

(b) during the period September 17, 2007 to September 24, 2010, Carter's actions constituted a breach of subsection 2.1(1) of OSC Rule 31-505 and was contrary to the public interest;

(c) Flavio Arconti and Gino Arconti, as actual and *de facto* officers and directors of Carter, authorized, permitted or acquiesced in the non-compliance with Ontario securities law by Carter, and are therefore deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the *Act*;

(d) during the period January 1, 2009 to September 24, 2010, the Respondents directly or indirectly engaged or participated in acts, practices or courses of conduct relating to the securities of NAFG and NAC that they knew or reasonably ought to have known perpetrated a fraud on persons contrary to subsection 126.1(b) of the *Act* and contrary to the public interest;

(e) Flavio Arconti and Gino Arconti, as actual and *de facto* officers and directors of NAFG and NAC, authorized, permitted or acquiesced in the non-compliance with Ontario securities law by NAFG and NAC, and are therefore deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the *Act*; and

(f) on September 24, 2010, Gino Arconti engaged in or held himself 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) of the *Act* and contrary to the public interest.

(Merits Decision, above at para. 338)

III. THE POSITION OF THE PARTIES

A. Staff's Submissions

[19] Prior to the Sanctions and Costs Hearing, Staff filed its written submissions dated February 14, 2014, accompanied by a Brief of Authorities and a Sanction Brief. Staff also filed the Affidavit of Marcel Tillie sworn on March 6, 2014 and the Affidavit of Marcel Tillie sworn on June 16, 2014. The Affidavit of Marcel Tillie sworn on March 6, 2014 was entered as Exhibit 1 at the Sanctions and Costs Hearing, and the Affidavit of Marcel Tillie sworn on June 16, 2014 was entered as Exhibit 2.

[20] In its written submissions, Staff submitted that the following sanctions and costs against the Respondents are appropriate and in the public interest:

(a) an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in any securities by NAFG, NAC, Flavio Arconti and Gino Arconti cease permanently;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that the acquisition of any securities by each of NAFG, NAC, Flavio Arconti and Gino Arconti is prohibited permanently;

(c) an order pursuant to clause 3 of subsection 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply to NAFG, NAC, Flavio Arconti and Gino Arconti permanently;

(d) an order pursuant to clause 6 of subsection 127(1) to the *Act* that NAFG, NAC, Flavio Arconti and Gino Arconti be reprimanded;

(e) an order pursuant to clause 7 of subsection 127(1) of the *Act* that Flavio Arconti and Gino Arconti resign any position that either of them holds as a director or officer of an issuer;

(f) an order pursuant to clause 8 of subsection 127(1) of the *Act* that Flavio Arconti and Gino Arconti be prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) an order pursuant to clause 8.2 of subsection 127(1) of the *Act* that Flavio Arconti and Gino Arconti be prohibited permanently from becoming or acting as a director or officer of a registrant;

(h) an order pursuant to clause 8.4 of subsection 127(1) of the *Act* that Flavio Arconti and Gino Arconti be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(i) an order pursuant to clause 8.5 of subsection 127(1) of the *Act* that NAFG, NAC, Flavio Arconti and Gino Arconti be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(j) an order pursuant to clause 9 of subsection 127(1) of the *Act* that each of NAFG, NAC, Flavio Arconti, Gino Arconti pay an administrative penalty of $750,000, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(k) an order pursuant to clause 10 of subsection 127(1) of the *Act* that NAFG, Flavio Arconti and Gino Arconti disgorge to the Commission a total of $2,441,392.42 for which they shall be jointly and severally liable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(l) an order pursuant to clause 10 of subsection 127(1) of the *Act* that NAC, Flavio Arconti and Gino Arconti disgorge to the Commission a total of $1,042,000 for which they shall be jointly and severally liable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*; and

(m) an order pursuant to subsection 127.1 of the *Act* that NAFG, NAC, Flavio Arconti and Gino Arconti pay $283,843.75 of the costs of the investigation and hearing, for which they shall be jointly and severally liable.

[21] In its written submissions, Staff submitted that given the Commission's Order dated February 13, 2014, wording should be added to the market participating bans on NAFG to include the Melotel Carve-Out. However, on June 19, 2014, Staff sent an email to the Registrar and stated that, in view of NAFG's bankruptcy on May 8, 2014, the Melotel Carve-Out to the permanent market participation bans sought by Staff against NAFG was no longer necessary. In the email, Staff also indicated that it would not be seeking monetary sanctions or costs against NAFG, as described in subparagraphs 20(j), (k) and (m) above.

B. The Respondents' Submissions

[22] On June 20, 2014, counsel for the Respondents filed their written submissions, the Affidavit of Gino Arconti and a Sanction and Cost Submissions Brief.

[23] The Respondents' written submissions explained the financial difficulties of NAFG and the Arcontis' efforts to overcome these difficulties. The Respondents also submitted that the Commission should consider a number of mitigating factors, including:

- the Respondents' submission that they were held accountable for knowing and understanding their obligations (i.e. in Carter's policies and procedures manual and at law generally) based primarily upon the finding that they understood those obligations as explained to them by David Gilkes ("**Gilkes**"), the regulatory consultant who was hired by the Arcontis. The Respondents submit that if Gilkes did not advise the Respondents that they needed to disclose their financials, then that should be considered as a mitigating factor in addressing their sanctions;

- the Respondents' submission that Gilkes gave uncontradicted testimony that there are no real rules of disclosure when dealing with accredited investors in the exempt market, along with the submission that there was no evidence that Gilkes or the Respondents were able to secure any guidance relating to Staff's concerns before Staff sent its letter on June 23, 2010;

- the Respondents' submission that without the benefit of hindsight or guiding jurisprudence, it was difficult for the Respondents to determine when NAFG's financial difficulties reached sufficient severity to render their current risk-disclosure measures inadequate;

- factors concerning NAFG's marketing brochures, including the following submissions: there was no evidence tendered of an express statement of profitability in the brochures, Staff's failure to raise certain concerns with the brochures at different points in time, and Gilkes' unawareness of any concerns of profitability implications in the brochures when he revised them following Staff's letter dated June 23, 2010;

- factors concerning the misuse of investor funds, including the following submissions: the lack of any shortfall during the period of January 1, 2009 to September 24, 2010 (the "**Fraud Period**") as indicated in NAFG's financial statements, despite exhaustive compliance reviews Staff did not raise any fraudulent concerns until the Respondents were incapable of taking any corrective action, and in 2010 the Respondents took active measures to reduce NAFG's interest payments by advising investors of the financial difficulties of NAFG and by reducing half of its interest expense by a third and working successfully with HDL Financing; and

- certain issues regarding Staff's analysis on the source and application of funds of NAFG, particularly regarding the interest payments and redemption payments made to investors.

[24] I find that the majority of the factors listed above go to the merits of Staff's allegations. The Respondents had the opportunity to fully defend themselves and respond to Staff's case at the Merits Hearing. This is not the appropriate forum to reopen the Merits Hearing or vary any findings that were made in the Merits Decision. The purpose of this hearing is to consider the appropriate sanctions and costs to be imposed on the Respondents. I have accordingly focused my analysis and findings in this decision solely to this purpose.

IV. ANALYSIS

A. Sanctions

1. The Applicable Law

[25] The Commission's mandate, set out in section 1.1 of the Act, is 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.

[26] In making an Order in the public interest under section 127 of the *Act*, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in the oft-cited decision of *Re Mithras Management Ltd.:*

> … the role of this Commission is to protect the public interest be 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 ... 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)

[27] 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.
>
> (*Re Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37 at para. 43)

[28] The Supreme Court of Canada has also recognized that general deterrence is an important factor in imposing sanctions by stating that "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[29] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(b) the respondents' 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) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit (or loss) avoided from the illegal conduct;

(i) the size of any financial sanction or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of the respondent;

(k) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746-7747; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at 1136; *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) ("***Erikson***"))

[30] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, above at 1134).

[31] With regards to 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". The Commission has described the purpose of the disgorgement remedy as follows:

> [T]he 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…
>
> …
>
> [T]he 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 ("***Limelight***") at paras. 47 and 49)

[32] In *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.

(*Limelight*, above at para. 52)

[33] 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*.

2. Relevant Sanctioning Factors

[34] In considering the factors set out in paragraph 29 above, I find the factors below to be relevant to the circumstances of the Respondents.

(a) Seriousness of the Allegations Proved

[35] The findings in the Merits Decision established significant contraventions of Ontario securities law and conduct that was found to be contrary to the public interest. In particular, the Commission found that the Respondents breached subsection 126.1(b) of the *Act* during the Fraud Period. The Commission has previously held that fraud is "one of the most egregious securities regulatory violations" and is both an "affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214, citing *Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[36] Moreover, the Divisional Court has held that "[p]articipation in the capital markets is a privilege, not a right" (Erikson, above at para. 55).

[37] In this matter, the Arcontis were deemed to have not complied with Ontario securities law through their roles as actual and *de facto* directors and officers of NAFG and NAC, along with their roles as actual and *de facto* directors and officers of Carter, which was found to have breached its suitability obligations under section 13.3 of NI 31-103 and its duty to act fairly, honestly and in good faith under subsection 2.1(1) of OSC Rule 31-505. Additionally, Gino Arconti was found to have illegally traded securities after his registration was automatically suspended as a result of the Director's Decision, contrary to subsection 25(1) of the *Act*.

(b) Experience and Level of Activity in the Marketplace

[38] The Respondents submit that the Arcontis were not experienced in the marketplace. I disagree with this submission. As discussed in paragraph 17 above, the Arcontis were registrants from September 17, 2007 to September 22, 2010. The Commission has previously recognized that registrants are expected to have a higher level of awareness of their duties than

non-registrants (*Re Sextant Capital Management Inc.* (2012), 35 O.S.C.B 5213 at para. 16(b), citing *Re Rowan* (2009), 33 O.S.C.B. 91 at para. 145 and *Re Norshield Asset Management* (Canada) (2010), 33 O.S.C.B. 7171 at paras. 84 and 85).

[39] I find that the Arcontis failed to meet the high standard of conduct that was expected of them as registrants. In the Merits Decision, the Commission found that the Arcontis were active participants in Carter's investment activities and authorized Carter's misconduct. The Arcontis were also found to be active members in the fraud committed by NAFG and NAC.

[40] Moreover, the fraudulent scheme spanned more than 20 months and involved the misconduct of all Respondents in this matter. As such, their experience and level of activity in the capital markets is an aggravating factor for each of the Respondents.

(c) Size of Any Profit or Loss Avoided from Illegal Conduct

[41] A total of $2,908,170 was received from investors of NAFG and a total of $1,042,000 was raised from the sale of NAC securities from 11 investors (Merits Decision, above at paras. 83 and 308). Most of the investors of NAFG and NAC, who were unsecured investors, lost at least half of their investment (Merits Decision, above at para. 311). In my view, while the investor losses in this case fall neither at the most nor the least serious end of the spectrum, they have the capacity to result in a substantial loss of investor confidence in the integrity of the capital markets.

(d) Mitigating Factors and Remorse

[42] The Arcontis both testified at the Merits Hearing, and all the Respondents admitted to certain facts at the commencement of the Merits Hearing. However, I note that the Respondents did not admit to the following allegations: the conduct by Carter amounted to a failure by the company to deal fairly, honestly and in good faith with its clients; the Respondents' conduct amounted to fraud; and Gino Arconti engaged in and/or held himself out as engaging in the business of trading in securities without registration and contrary to the public interest. I therefore consider the Respondents' admissions and the Arcontis' testimonies at the Merits Hearing to be neutral factors when determining the appropriate sanctions to be imposed on the Respondents.

[43] Staff submits that the Arcontis did not take responsibility for their actions, did not express remorse and acted in a way to preserve their best interests, specifically by seeking to obtain releases from investors in relation to the lawsuits against their lawyers and former advisers, including Gilkes. I do not accept these submissions from Staff and therefore do not consider them to be aggravating factors against the Arcontis.

[44] The Respondents submit that the Commission should consider a number of mitigating factors. As discussed in paragraph 24 above, I find that the majority of these factors go to the merits of this case, which were raised in the Merits Hearing and addressed in the Merits Decision. The evidence presented at the Merits Hearing showed that: although Gilkes assisted the Arcontis as a regulatory consultant, he was never present during the Arcontis' meetings with investors; later disclosure made by the Respondents did not constitute disclosure at the time investors initially made their investments; and, it was not credible that the Arcontis did not understand their obligation to disclose significant investment risks to their investors (Merits Decision, above at paras. 245, 282 and 283). I also note that, at the Merits Hearing, counsel for the Respondents did not ask any questions in cross-examination of Staff's forensic accountant, Marcel Tillie ("**Tillie**"), who provided the Panel with the source and application of funds analysis in relation to this matter.

(e) General and Specific Deterrence

[45] A message must be sent to the Respondents and like-minded individuals that fraudulent schemes similar to the one involved in this case will result in severe sanctions. Orders removing the Respondents from the capital markets, imposing significant administrative penalties and requiring disgorgement of funds not returned to investors are proportionate to the Respondents' misconduct, and will send a message to like-minded individuals that involvement in this type of misconduct will result in severe sanctions.

3. Appropriate Sanctions in this Matter

[46] At the Sanctions and Costs Hearing, Staff provided the Panel with a copy of the Reasons and Decision on Sanctions and Costs in *Re XI Biofuels Inc. et al.* (2010), 33 O.S.C.B. 10963 ("***XI Biofuels***"), and pointed the Panel to paragraph 25, which states:

> We accept the submissions of Staff. We are not persuaded that the BIA prevents us from exercising our public interest jurisdiction under sections 127 and 127.1 of the *Act* without leave of the Bankruptcy Court. We leave questions of enforcement of our order to another forum. In this case, however, we have determined that the public interest is best served by restricting the monetary orders to the Individual Respondents only, in order to avoid depleting the assets that may

> be available for compensation or restitution to investors who lost money as a result of the Respondents' non-compliance with the *Act*.
>
> (*XI Biofuels*, above at para. 25)

[47] Relying on paragraph 25 of XI Biofuels, I agree with Staff that the Commission has the authority to make public interest orders against NAFG, a bankrupt entity.

[48] I also agree with Staff's submissions that the Commission should not distinguish between the conduct of Flavio Arconti and Gino Arconti, and that the Arcontis therefore deserve the same level of sanctions. During the time of the Respondents' conduct referred to herein, the Arcontis jointly owned NAFG, NAC, Carter and Prestige Motors and were the actual and/or *de facto* directors and officers of each of these entities. Flavio Arconti prepared the marketing brochure of NAFG, which was found to contain misleading statements, while Gino Arconti distributed these brochures to investors. Both Arcontis were the directing minds of NAFG and NAC, they were responsible for depositing cheques that came into NAFG, they reviewed the financial statements of NAFG, and they engaged in discussions with investors. The Arcontis were also active participants in Carter's investment activities and authorized Carter's conduct.

(a) Trading and Other Market Prohibitions

[49] Given the seriousness of the misconduct of the Respondents, sanctions in this case should send a strong message to both the Respondents and the public at large. I find that it is in the public interest to make orders removing the Respondents permanently from the capital markets.

[50] I agree with Staff's submission that the Arcontis should be subject to permanent market participation bans with no carve-outs for personal trading. The Commission has ordered permanent cease trade, acquisition and exemption application bans, without exception, in circumstances where respondents were found by the Panel to have engaged in fraud (*Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions***") at para. 35; *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7357 ("***Lyndz***") at para. 80; *Re Goldpoint Resources Corp.* (2013), 36 O.S.C.B. 1464 ("***Goldpoint***") at para. 63). In this matter, the Arcontis engaged in fraudulent conduct, which included providing misleading documents to investors and engaging in unauthorized diversion of investor funds. The Arcontis cannot be trusted to participate in the capital markets in the future and their conduct demonstrates a serious risk to the public.

[51] I therefore find that it is appropriate that the Respondents be subject to permanent trading, acquisition and exemption application bans, and that no carve-outs be afforded to the Arcontis for personal trading. Permanent director or officer bans will also remove the Arcontis from Ontario's capital markets and protect the investing public.

[52] I also find it appropriate to reprimand the Respondents, pursuant to paragraph 6 of subsection 127(1) of the *Act*, in order to reaffirm that the Commission will not tolerate future illegal and fraudulent conduct such as occurred in this case.

(b) Administrative Penalties

[53] The Commission's public interest jurisdiction allows it to impose sanctions under section 127 of the *Act*. Under paragraph 9 of subsection 127(1) of the *Act*, I am entitled to impose an administrative penalty of not more than $1 million in connection with each failure of the Respondents to comply with Ontario securities law. In the Merits Decision, the Commission found that the Respondents were involved with multiple contraventions of Ontario securities law, including fraud, and found that the Respondents acted contrary to the public interest.

[54] As discussed in paragraph 21 above, Staff is no longer seeking monetary sanctions against NAFG, and therefore seeks that each of NAC, Flavio Arconti and Gino Arconti pay an administrative penalty of $750,000.

[55] I have considered the Commission's prior case-law in determining administrative penalties that are proportionate to the circumstances in this matter. Staff relied on Al-Tar Sanctions, which involved unregistered trading, illegal distribution of securities, fraud and director and officer liabilities. The individual respondents were required to pay administrative penalties ranging from $200,000 to $750,000. Staff also relied on *Re Maple Leaf Investment Fund Corp.* (2012), 35 O.S.C.B. 3075, Re *New Found Freedom Financial* (2013), 36 O.S.C.B. 6758 ("***New Found Freedom***"), *Re Pogachar* (2012), 35 O.S.C.B. 6479, Lyndz and Goldpoint, all of which involved administrative penalties that ranged from $250,000 to $750,000 against respondents (I note that one individual respondent in *New Found Freedom Financial* was ordered to pay a $5,000 administrative penalty). These and other similar Commission decisions provide appropriate precedents for assessing proportionate administrative penalty sanctions.

[56] In this case, the Respondents' actions caused significant harm to investors and the capital markets generally. A total of $2,908,170 was received from investors of NAFG and $1,042,000 was raised from the sale of NAC securities. Although there was evidence that the Respondents updated various corporate documents, such as Know Your Client forms and NAFG's

marketing brochures, in an effort to be compliant with Ontario securities law, the Commission ultimately found that the Respondents' misconduct resulted in multiple contraventions of Ontario securities law, including a finding of fraud. I note that in his testimony at the Merits Hearing, Flavio Arconti admitted that the wording in some of the statements in the marketing brochures could be construed differently than what he interpreted them to mean, and Gino Arconti, in his testimony, accepted the criticism that the version of the marketing brochure that was most widely distributed to investors could have left the impression that NAFG was a bigger player than it really was in the automotive and financing industry (Merits Decision, above at paras. 153 and 189).

[57] Regarding both Arcontis, they were aware that NAFG never made a profit in the years 2007, 2008, 2009 or 2010, and they knew that the unsecured loan to Prestige Motors reached over $2 million. Each of the Arcontis transferred their interest in their residence to their spouses in May, 2010; and the reasons for the transfers was to place whatever value there was in the residences out of reach of potential creditors (Merits Decision, above at para. 316). The Arcontis were also registrants and were the directing minds of NAFG, NAC, Carter and Prestige Motors. There is a need for a reminder that the Commission expects a higher standard of conduct from those provided with the privilege of being involved in the capital markets.

[58] Accordingly, I find that it is appropriate and proportionate to the circumstances in this case to make an order against NAC, Flavio Arconti and Gino Arconti to each pay an administrative penalty of $600,000.

(c) Disgorgement

[59] In the Merits Decision at paragraph 317, the Commission found that through their directing minds (the Arcontis), "NAFG and NAC knew that the representations to investors regarding NAFG's financial situation and the use of investor funds were false and misleading and would cause deprivation to investors by exposing them to risks not contemplated by them". It was through the actions and subjective knowledge of the Arcontis that allowed NAFG and NAC to perpetrate the fraudulent Ponzi scheme, in which payments of new investor money were made to previous investors. Investors were substantially harmed, and it does not appear likely that investors will be able to obtain any redress. I find that it is appropriate to impose disgorgement orders against the Respondents for the amounts they obtained through their serious misconduct.

(i) NAFG, Flavio Arconti and Gino Arconti

[60] Staff submits that it only seeks disgorgement amounts in relation to the Fraud Period. The evidence showed that a total of $2,908,170 was received from investors of NAFG, a total of $126,000 was received from investors of NAC and a total of $466,777.58 was repaid to investors (Merits Decision, above at para. 83). Staff submits that none of payments totaling $466,777.58 were made to investors on the NAC investor list. Given that there was no evidence presented to the contrary, I accept Staff's submission and I will attribute these payments to NAFG's investors.

[61] In its written submissions, based on the amounts referred in paragraph 60 above, Staff sought an order that NAFG, Flavio Arconti and Gino Arconti disgorge to the Commission a total of $2,441,392.42 for which they shall be jointly and severally liable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*. However, following its submissions regarding NAFG's status as a bankrupt, Staff informed the Commission that it would not seek monetary sanctions against NAFG, as discussed in paragraph 21 above.

[62] At the Sanctions and Costs Hearing, Staff revised its disgorgement request of $2,441,392.42 and submitted that the $126,000 received from investors of NAC should not be subtracted from the total amount received from investors of NAFG during the Fraud Period. Staff submitted that its revised disgorgement amount should be $2,567,392.42 (Transcript, Sanctions and Costs Hearing, p. 19, lines 4-11).

[63] The Respondents submit that a reasonable disgorgement order against the Respondents would be $175,000, which they submit represents the management fees that were paid to the Arcontis (Transcript, Sanctions and Costs Hearing, p. 54, lines 10-12 and p. 59, lines 5-13). The Respondents also submit that the amount of $1,642,413.28 categorized as "Interest Paid to Investors" in Tillie's source and application of funds analysis (Merits Decision, Exhibit 20) includes both interest and redemption payments. The Affidavit of Gino Arconti indicates that a total of $388,701.26 was received by investors as redemption payments. Staff submits that it does not have any information to refute a finding that these payments were potential principal payments. I therefore accept that $388,701.26 was repaid to investors as redemption payments.

[64] In calculating the net receipts received from investors of NAFG, I have taken the $2,908,170 that was received from investors of NAFG and netted out: (a) $466,777.58 that was repaid to NAFG's investors; and (b) $388,701.26 that was paid to investors as redemption payments. I have not included the $126,000 that was received from investors of NAC, which is consistent with Tillie's analysis on the source and application of funds in this matter (Merits Hearing, Exhibit 20). The net receipts from investors of NAFG therefore amount to $2,052,691.16.

[65] I find that the net receipts from investors of NAFG were obtained as a result of the fraudulent conduct of NAFG and each of the Arcontis. These receipts have been ascertained and a disgorgement order for these receipts would have a

significant general and specific deterrent effect. I therefore find that it is appropriate to order Flavio Arconti and Gino Arconti to disgorge, on a joint and several basis, $2,052,691.16 to the Commission for the amounts they obtained as a result of their non-compliance with Ontario securities law.

(ii) NAC, Flavio Arconti and Gino Arconti

[66] Staff seeks an order that NAC, Flavio Arconti and Gino Arconti disgorge to the Commission a total of $1,042,000 for which they shall be jointly and severally liable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

[67] Regarding NAC, Staff submitted in its written submissions that it could only find $126,000 in funds coming from NAC or NAC investors that were deposited into the bank accounts of NAFG. Staff did not have bank statements for any bank accounts in the name of NAC. However, at the Merits Hearing, the Respondents admitted that during the period July, 2009 to April, 2010, NAC issued shares to approximately 11 investors and the total proceeds from the sale of NAC securities of approximately $1,042,000 was transferred to NAFG (Merits Decision, above at para. 308). The Respondents, however, submit that the admission regarding the $1,042,000 from the "sale" of NAC securities was simply an exchange of NAFG securities for NAC securities. I do not accept the Respondents' submission.

[68] As discussed in paragraph 59 above, the Commission made a finding of fraud against NAC based on the subjective knowledge of its directing minds, the Arcontis. The Respondents admitted that approximately $1,042,000 was raised from the sale of NAC securities. I therefore find that $1,042,000 was obtained by NAC and the Arcontis through their non-compliance of Ontario securities law, and I order that this amount be disgorged to the Commission on a joint and several basis by NAC, Flavio Arconti and Gino Arconti.

B. Costs

1. The Applicable Law

[69] Pursuant to section 127.1 of the *Act*, the Commission has authority 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 Ontario securities law or has acted contrary to the public interest. Factors to be considered by the Commission when awarding costs are set out in Rule 18.2 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***").

[70] Staff originally requested in its written submissions that NAFG, NAC, Flavio Arconti and Gino Arconti pay $283,843.75 of the costs of the investigation and hearing, for which they shall be jointly and severally liable. However, as discussed in paragraph 21 above, in its email sent to the Registrar on June 19, 2014, Staff stated that it would not seek costs against NAFG. Staff therefore currently seeks a costs order against NAC, Flavio Arconti and Gino Arconti.

[71] Staff calculated its costs of the investigation and hearing as set out in the Affidavit of Michelle Spain sworn on February 14, 2014, which includes Staff's Bill of Costs. The Bill of Costs employs the hourly rates approved by the Commission and reflects the time spent by: Staff counsel (Michelle Vaillancourt), a senior investigative counsel (Shaun Flynn) and Staff's forensic accountant (Tillie). The time spent by students-at-law and assistants were excluded. Staff submits that it has employed a conservative approach by applying the following discounts: no time was claimed for the work of a senior litigation counsel who was the litigator on this matter prior to Michelle Vaillancourt's involvement; no time was claimed for the work of law clerks; no time was claimed for the time spent preparing for or attending the Sanctions and Costs Hearing; and no claim was made for any disbursements.

2. Analysis

[72] In *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***"), the Panel identified criteria that was considered by the Commission in past decisions when awarding costs:

(a) failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;

(b) the seriousness of the charges and the conduct of the parties;

(c) abuse of process by a respondent may be a factor in increasing the amount of costs;

(d) the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and

(e) the reasonableness of the costs requested by Staff.

(*Ochnik*, above at para. 29)

[73] Applying the factors from *Ochnik* and the factors listed in Rule 18.2 of the *Rules of Procedure*, I find the following factors to be relevant in imposing a costs order against NAC, Flavio Arconti and Gino Arconti:

(a) a Notice of Hearing was issued by the Commission on December 28, 2011 to notify the Respondents in this matter that Staff would be seeking investigation and hearing costs against them;

(b) Staff has proven serious allegations against the Respondents involving a substantial amount of investor funds and misconduct that led to multiple contraventions of Ontario securities law, including fraud, and conduct contrary to the public interest;

(c) the Merits Hearing in this matter spanned 12 days;

(d) the Respondents filed a document entitled "Admissions of the Respondents" at the beginning of the Merits Hearing (Merits Hearing, Exhibit 1);

(e) the Respondents cooperated with Staff during the investigation of this matter;

(f) Staff's request for costs pertains to the period spanning from October 4, 2010 to December 13, 2013, and consequently does not include any costs associated with the Melotel Proposal or the four adjournment requests made by the Respondents that were granted by the Commission, as discussed in paragraphs 4 to 13 above;

(g) the Commission granted four requests from the Respondents to modify the deadline for their written submissions on sanctions and costs. The Commission's most recent Order dated May 6, 2014 allowed the Respondents to file and serve their already late written submissions by June 9, 2014. The Respondents provided their written submissions and related materials on sanctions and costs on June 20, 2014; and

(h) Staff has taken a conservative approach in assessing the amount of costs.

[74] Having considered the foregoing, and in particular, the complexity of the matter and the conduct of both the Respondents and Staff during the Merits Hearing, I find that it is appropriate to award costs in the amount of $200,000 on a joint and several basis against NAC, Flavio Arconti and Gino Arconti.

V. CONCLUSION

[75] For the reasons set out above, I conclude that it is in the public interest to make the orders 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.

[76] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

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

(b) pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by the Respondents shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to the Respondents permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the *Act*, the Respondents are reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the *Act*, Flavio Arconti and Gino Arconti shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to paragraph 8 of subsection 127(1) of the *Act*, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to paragraph 8.2 of subsection 127(1) of the *Act*, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of a registrant;

(h) pursuant to paragraph 8.4 of subsection 127(1) of the *Act*, Flavio Arconti and Gino Arconti shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(i) pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, the Respondents shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(j) pursuant to paragraph 9 of subsection 127(1) of the *Act*, NAC, Flavio Arconti and Gino Arconti shall each pay an administrative penalty of $600,000 for their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

(k) pursuant to paragraph 10 of subsection 127(1) of the *Act*, Flavio Arconti and Gino Arconti shall, on a joint and several basis, disgorge to the Commission a total of $2,052,691.16 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

(l) pursuant to paragraph 10 of subsection 127(1) of the *Act*, NAC, Flavio Arconti and Gino Arconti shall, on a joint and several basis, disgorge to the Commission a total of $1,042,000 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

(m) pursuant to subsection 127.1 of the *Act*, NAC, Flavio Arconti and Gino Arconti shall jointly and severally pay $200,000 for the costs incurred in the investigation and hearing of this matter.

DATED at Toronto this 11th day of September, 2014.

“James D. Carnwath”, Q.C.

3.1.4 Northern Securities Inc. et al. –ss. 8(3) and 21.7

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

AND

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

AND

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

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 8(3) and Section 21.7 of the Securities Act)

Hearing:	June 9, 10 and 11, 2014		
Decision:	September 11, 2014		
Panel:	James E. A. Turner	–	Vice Chair and Chair of the Panel
	Judith N. Robertson	–	Commissioner
Appearances:	David Hausman -	–	For Douglas Michael Chornoboy and Frederick Earl Vance
	Victor Philip Alboini	–	For himself and Northern Securities Inc.
	Alexandra Clark Charles Corlett	–	For the Investment Industry Regulatory Organization of Canada
	Matthew Britton	–	For the Ontario Securities Commission

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. INTRODUCTION

[1] This was a *de novo* sanctions and costs hearing before the Ontario Securities Commission (the "**Commission**") under sections 8(3) and 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") with respect to the Investment Industry Regulatory Organization of Canada ("**IIROC**") proceeding (the "**IIROC Proceeding**") relating to Northern Securities Inc. ("**NSI**"), Victor Philip Alboini ("**Alboini**"), Douglas Michael Chornoboy ("**Chornoboy**") and Frederick Earl Vance ("**Vance**") (collectively, the "**Applicants**").

[2] The hearing took place before the Commission on June 9, 10 and 11, 2014 (the "**Sanctions and Costs Hearing**"). Alboini represented himself and NSI, and separate legal counsel represented each of Chornoboy and Vance.

[3] During the hearing, we heard evidence relevant to sanctions and costs. Alboini and NSI called three witnesses and Alboini testified on his own behalf. In addition, Alboini and NSI tendered affidavit evidence.

[4] We received written submissions from IIROC staff ("**IIROC Staff**"), Alboini on behalf of himself and NSI, and Chornoboy. We heard oral submissions from IIROC Staff, Alboini on behalf of himself and NSI, and counsel for Chornoboy, respectively. Counsel for Vance made no submissions (see paragraph 125 of these reasons). Staff of the Commission ("**Commission Staff**"), while present during the Sanctions and Costs Hearing did not make any submissions.

[5] These are our reasons and decision on sanctions and costs.

II. THE APPLICANTS

[6] The following background facts were agreed to at the hearing (the "**IIROC Hearing**") before the IIROC panel (the "**IIROC Panel**") in this matter and are set out in paragraph 4 of the IIROC Panel's decision (*Re Northern Securities* (2012) IIROC 63 (the "**IIROC Decision**")):

1. NSI is a Type 2 introducing broker. At all material times, being from 2006 to 2011, NSI was a registrant of the IDA, and subsequently IIROC. At all material times, NSI was also registered as an Investment Dealer and was a Participating Organization of the Toronto Stock Exchange ("**TSX**") and therefore was a Participant under the Universal Market Integrity Rules ("**UMIR**").

2. NSI is a full service firm with its head office in Toronto, Ontario. NSI carries on retail trading, institutional trading and corporate finance work.

3. Alboini has been NSI's Ultimate Designated Person ("**UDP**") and its Chief Executive Officer ("**CEO**") since June 1999. Alboini has also been a Registered Representative ("**RR**") at NSI since at least 1999.

4. Chornoboy has been NSI's Chief Financial Officer ("**CFO**") since June 2006 and Vance has been NSI's Chief Compliance Officer ("**CCO**") since October 2006.

5. At all material times, Alboini, Chornoboy and Vance were registrants of the IDA and, subsequently, IIROC.

6. NSI was at all material times wholly owned by Northern Financial Corporation ("**NFC**").

7. NFC is a public company and its shares are traded on the TSX.

8. At all material times, Alboini was a shareholder of NFC and its President and CEO.

9. Jaguar Financial Corporation ("**Jaguar**") is a publicly traded company whose shares are traded on the TSX. At all material times, NFC and Alboini were shareholders of Jaguar and Alboini was its President and CEO. During the material time, Jaguar opened and held multiple accounts at NSI, and Alboini was the RR for all of those accounts.

10. Chornoboy has been the CFO for NFC since June 2006 and for Jaguar since December 2006.

11. At all material times, Jaguar, NFC and NSI shared their physical premises.

We have adopted the foregoing definitions for purposes of these reasons.

[7] In this hearing *de novo*, we are determining the appropriate sanctions and costs to be imposed on Alboini, NSI, Chornoboy and Vance based on the IIROC Decision as modified by our decision referred to in paragraph 14 and summarized in paragraphs 15 to 36 below.

III. HISTORY OF THE MATTER

1. The IIROC Decision

[8] The merits portion of the IIROC Hearing was held on May 7 to June 1, July 3, 4, and 23, 2012. The IIROC Panel issued an oral decision on the merits on July 23, 2012 with reasons to follow.

[9] The IIROC sanctions and costs hearing was held on October 11 and 12, 2012.

[10] The IIROC Panel released the IIROC Decision on November 10, 2012. That decision included written reasons for the IIROC Decision on the merits and as to sanctions and costs.

[11] In the IIROC Decision, the IIROC Panel found that IIROC Staff had proven the allegations contained in **Count 1, Count 2, Count 3** and **Count 5(a)** as alleged by IIROC Staff.

[12] Specifically, the IIROC Panel's findings were as follows:

> **Count 1:** Between August and November 2008, Alboini, as Ultimate Designated Person and a Registered Representative at NSI, engaged in a trading practice which improperly obtained access to credit for his client, Jaguar Financial Corporation, and in doing so risked the capital of both NSI and its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
>
> **Count 2:** Between August and November 2008, Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar Financial Corporation and other NSI clients, contrary to IIROC Dealer Member Rules 1300.1, 1300.2, and 2500.
>
> **Count 3:** From 2006 to 2010, NSI, Alboini, as Ultimate Designated Person, and Vance, as Chief Compliance Officer, repeatedly failed to ensure that NSI corrected deficiencies found in three business conduct reviews and one trading review, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By law 29.1 and IIROC Dealer Member Rule 29.1.
>
> **Count 5(a):** NSI, Alboini, as Ultimate Designated Person, and Chornoboy, as Chief Financial Officer, from February 2008 to February 2009, filed or permitted to be filed inaccurate Monthly Financial Reports which failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital, contrary to IDA By-law 17.2 and IIROC Dealer Member [*sic*].
>
> (IIROC Decision, *supra* at para. 143)

[13] The IIROC Panel imposed the following sanctions and costs in the IIROC Decision:

> Alboini: The Panel orders that Alboini pay a fine in the amount of $500,000 in respect of Count 1, in the amount of $100,000 in Alboini: respect of Count 3 and in the amount of $25,000 in respect of Count 5(a), for a total fine of $625,000, and that Alboini pay costs in the amount of $125,000, such total fine and costs to be paid within 30 days of the date of the decision. The Panel also orders that Alboini disgorge the commissions earned by him in respect of the trades made in NSI's TA Account between August and November 2008, the amount thereof to be disclosed to IIROC by NSI and paid within 30 days of the date of this decision. The Panel also orders that Alboini be suspended from approval by or registration with IIROC in all capacities for two years commencing 14 days after the date of this decision, and that Alboini be permanently barred from approval by, or registration with IIROC as a UDP anywhere in the industry commencing 14 days after the date of this decision.
>
> Vance: The Panel orders that Vance pay a fine of $25,000 in respect of Count 2 and a fine of $25,000 in respect of Count 3 for a total fine of $50,000, and that Vance pay costs in the amount of $50,000, such total fine and costs to be paid within 30 days of the date of the order. In addition, the Panel orders that Vance be suspended from approval by, or registration with IIROC in any supervisory capacity including acting as Chief Compliance Officer anywhere in the industry, for a period of 3 months commencing 14 days after the date of this order in respect of Count 2 and the same suspension for concurrent period [*sic*] of 3 months in respect of Count 3.
>
> NSI: The Panel order [*sic*] that NSI pay a fine of $250,000 in respect of Count 3 and a fine of $50,000 in respect of Count 5(a), for a total fine of $300,000, and that NSI pay costs in the amount of $150,000, such total fine and costs to be paid within 30 days after the date of this decision.
>
> Chornoboy: The Panel orders that Chornoboy pay a fine of $25,000 in respect of Count 5(a) and that he pay costs in the amount of $15,000, such fine and costs to be paid within 30 days after the date of this decision.
>
> (IIROC Decision, *supra* at paras. 254 to 257)

2. The OSC Decision

[14] Following the IIROC Decision, the Applicants brought an application (the "**Application**") under subsection 8(3) and section 21.7 of the Act for a hearing and review by the Commission of the IIROC Decision. The Application was heard over three days on February 14, 15, and 20, 2013 (the "**Application Hearing**"). The Commission issued its decision and reasons on December 19, 2013 (*Re Northern Securities Inc.* (2014), 37 O.S.C.B. 161 (the "**Commission Decision**").

[15] The Commission upheld the IIROC Panel's findings on Count 1, 2 and 5(a). It dismissed Count 3 and referred that Count back to IIROC to be re-heard before a different IIROC panel if IIROC decided to do so by notice to NSI, Alboini and Vance given by February 14, 2014. With respect to sanctions and costs, the Commission Decision set aside the sanctions and costs imposed in the IIROC Decision and determined that the Commission would hold a hearing *de novo* solely on the question of sanctions and costs. The Commission's findings are described below.

(a) Count 1

[16] With respect to Count 1, the Commission agreed with the IIROC Panel's conclusion that Alboini as UDP and RR at NSI engaged in a trading practice through the use of the average price accumulation account (the "**TA Account**") that allowed Jaguar to improperly obtain access to credit (when it was not creditworthy within the meaning of the industry) and in doing so risked the capital of both NSI and Penson, which constituted conduct unbecoming or detrimental to the public interest contrary to IIROC Rule 29.1. The Commission found that the IIROC Panel considered the evidence before it and made findings that the use by NSI and Alboini of the TA Account was improper in light of industry standards (Commission Decision, *supra* at para. 254). The Commission agreed with the IIROC Panel that:

(a) access to credit for Jaguar was improper (Commission Decision, *supra* at paras. 227 to 229);

(b) Jaguar was not creditworthy by the standards of the investment industry at the time it purchased securities because it did not have the cash or marginable securities to pay for the securities in the TA Account (Commission Decision, *supra* at paras. 230 to 233);

(c) Alboini had multiple roles and that those roles created potential conflicts of interest. There was a conflict of interest between Alboini's obligations as UDP, RR and CEO of NSI and his interests as CEO and a shareholder of Jaguar (Commission Decision, *supra* at paras. 234 to 235);

(d) The trading in the TA Account was improper because Jaguar was not creditworthy at the times of the trades and the ticketing out of securities was delayed until month-end resulting in a delay of payment for the securities (Commission Decision, *supra* at paras. 236 to 243);

(e) Alboini misled Penson and, as a result, Penson granted credit to Jaguar through the trading in the TA Account in circumstances in which it would not otherwise have done so (Commission Decision, *supra* at para. 248); and

(f) Alboini exposed Penson and NSI to out-of-the-ordinary credit risk. The Commission found that there was evidence before the IIROC Panel that Jaguar's overall securities position was under-margined for all but eight days during the period from August 1, 2008 to November 28, 2008. Further, at one point, the aggregate unmargined liabilities of Jaguar in the TA Account and other Jaguar accounts at NSI was $2,964,012, which was more than the comfort deposit of approximately $1.7 million maintained by NSI with Penson. The unmargined liabilities exposed NSI to significant risk because NSI would have been deficient in its regulatory capital had it accounted for those liabilities (Commission Decision, *supra* at paras. 249 to 253).

[17] The IIROC Panel's findings on Count 1 that were upheld by the Commission are summarized as follows:

(a) "It is the Panel's conclusion that Jaguar was not creditworthy when it purchased the securities in the TA Account which were destined for the Jaguar Project Accounts and that Alboini should not have initiated the trades knowing that Jaguar was not creditworthy. This factor alone would be sufficient to establish that Alboini's gaining access to credit was improper …" (IIROC Decision, *supra* at para. 51);

(b) "... Furthermore as UDP and CEO, Alboini owed a fiduciary obligation to NSI to protect the interests of NSI. In this case, Alboini let his interests in making money for Jaguar and himself take precedence over his obligations to NSI, rather than the other way around. This conflict is another factor leading the Panel to conclude that the access to credit was "improper" (IIROC Decision, *supra* at para. 53);

(c) "The Panel agrees with IIROC's position that the orders in the TA Account were not large orders, but were day orders that were accumulated and assigned an average price for ticketing purposes. It is the Panel's conclusion that this trading activity in the TA Account was neither in accordance with accepted industry practice regarding the use of client average price accumulation accounts nor with NSI's manual and was nothing more than Jaguar free-riding on Penson's capital. This was an improper use of the TA Account …" (IIROC Decision, *supra* at para. 61); [Emphasis added]

(d) "... a far more important factor was Alboini misleading Penson into thinking it could treat the Jaguar Main Account and the Jaguar Project Accounts as if they were one account" (IIROC Decision, *supra* at para. 65). "... [i]t is the Panel's conclusion that Alboini's failure to correct Penson's misimpression about the propriety of treating the Jaguar accounts as one was improper and was a factor in getting Jaguar access to credit" (IIROC Decision, *supra* at para. 69); and

(e) "Based on the Panel's conclusions regarding the issues relating to Jaguar's lack of creditworthiness, Alboini's conflict of interest, the inappropriate use of the TA Account and Alboini's misleading Penson regarding the

> treatment of Jaguar Main Account [*sic*] and the Jaguar Project Accounts as described above, the Panel's decision is that Jaguar's access to credit was "improper" for the purposes of Count 1" (IIROC Decision, *supra* at para. 71).

(Commission Decision, *supra* at para. 229)

[18] It is these findings that we must consider in determining appropriate sanctions to impose on Alboini in respect of Count 1.

(b) Count 2

[19] The Commission found that there was an adequate evidentiary foundation upon which the IIROC Panel could conclude that Vance, as NSI's CCO, failed to adequately supervise Alboini's trading activity involving Jaguar and other NSI clients, contrary to IIROC Dealer Member Rules ("**IIROC Rules**") 1300.1, 1300.2 and 2500. The Commission agreed with the IIROC Panel's finding that Vance's failure to adequately respond to the following red flags was sufficient to establish the allegations in Count 2:

(a) Alboini opened 10 new Project Accounts for Jaguar between August and November 2008;

(b) the new client application forms (NCAFs) for the 10 new Project Accounts were incomplete, including the absence of any indication as to whether or not any third parties held a beneficial interest in the accounts; and

(c) Vance was aware that a "majority of the investors" in the Project Accounts were also NSI clients.

Further, Vance failed to make additional inquiries with respect to these matters (Commission Decision, *supra* at paras. 259 to 267). The Commission noted that the IIROC Decision found that "Vance's testimony made clear the fact that he took little initiative to ensure compliance within NSI" with IIROC Rules 1300.1, 1300.2 and 2500 (IIROC Decision, *supra* at para. 105(b) and Commission Decision, *supra* at para. 262).

[20] The Commission also noted that the IIROC Panel recognized the importance of Vance's role as CCO given the conflicting corporate relationships:

> Good business practice requires that a CCO be extra-careful to ensure proper disclosure documentation is on file and that NSI clients have been fully advised of the corporate relationships when they are investing with Jaguar, a firm in which the NSI UDP exercises control and has a personal financial interest. Vance's testimony demonstrated a lack of situational awareness and little interest in questioning *what should have been a major compliance concern at NSI*. This was a red flag which should have caused Vance to make more diligent inquiries into all the circumstances of the client investments in the Jaguar Projects to ensure that the clients were fully advised and knew what they were doing. Failure to do so was a failure on his part to properly supervise Alboini's trading activity, as alleged. [Emphasis added]
>
> (IIROC Decision, *supra* at para. 105(d) and Commission Decision, *supra* at para. 263)

[21] It is these findings that we must consider in determining appropriate sanctions to impose on Vance in respect of Count 2.

(c) Count 3

[22] The central factual issue in respect of Count 3 was whether NSI, Alboini and Vance each repeatedly failed to ensure that deficiencies identified by IIROC in three business conduct compliance reviews and one trading conduct compliance review were corrected by NSI (Commission Decision, *supra* at para. 268).

[23] The Commission concluded that the IIROC Panel made an error in law because it applied a standard of review like that set out in *Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 190 ("***Dunsmuir***") in assessing IIROC Staff's allegations. The Commission held that the IIROC Panel was required to determine based on the evidence before it whether the allegations by IIROC Staff with respect to Count 3 were established. While IIROC Staff through its reviews may have come to conclusions about the alleged repeated deficiencies, the IIROC Panel should not have addressed that allegation as if it were sitting on a judicial review applying a *Dunsmuir*-like standard of review. The question to be determined by the IIROC Panel was not whether IIROC Staff's position and interpretation of IIROC Rules with respect to the deficiencies was unreasonable, arbitrary, contrary to law or beyond its jurisdiction. The question was whether IIROC Staff had established on the balance of probabilities that repeated deficiencies had occurred and were not corrected. In the Commission's view, the IIROC Panel made an error in law in applying a Dunsmuir-like standard of review to the evidence before it (Commission Decision, *supra* at paras. 274 to 278 and 282).

[24] The Commission therefore set aside the IIROC Panel's decision with respect to Count 3. The Commission referred that matter back to IIROC for disposition indicating that IIROC was entitled to decide whether Count 3 shall be re-heard in a trial *de novo* before a different IIROC panel. Any such decision to re-hear Count 3 was to be made by IIROC, and communicated to NSI, Alboini and Vance, on or before February 14, 2014, or by such other date as was agreed to by those Applicants, failing which Count 3 was dismissed (Commission Decision, *supra* at para. 343).

[25] On February 13, 2014, IIROC notified Alboini by e-mail that it had decided not to proceed with a new hearing with respect to Count 3.

[26] Accordingly, Count 3 was dismissed and the conduct and the sanctions and costs relating to Count 3 are not at issue in this hearing.

(d) Count 5(a)

[27] The IIROC Panel found that NSI, Alboini as UDP and Chornoboy as CFO, from February 2008 to February 2009, filed or permitted to be filed inaccurate monthly financial reports ("**MFRs**") which failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital ("**RAC**") contrary to IDA By-law 17.2 and IIROC Rule 17.2.

[28] Chornoboy admitted the facts alleged in Count 5(a) and "that he erred in his accounting treatment" of the costs of the leasehold improvements (Commission Decision, *supra* at para. 284). As a result of this error, NSI was also held liable for the breach of IDA By-law 17.2 and IIROC Rule 17.2 (IIROC Decision, *supra* at para. 137).

[29] The Commission recognized that Alboini's role as UDP did not make him responsible or culpable for every error by a person under his supervision. However, in the circumstances, it was not enough for Alboini to simply say that he was unaware of the error. The onus was on Alboini to establish that his reliance on Chornoboy was reasonable and that he took appropriate steps to ensure that the MFRs were accurate. The Commission agreed with the IIROC Panel's conclusion that Alboini was ultimately responsible for Chornoboy's error. Given the materiality of the amounts paid for the leasehold improvements, Alboini's knowledge of those amounts and his review of the MFRs, the Commission found that the IIROC Panel was entitled to conclude, as it did, that Alboini was culpable with respect to Count 5(a) (Commission Decision, *supra* at paras. 285 to 287).

[30] It is these findings that we must consider in determining appropriate sanctions to impose on Alboini, NSI and Chornoboy in respect of Count 5(a).

(e) Sanctions and Costs

[31] The IIROC Panel issued its brief decision on the merits on July 23, 2012. No reasons were provided to support the decision on the merits prior to the sanctions and costs hearing held on October 11 and 12, 2012. The Applicants strenuously objected to the sanctions and costs hearing taking place before the reasons for the IIROC Panel's findings were issued. The IIROC Panel dismissed that objection and proceeded with the sanctions and costs hearing without issuing reasons on the merits (Commission Decision, *supra* at paras. 288 to 294).

[32] The Commission found that it was procedurally unfair in the circumstances that no reasons on the merits were provided by the IIROC Panel to the Applicants prior to the sanctions and costs hearing.

[33] The Commission noted that there have been a number of proceedings in which IIROC panels bifurcated the merits hearing and the sanctions and costs hearing and provided reasons on the merits before the sanctions and costs hearing. However, there does not appear to be an IIROC policy in this respect and, according to IIROC Staff, there have also been many instances in which IIROC panels have not done so (Commission Decision, *supra* at paras. 295).

[34] The Commission considered whether proceeding on this basis was procedurally unfair to the Applicants. The Commission found that in this case, the matters at issue were complex and that there were many factual and legal issues in respect of which the IIROC Panel made findings contrary to the submissions of the Applicants. Further, one of the issues that the IIROC Panel was required to address at the sanctions and costs hearing was whether the sanctions and costs imposed were proportionate to the conduct and circumstances of the Applicants. The Commission found that it would have been difficult for the Applicants to effectively address the issue of proportionality of sanctions without the reasons and detailed findings on the merits by the IIROC Panel. In the Commission's view, in these circumstances, the IIROC Panel should have provided reasons on the merits prior to the sanctions and costs hearing in order to permit the Applicants to effectively make submissions. The Applicants were entitled to a high level of procedural fairness which includes the right to be heard (Commission Decision, *supra* at paras. 297 and 298).

[35] The Commission also noted that the IIROC Panel imposed a longer suspension and UDP ban on Alboini than requested by IIROC Staff. The IIROC Panel imposed a permanent ban on Alboini as UDP on the basis that Alboini's conduct indicated a resistance to governance (Commission Decision, *supra* at paras. 300 to 303). (Schedule A to these reasons sets out

the sanctions requested by IIROC Staff at the IIROC Hearing and the sanctions imposed by the IIROC Panel.) The Commission found that Alboini would not have known in advance of the sanctions and costs hearing that his resistance to governance or ungovernability would be an issue at that hearing and he would not have known what findings the IIROC Panel was relying on to support a permanent ban. That knowledge would have been important to Alboini in formulating his submissions on sanctions and costs. The result of these circumstances was that, to a significant extent, Alboini went into the sanctions and costs hearing on an uninformed basis (Commission Decision, *supra* at paras. 300 to 304).

[36] The Commission found that the conduct of the sanctions and costs hearing was procedurally unfair to the Applicants and set aside the IIROC Panel's sanctions and costs order. As a result, we are now conducting this *de novo* hearing solely on the question of the appropriate sanctions and costs to be imposed on the Applicants based on the findings of the IIROC Panel on Counts 1, 2 and 5(a).

3. The IIROC Motion and Alboini and NSI's Cross-Motion

[37] On April 21, 2014, IIROC Staff brought a motion to limit the scope of Alboini and NSI's proposed evidence at the Sanctions and Costs Hearing (the "**IIROC Motion**"), and on May 5, 2014, Alboini and NSI filed a cross-motion to dismiss the IIROC Proceeding (the "**Cross-Motion**"). On May 12, 2014, the Commission held a hearing to consider the motions.

[38] IIROC Staff objected to certain affidavits and witnesses that Alboini and NSI intended to introduce or call at the sanctions and costs hearing.

[39] Alboini and NSI wanted to rely on affidavits addressing the following topics:

(a) financial commitments relating to transactions which took place in the TA Account (the "**Financial Commitments Affidavits**");

(b) fees and the lack of conflicts of interest associated with imposing such fees (the "**NSI Fees Affidavit**");

(c) the financial impact of sanctions; and

(d) character evidence.

[40] IIROC Staff objected to the Financial Commitments Affidavits and NSI Fees Affidavit proposed to be tendered as evidence. IIROC Staff took the position that these affidavits dealt with evidence on the merits and admitting them would be tantamount to re-opening the merits and re-litigation of the findings on the merits.

[41] Alboini and NSI also wished to call four witnesses, which IIROC Staff objected to on the basis that their testimony also related to findings on the merits and were not relevant to the determination of sanctions. IIROC Staff also took the position that Alboini's "will say" statement dealt for the most part with evidence relating to the merits of Counts 1 and 5(a).

[42] The Commission gave oral reasons on May 12, 2014. The Commission stated that NSI and Alboini must have a full opportunity to address sanctions and costs. However, this does not permit the re-opening and re-litigation of the findings on the merits on Counts 1, 2 and 5(a). The appropriate forum for the Applicants to contest the findings in the Commission Decision is an appeal to the Divisional Court.

[43] The Commission held that the evidence tendered at the Sanctions and Costs Hearing must be relevant for the determination of appropriate sanctions and/or costs. The Commission found that the affidavits relating to the financial impact of proposed sanctions and character evidence are relevant to determining sanctions. However, the Commission found that the Financial Commitments Affidavits and NSI Fees Affidavit dealt solely with evidence relating to the merits of Count 1 and were therefore inadmissible.

[44] As noted above, the Commission found it appropriate to permit Alboini and NSI to call four witnesses to testify as to Alboini's good character. However, the Commission indicated that the witnesses would not be permitted to testify as to conduct relating to the findings on the merits on Counts 1, 2 and 5(a). Alboini was also instructed that his testimony should not touch on evidence relating to the merits findings made by the Commission in the Commission Decision. He was requested to focus on providing evidence as to relevant sanctioning factors.

[45] In response to the IIROC Motion, Alboini and NSI brought the Cross-Motion and took the position that the IIROC Proceeding should be stayed, or the matter sent back for a re-hearing before IIROC, because the IIROC Hearing was procedurally unfair. Specifically, Alboini and NSI stated that the IIROC Proceeding was unfair because:

(a) they did not have the reasons on the merits prior to the sanctions hearing and thus did not have a full opportunity to be heard on sanctions,

(b) the IIROC Panel was biased, and

(c) the IIROC Panel imposed sanctions higher than those requested by IIROC Staff.

[46] IIROC and OSC Staff took the position that pursuant to sections 8 and 21.7 of the Act, the Commission has the authority to conduct a hearing *de novo* and substitute its decision for that of the IIROC Panel. The hearing *de novo* on sanctions and costs would provide Alboini and NSI with a full opportunity to be heard. They also submitted that the Cross-Motion should be dismissed because it was both premature and inappropriate to grant that relief at the time as it amounted to an attempt to appeal the findings in the Commission Decision.

[47] The Commission gave oral reasons on May 12, 2014 and dismissed the Cross-Motion. The Commission found that any prejudice to Alboini and NSI of a procedurally unfair IIROC sanctions hearing would be remedied by holding a *de novo* sanctions and costs hearing before the Commission. At the *de novo* sanctions and costs hearing, Alboini and NSI would have the opportunity to be heard and they would have the benefit of the Commission's Decision which sets out its findings in this matter.

[48] The Commission also found that the submissions by Alboini and NSI relating to alleged bias and abusive conduct of the IIROC Panel were already addressed in the Commission Decision. The Commission found that the Sanctions and Costs Hearing was not the appropriate forum to argue and re-litigate the IIROC Decision and the Commission Decision. That should be addressed as part of any appeal, if any.

[49] The Commission concluded in its May 12, 2014 order that:

1. Alboini and NSI's Cross-Motion was dismissed;

2. the IIROC Motion was granted as follows:

   (a) The Financial Commitments Affidavits and NSI Fees Affidavit filed by Alboini and NSI were excluded from evidence at the Sanctions and Costs Hearing;

   (b) Witnesses W.R., J.K., and E.M. could testify at the Sanctions and Costs Hearing only as to the character of Alboini and their satisfaction in their dealings with Alboini and NSI;

   (c) Witness J.S. could testify at the Sanctions and Costs Hearing only as to the character of Alboini and his level of satisfaction in his dealings with Alboini and NSI in terms of transparency, fair dealing, integrity and honesty; and

   (d) Alboini's testimony at the Sanctions and Costs Hearing was limited to the matters described in the oral reasons of the Commission given at the motions hearing on May 12, 2014;

3. the other affidavits and materials previously tendered to the Commission by Alboini and NSI could be included in the evidence at the Sanctions and Costs Hearing.

IV. SANCTIONS AND COSTS REQUESTED BY IIROC STAFF

[50] IIROC Staff has requested that the following sanctions and costs orders be made against the Applicants in this Sanctions and Costs Hearing:

(a) sanctions against Alboini in relation to Count 1:

   (i) a fine of $500,000;

   (ii) a two-year suspension from registration in all capacities;

   (iii) a permanent suspension as UDP; and

   (iv) Alboini disgorge $244,985 in commissions;

(b) sanctions against Alboini in relation to Count 5(a), a fine of $35,000;

(c) costs against Alboini of $93,750;

(d) sanctions against NSI in relation to Count 5(a), a fine of $50,000 and costs of $15,000;

(e) sanctions against Vance in relation to Count 2:

(i) a fine of $25,000;

(ii) a three-month suspension from registration in any supervisory capacity; and

(iii) costs of $25,000;

(f) sanctions against Chornoboy in relation to Count 5(a), a fine of $25,000 and costs of $15,000.

[51] IIROC Staff states that they are seeking to uphold the same sanctions and costs ordered by the IIROC Panel in the IIROC Decision. IIROC Staff says that the Commission should defer to the IIROC Panel's decision on sanctions and costs because the IIROC Panel (i) was in the best position to determine appropriate sanctions and costs as it heard and reviewed all the evidence before it during the IIROC Hearing; (ii) is intimately familiar with the Dealer Member Disciplinary Sanctions Guidelines (the "**Sanctions Guidelines")** and IIROC decisions on sanctions and costs; and (iii) is aware of appropriate sanctions and costs in light of industry expectations and standards.

[52] IIROC Staff also refers us to the decision in *Re Mills*, 2001 IDACD No. 7 ("***Re Mills***"), which emphasized industry expectations as a central guiding principle in ensuring general deterrence.

[53] We have set out in Schedule A to these reasons a chart showing the sanctions and costs requested by IIROC Staff at the IIROC Hearing and the sanctions and costs originally imposed by the IIROC Panel.

V. EVIDENCE PRESENTED AT THE SANCTIONS AND COSTS HEARING

[54] As determined on the IIROC Motion, Alboini's evidence was limited to evidence that was relevant in determining appropriate and proportionate sanctions and/or costs. The bulk of the evidence was contained in the affidavits submitted by Alboini and in the testimony of the witnesses at the Sanctions and Costs Hearing. We have summarized this evidence below.

1. Affidavits

[55] Alboini introduced the following affidavits:

(a) affidavit of J.B., sworn March 13, 2014;

(b) Alboini's Impact Affidavit, sworn March 12, 2014; and

(c) Alboini's Supplementary Impact Affidavit, sworn May 23, 2014.

[56] The Affidavit of J.B provided character evidence with respect to Alboini and evidence regarding J.B.'s experience investing with Alboini at NSI. J.B. was a corporate lawyer who had worked with Alboini in a professional context and then later engaged him as his investment advisor to allocate a small portion of assets in speculative investments. The affidavit of J.B. stated at paragraph 6 that Alboini and NSI "provided me with a careful analysis of the speculative investment opportunities and also brought a positive entrepreneurial zeal to these opportunities". In J.B.'s view, Alboini and NSI contributed to the health and vibrancy of the Canadian capital markets through their services and J.B. stated that overall his interactions with Alboini and NSI were "significantly positive".

[57] Alboini's Impact Affidavit addressed the consequences of the IIROC Decision on NSI and Alboini. That Affidavit lists the negative consequences of the IIROC Decision to NSI as follows:

(a) NSI's seriously damaged reputation;

(b) NSI's failure to secure a new carrying broker;

(c) NSI's distress sale of its retail business;

(d) widespread negative publicity;

(e) NSI's loss of all employees (with the transfer of the retail business and shutdown of the institutional business, NSI required a financial and operational restructuring; employees were reduced from 57 employees to 10 employees in January 2013 and further reduced to four employees in April 2013);

(f) NSI's capital deficiencies (as at December 4, 2012, IIROC determined that NSI had a RAC deficiency of $143,000);

(g) the IIROC decision did not permit NSI to carry out exempt market dealer functions;

(h) the trading halt in NFC shares (which the TSX Venture Exchange imposed on November 13, 2013 and was only lifted after the Commission granted a stay of the IIROC sanctions);

(i) NSI has been insolvent since January 1, 2013;

(j) NSI's suspension as an IIROC Dealer Member in March 2013;

(k) NSI's cessation of its business (as a result, NFC is carrying on a downsized mergers and acquisitions advisory business and small merchant banking business through Added Capital, a Division of NFC (a non-registrant));

(l) NSI's uncertain ability to revive its IIROC status;

(m) significant delay in receiving repayment of the comfort deposit; and

(n) the financial burden with substantial legal fees.

[58] According to Alboini's Impact Affidavit, NSI has debt of $9,847,408 including subordinated debt owing to NFC of $8,475,723. NSI's shareholders' deficit is $9,847,961. If the subordinated debt owing to NFC was converted to equity, the shareholders' deficit for NSI would be $1,372,238. Given its liabilities, negative shareholders' equity and inability to generate revenue, NSI is currently insolvent.

[59] The Alboini Impact Affidavit also states that the loss of contributing revenue from NSI has had an adverse financial impact on NFC, which is a public company with approximately 5,100 shareholders listed on the TSX Venture Exchange. For the fiscal year ended March 31, 2013, which covered the period of the IIROC Decision, NFC reported a loss of $6,049,332. As at March 31, 2013, NFC had total liabilities of $5,169,098 which included a provision of $450,000 representing the total financial penalty imposed on NSI in the IIROC Decision. NFC's total liabilities of $5,169,098 may be compared with its total liabilities of $2,958,131 as at March 31, 2012 before the IIROC Decision was released. NFC reduced its total liabilities by approximately $1,550,855 from $5,169,098 at March 31, 2013 to $3,618,243 at December 31, 2013 with a write-down of debt and a reversal of the $450,000 provision for the financial penalty of $450,000 imposed by the IIROC Decision. Despite the write-down, NFC continues to have substantial debt and NFC has a shareholders' equity deficiency of $3,509,015. Given its substantial debt and equity deficiency, NFC is currently insolvent. NFC has not been able to raise any capital. The insolvency of NFC represents a negative consequence to NSI as NFC has been the financing pipeline for NSI. NFC's revenue for the nine month period ended December 31, 2013 was $1,318,108 and its net income was $1,121,180. However, a substantial portion of the revenue is attributable to non-cash debt write-downs in the restructuring of NFC.

[60] Further, Alboini's Impact Affidavit lists the negative consequences of the IIROC Decision on Alboini as follows:

(a) substantial adverse reputational impact both professionally and personally due to widespread negative publicity on the IIROC sanctions imposed;

(b) loss of NSI source of income;

(c) adverse financial impact in his attempt to save NSI and restructure NFC;

(d) negative impact on Alboini's wife, daughter and son;

(e) highly unlikely that Alboini will work again in the securities industry;

(f) loss of colleagues at NSI and NFC who were friends and partners;

(g) the insolvency of NSI and substantial debt of NFC;

(h) loss of clients;

(i) loss of some friends;

(j) financing NSI to pay for substantial legal fees;

(k) material reduction in the value of Alboini's NFC shares; and

(l) since the suspension of NSI in March 2013, Alboini has been unable to work in the securities industry.

[61] Alboini asserts in the Alboini Impact Affidavit that the sanctions in the IIROC Decision were so harsh, and that the negative publicity so widespread and devastating, that his ability to work again in the securities industry is at a minimum highly unlikely or possibly permanently damaged and that there is no possible way that his reputation will be restored in any meaningful way to the status that he once enjoyed.

[62] Alboini Impact Affidavit also sets out the negative consequences on NFC that arose out of the sanctions imposed in the IIROC Decision as follows:

(a) NFC was unsuccessful in carrying out two equity financings in 2013;

(b) the auditors of NFC resigned as a result of the restructuring carried out by NFC;

(c) two independent directors of NFC resigned;

(d) NFC was able [*sic*] to appoint two new independent directors and auditors;

(e) in order to meet its obligations to settle a debt with Alboini, NFC sold 4,000,000 Jaguar shares on April 26, 2013, 1,900,000 Jaguar shares on May 8, 2013 and 6,000,000 Jaguar shares on October 11, 2013;

(f) NFC settled Jaguar debt with two creditors by making a payment of $108,865 on June 20, 2013 and a payment of $108,000 on August 28, 2013. The payments were financed by Alboini's loans made to NFC in the total amount of approximately $217,000;

(g) NFC incurred a loss of $6,049,000 for the fiscal year ended March 31, 2013;

(h) NFC's debt increased from $2.6 million as at March 31, 2012 to $5.2 million as at March 31, 2013; and

(i) Alboini made substantial loans to, and equity investments in, NFC and made substantial equity investments in NFC, which funds were substantially invested in NSI.

[63] During the period from June 2012 to April 2013 Alboini and another director of NFC and two clients made substantial contributions of capital to NFC which in turn were substantially invested in NSI, all with a view to keeping NSI alive. In total NFC owed $450,000 to two clients, $500,000 to a director and $700,000 to Alboini. In addition, since June 2012, Alboini invested $300,000 in NFC equity and an NFC director invested $300,000 in equity. Despite the investments made in NSI, NSI was unable to maintain a positive RAC and NSI was suspended by an IIROC panel in March 2013, and remains suspended today. As of the date of the Alboini Impact Affidavit, NFC has approximately $3,618,243 in liabilities and has a market value of $220,000.

[64] Alboini also filed the Supplementary Impact Affidavit, which dealt with the closure by TD bank of all Alboini affiliated accounts in May of 2014 (including his accounts, his wife's accounts, NSI accounts, Jaguar accounts, and NFC accounts). The affidavit states that these accounts were closed as a result of the sanctions imposed by IIROC and adverse publicity from the IIROC Decision. The affidavit also states that NFC's $300,000 credit facility, which had a loan outstanding of $245,000, was affected and the bank has demanded payment of the loan by June 20, 2014.

2. Witnesses

[65] Alboini called three witnesses to testify at the Sanctions and Costs Hearing:

(a) E.M., a chairman of a securities brokerage firm, who dealt with Alboini and NSI in a professional capacity on various financings;

(b) J.S., who worked at Penson and later became the president and CEO of Penson from 2010 to 2013; and

(c) J.K., a chairman and/or chief executive in a number of mid-cap and small-cap resource companies.

[66] All three witnesses provided character evidence regarding Alboini and testified as to their experiences with Alboini.

[67] Specifically, E.M. testified that NSI was involved in small-cap transactions that most of the larger banks would not participate in and that NSI was competitive in this field. As well, E.M. testified that when on opposite sides of a transaction,

Alboini and NSI were good adversaries and played by the rules. There was never any negative experience regarding NSI's or Alboini's ethics or fairness.

[68] J.S. testified about the professional types of conversations that he would have with Alboini relating to the services being provided by Penson to NSI, the NSI accounts that Alboini was directly involved in, and the contractual discussions between NSI and its carrying broker Penson. J.S. testified that conversations were of a productive nature, legitimate concerns would be raised and action plans made. J.S. also testified that Alboini was cooperative in discussions that dealt with addressing margin issues. In addition, J.S. testified that Alboini was reasonable in contract negotiations, and although they might have had different positions, they managed to resolve the issues and come to a reasonable agreement. J.S also testified that Alboini was always transparent in discussions and that he never saw a situation where there was a lack of integrity or lack of honesty.

[69] J.K. testified about the financings in which NSI was engaged as the financial advisor, underwriter or agent, and/or broker. J.K explained that NSI was selected because the size of the financings was not something that the larger banks would have an interest in. According to J.K., NSI was instrumental in developing this area of business compared to the large banks. J.K. also testified that he was happy with Alboini and NSI's services and that is why they went back to them for other financings. Alboini and NSI had knowledge of the type of companies they were dealing with and the investors who would be interested in such investments. Overall, he was satisfied with the service and advice received from Alboini and NSI. They were constructive, helpful and knowledgeable. In addition, J.K. also testified that there were never any incidents where an issue of honesty or integrity arose. He also testified that he opened a personal account at NSI and that Alboini was his investment advisor and that he was satisfied with Alboini in this regard. Alboini explained investment opportunities in detail and provided all the information requested. Further, J.K. testified that he had no concerns with Alboini's honesty, integrity or ethics.

[70] Initially, Alboini was also proposing to call a fourth witness, W.S., to testify (who was also a former director of NFC). However, due to medical issues, this witness was unable to attend and provided a written statement instead. The statement set out that W.S. dealt with Alboini in various circumstances and W.S. was also a client of Alboini at NSI and was "generally satisfied with [Alboini's] performance as an investment advisor". The statement also commented on the unique business and investing opportunities that Alboini provided and that Alboini conducted himself honestly and always presented and explained opportunities and risks to his clients. He also stated that as a small firm, NSI suffered from the regulatory burden and compliance was very costly to such a small firm.

VI. SUBMISSIONS OF THE PARTIES

[71] The following is a summary of the key submissions made by each party.

1. IIROC Staff's Submissions

(a) Count 1

[72] Count 1 applies only to Alboini. IIROC Staff takes the position that the sanctions imposed by the IIROC Panel with respect to that Count are appropriate.

[73] IIROC Staff refers us to several IIROC decisions to provide an overview of similar sanctions imposed in similar circumstances. IIROC Staff focuses on decisions dealing with TA Accounts and the roles of UDPs (see *Re Connacher*, 2011 IIROC 28 ("***Re Connacher***"); *Re Cuthbertson*, 2012 IIROC 24; ("***Re Cuthbertson***"); *Re Pan*, 2012 IIROC 22 ("***Re Pan***"); and *Re Rowan* (2013), 33 O.S.C.B. 91 ("***Re Rowan***")).

[74] IIROC Staff relies on Re Mills to emphasize that industry expectation is a major factor in determining general deterrence. IIROC Staff also refers us to Re Connacher to establish that substantial character evidence is not sufficient to outweigh the breaches of IIROC Rules by a UDP.

[75] In their submissions, IIROC Staff took us through Alboini's conduct and submitted that it was serious misconduct that supported the imposition of the sanctions requested.

[76] While Alboini's conduct did not cause any harm to clients, IIROC Staff submits that Alboini's conduct did harm the reputation of the industry as a whole and the confidence in that industry.

[77] IIROC Staff submits that Alboini, as UDP and RR at NSI, exploited NSI to benefit the business of Jaguar in which Alboini had a financial interest. IIROC Staff submits that, through his actions, Alboini put the capital of NSI's carrying broker, Penson and NSI, at risk.

[78] IIROC Staff submits that there were several transactions in which Alboini intentionally exploited the opportunity for Jaguar to obtain free financing for purchases of securities that it would not have been able to obtain otherwise. First, in July 2008, Penson imposed a trading restriction on Jaguar's main account at NSI (the "**Main Account**") because it had been

undermargined for twenty consecutive days. After the restriction was lifted, the Main Account held a negative position despite holding securities with a market value of almost $20 million because none of the securities were eligible for margin.

[79] Second, IIROC Staff submits that in August 2008, Penson had identified an undermargin problem with Alboini's attempt to make a purchase in the Main Account at NSI. To address the liquidity problem in the Main Account, Alboini sold shares of Telehop Communications Inc. from the Main Account to one of Alboini's NSI clients. This transaction was done in the form of an off-book put option in favor of the client, while the risk of the arrangement remained with Jaguar. Moreover, this transaction was not disclosed to Vance.

[80] Third, IIROC Staff submits that Alboini used the TA Account to finance further securities purchases on behalf of Jaguar. Alboini opened additional project accounts for each stock that Jaguar wanted to purchase (the "**Project Accounts**"). In some cases, Jaguar was the only investor, but in other accounts, there were outside investors.

[81] According to IIROC Staff, these transactions exploited the "gap" in understanding between NSI and Penson in regards to which party was required to hold regulatory capital to cover purchases in the TA Account. IIROC Staff suggests that Penson did not know the identity of the purchaser in the TA Account until the transaction was ticketed out, which Alboini did not do immediately (IIROC Staff indicates that for some transactions, the delay was up to a month).

[82] IIROC Staff further submits that as a result of Alboini's trading activity, both NSI and Penson's capital was at risk because the securities were not ticketed out of the TA Account on a timely basis. Therefore, IIROC Staff states that Jaguar was not creditworthy by industry standards and NSI would not have been able to meet the "required margin amount".

[83] Furthermore, IIROC Staff states that Alboini failed to fully appreciate his responsibilities as UDP which was to ensure compliance and promote a culture of compliance within NSI. IIROC Staff points out that in the Commission Decision, the Commission recognized the findings made by the IIROC Panel relating to the responsibilities of Dealer Members and how Alboini's conduct fell short:

> The IIROC Panel also concluded that "Dealer Members owe a duty to each other to deal honestly and fairly in accordance with generally accepted industry standards (so long as those standards are not below their obligation to the public interest) so as not to expose other Dealer Members or their employees to unnecessary and unexpected risks" (IIROC Decision, *supra* at para. 84). The Panel concluded that "Alboini's actions fell very far below the standards that would or should be acceptable to member firms" (IIROC Decision, *supra* at para. 85). One factor in making that finding was the IIROC Panel's conclusion that "Alboini's failure to correct Penson's misimpression about the propriety of treating the Jaguar accounts as one was improper and was a factor in getting Jaguar access to credit" (IIROC Decision, *supra* at para. 69; see paragraph 229(d) above).
>
> (Commission Decision, *supra* at para. 253)

[84] IIROC Staff submits that Alboini's conduct described above had a significant impact on the risk to the capital of both Penson and NSI. For example, IIROC Staff points out that during cross-examination at the IIROC Hearing, Chornoboy stated that NSI would have been in a negative RAC position if NSI had to put up the $1.113 million from the Vulcan transaction.

[85] IIROC Staff also submits that Jaguar was undermargined for the entire period between August 1, 2008 and November 28, 2008 except for eight days in August, 2008. During this period, IIROC Staff indicates that Alboini continued to place orders for shares on behalf of Jaguar and, by the end of November 2008, the Jaguar accounts had an overall undermargin position of $1,424,000. The magnitude of the undermargin amount and length of time the undermargin position continued is a relevant consideration that should be taken into account when imposing sanctions.

[86] In response to Alboini's submissions, IIROC Staff takes the position that Alboini's arguments relating to Count 1 appear to be re-litigating the merits of Count 1 and that the appropriate forum for that is the Divisional Court, not the Commission.

[87] With respect to Alboini's submissions regarding the impact of the IIROC Decision on him and NSI, IIROC Staff submits that Alboini's impact evidence was unsubstantiated. IIROC Staff submits that Alboini's evidence to demonstrate the impact of the IIROC Decision was tenuous and that it should not be taken at face value. Specifically, IIROC Staff submits that the evidence lacked salient facts and painted an incomplete picture of what transpired.

[88] With respect to Alboini's submissions relating to the unfairness of the sanctions and costs hearing before the IIROC Panel, IIROC Staff submits that Alboini failed to recognize that the initial sanctions under the IIROC Decision never came into effect, as they were initially stayed. Further, the Commission Decision overturned the sanctions and costs imposed and required a hearing *de novo* on sanctions and costs. Therefore, in IIROC Staff's submission, there is no material impact of the IIROC Decision.

(b) Count 2

[89] Count 2 applies solely to Vance. IIROC Staff takes the view that the sanctions imposed by the IIROC Panel in respect of Count 2 are appropriate. They were a fine of $25,000 and a three-month suspension from registration in any supervisory capacity.

[90] In considering sanctions for Vance, IIROC Staff refers us to the following IIROC decisions: *Re Benarroch,* 2011 IIROC 11 ("***Benarroch***"); *Re Murdoch*, 2012 IIROC 23 ("***Re Murdoch***") and *Re Stevenson,* 2008 IIROC 24 ("***Re Stevenson***").

[91] IIROC Staff submits that the following relevant factors as set out in the Sanctions Guidelines apply to Vance's conduct:

(a) the extent of inadequacy of the procedures for supervision or the actual supervision of employees;

(b) the extent of employee misconduct;

(c) "red flag" warnings that should have been caught by a proper system of supervision and the failure to follow up or to conduct periodic review; and

(d) corrective measures taken since discovery of the problem.

[92] IIROC Staff points to several aggravating factors related to the seriousness of Vance's breaches of the IIROC Rules. First, Vance failed to make proper inquiries into the following trading activities by Alboini:

(a) ten new Jaguar Project Accounts were opened between August and November 2008;

(b) those ten new accounts had incomplete documentation and did not mention whether any third parties held a beneficial interest in the account; and

(c) Vance's knowledge that a majority of those investors in the Project Accounts were also NSI clients. Vance failed to make a reasonable effort to ensure that the clients' interests were properly protected by failing to inform them of the potential conflict of interest between Alboini, NSI and Jaguar.

[93] IIROC Staff submits that the failure to maintain properly completed new client account forms had a substantial impact because it is "the foundational supervisory document that all compliance personnel use to monitor trading".

[94] IIROC Staff says that Vance's testimony at the IIROC Hearing showed that he made little effort to ensure that NSI was in compliance with IIROC Rules 1300.1, 1300.2 and 2500. As a result, IIROC Staff submits that Vance failed as CCO to properly identify major compliance concerns at NSI.

[95] IIROC Staff acknowledges that Vance had a difficult task because he was effectively responsible for supervising his boss, Alboini. However, IIROC Staff emphasizes that this situation illustrates the importance of sending a message to IIROC Dealer Members and CCOs that "they must take their obligations very seriously, no matter who in the organization may object".

[96] IIROC Staff suggests that there were several mitigating factors to consider as well: Vance did not have any prior disciplinary record, Vance was not involved in Alboini's trading practices, and Vance did not directly benefit from NSI's and Alboini's misconduct.

(c) Count 5(a)

[97] Count 5(a) applies to Chornoboy, NSI and Alboini and relates to inaccurate MFRs that failed to properly account for leasehold improvement costs thereby misstating NSI's RAC. IIROC Staff takes the position that the sanctions imposed by the IIROC Panel in respect of this Count are appropriate. They are a fine of $25,000 for Chornoboy, a fine of $50,000 for NSI and a fine of $25,000 for Alboini.

[98] In considering sanctions for Count 5(a), IIROC Staff refers us to several IIROC decisions: *Re Aquino* [2001] IDACD No. 10 ("***Re Aquino***"); *Re HSBC James Capel Inc.* [2000] IDACD No. 29 ("***Re HSBC***"); *Re Interactive Brokers Inc.* 2009 IIROC 30 ("***Re Interactive Brokers***"); and *Re Mills*, *supra*.

Chornoboy

[99] IIROC Staff submits that the breach committed in Count 5(a) is significant because it was in the period of time when the activities in Count 1 occurred. In IIROC's view, if NSI's RAC calculation included Jaguar's unfunded liabilities in the TA Account and other Jaguar accounts, NSI would have had a negative RAC in the period of August, September, and November 2008.

Furthermore, if the leasehold improvements were accounted for properly, NSI would have been in "early warning" status on six occasions.

[100] IIROC Staff also acknowledges that Chornoboy immediately admitted the accounting error when it was presented to him by IIROC Staff and that the error appeared to be inadvertent.

NSI

[101] IIROC Staff submits that NSI's previous disciplinary history should be taken into account in considering Count 5(a). NSI and IDA Staff entered into a settlement agreement in 2001 in which NSI admitted that it maintained a RAC of less than zero. NSI was fined $10,000 and ordered to pay costs of $5,000 in that proceeding.

Alboini

[102] IIROC Staff submits that Alboini should be responsible for the accounting errors in the MFRs because of Alboini's involvement with the review of those documents and the amount of money involved with the leasehold improvements. In IIROC Staff's view, the significance of the leasehold improvement costs for a small firm was not a minor event and Alboini would have been aware of them.

(d) Costs

[103] IIROC Staff requests costs pursuant to IIROC Rule 20.49. IIROC Staff submitted to us the bill of costs that was introduced before the IIROC Panel as the basis for the costs requested.

[104] IIROC Staff also submits that we should defer to the findings in the IIROC Decision relating to costs because the IIROC Panel "was in the best position to consider the length of the hearing and the complexity and nature of the evidence and issues that were placed before it".

[105] Notwithstanding, IIROC Staff acknowledges that a portion of the costs incurred dealt with Count 3, and because Count 3 was dismissed, a reduction of the costs is warranted for the Applicants that were named in Count 3. Those reductions are discussed below.

Alboini

[106] With respect to Alboini, IIROC Staff submits that the original amount of costs ordered by the IIROC Panel ($125,000) should be discounted by 25% to reflect that one of the four counts in the allegations was dismissed (Count 3). The total costs requested by IIROC Staff against Alboini after the discount are $93,750.

Vance

[107] With respect to Vance, IIROC Staff submits that the original amount of costs ordered by the IIROC Panel ($50,000) should be discounted by 50% to reflect that one of the two counts against Vance (Count 3) was dismissed. The total costs requested by IIROC Staff against Vance after the discount are $25,000.

Chornoboy

[108] IIROC Staff submits that since Chornoboy was named only in Count 5(a) and the original costs imposed by IIROC ($15,000) relate only to that Count, the IIROC Panel's costs ordered against Chornoboy in the amount of $15,000 should be upheld.

NSI

[109] With respect to NSI, IIROC Staff submits that the original amount of costs ordered by the IIROC Panel ($150,000) should be discounted by a significant amount to reflect that one of the two counts against NSI (Count 3) was dismissed. The total costs requested by IIROC Staff after the discount are $15,000.

[110] At the Sanctions and Costs Hearing, IIROC Staff submitted that such a large discount was warranted because NSI is now named only in Count 5(a), which involved a relatively small portion of the evidence and IIROC Staff time and effort in this matter. Further, IIROC Staff relies on the fact that Chornoboy, who was also subject only to Count 5(a), was ordered by the IIROC Panel to pay $15,000 in costs, and that this amount is an appropriate "yardstick" for comparison to determine the amount of costs that NSI should bear. As a result, IIROC Staff submits that NSI should be ordered to pay $15,000 in costs.

2. The Applicants' Submissions

(a) Count 1

[111] Alboini and NSI take the position that no sanctions or costs should be ordered against them. They submit that the publicity of the IIROC Decision has already caused maximum possible damage. Alboini and NSI further submit that the sanctions and costs imposed under the IIROC Decision do not appropriately reflect the conduct and factors to be considered. For example, Alboini and NSI point out that: (i) there was no loss to clients, NSI, Penson or anyone else, and the clients, NSI and Penson all profited from the investments; (ii) Jaguar was making legitimate investments; (iii) there was no fraudulent, criminal or deceitful conduct in the client accumulations; (iv) there was a delayed payment for some of the trades that were made; (v) there is no IIROC Rule or guidance concerning the use and operation of a TA Account; and (vi) this was the first contested case involving the use of TA Accounts.

[112] These submissions are discussed below.

Financial Impact

[113] Alboini and NSI submit that they have already experienced significant negative financial impact as a result of the IIROC Decision and for this reason there should be no sanctions and costs imposed on Alboini and NSI. Alboini and NSI submit that they have suffered "maximum possible damage" from the IIROC Decision. Specifically, NSI is currently insolvent and suspended as an IIROC Dealer Member as of March 18, 2013 (*Re Northern Securities*, 2013 IIROC 14 (the "***IIROC Suspension Order***")).

[114] In Alboini and NSI's view, the IIROC Decision was a significant factor affecting whether NSI could secure a carrying broker. As a result of being unable to secure another carrying broker, Alboini and NSI submit that NSI was required "to sell its retail business at a distress sale price of $80,000 for the transfer of 30 investment advisors and $185 million in assets under administration, well below a normalized value of 2% of the $185 million in assets under administration or $3.7 million".

[115] Alboini and NSI submit that there were further financial consequences from the IIROC Decision. First, NSI had a negative shareholders' equity of $3.5 million as of December 31, 2013. Second, Alboini submits that as result of the IIROC Decision, Toronto-Dominion Bank issued a notice to terminate the client accounts of Alboini, his wife, NFC, and Jaguar. In addition, Toronto-Dominion Bank has retained legal counsel to recover loans from NFC, NSI and Alboini.

[116] Alboini submits that he has incurred significant debt ($900,000) in an effort to maintain NSI. Further, Alboini submits that he is owed $600,000 by NFC and that the value of Alboini's equity investments has declined since NSI's insolvency and suspension.

Reputational Impact

[117] Alboini submits that even though the IIROC sanctions and costs were set aside by the Commission and a *de novo* sanctions and costs hearing has taken place, the sanctions and costs ordered by the IIROC Panel are still in the minds of many market participants. In addition, since the IIROC Decision is on IIROC's website, the original IIROC sanctions remain in the public eye and Alboini and NSI will face the damaging impact of the publicized IIROC sanctions for some time.

[118] Alboini submits that he has personally suffered reputational damage from the IIROC Decision. Alboini has not been employed by NSI since March 2013 and Alboini does not believe that he can work in the securities industry again. Alboini has suffered loss of employees, partners, friends and clients, and Alboini is facing ongoing review by the TSX Venture Exchange regarding his status as a director and officer of NFC and Jaguar.

Alboini's Role as UDP

[119] Alboini submits that as UDP, he has always strived to operate NSI with integrity and with the interest of the client as a priority. In Alboini's view, he promoted a culture of compliance to NSI staff, intervened in compliance matters with regulatory bodies and reviewed daily trades to ensure compliance.

Alboini's Clean Disciplinary Record

[120] Alboini maintains that he has a clean disciplinary record. There are, however, three settlements entered into by NSI with IIROC and its predecessor (the IDA) imposing sanctions on NSI (see paragraph 239 of these reasons). Alboini submits that he signed the 2008 settlement agreement on behalf of NSI, not because it dealt with him as an individual.

Client Satisfaction and Treatment

[121] Alboini and NSI submit that they always conducted themselves in a professional manner with clients. Furthermore, Alboini and NSI submit that a relevant mitigating factor is that the conduct did not result in any client losses.

IIROC Panel's Motives

[122] Alboini and NSI submit that the IIROC Panel's expressed fear of public statements by NSI and Alboini demonstrated that the IIROC Panel had an improper motive in considering sanctions and costs and as such they were biased when imposing sanctions.

IIROC Panel's Conclusion on Resistance to Governance

[123] Alboini submits that findings relating to Alboini's resistance to governance are irrelevant to Count 1 sanctioning considerations. In Alboini's view, the IIROC Panel considered Alboini's resistance to governance as a contributing factor in imposing a permanent suspension. Alboini submits that these findings were based exclusively on the IIROC Panel's conclusions on Count 3. Therefore, since Count 3 was dismissed by the Commission Decision, the factor of resistance to governance should not be considered in relation to Count 1.

No Specific Violation of a Rule or Guidance on the Use of Accumulation Accounts

[124] Alboini and NSI submit that since there was no specific violation of an IIROC Rule or guidance on the use of accumulation accounts, it is a relevant mitigating factor that there was no intentional breach of any existing rules in this regard.

(b) Count 2

[125] Vance was not present at the Sanctions and Costs Hearing. His counsel informed us that, due to illness, Vance could not participate and could not provide instructions to counsel regarding the Sanctions and Costs Hearing. As a result, on June 10, 2014, counsel for Vance requested an adjournment on behalf of Vance (see paragraph 242 of these reasons). Vance did not make any submissions at the Sanctions and Costs Hearing with respect to sanctions and costs.

(c) Count 5(a)

Chornoboy

[126] Counsel for Chornoboy submits that based on the principle of proportionality, a reprimand is the only proper sanction for Chornoboy.

[127] Chornoboy submits that the financial sanctions requested by IIROC would have a disproportionate impact as compared with the same sanctions against a member firm or individual having more substantial resources. In addition, IIROC decisions regarding inadvertent RAC deficiencies show that RAC deficiencies are resolved mostly by settlement, with insignificant financial sanctions and such sanctions are usually imposed on the issuer and not the individual CFO.

[128] Counsel for Chornoboy referred us to several decisions to support this position: *Re Mills*, *supra*; *Re Graham* [2005] IDACD No. 21 ("***Re Graham***"); *Re Trilon Securities Corp* [2003] IDACD No. 12 ("***Re Trilon***"); *Re Research Capital Corp* [2004] LNBCSC 108 ("***Re Research Capital***"); *Re Credifinance Securities Ltd* [2006] IDACD No. 30 ("***Re Credifinance***"); and *Re Dornford* (1998), 21 O.S.C.B. 7499 ("***Re Dornford***").

[129] Chornoboy submits that a sanction beyond a reprimand would not serve a specific deterrent purpose because the error was inadvertent and was not due to a failure to understand or appreciate the IIROC Rules and applicable securities law. Moreover, Counsel for Chornoboy submits that Chornoboy is no longer in the industry and, as a result, he will not be in a position to repeat such an error going forward. Accordingly, specific deterrence is not necessary.

[130] Furthermore, Chornoboy submits that sanctions other than a reprimand would not serve a general deterrence purpose. The error in Count 5(a) was a question of accrual accounting, which only had a consequential impact on NSI's RAC calculation. Accordingly, "a message doesn't need to be sent to the rest of the industry to accrue expenses properly. Any bookkeeper should have known how to do that."

[131] With respect to mitigating factors, counsel for Chornoboy emphasizes that Chornoboy did not obtain any financial benefit as a result of his error, the error did not relate to NSI's trading activities or customers, there was no harm to investors, the error was inadvertent, Chornoboy did not receive any direct financial benefit as a result of the error, and he readily acknowledged the error once it was brought to his attention by IIROC Staff. Chornoboy also admitted to his error at the IIROC Hearing. Prior to this incident, Chornoboy had a clean disciplinary record.

[132] Chornoboy submits that he has already paid a substantial price for his error. For example, an offer of employment to work in Kelowna, British Columbia was withdrawn due to the IIROC Decision despite Chornoboy having already incurred expenses to relocate.

Alboini and NSI

[133] In relation to Count 5(a), Alboini and NSI submit that they should not be held responsible for Chornoboy's unintentional error. Moreover, Alboini submits that he relied on Chornoboy's expertise and the independent audit by an external auditor of NSI's financial statements. In addition, Alboini and NSI emphasized that Chornoboy admitted the conduct relating to Count 5(a) and that in light of these admissions, they should not also be held responsible for this conduct.

(d) Costs

[134] The Applicants' submissions regarding costs are summarized below.

Alboini and NSI

[135] Alboini, on behalf of himself and NSI, submits that there should be no costs imposed on him or NSI because of the various negative consequences they have already suffered as a result of the impact of the IIROC Decision (discussed above in paragraphs 111 to 118 of these reasons).

Chornoboy

[136] Chornoboy submits that the impact of a costs order and of any other financial sanctions should be considered as a whole. Chornoboy refers us to Re Credifinance which indicates that costs should be ordered with caution, and costs should not have "the effect of inhibiting a Member, or an approved person [*sic*], from advancing a defence which it thinks is meritorious." (*Re Credifinance*, *supra* at para. 56).

[137] Chornoboy also points out that he admitted his error from the beginning. Therefore, this Count and the investigation related to Count 5(a) represented only a small portion of the total IIROC Staff time related to this matter. Accordingly, a costs order of $15,000 would not be proportionate and would be punitive and excessive in the circumstances.

Vance

[138] Vance's counsel did not make any submissions regarding costs.

VII. THE LAW ON SANCTIONS

1. General Principles

[139] This is a hearing *de novo* on sanctions and costs pursuant to subsection 8(3) of the Act. That section provides that "the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper". The Commission Decision dismissed the IIROC Panel's decision on sanctions and costs. We are now holding a hearing *de novo* in which we will make a determination of the appropriate sanctions and costs.

[140] In imposing sanctions and costs, we have considered the Sanctions Guidelines and IIROC's previous decisions on sanctions and costs. In particular, we have considered the general principles, and key considerations when determining sanctions, set out in the Sanctions Guidelines. The principles reflected in the Sanctions Guidelines and IIROC decisions are substantially similar to the sanctioning factors considered by the Commission in its decisions. We have also considered the sanctions imposed under the IIROC Decision.

[141] Both IIROC and the Commission recognize that "[i]n imposing sanctions, the Commission's objective is not to punish past conduct. Rather, the Commission must act in a protective and preventative manner to restrain future conduct that may be harmful to investors or the capital markets" (*Re Sabourin* (2010), 33 O.S.C.B. 5299 at para. 53 ("***Re Sabourin***"), relying on *Re Mithras Management* (1990), 12 O.S.C.B. 1600 ("***Re Mithras***"). In *Re Mills*, a hearing Panel of the Investment Dealers Association ("**IDA**", now IIROC) also emphasized that the objective of sanctions is to determine sanctions "appropriate to the conduct and the respondent before it, reflecting that its primary purpose is prevention, rather than punishment" (*Re Mills*, *supra* at para. 6).

[142] The sanctions imposed must be proportionate to the nature of each Applicant's conduct (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134 ("***Re M.C.J.C.***")) and take into consideration the circumstances in which a contravention of IIROC Rules was committed and any aggravating and mitigating factors.

[143] Deterrence, both specific and general, is an important consideration to be taken into account by IIROC and Commission panels. Specific deterrence involves deterring the Applicants from committing the same type of misconduct again, while general deterrence involves deterring other Dealer Members and Approved Persons from committing similar violations of the IIROC Rules. The Supreme Court of Canada addressed the important role of deterrence in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Re Cartaway***"):

> 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.
>
> (*Re Cartaway*, *supra* at para. 52)

[144] The IDA has also discussed the importance of deterrence:

> In our view, taking into account general deterrence, in the case before us, would not be for the purpose of punishing Dornford, as argued by Mr. Douglas, but rather for a prophylactic purpose, the future protection of the marketplace not only from actions by Mr. Dornford but also from breaches of trust by others. Although Mithras speaks of deterring future improper conduct of a respondent, it does note that the Commission is "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." It seems to us that Warnes does not in any way indicate that general deterrence can be taken into account for punitive purposes, but rather, in the securities law context, that it can be taken into account in determining what is necessary to restrain conduct by others that is likely to be prejudicial to the public interest in having capital markets that are fair and efficient.
>
> (*Re Dornford*, *supra* at page 12)

[145] Further in Re Mills, *supra*, the IDA noted that general deterrence can be achieved if a sanction strikes an appropriate balance by addressing the specific misconduct, but is also in line with industry expectations:

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect.
>
> (Re Mills, *supra* at para. 6)

[146] With respect to general deterrence, the Commission stated in Re Mithras:

> … 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.
>
> (*Re Mithras*, *supra* at 1610 and 1611)

[147] Deterrence, industry expectations, and relevant sanctioning factors and decisions are discussed below.

2. IIROC Rules

[148] IIROC Rules 20.33 and 20.34 set out the sanctions that an IIROC Panel may impose on Approved Persons and Dealer Members for a breach of IIROC Rules. For instance, a hearing panel may impose on an Approved Person one or more of the following:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention;

(c) suspension of approval for any period of time and upon conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the Corporation; or

(i) any other fit remedy or penalty.

In addition, Rule 20.49 gives an IIROC panel the authority to order costs. (Each of these IIROC Rules is set out in Schedule B to these reasons.)

[149] The Commission has recognized that disgorgement is permitted pursuant to IIROC Rule 20.33 and that the purpose of that Rule is to permit disgorgement of any amount accruing to the benefit of a person as a result of a contravention of the rules (*Re Dennis* (2012), 35 O.S.C.B. 7374 ("***Re Dennis***")). The Commission has held that a purposive approach should be taken to interpreting the word "profit" to achieve the overriding goal of investor protection (*Re Dennis, supra* at para. 43). The Commission stated in *Re Dennis*:

> We also agree with the submissions by counsel for IIROC with respect to the significance of the shift in language from "pecuniary benefit" to "profit made or loss avoided" when the Rule was amended in 2004. In our view, the 2004 amendment to the IDA By-laws (the predecessor of the IIROC Member Rules) which produced the current wording of Rule 20.33, was intended to make the penalty formula more inclusive as opposed to less inclusive so as to better achieve the protection of investors. This is supported by the commentary that accompanied the revised wording of the Rule (set out at paragraph 31 above and reproduced here):
>
> > **Proposed Solution – Improve Formula**
> >
> > The wording of the formula will be changed to "three times the profit gained or loss avoided" so as to ensure that the objective of the formula is met in that "loss avoided" is captured by the formula. The proposed wording is consistent with the wording in the Ontario Securities Act.
>
> We also found it helpful to our conclusion on this point that the specific sanctioning guideline relating to misappropriation of funds contrary to Rule 29.1, which has remained substantially unchanged since 2003, states that a fine "should include the amount of any financial benefit" to a respondent.
>
> (*Re Dennis*, supra at paras. 44 and 45)

[150] Further, the Sanctions Guidelines address disgorgement as a component of sanctions:

> **4.1.3 Disgorgement**
>
> At present, Dealer Member Rules specifically restrict the levy of a fine to a maximum of $1,000,000 per contravention for Approved Persons and $5,000,000 for Dealer Members. As well, a Hearing Panel may require a respondent to pay an amount equal to three times the profit made or the loss avoided by the respondent as a result of the commission of the contravention in question, including any commissions earned, or other benefits obtained from the impugned transactions. However, disgorgement is a sanction — it is not restitution.
>
> (Sanctions Guidelines, *supra* at page 13)

3. Sanctions Guidelines

(a) General Principles

[151] As discussed above, IIROC Rules 20.33 and 20.34 authorize the imposition of sanctions. The imposition of sanctions is a matter for the discretion of the panel to be determined in light of all the circumstances in each case. The Sanctions Guidelines were established by IIROC to assist with determining appropriate sanctions to be imposed as part of a settlement agreement or at the end of a disciplinary proceeding. It is important to note that the Sanctions Guidelines are neither exhaustive nor determinative (see paragraph 156 below).

[152] The Sanctions Guidelines set out general principles that should be considered when imposing sanctions; those purposes include:

1. protection of the investing public;
2. protection of IIROC's membership;
3. protection of the integrity of IIROC's process;
4. protection of the integrity of the securities markets; and
5. prevention of a repetition of conduct of the type under consideration.

(Sanctions Guidelines, *supra* at page 8)

[153] The Sanctions Guidelines also provide that those who threaten the integrity of the capital markets must recognize that they will be held accountable through enforcement action by regulators. The Sanctions Guidelines emphasize that "[s]anctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence" (Sanctions Guidelines, *supra* at page 8). The Sanctions Guidelines also state that, "[s]ince sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent" (Sanctions Guidelines, *supra* at page 9).

[154] The Sanctions Guidelines also set out a non-exhaustive list of factors to be considered when determining sanctions:

(a) harm to clients, employer and/or the securities market;

(b) blameworthiness;

(c) degree of participation;

(d) extent to which the respondent was enriched by the misconduct;

(e) prior disciplinary record;

(f) acceptance of responsibilities, acknowledgement of misconduct and remorse;

(g) credit for cooperation;

(h) voluntary rehabilitative efforts;

(i) reliance on the expertise of others

(j) planning and organization (pre-meditation);

(k) multiple incidents of misconduct over an extended period of time;

(l) vulnerability of victim;

(m) failure to cooperative with the investigation;

(n) significant economic loss to the client and/or dealer member firm.

(Sanctions Guidelines, *supra* at pages 9 to 12)

[155] These factors are similar to the sanctions factors generally considered by the Commission in imposing sanctions (see *Re M.C.J.C. supra* at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746).

[156] In addition to the factors referred to above, the Sanctions Guidelines provide additional factors that relate to the breach of a specific IIROC Rule. They also suggest minimum sanctions as a baseline for specific offences, while recognizing that the Sanctions Guidelines should not fetter the discretion of a panel and a panel may impose different sanctions appropriate and proportionate to the specific circumstances of each case.

(b) Permanent Bans

[157] The Sanctions Guidelines recognize that in some circumstances the severity of the misconduct will merit a permanent ban. The Sanctions Guidelines specify the circumstances when such a ban would be appropriate:

> **4.3 Permanent Bar from Approval or Expulsion/Termination of Membership**
>
> A permanent ban from approval of an individual or the termination or membership [*sic*] or expulsion from the Corporation is a severe economic penalty and should generally be reserved for cases where:
>
> - the public itself has been abused;
> - where it is clear that a respondent's conduct is indicative of a resistance to governance;
> - the misconduct has an element of criminal or quasi-criminal activity; or
> - there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.
>
> Hearing Panel [*sic*] may consider imposing a fine and requiring disgorgement even when a registrant is permanently barred in egregious cases involving significant harm to clients and/or to the integrity of the securities industry as a whole.
>
> (Sanctions Guidelines – General Principles – Section 4.3, *supra* at page 13)

(c) Failure to Supervise

[158] Sanctions Guideline 4.3 sets out factors to consider and recommended sanctions where the misconduct at issue involves the failure to supervise and breaches of IIROC Rules 1300.2 and 2500, among others (which is alleged in Count 2). Additional factors to consider include:

> 1. Extent of inadequacy in the procedures for supervision or the actual supervision of employee(s);
> 2. Extent of employee(s) misconduct;
> 3. Amount of losses or compensation for which the Dealer Member is liable as a result of the employee(s) misconduct;
> 4. "Red flag" warnings that should have been caught by a proper system of supervision/failure to follow-up or to conduct periodic reviews; and
> 5. Corrective measures taken since the discovery of the problem.
>
> (Sanctions Guidelines – Internal Control Offences – Section 4.3, *supra* at page 40)

[159] Recommended sanctions include:

> (a) for a Dealer Member:
>
> - Fine: minimum of $50,000;

- Consider condition the Dealer Member demonstrate that its procedures and practices meet the Corporation standards; additional monthly fine until the Corporation is satisfied; and
- Suspension or expulsion of dealer member in egregious cases.

(b) for a designated person/supervisor:

- Fine: minimum of $25,000;
- re-write of PDO;
- period of suspension or permanent bar from director/officer/supervisory and or compliance responsibilities; and
- permanent ban from approval in all capacities in egregious cases.

(Sanctions Guidelines, *supra* at page 40)

(d) Record Keeping Violations

[160] Sanctions Guideline 4.5 sets out factors to consider and recommended sanctions where the misconduct at issue involves the failure to keep and maintain at all times current books and records necessary to record business transactions properly (breaches of IIROC Rules 17.2 and 200) (which is alleged in Count 5(a)). Additional factors to consider include:

1. nature of the inaccurate or missing information;
2. the materiality of the inaccurate or missing information;
3. the extent of any loss to client(s) or the Dealer Member firm;
4. whether there was an intentional disregard for Corporation requirements or if the failure to keep proper records was due to carelessness or inadvertence.

(Sanctions Guidelines, *supra* at page 42)

[161] Recommended sanctions include:

For a Dealer Member firm:

1. minimum fine of $25,000;
2. suspension until such time as the record keeping violations have been corrected.

For senior managers:

1. minimum fine of $10,000;
2. re-write of PDO;
3. period of suspension from director/officer/supervisory and/or compliance responsibilities;
4. permanent ban from approval in all registered capacities in the most egregious of cases.

(Sanctions Guidelines, *supra* at page 42)

4. Relevant Prior Decisions

[162] The following is a summary of the relevant decisions that the parties referred to during the Sanctions and Costs Hearing.

(a) Decisions Relating to Count 1

[163] With respect to Count 1, we were referred to *Re Connacher*, *supra*, *Re Pan*, *supra*, *Re Cuthbertson*, *supra* and *Re Benarroch*, *supra*. All of these decisions dealt with misconduct relating to trading and breaches of IIROC Rule 29.1, although the severity of the misconduct varied. For our purposes, it is helpful to examine the conduct and sanctions imposed in each of these cases to determine where Alboini's conduct falls on the spectrum of misconduct.

[164] In *Re Connacher*, the respondent (Connacher) was the head trader and RR who caused a loss of $33 million to Evergreen by conducting trades in the average price inventory account at his discretion. In addition, the respondent borrowed $345,000 from clients and never repaid them (*Re Connacher*, *supra* at para. 36). Connacher failed to recognize the risk to which he exposed the firm and/or carrying broker as a result of his trading activity (*Re Connacher*, *supra* at para. 18). Connacher was fined and required to disgorge commissions. The IIROC panel did not specify the individual amounts for the fine and for disgorgement, but the total was $500,000. A permanent suspension from registration in any capacity was also imposed on the basis that the breach was considered as "tantamount to fraud" (*Re Connacher*, *supra* at para. 36). *Re Connacher* is an example of misconduct falling on the most egregious side of the spectrum.

[165] A permanent suspension from registration and a fine of $150,000 have also been imposed where the conduct was "egregious" and where the respondent made "continuous efforts to deceive his employer" (*Re Pan*, *supra* at para. 48). In *Re Pan*, the respondent was an RR who made "unsolicited and aggressive active short-term trades" using the margin of a major client account (*Re Pan*, *supra* at para. 16). Several aggravating factors in *Re Pan* contributed to the sanctions imposed: there was a cumulative client account loss of approximately $3,000,000; Pan made a total of nine personal advances ($761,000) to the client and lied to compliance staff about the source of funds on several occasions; and Pan failed to comply with his "gatekeeper function" which was to "protect the integrity of the capital markets" (*Re Pan*, *supra* at para. 26).

[166] In *Re Cuthbertson*, *supra*, a settlement agreement was approved imposing an 18-month suspension and a $35,000 fine in circumstances where the trader and RR conducted seven unauthorized trades over a period of four months, which resulted in a loss of $418,000 to the dealer member. The settlement agreement referred to several mitigating factors including: the respondent's age; the respondent did not "devise a plan to take advantage of his clients for his personal gain" (*Re Cuthbertson*, *supra* at para. 10) and the fact that the respondent had agreed to a voluntary payment plan to compensate the Dealer Member for client losses (the payments totaled $154,041.83) (*Re Cuthbertson*, *supra* at para. 12).

[167] In circumstances in which an RR personally engaged in suspicious transactions for personal gain, a two-year suspension from registration and a fine of $50,000 have also been imposed (*Re Benarroch*, *supra* at para. 4).

(b) Decisions Relating to Alboini's Role as UDP

[168] Each Dealer Member must designate a director, partner or officer who is responsible for the opening of new accounts and the supervision of account activity (the Ultimate Designated Person or UDP). The UDP "is responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry" (Sanctions Guidelines, *supra* at page 40). *A UDP has the responsibility of ensuring and promoting a culture of compliance within a Dealer Member.* A UDP is "responsible for the firm's overall compliance with regulatory requirements as well as overseeing the development and implementation of its compliance practices and procedures" (*Re Rowan*, *supra* at para. 186). Accordingly, the UDP role is critically important within a Dealer Member and any breach of IIROC Rule 29.1 is fundamentally inconsistent with that role.

[169] In *Re Rowan*, *supra*, the following sanctions were imposed on a UDP: an administrative penalty of $250,000, a reprimand, resignation from any position that he held as a director or officer of a registrant, a 45-day ban from becoming or acting as a director and officer of a registrant and a condition that the UDP not be approved to act in any supervisory role for a period of 45 days. In *Re Rowan*, the UDP failed to "supervise trading by Rowan and to address the issues arising from Rowan's dual role as a director of Biovail and as a registered representative trading in Biovail securities …". That conduct was held to have been "serious misconduct" (*Re Rowan, supra* at para. 191). The Commission stated as follows:

> Although Carmichael's violations of the Act were not as significant as those of Rowan, we nevertheless find that Carmichael as Chairman, CEO and acknowledged UDP of Watt Carmichael had an important leadership role in the brokerage firm and was responsible to ensure that the firm and its employees operated in compliance with Ontario securities law by adopting appropriate policies, procedures and practices. Carmichael, in light of his role and long-standing career in the industry, should not have abdicated his responsibilities. In particular, Carmichael's failure to supervise trading by Rowan and to address the issues arising from Rowan's dual role as a director of Biovail and as a registered representative trading in Biovail securities amounted to serious misconduct.
>
> (*Re Rowan*, *supra* at para. 191)

[170] In *Re Benarroch*, *supra*, a UDP permitted and facilitated suspicious transactions in client accounts without making diligent inquiries to ensure the legitimacy of the transactions. *Re Benarroch* also emphasized the significance of the UDP's gatekeeper function. In that decision, the UDP was suspended for 15 years from any registration with IIROC and fined $250,000. The IIROC panel considered aggravating factors such as the fact that the UDP permitted and facilitated suspicious transactions; the UDP personally participated in and benefited from the transactions; there were multiple incidents over a number of years; the conduct was intentional and the UDP's experience in the industry. However, the IIROC panel noted as a mitigating factor that there was no harm to clients.

(c) Decisions relating to Count 2

[171] With respect to Count 2, we were referred to *Re Murdoch*, *supra*, *Re Stevenson*, *supra*, and *Re Benarroch*, *supra*. All of these cases dealt with supervisory obligations.

[172] In *Re Murdoch*, a branch manager breached IDA Regulation 1300.2 by failing to adequately supervise a RR. The IIROC panel took into consideration factors including the failure to recognize red flags regarding client accounts; the respondent's knowledge and experience in the industry; and the need to "send a message to others that more is required and serious consequences will result from failure to exercise individual responsibilities for the supervision of others and to take independent steps where red flags occur" (*Re Murdoch*, *supra* at para. 25). The branch manager received a twelve-month suspension from acting in any supervisory capacity and a fine of $50,000.

[173] In *Re Stevenson*, the respondent failed to exercise his gatekeeper duty with respect to 20 offshore corporations with the same designated beneficiary. Mitigating factors for imposing sanctions were the lack of client harm; the respondent's clean disciplinary record; the act "was a result of bad judgment" and was not fraudulent (*Re Stevenson*, *supra* at para. 17); the respondent fully cooperated during the investigation; and the requirements on the respondent to attend certification classes after the suspension period (*Re Stevenson*, *supra* at para. 17). The branch manager received a fine of $50,000, a 12-month suspension from approval as sales manager, officer (including revocation of the Senior Vice-President designation) and director, branch manager, co-branch manager or officer or any other management, compliance or supervisory function and various restrictions on the respondent's registration after the suspension (*Re Stevenson*, *supra* at para. 3).

[174] In *Re Benarroch*, *supra*, the CCO and Alternate Designated Person failed to supervise the transactions of the CEO, UDP, Director and Chairman and of an RR (*Re Benarroch*, *supra* at page 3). The CCO was suspended for five years from any registration with IIROC in a supervisory role, suspended from any registration with IIROC for one year, and fined $50,000. Aggravating factors included the fact that the CCO should have raised questions about the propriety of transactions; transactions between accounts were approved with no apparent justifications; and the CCO failed to make diligent inquiries (*Re Benarroch*, *supra* at page 30).

(d) Decisions relating to Count 5(a)

[175] With respect to Count 5(a), we were referred to the decisions in *Re Aquino*, *supra*, *Re HSBC*, *supra*, *Re Interactive Brokers*, *supra*, and *Re Trilon*, *supra*. Those decisions all dealt with issues relating to keeping books and records and/or negative RAC, constituting breaches of IIROC Rule 17.2 or former IDA By-Law 17.2 and IIROC Rule 17.1 or former IDA By-law 17.1, respectively. All of these matters were settlements, where sanctions were imposed on the dealer member firm for the misconduct at issue. Only in *Re Aquino* were sanctions imposed on the individual officer responsible for the compliance failures.

[176] Where Dealer Members have failed to keep proper records (under IIROC Rule 17.2), fines have been ordered against the corporate respondents. In *Re HSBC*, the respondent HSBC was fined $60,000 for failing to maintain a RAC greater than zero as required under IDA By-law 17.1 and in violation of IDA By-law 17.2. HSBC reported a RAC deficiency of $21,289,000 and $82,340,000 on two separate occasions. In these circumstances, the settlement considered mitigating factors such as the fact that no client funds were put at risk and the respondent incurred significant expenses to rectify the issues.

[177] A fine of $40,000 was imposed on the corporate respondent in *Re Interactive Brokers*, *supra*, for breaching IDA By-Law 17.2 between 2002 and 2009. The settlement agreement considered several mitigating factors such as the fact that the respondent had no prior disciplinary record; the breach was technical; no client was put at risk and no clients suffered prejudice; the breach was not intentional; the respondent cooperated fully during the investigation and there was never any negative RAC as a result of the breach.

[178] Similarly, the corporate respondent in *Re Trilon*, *supra*, was fined $50,000 for having a RAC deficiency of $51,809,000 and $3,406,000 on separate occasions. A mitigating factor in *Re Trilon* was that the miscalculation was inadvertent.

[179] In circumstances where sanctions have been imposed on an individual respondent, the sanctions have been smaller. For example, in *Re Aquino* a fine of $10,000 was imposed and the individual was required to re-write the Partners, Directors and Senior Officers Exam. In that case, the respondent suspected the firm's bookkeeper of fraud and immediately took corrective measures to reconcile the bank balances. There was no client loss resulting from the conduct in question.

VIII. APPROPRIATE SANCTIONS IN THIS MATTER

1. Relevant Sanctioning Factors

[180] The following are the relevant sanctioning factors that we considered in imposing sanctions in this matter.

(a) Proportionality

[181] Sanctions must be proportionate to the conduct and the particular circumstances of the respondent (*Re M.C.J.C*, *supra*). The Commission has taken proportionality into account in connection with IIROC matters. In *Re Magna Partners* (2011), 34 O.S.C.B. 8697 ("*Re Magna Partners*"), IIROC Staff originally requested a global fine of $160,000 at the IIROC hearing and the IIROC panel ordered a fine of $100,000. On review, the Commission reduced the fine to $30,000 and ordered costs of $10,000 (the IIROC panel ordered the same costs). The Commission referred to *Re Kasman* (2009), 32 O.S.C.B. 5729 ("***Re Kasman***") where the Commission concluded that:

> We accept that a respondent's personal and financial circumstances are relevant factors to be considered, along with other appropriate sanctioning factors, in determining the amount of a fine. We also accept that considering ability to pay *is consistent with the principle of proportionality* in determining sanctions, and we are not persuaded that it is inconsistent with achieving general deterrence [Emphasis added].
>
> (*Kasman*, *supra* at para. 72)

[182] In considering proportionality, the size of the registrant is also relevant. A fine that may be negligible for a larger Dealer Member may put a smaller Dealer Member out of business. This was recognized in *Re Magna Partners*, *supra*:

> In this case, we believe that the Decision lacked proportionality in that the IIROC Hearing Panel did not appear to appropriately take into account the small size of the registrant and its limited regulatory capital. During the hearing before the IIROC Hearing Panel, IIROC acknowledged that the Applicant was a small firm, with a risk adjusted capital of $293,000 as of August 31, 2010. The Applicant had been in early warning since June 8, 2010. In our view, a penalty of $100,000 is not proportionate to the size of the firm and its regulatory capital. A penalty of that size would be considered a minor deterrence to a large member of the industry, but could cause the failure of a much smaller member firm such as the Applicant. We are not suggesting that the amount of a firm's risk adjusted capital should be a determining factor in imposing sanctions. We are simply saying that, in these circumstances, it should be a very significant factor. Further, in imposing sanctions, the IIROC Hearing Panel did not have the benefit of considering the Beacon Decision. The fine imposed in that decision seems to us to be very relevant to the Applicant's circumstances.
>
> (*Re Magna Partners*, *supra* at para. 58)

[183] In considering the appropriate sanctions, we must consider the impact of those sanctions on the Applicants. NSI is a relatively small registrant and it is apparent that Alboini has been the driving force behind it. It appears that the Applicants have experienced significant negative financial consequences as a result of these lengthy proceedings. While we do not accept Alboini's submission that the IIROC Decision was the cause of all of the negative consequences referred to in paragraphs 57 to 64 of these reasons, it seems to us that the IIROC Proceeding and the IIROC Decision have already had significant negative effects on NSI and Alboini to the point of putting in doubt the continued viability of NSI.

[184] While that does not mean that substantial sanctions should not be imposed on Alboini and NSI, it is a relevant consideration.

(b) The Role of Each of the Individual Applicants

[185] Another important consideration is the role that each of the individual Applicants had with NSI and the level of their responsibility.

[186] Alboini was the directing mind and UDP of NSI. As discussed above, prior decisions have recognized that UDPs play a very important role in a firm's compliance practices and procedures (see paragraph 168 above). In the Commission Decision, we found that in his role as UDP, Alboini fell short of the standards that are expected of a UDP. Specifically, we noted that:

> The IIROC Panel also concluded that "Dealer Members owe a duty to each other to deal honestly and fairly in accordance with generally accepted industry standards (so long as those standards are not below their obligation to the public interest) so as not to expose other Dealer Members or

> their employees to unnecessary and unexpected risks" (IIROC Decision, *supra* at para. 84). The Panel concluded that "Alboini's actions fell very far below the standards that would or should be acceptable to member firms" (IIROC Decision, *supra* at para. 85). One factor in making that finding was the IIROC Panel's conclusion that "Alboini's failure to correct Penson's misimpression about the propriety of treating the Jaguar accounts as one was improper and was a factor in getting Jaguar access to credit" ...
>
> (Commission Decision, *supra* at para. 253)

[187] In addition, we acknowledged the IIROC Panel's finding that:

> ... Furthermore as UDP and CEO, Alboini owed a fiduciary obligation to NSI to protect the interests of NSI. In this case, Alboini let his interests in making money for Jaguar and himself take precedence over his obligations to NSI, rather than the other way around. This conflict is another factor leading the Panel to conclude that the access to credit was "improper".
>
> (Commission Decision, *supra* at para. 229 citing IIROC Decision, *supra* at para. 53)

[188] With respect to the role played by a CCO (which is a consideration in the case of Vance), the IIROC Panel stated:

> Good business practice requires that a CCO be extra-careful to ensure proper disclosure documentation is on file and that NSI clients have been fully advised of the corporate relationships when they are investing with Jaguar, a firm in which the NSI UDP exercises control and has a personal financial interest. Vance's testimony demonstrated a lack of situational awareness and little interest in questioning what should have been a major compliance concern at NSI. This was a red flag which should have caused Vance to make more diligent inquiries into all the circumstances of the client investments in the Jaguar Projects to ensure that the clients were fully advised and knew what they were doing. Failure to do so was a failure on his part to properly supervise Alboini's trading activity, as alleged.
>
> (IIROC Decision, *supra* at para. 105(d))

[189] With respect to the role played by CFOs (which is a consideration in the case of Chornoboy), the Commission has acknowledged the important role a CFO plays (see, for instance, *Re Rex Diamond Corp.* (2009), 32 O.S.CB. 6467).

[190] Overall, the UDP, CCO and CFO positions all carry with them a high level of responsibility. That responsibility was not met in this case.

(c) Deterrence

[191] In addition to imposing sanctions that are proportionate to each of the Applicants' conduct, it is also important that we impose sanctions that will provide general deterrence to others in the industry from engaging in similar misconduct. In some circumstances, general deterrence may require significant sanctions even if specific deterrence does not (see the discussion of disgorgement in paragraphs 210 and 211 of these reasons).

(d) Seriousness of the Misconduct

[192] With respect to Count 1, the IIROC Panel found that Alboini engaged in the following serious misconduct:

(a) he improperly obtained access to credit for Jaguar (Commission Decision, *supra* at paras. 223 to 226) at a time when Jaguar was not creditworthy (Commission Decision, *supra* at paras. 227 to 233);

(b) there was a conflict of interest between Alboini's obligations as UDP, RR and CEO of NSI and his interests as CEO and a shareholder of Jaguar (Commission Decision, *supra* at paras. 234 to 235);

(c) the trading in the TA Account was inappropriate and permitted Jaguar to free-ride on Penson's capital (Commission Decision, *supra* at paras. 236 to 243);

(d) Penson was misled by Alboini (Commission Decision, *supra* at para. 248); and

(e) the trading exposed NSI and Penson to out-of-the-ordinary credit risk (Commission Decision, *supra* at paras. 249 to 253).

[193] Alboini submits that mitigating factors on Count 1 included that there were no investor losses as a result of his conduct and that there was no breach of a specific IIROC rule; rather, the finding of the IIROC Panel was that Alboini's conduct was "unbecoming".

[194] While there were no investor losses, it is important to note that this matter did involve conduct that exposed Penson and NSI to serious risks, as found in the IIROC Decision and the Commission Decision. Further, Alboini profited from his misconduct through receiving commissions of $244,985.

(e) No Express IIROC Rule Breached

[195] As noted above, Alboini argues that there are no express IIROC Rules relating to the use of a TA Account. Rather, Count 1 is framed on the basis that Alboini's conduct was "unbecoming". One of IIROC's roles is to establish appropriate standards of conduct in the securities industry and not every action or activity can be expressly addressed in specific IIROC Rules. A general category of "unbecoming business conduct" is necessary and appropriate.

[196] The IIROC Panel concluded that "[i]t is the Panel's view that Alboini's actions fell very far below the standards that would or should be acceptable to member firms" (IIROC Decision, *supra* at para. 85).

[197] We concluded in the Commission Decision that:

> Count 1 alleges that Alboini engaged "in business conduct unbecoming or detrimental to the public interest" (IIROC Rule 29.1). IIROC has particular knowledge and expertise in interpreting and applying that standard. The fact that there is no definition of what "unbecoming business conduct" may be does not prevent an IIROC panel from interpreting and applying that standard. In *Youden*, the absence of a definition of "misconduct" did not prevent an IDA panel from addressing and applying that concept. *Youden* quotes the following passage from *Re Gareau*:
>
> …
>
> > Finally, the courts have made clear that the absence of a definition of misconduct does [not] prevent a disciplinary tribunal from considering whether there has been misconduct in a particular case. In *Re Matthews and Board of Directors of Physiotherapy* (1987), 61 O.R. (2d) 475, the Ontario Court of Appeal stated:
> >
> > > The absence of such a definition requires the board to judge the appellant by the objective standards of his own profession. Although these standards are unwritten, they are nonetheless real and it is within the jurisdiction of the appellant's professional brethren who constitute the board to determine in the particular case if he has fallen below that standard.
> >
> > …
> >
> > (*Youden*, *supra* at para. 76)
>
> (Commission Decision, *supra* at para. 256)

[198] Accordingly, the IIROC Panel was entitled to interpret and apply the concept of "unbecoming business conduct" and to determine that Alboini's conduct fell within it. The IIROC Panel was entitled to conclude, as it did, that Alboini's conduct constituted conduct unbecoming or detrimental to the public interest contrary to IIROC Rule 29.1.

(f) Vance's Misconduct

[199] With respect to Count 2, we found that Vance engaged in serious misconduct by failing to make sufficient inquiries in response to the following red flags:

> (a) Alboini opened 10 new Project Accounts for Jaguar between August and November 2008;
>
> (b) the new client application forms (NCAFs) for the 10 new Project Accounts were incomplete, including the absence of any indication as to whether or not any third parties held a beneficial interest in the accounts; and
>
> (c) Vance was aware that a "majority of the investors" in the Project Accounts were also NSI clients.
>
> (Commission Decision, *supra* at paras. 260 and 267)

(g) Conduct Involved in Count 5(a)

[200] With respect to Count 5(a), the IIROC Panel found that Alboini, NSI and Chornoboy engaged in the following misconduct:

(a) NSI leased new premises in Toronto in 2007 and retained a contractor to make improvements. The contractor proceeded with its work and issued invoices to NSI from time to time in 2007 and early 2008. After deducting an interim payment made by NSI, the final cost of the contractor's work was $521,515.55;

(b) Chornoboy failed to record the liabilities owing to the contractor on NSI's MFRs and in its annual financial statements;

(c) As a result of failing to properly record the liabilities to the contractor, NSI's MFRs filed with IIROC were inaccurate for the 13 months from February 2008 to February 2009. By not recording the liabilities, NSI concealed six instances in which it was in "early warning" for purposes of IIROC Rule 30;

(d) As UDP, Alboini was ultimately responsible for the failures to properly record NSI's liabilities and for the breach of IIROC Rule 30.

We note that the IIROC Panel concluded that this error by Chornoboy was inadvertent and that he admitted the error at the IIROC Hearing (Commission Decision, *supra* at paras. 283, 284 and 287).

(h) Impact of the IIROC Decision

[201] We heard evidence and strong submissions from Alboini as to the negative impact of the IIROC Decision on Alboini and NSI.

[202] First, we note that the Commission granted a stay of the IIROC Decision on November 19, 2012 and thus the original sanctions and costs order never came into effect. Further, the Commission Decision overturned the sanctions and costs imposed by the IIROC Panel and ordered a hearing *de novo* on sanctions and costs.

[203] IIROC is a regulatory body and is required by the Act to "regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices (subsection 21(4) of the Act)" (Commission Decision, *supra* at para. 43). In addition, under the Commission's Recognition Order, IIROC has the responsibility to establish, administer and enforce rules related to the proper business conduct of IIROC members (Commission Decision, *supra* at paras. 44 and 45). All IIROC members must comply with IIROC's by-laws, rules, regulations, policies, procedures, interpretations and practices.

[204] It does appear to us that the IIROC Decision has had a significant negative impact on Alboini's reputation and on his and NSI's financial circumstances. There will, however, always be negative consequences to a registrant from an IIROC sanctions order and those consequences are recognized as a consideration in imposing sanctions. That consideration cannot, however, outweigh the other sanctioning considerations discussed in these reasons.

[205] In his submissions regarding the impact of the IIROC Decision, Alboini blamed IIROC for two matters:

(a) NSI was unable to secure a new carrying broker; and

(b) TD bank closed all NSI accounts, Jaguar accounts, and NFC accounts as well as individual accounts of Alboini and his wife.

[206] With respect to the ability to secure a new carrying broker, we note that Penson did not stop acting as NSI's carrying broker due to the IIROC Decision. On September 28, 2012, Penson sent a letter to NSI informing NSI that Penson was terminating the Uniform Type 2 Introducer/Carrier Broker Agreement with NSI and the termination would be effective on December 31, 2012. We note that the IIROC Decision was issued on November 10, 2012 about a month and a half later. The reason Penson terminated the agreement was because its parent company in the United States had declared bankruptcy. While IIROC expressed concerns for NSI clients as a result of NSI losing its carrying broker, it was NSI's responsibility to obtain a new carrying broker, not IIROC's.

[207] With respect to the closure of the TD bank accounts, there was evidence at the Sanctions and Costs Hearing that TD's decision was influenced by the findings of the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**") (whose mandate is to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information) related to compliance issues set out in a Notice of Violation with respect to NSI dated April 22, 2013. This was confirmed by an e-mail from TD dated May 23, 2014 which stated:

> We have discretion under our account agreements to close accounts upon notice. We periodically review accounts and close them when they do not align with our risk management culture. In this instance, our decision was based on a review of Northern Securities and related parties. Of particular concern were the FINTRAC findings against Northern Securities. In any decision to end the relationship, we take a holistic approach which includes related parties and personal accounts.
>
> (Exhibit 12, Tab 5)

[208] We note that the FINTRAC investigation commenced prior to the release of the IIROC Decision and that the date of FINTRAC's examination was November 2, 2012 (which examined conduct from January 1, 2012 to June 30, 2012). Further, in respect of the TD account closures, we are not able to conclude that TD's decision regarding them was due to the IIROC Decision.

[209] Accordingly, the IIROC Decision was not the cause of NSI losing its carrying broker and there were a number of factors that prevented NSI from finding a new one. The IIROC Decision does not appear to have been the cause of TD's closure of the Alboini and related bank accounts. In any event, these issues are not significant mitigating circumstances in imposing sanctions in this matter.

(i) Disgorgement

[210] The disgorgement remedy is designed to (i) ensure that Dealer Members and Approved Persons do not profit or benefit from breaches of IIROC Rules; and (ii) satisfy the goals of specific and general deterrence.

[211] Specific deterrence is achieved as disgorgement requires a wrongdoer to disgorge the profit or benefit obtained from the misconduct. General deterrence is achieved because disgorgement orders send a message that wrongdoers cannot profit or benefit from breaches of IIROC Rules.

2. Count 1 – Sanctions Imposed on Alboini

Fines

[212] The Sanctions Guidelines state that "[i]t is generally accepted that monetary fines serve to express general condemnation of specific conduct. Fines will generally increase in relation to the relative severity of specific misconduct. …"

[213] IIROC Staff requests a fine for Alboini on Count 1 of $500,000. We note that fines of that magnitude have been imposed in the past in egregious cases tantamount to fraud. (In *Re Connacher*, *supra*, a $500,000 penalty was imposed but we do not know how much of that amount was fine and how much was disgorgement.) However, fraud was not alleged in this matter and there was no direct financial harm or loss to investors. The IIROC Panel did, however, find serious harm from the conduct (see paragraph 192 of these reasons).

[214] In *Re Rowan*, the Commission ordered a fine of $250,000 against a UDP. In that case, the Commission recognized the important gate-keeping and leadership role that a UDP plays. Significant sanctions are necessary in this matter to ensure that Alboini and all UDPs take their role and responsibilities seriously. (*Re Rowan*, *supra* at paras. 186 and 191)

[215] The fine that we impose on Alboini in the circumstances is $250,000. That is a substantial amount that is slightly in excess of the commissions we have ordered disgorged below. Imposing that fine, in addition to disgorgement, is necessary as a matter of general deterrence. There may be significant financial benefits that can be obtained as a result of a contravention of IIROC Rules. As a general principle, no registrant should be able to profit from the breach of IIROC Rules. It is not sufficient deterrence simply to pay to IIROC an amount equal to the profit obtained from the misconduct. IIROC Dealer Members and Approved Persons must recognize that there will be a substantial cost to misconduct. A substantial fine, in addition to disgorgement, is appropriate in these circumstances.

Disgorgement

[216] It was an agreed fact that Alboini earned $244,985 in commissions from the trading in the TA Account during the period of time covered by Count 1. We find that it is appropriate to order that Alboini disgorge all commissions he earned as a result of his conduct involved in Count 1. The Commission has accepted the principle that a person should not profit from their breach of securities laws. The same principle applies to the breach of IIROC Rules. There would be no deterrence if wrongdoers can profit from their misconduct.

Registration Suspensions

[217] We find that it is appropriate to order that Alboini be suspended for (i) one year from registration in all capacities; and (ii) two years from approval by, or registration with, IIROC as a UDP anywhere in the industry.

[218] In the circumstances, we believe that a general suspension from registration should be imposed and that a one-year suspension is appropriate. That is a very significant sanction and is proportionate to Alboini's conduct in this matter.

[219] A number of factors influenced our decision that two years would be the appropriate length for a ban of Alboini as UDP. First, we note that the IIROC Decision imposed a permanent UDP ban and, at the Sanctions and Costs Hearing, IIROC Staff requested a permanent UDP ban. The Sanctions Guidelines recognize that a permanent ban is the most serious of all penalties and should be imposed in cases where one of the following factors are present:

(a) the public has been abused;

(b) it is clear that a respondent's conduct is indicative of a resistance to governance;

(c) the misconduct has an element of criminal or quasi-criminal activity; or

(d) there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.

(Sanctions Guidelines, *supra* at page 13)

[220] The factors referred to in paragraphs (a) and (c) above do not apply in this case.

[221] With respect to whether Alboini's conduct was indicative of a resistance to governance, Alboini submits that ungovernability related more to the conduct related to Count 3, which has been dismissed. We note that IIROC Staff did not make specific submissions at the Sanctions and Costs Hearing on the issue of ungovernability and did not tender any evidence to show that Alboini was ungovernable. However, the IIROC Decision did apply ungovernability to Count 1. The IIROC Decision stated:

> This Guideline provides that a permanent ban from approval of an individual may be considered where it is clear that a respondent's conduct *is indicative of a resistance to governance or there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public*, their clients and the securities industry as a whole. The Panel has decided that this factor is applicable to Alboini in respect of Count 1. [Emphasis added]
>
> (IIROC Decision, *supra* at para. 197)

[222] Based on the evidence and submissions made to us, we are not persuaded that a permanent UDP ban is appropriate.

[223] Further, with respect to whether Alboini can be trusted to act in an honest and fair manner in all his dealings with the public, clients, and the members of the securities industry as a whole, we note that there was character evidence on this topic at the Sanctions and Costs Hearing. The witnesses indicated that all of their interactions with Alboini were professional and their experiences were positive. All acknowledged that Alboini and NSI provided services in a small to mid-cap niche market which larger institutions don't serve. There was no suggestion by these witnesses that Alboini could not be trusted to act in an honest and fair manner.

[224] Taking into account all these considerations, we find that a two-year UDP suspension is appropriate and will send a strong message that the UDP role is important and that UDPs must take that role and their responsibilities very seriously (see paragraph 168 of these reasons for a description of the UDP role).

[225] During the Sanctions and Costs Hearing, Alboini made submissions about the negative impact of any suspension and the hardship that he would face if we imposed any suspension. We note, however, that Alboini confirmed that he can continue to carry on some of his business activities even though he is not registered. In his testimony, Alboini indicated that he is currently working in the securities industry through Added Capital, a division of NFC that was set up to focus on mergers and acquisitions advice and merchant banking. Those activities do not require registration.

[226] All registrants must understand that participation in the capital markets is a privilege, not a right, and if misconduct occurs while registered, that privilege may be suspended to emphasize the importance of compliance with applicable rules.

Reprimand

[227] We find that it is also appropriate to reprimand Alboini. The reprimand is intended to convey strong censure of his misconduct and to emphasize the importance of complying with IIROC Rules. A reprimand is particularly relevant to the misconduct of a registrant.

Alboini's Admissions

[228] Alboini made a number of admissions during the course of the Sanctions and Costs Hearing. Specifically, Alboini made the following admissions with respect to Count 1:

(a) "There were several mistakes made in hindsight. It was the first time that Jaguar carried out more than one investment at a time. This caused a problem with the structure of our investments. We always set up a "project" investment. This was done for administrative ease and to minimize legal fees and other costs which would otherwise apply in setting up a corporation or limited partnership. Each equity investor would own his pro rata share of the target company shares acquired by Jaguar on behalf of the investors. They would be entitled to their pro rata share of 70% of the net gain on the investment. This applied in the Virtek investment."

(b) "However in hindsight I should have made sure that he had all the investor or lender agreements as soon as they were signed by my clients. Penson did receive the investor or lender agreements at the time my client funds were transferred from their accounts to the appropriate Jaguar project accounts. It should have been done earlier."

(c) "I accept responsibility for that mistake. They were aware in general terms of the outside investor participation but we should have given Penson copies of the Investor and Lender agreements."

(d) "It is clear that I wore too many hats which caused concern to IIROC in these proceedings. I should have put in place independent responsibility for decision-making in the hands of Doug Chornoboy, Fred Vance and [our general counsel] because as UDP I was conflicted. In fact I believe they exercised their responsibilities well during this period. All of us would do the right thing. However I should have made it abundantly clear that they were the final authority on any conflict of interest matters."

These admissions (made in Alboini's factum) show that Alboini understands and is conscious of the seriousness of his misconduct in this matter.

Other Issues Raised by Alboini at the Sanctions and Costs Hearing

[229] During the course of his submissions, Alboini raised a number of issues relating to Count 1 which were previously addressed in the Commission Decision. In our view, those submissions were an attempt to reopen findings on the merits and were tantamount to an appeal of the Commission Decision. The appropriate forum for those submissions is an appeal to the Divisional Court, if Alboini and NSI wish to file one. We have summarized those submissions below and have referred to where they are addressed in the Commission Decision.

[230] First, Alboini takes the position that he did not mislead Penson. We note however that the Commission Decision upheld this finding of the IIROC Panel. Specifically, we stated:

> The IIROC Panel came to the conclusion that Penson was misled by Alboini "into thinking it could treat the Jaguar Main Account and the Jaguar Project Accounts as if they were one account" (IIROC Decision, *supra* at para. 65). While the IIROC Panel concluded that Alboini misled Penson, no witness testified at the IIROC Hearing on behalf of Penson. We acknowledge that the evidence before the Panel on this issue was not the best evidence available in the circumstances (which would have been the testimony of a senior officer of Penson with knowledge of the facts who testified whether Penson was actually misled). We note, however, that there was evidence before the IIROC Panel upon which it could rely in coming to the conclusion that Alboini misled Penson, including the testimony of Alboini referred to in the IIROC reasons (see IIROC Decision, *supra* at paras. 68 and 69). We do not know whether Penson took the position that it was misled by Alboini. We note, however, that the IIROC Panel concluded that Penson granted credit to Jaguar through the trading in the TA Account in circumstances in which it would not otherwise have done so. In our view, the IIROC Panel was entitled in these circumstances to conclude that Alboini misled Penson.
>
> (Commission Decision, *supra* at para. 248)

[231] Further, we note that misleading Penson was not the only ground for the IIROC Panel's finding on Count 1. The elements of Count 1 include: whether the trading practice obtained access to credit for Jaguar and, if so, whether that trading was improper and whether it risked the capital of both NSI and Penson (Commission Decision, *supra* at para. 224). Even if Penson was not misled, it was found in both the IIROC Decision and Commission Decision that (i) Alboini improperly obtained access to credit for Jaguar; (ii) that access to credit was improper; (iii) Jaguar was not creditworthy at the time; and (iv) this exposed NSI and Penson to out-of-the-ordinary credit risk.

[232] Alboini also challenges the fact that the IIROC Panel did not take into account the equity value of the client accounts at issue when assessing creditworthiness. However, the issue was whether there were adequate marginable securities in the accounts at the time. The IIROC Panel found that the accounts held securities that were not marginable. The IIROC Decision stated:

> The account statements for the Jaguar Main Account and for the Jaguar Project Accounts as well as the spreadsheet summary of all trading in the accounts contained in Exhibit 7 clearly established that when Alboini arranged to purchase the securities for the various projects, Jaguar did not have the cash or marginable securities to pay for the securities and that Alboini knew that was the case. ... Jaguar was not creditworthy by the standards of the investment industry at the time it purchased the securities.
>
> (IIROC Decision, *supra* at para. 46)

[233] Alboini also submits that the IIROC Panel ignored investor commitments of funds when assessing creditworthiness. Those commitments do not affect marginability. It is not sufficient for Alboini to say that he believed that his clients would comply with their financial commitments. The fact of the matter is that by not having sufficient marginable client securities, the capital of NSI and Penson was put at risk.

[234] Alboini also submits that the IIROC Panel erred in not allowing him to present expert evidence at the IIROC Hearing. This issue was addressed in the Commission Decision where we found that there was no procedural unfairness arising from the IIROC Panel's decision not to admit the expert evidence (Commission Decision, *supra* at para. 247). We stated that:

> The threshold for permitting expert evidence is a high one (see paragraph 69 of these reasons). The legal question is whether expert evidence was necessary to enable the IIROC Panel to appreciate the matters in issue and to make the decisions that it did. The IIROC Panel concluded that such evidence was not necessary (the Panel also questioned other aspects of the proposed expert evidence including the qualifications of the proposed expert). Ultimately, it was for the IIROC Panel to determine whether the use by Alboini of the TA Account was improper in the circumstances; that was not a matter for the opinion of an expert. We find that the IIROC Panel was entitled to conclude that expert evidence as to industry practice in the use of an accumulation account was not necessary in the circumstances. In our view, the IIROC Panel was also entitled to conclude that "[d]elaying the ticketing out [of the securities in the TA Account] until month end … is an inappropriate use of the TA Account" (see paragraph 238 above and IIROC Decision, *supra* at para. 63).
>
> (Commission Decision, *supra* at para. 245)

[235] Alboini raised again the issue of the alleged prejudice arising from the confidential risk trend report ("**RTR**") that indicated that NSI was a high-risk firm. This issue was also addressed in the Commission Decision:

> The NSI RTR was not used or relied on by IIROC in the IIROC proceeding. The IIROC Hearing had nothing to do with whether NSI was a high risk Dealer Member. No such allegation was made by IIROC Staff and the IIROC Panel did not make any such finding. Further, any such finding would have been irrelevant to the findings of the IIROC Panel or its decision on sanctions and costs. A high risk rating does not mean that a firm has or will breach IIROC Rules or commit some other misconduct. …
>
> (Commission Decision, *supra* at para. 330)
>
> The references in the evidence to the NSI RTR were far less prejudicial than a judge hearing and having to disregard a confession (as in Philip). The IIROC Panel stated that it would ignore the NSI RTR and there is nothing to suggest that the IIROC Panel did not do so. We agree with the IIROC Panel's legal analysis and conclusions set forth in its Motion Decision. In our view, there are no valid grounds for us to conclude that the references to the NSI RTR significantly prejudiced the

> Applicants or rendered the IIROC Hearing procedurally unfair or an abuse of process. Applying *Canada Malting*, there are no grounds for us to intervene in the IIROC Decision on this basis.
>
> (Commission Decision, *supra* at para. 333)

[236] Alboini also alleges that the IIROC Panel was influenced by the public statements about IIROC made by Alboini in a news release dated September 23, 2005, and that the IIROC Panel did not issue separate merits reasons because it was afraid that NFC and/or NSI would issue another news release criticizing IIROC. The Commission Decision addressed Alboini's bias motion. That motion alleged that, among other things, comments of the members of the IIROC Panel gave rise to a reasonable apprehension of bias because they related to the public perception of IIROC in imposing sanctions, including allegedly disparaging comments made by Alboini reported in the media. The Commission Decision found that there was no bias and stated that:

> …those statements were not the subject matter of the IIROC proceeding and, based on the extensive reasons for sanctions and costs in the IIROC Decision, the IIROC Panel does not appear to have been influenced by them in imposing sanctions and costs.
>
> (Commission Decision, *supra* at para. 317)
>
> We find that the comments made by the members of the IIROC Panel […] either individually or when considered together, would not lead an informed, reasonable person with knowledge of all the circumstances to reasonably perceive that the IIROC Panel was biased against the Applicants or had prejudged the matter of sanctions and costs. Accordingly, those comments do not give rise to a reasonable apprehension of bias on the part of the IIROC Panel.
>
> (Commission Decision, *supra* at para. 321)

[237] Alboini also submits that the fact that the IIROC Panel released its reasons on the merits and sanctions together was prejudicial. This issue was also dealt with in the Commission Decision. While the Commission acknowledged that in some circumstances reasons on the merits and sanctions may be issued together, in complex cases, separate reasons on the merits are preferable before a sanctions hearing. We determined that a hearing *de novo* on sanctions and costs was appropriate to provide the Applicants with the opportunity to make submissions on sanctions with full knowledge of the merits findings. Specifically, we found that:

> In this case, the matters at issue were complex and there were many factual and legal issues in respect of which the IIROC Panel made findings contrary to the submissions of the Applicants. Further, one of the issues that the IIROC Panel was required to address at the sanctions and costs hearing was whether the sanctions and costs imposed were proportionate to the conduct and circumstances of the Applicants. It seems to us that it would have been difficult for the Applicants to effectively address the issue of proportionality without the reasons and detailed findings on the merits by the IIROC Panel. We note in this respect that the Applicants strenuously objected before the IIROC Panel that proceeding with the sanctions and costs hearing without the benefit of the reasons on the merits was unfair to them.
>
> In our view, in these circumstances, the IIROC Panel should have provided reasons on the merits prior to the sanctions and costs hearing in order to permit the Applicants to effectively make submissions. As noted in paragraph 71 of these reasons, the Applicants were entitled to a high level of procedural fairness which includes the right to be heard. In our view, the failure of the IIROC Panel to provide reasons on the merits before the sanctions and costs hearing was unfair to the Applicants in the circumstances. We note in this respect that the question is not whether in the IIROC Panel's view the Applicants were able to make effective submissions in the circumstances (see paragraph 294 of these reasons).
>
> (Commission Decision, *supra* at paras. 297 and 298)

[238] Alboini also submits that he encouraged a culture of compliance at NSI and that he took matters of compliance with the IIROC Rules very seriously. During the Sanctions and Costs Hearing, Alboini provided us with examples of compliance e-mails and memos that were sent to his employees with the objective of ensuring that everyone at NSI followed the rules. Whether he did so does not change the findings of the IIROC Panel in the IIROC Decision.

[239] Alboini also emphasizes that he had a clean compliance and disciplinary record. That appears to us to be the case. However, we note that NSI has had compliance issues in the past and has entered into settlements with IIROC or its predecessor (*Re Northern Securities* [2001] IDACD No 31 ("**2001 Settlement**"), *Re Northern Securities* (2008), 31 O.S.C.B.

5856, and *Re Northern Securities*, 2013 IIROC 14). Alboini as UDP and the directing mind of NSI must take some responsibility for those compliance deficiencies.

Conclusions with respect to Count 1

[240] The IIROC Panel concluded that Alboini's conduct was unbecoming and breached IIROC Rule 29.1.

[241] After considering all the relevant factors discussed in these reasons, we find that it is appropriate to impose the following sanctions on Alboini in respect of Count 1:

(a) Alboini shall pay a fine of $250,000 to IIROC, such fine to be paid within 30 days of the date of the order;

(b) Alboini shall disgorge to IIROC commissions of $244,985, such amount to be paid within 30 days of the date of the order;

(c) Alboini shall be suspended for one year from approval by, or registration with, IIROC in all categories anywhere in the industry, commencing 14 days after the date of the order;

(d) Alboini shall be suspended for two years from approval by, or registration with, IIROC as a UDP anywhere in the industry, commencing 14 days after the date of the order; and

(e) Alboini shall be reprimanded.

3. Count 2 – Sanctions Imposed on Vance

[242] We did not receive any submissions on sanctions and costs from Vance because he was unable for medical reasons to provide instructions to his counsel. Counsel for Vance requested an adjournment at the Sanctions and Costs Hearing on June 10, 2014. Rule 9.2 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 provides guidance as to the factors to be considered when considering an adjournment request. The following factors were relevant in this case:

(a) the adjournment was not on consent; IIROC Staff objected;

(b) granting an adjournment would create delay in this matter;

(c) the dates for the Sanctions and Costs Hearing were set down by order on January 27, 2014;

(d) the adjournment was requested at the last possible moment on June 10, 2014;

(e) adjourning at such a late stage would create delay and extra costs to the parties and the Commission; and

(f) we have very limited information as to Vance's medical condition and when that condition will be resolved, if it can be.

[243] Based on these considerations, we have decided not to permit Vance an adjournment and to proceed with our decision on sanctions. However, we are specifically granting to Vance the right, exercisable within 60 days of these reasons, to bring an application under section 144 of the Act for a revocation or variation of our decision, if he wishes to do so (without prejudice to any other right Vance may have under that section or otherwise).

[244] Relevant decisions have emphasized the crucial "gatekeeper" function of the CCO, and the importance of the supervisory role of the CCO in a Dealer Member firm (see Re Murdoch, *supra*, Re Stevenson, *supra* and Re Benarroch, *supra*).

[245] We find that Vance's failure to properly supervise Alboini and inquire into the ten new Jaguar accounts, and into Alboini's trading activities, constituted serious misconduct. Further, those new account openings were approved without completed new client forms which would have indicated the existence of any third party beneficial interest in the accounts.

[246] There are, however, several mitigating factors that we considered: (i) Vance did not participate in Alboini's trading activities relating to Count 1; (ii) there was no direct loss or harm to investors; (iii) Vance did not receive any direct financial benefit from his misconduct; and (iv) Vance has a clean disciplinary record.

[247] The decisions dealing with similar misconduct provides guidance on the range of appropriate sanctions in respect of Vance's misconduct. For example, a suspension from any supervisory capacity has ranged from twelve months (*Re Murdoch*, *supra* and *Re Stevenson*, *supra*) to five years (*Re Benarroch*, *supra*). Fines have been imposed in the range of $50,000 (Re Murdoch, *supra*; *Re Stevenson*, *supra* and *Re Benarroch*, *supra*). We note that a minimum fine of $25,000 is suggested in the

Sanctions Guidelines for a designated person or supervisor. However, Vance's misconduct was not as severe as the conduct in the decisions referred to us by the parties in their submissions. In particular, in *Re Benarroch*, the CCO's conduct was found to be "intentional, ongoing over a long period of time and systematic" (*Re Benarroch*, *supra* at para. 5). In that case, the CCO failed to properly inquire into suspicious transactions made by the RRs from which they directly benefitted. The CCO in *Re Stevenson* accepted personal loans from a representative who was under his supervision, thereby raising a significant conflict of interest in his supervisory role. The IIROC panel in *Re Stevenson* found the CCO's conduct to have "besmirch(ed) the reputation of the firm where they work, and, ultimately, the entire securities industry" (*Re Stevenson*, *supra* at para. 16). Finally, in *Re Murdoch*, a branch manager failed to properly inquire into and detect unauthorized trades over a three-year period in a client account which incurred significant losses. The branch manager also failed to detect glaring red flags such as the increase in volume and risk in trading activity in the client account, and the large amount of commissions generated through the trades. The conduct was found to be especially troubling because the client was vulnerable and was seventy-five years of age.

Conclusion

[248] Based on the foregoing considerations, we find that it is appropriate to impose the following sanctions on Vance with respect to Count 2:

(a) Vance shall be suspended for three months from approval by, or registration with, IIROC in any supervisory capacity, including acting as Chief Compliance Officer, anywhere in the industry commencing 14 days after the date of the order; and

(b) Vance is reprimanded for his conduct in this matter.

We find that these sanctions will provide sufficient specific and general deterrence and, in the circumstances, we do not need to impose a fine on Vance.

4. Count 5(a)

[249] As set out in paragraph 200 of these reasons, the IIROC Panel concluded that Chornoboy, Alboini and NSI breached IDA By-Law 17.2 and IIROC Rule 17.2 by filing or permitting to be filed inaccurate MFRs which failed to properly account for leasehold improvement costs, thereby misstating NSI's RAC.

[250] We note that breaches of IDA By-Law 17.2 and IIROC Rule 17.2 typically involve sanctions imposed on corporate respondents and not on individuals (see for example: *Re HSBC*, *supra*, *Re Interactive Brokers*, *supra* and *Re Trilon*, *supra*, where sanctions were imposed only on the corporate respondents (see paragraphs 175 to 179 of these reasons)). In the rare circumstance where an individual was sanctioned for such conduct, the fine was $10,000 (see *Re Aquino*, *supra*). We note that the Sanctions Guidelines suggest a minimum fine of $10,000 for a CFO (Sanctions Guidelines, *supra* at page 38).

(a) Sanctions Imposed on Chornoboy

[251] In considering appropriate sanctions for Chornoboy on Count 5(a), we have taken into account the following mitigating factors: (i) the error was inadvertent and was admitted by Chornoboy when it was brought to his attention; (ii) there was no direct loss or harm to investors; (iii) Chornoboy did not receive any direct financial benefit from the error; (iv) Chornoboy has a clean disciplinary record; and (v) Chornoboy cooperated fully with IIROC Staff to rectify the error once it was brought to his attention.

[252] We also note that, if the appropriate accounting had been applied, it would have put NSI in "early warning" status and would not have given rise to a RAC deficiency. We note that the decisions we were referred to involved RAC deficiencies of a material amount (see, for example, *Re Trilon*, *supra*, where there was a RAC deficiency of $51,809,000 over a period of 10 months).

[253] Finally, we recognize the fact that Chornoboy has already suffered significant negative consequences as a result of his error. Counsel for Chornoboy submits that, among other things, Chornoboy has not been able to secure consistent work in the securities industry since his employment with NSI ended.

[254] In our view, a fine is not necessary in these circumstances.

[255] For the reasons discussed above, we find that a reprimand is the appropriate sanction for Chornoboy.

(b) Sanctions Imposed on Alboini

[256] Alboini submits that he should not be subject to any sanctions with respect to Count 5(a) as the error that was committed was inadvertent and Alboini was entitled to rely on his CFO, Chornoboy, with respect to the appropriate accounting treatment. With respect to reliance on Chornoboy, the Commission Decision stated that:

> In the circumstances, it was not enough for Alboini to simply say that he was unaware of the error. The onus was on Alboini to establish that his reliance on Chornoboy was reasonable and that he took appropriate steps to ensure that the MFRs were accurate. The IIROC Panel concluded that Alboini was ultimately responsible for Chornoboy's error. Given the materiality of the amounts paid for the leasehold improvements, Alboini's knowledge of those amounts and his review of the MFRs, the IIROC Panel was entitled to conclude, as it did, that Alboini was culpable with respect to Count 5(a).
>
> (Commission Decision, *supra* at para. 286)

[257] We do not find it necessary, however, to impose a fine on Alboini with respect to Count 5(a). That is consistent with our decision on Count 5(a) with respect to Chornoboy. Further, as noted above, fines in respect of such matters are generally imposed on a corporate respondent and not individuals. There are no aggravating factors that support the imposition of a fine on Alboini in respect of Count 5(a).

[258] For the reasons referred to above, we find that a reprimand is the appropriate sanction for Alboini in relation to Count 5(a).

(c) Sanctions Imposed on NSI

[259] As discussed above, prior decisions generally sanctioned corporate respondents for breaches of IDA By-law 17.2 and IIROC Rule 17.2. We note that a fine of $60,000 was ordered in *Re HSBC*, *supra*, a fine of $40,000 was ordered in *Re Interactive Brokers*, *supra* and a fine of $50,000 was ordered in *Re Trilon*, *supra*.

[260] We have considered the same mitigating factors referred to in paragraphs 251 and 252 above. Count 5(a) was the only allegation against NSI.

[261] We note that NSI does have a prior disciplinary record and has entered into three settlement agreements referred to in paragraph 239 of these reasons. The 2001 Settlement and the settlement referred to in paragraph 262 below dealt with NSI's failure to maintain a RAC level greater than zero. We find that repeat misconduct does merit the imposition of higher sanctions in order to achieve specific and general deterrence. We find that a fine of $50,000 should be imposed on NSI in the circumstances. We note that is the same amount as the fine imposed in *Re Trilon*, *supra*.

[262] We also take into account NSI's current circumstances. NSI appears to be currently insolvent and was suspended as an IIROC Dealer Member as of March 19, 2013 (*IIROC Suspension Order*, *supra*). That order was issued on consent as a result of a settlement agreement between NSI and IIROC because during the period from November 21, 2012 to January 25, 2013 NSI: (i) had RAC in an amount less than zero on 38 days, and (ii) failed to have adequate controls because it did not have a CFO.

[263] Accordingly, we find that a $50,000 fine and a reprimand are appropriate sanctions against NSI on Count 5(a).

IX. COSTS

[264] IIROC has authority to order costs under IIROC Rule 20.49.

[265] The Applicants submit that costs should not be awarded against them. IIROC Staff requests that we impose the same costs as imposed by the IIROC Panel, subject to the reduction referred to in paragraph 270 below. IIROC Staff submits that the IIROC Panel was in the best position to assess those costs. To support that request, IIROC Staff tendered the same bill of costs that was before the IIROC Panel.

[266] IIROC Staff costs were billed at their usual rates of $150 per hour for enforcement counsel and $106 per hour for investigators. IIROC Staff's investigation costs were $337,927 and prosecution costs were $274,553 for total costs of $612,480. We note that IIROC Staff did not claim costs for outside counsel that acted during the course of this proceeding. Those costs exceeded $575,000.

[267] At the IIROC Hearing, IIROC Staff reduced the overall costs sought to $340,000 and sought costs in the amount of $150,000 from NSI, $125,000 from Alboini, $50,000 from Vance and $15,000 from Chornoboy.

[268] At the Sanctions and Costs Hearing, IIROC Staff further reduced their costs request to account for the fact that Count 3 was dismissed. Count 3 represented a large part of the investigation and prosecution costs. As a result, IIROC Staff submits that the following amounts of costs should be ordered:

(a) $93,750 against Alboini,

(b) $25,000 against Vance,

(c) $15,000 against Chornoboy, and

(d) $15,000 against NSI.

[269] IIROC Staff notes that the IIROC Panel ordered costs globally against each of the Applicants and did not specify the amount of costs that related to each Count.

[270] IIROC Staff submits that Alboini's costs should be reduced by one-quarter as there were a total of four allegations in this matter and only one allegation (Count 3) was dismissed. However, this approach ignores the fact that while there were four allegations, Alboini was named only in three of the allegations (Counts 1, 3 and 5(a)). Further, Count 3 would have involved very significant investigation and hearing time relative to Count 5(a). We conclude in the circumstances that it is appropriate to order costs against Alboini in respect of Count 1 and that those costs shall be $62,500. We determine those costs to be appropriate and reasonable in the circumstances.

[271] We find that costs should not be ordered against Alboini and Chornoboy with respect to Count 5(a). Because Chornoboy readily admitted his error, there were substantial cost savings at both the investigation and the IIROC Hearing stage.

[272] We find that it is not necessary to order costs against Vance in respect of Count 2. That Count arose substantially from Alboini's conduct related to Count 1. In our view, substantially more time, resources and costs would have been expended on Count 1 as opposed to Count 2.

[273] We order costs of $10,000 against NSI in respect of Count 5(a). We determine those costs to be appropriate and reasonable in the circumstances.

X. DECISION ON SANCTIONS AND COSTS

[274] Accordingly, we will issue an order, substantially in the form of Schedule C to these reasons, imposing the following sanctions and costs:

1. The following sanctions and costs are imposed on Alboini:

   (a) Alboini shall pay a fine of $250,000 to IIROC, such fine to be paid within 30 days of the date of the order;

   (b) Alboini shall disgorge to IIROC commissions of $244,985, the amount to be paid within 30 days of the date of the order;

   (c) Alboini shall be suspended for one year from approval by, or registration with, IIROC in all categories anywhere in the industry, commencing 14 days after the date of the order;

   (d) Alboini shall be suspended for two years from approval by, or registration with, IIROC as a UDP anywhere in the industry, commencing 14 days after the date of the order;

   (e) Alboini is reprimanded; and

   (f) Alboini shall pay to IIROC costs in the amount of $62,500, such costs to be paid within 30 days of the date of the order.

2. The following sanctions and costs are imposed on NSI:

   (a) NSI shall pay a fine of $50,000 to IIROC, such fine to be paid within 30 days of the date of the order;

   (b) NSI is reprimanded; and

   (c) NSI shall pay to IIROC costs of $10,000.

3. The following sanctions are imposed on Vance:

   (a) Vance shall be suspended for three months from approval by, or registration with IIROC in any supervisory capacity, including acting as Chief Compliance Officer, anywhere in the industry, commencing 14 days after the date of the order; and

(b) Vance is reprimanded;

4. Chornoboy is reprimanded.

[275] We have concluded that these sanctions are proportionate to the conduct of each Applicant and are in the public interest.

Dated at Toronto this 11th day of September, 2014.

"James E. A. Turner"
James E.A. Turner

"Judith N. Robertson"
Judith N. Robertson

SCHEDULE A

SANCTIONS AND COSTS PREVIOUSLY REQUESTED AND IMPOSED

	Sanctions and Costs Requested by IIROC Staff at the IIROC Hearing	Sanctions and Costs Imposed by the IIROC Panel
ALBOINI		
Count 1	$500,000	$500,000
	One year suspension from registration in all categories	Two year suspension from registration in all capacities
		Permanent ban as UDP
	Disgorge commissions	Disgorge commissions
Count 2	N/A	N/A
Count 3	$100,000	$100,000
	Six months suspension from serving as UDP of NSI (to be served concurrently with other suspensions)	One year suspension from registration in all categories (to be served concurrently with other suspensions) Permanent ban as UDP
Count 5(a)	$35,000	$25,000
Costs	$125,000	$125,000
NSI		
Count 3	$250,000	$250,000
Count 5(a)	$50,000	$50,000
Costs	$150,000	$150,000
VANCE		
Count 2	$35,000 Three months suspension from registration in all supervisory capacities	$25,000 Three months suspension from registration in all supervisory capacities
Count 3	$50,000	$25,000
Costs	$50,000	$50,000
CHORNOBOY		
Count 5(a)	$25,000	$25,000
Costs	$15,000	$15,000

SCHEDULE B

RELEVANT IIROC RULES

17 – Dealer Member Minimum Capital, Conduct of Business and Insurance

…

17.2. Every Dealer Member shall keep and maintain at all times a proper system of books and records.

17.2A. Every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statements in Rule 2600.

20 – Corporation Hearing Processes

…

20.33 Approved Persons

(1) Upon conclusion of a disciplinarian hearing, a Hearing Panel may impose the penalties set out at 20.33(2) if, in the opinion of the Hearing Panel, the Approved Person:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any Rule or Ruling of the Corporation; or

(c) failed to carry out an agreement or undertaking with the Corporation.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention;

(c) suspension of approval for any period of time and upon conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the Corporation; or

(i) any other fit remedy or penalty.

…

20.34 Dealer Members

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at Rule 20.34(2) if, in the opinion of the Hearing Panel, the Dealer Member:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any Rule or Ruling of the Corporation;

(c) failed to carry out an agreement or undertaking with the Corporation; or

(d) failed to meet liabilities to another Dealer Member or to the public.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Dealer Member:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention.

(c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;

(d) terms and conditions of continued Membership;

(e) termination of the rights and privileges of Membership;

(f) expulsion of the Dealer Member from membership in the Corporation; or

(g) any other fit remedy or penalty.

20.49 Assessment of Costs

(1) In addition to imposing any of the penalties set out in Rule 20.33, 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

(2) Costs shall not be assessed where the Hearing Panel has not made a finding against the Respondent based on any of the grounds set out at Rule 20.33(1) or Rule 20.34(1) or where an expedited decision is quashed upon review pursuant to Rule 20.48(1).

…

29 – Business Conduct

29.1 Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

…

SCHEDULE C

FORM OF ORDER

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

AND

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

AND

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

ORDER
(Section 21.7 and Subsection 8(3) of the Securities Act)

WHEREAS on August 20, 2012, Northern Securities Inc. ("NSI"), Victor Philip Alboini ("Alboini"), Douglas Michael Chornoboy ("Chornoboy") and Frederick Earl Vance ("Vance") (collectively the "Applicants") filed with the Ontario Securities Commission (the "Commission") a notice of application (the "Application") pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing and review of the decisions of a hearing panel (the "Hearing Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") dated July 23, 2012 and November 10, 2012 (the "Decision");

AND WHEREAS the Hearing and Review was heard over three days on February 14, 15, and 20, 2013, and the Commission released its decision and reasons on December 19, 2013, in which, among other matters, it set aside the sanctions and costs imposed on the Applicants by the IIROC Hearing Panel and ordered that the Commission would hold a hearing *de novo* solely on the question of the appropriate sanctions and costs to be imposed on the Applicants based on the findings of the IIROC Hearing Panel, other than its finding with respect to one Count;

AND WHEREAS the Sanctions and Costs Hearing was held on June 9, 10 and 11, 2014 and upon considering the evidence and the submissions, the Commission issued its reasons and decision on sanctions and costs on the date hereof;

AND WHEREAS the Commission has concluded that it is in the public interest to make the following order;

IT IS HEREBY ORDERED THAT:

1. The following sanctions and costs are imposed on Alboini:

   (a) Alboini shall pay a fine of $250,000 to IIROC, such fine to be paid within 30 days of the date of this order;

   (b) Alboini shall disgorge to IIROC commissions of $244,985, such amount to be paid within 30 days of the date of this order;

   (c) Alboini shall be suspended for one year from approval by, or registration with, IIROC in all categories anywhere in the industry, commencing 14 days after the date of this order;

   (d) Alboini shall be suspended for two years from approval by, or registration with, IIROC as an Ultimate Designated Person anywhere in the industry, commencing 14 days after the date of this order;

   (e) Alboini is reprimanded; and

   (f) Alboini shall pay to IIROC costs in the amount of $62,500, such costs to be paid within 30 days of the date of this order;

2. The following sanctions and costs are imposed on NSI:

   (a) NSI shall pay a fine of $50,000 to IIROC, such fine to be paid within 30 days of the date of this order;

   (b) NSI is reprimanded; and

   (c) NSI shall pay to IIROC costs in the amount of $10,000;

3. The following sanctions are imposed on Vance:

   (a) Vance shall be suspended for three months from approval by, or registration with, IIROC in any supervisory capacity, including acting as Chief Compliance Officer anywhere in the industry, commencing 14 days after the date of this order;

   (b) Vance is reprimanded; and

4. Chornoboy is reprimanded.

DATED at Toronto this _____ of _____, 2014.

_____ _____

3.1.5 Marc McQuillan

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

AND

IN THE MATTER OF
UNIVERSAL MARKET INTEGRITY RULES

AND

IN THE MATTER OF
MARC MCQUILLEN

REASONS AND DECISION

Hearing:	August 21, 2014		
Decision:	September 12, 2014		
Panel:	James E. A. Turner	–	Vice-Chair
Counsel:	Linda Fuerst	–	For Marc McQuillen
	Andrew Werbowski	–	For Staff of the Investment Industry Regulatory Organization of Canada
	Swapna Chandra	–	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

1. Introduction

[1] On August 21, 2014, the Ontario Securities Commission (the "**Commission**") held a hearing to consider an application (the "**Application**") brought by Marc McQuillen (the "**Applicant**" or "**McQuillen**") dated May 21, 2014 (and amended on June 30, 2014) under subsections 21.7(1) and 21.1(4) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "**Act**"), for a hearing and review of (i) a decision of a hearing panel of Market Regulation Services Inc. ("**RS**") dated February 27, 2007 (the "**Settlement Approval**") approving a settlement agreement entered into between McQuillen and RS dated February 8, 2007 (the "**Settlement Agreement**"); and (ii) a decision of the Investment Industry Regulatory Organization of Canada ("**IIROC**") on April 22, 2014 (the "**Refusal Decision**") not to reconsider the Settlement Approval and expunge all record of RS' approval of the Settlement Agreement.

[2] The Applicant requests the Commission to conduct a hearing and review of the Settlement Approval and/or the Refusal Decision and that the Commission set aside the Settlement Approval, vacate the Settlement Agreement and expunge McQuillen's disciplinary record arising out of the Settlement Approval. The Applicant also requests the Commission to grant an exemption under section 147 of the Act from the 30-day time limit for bringing the Application, or otherwise waive compliance with any such requirement.

[3] These are my reasons and decision relating to the Application.

2. Background Facts

[4] The following are the facts upon which the Application is based.

[5] RS alleged in its Statement of Allegations dated February 20, 2007 (the "**Statement of Allegations**") that both Berry and McQuillen breached Universal Market Integrity Rules ("**UMIR**") 6.4 and 7.7(5). In particular, RS alleged that:

(a) between April 4, 2002 and April 18, 2005, both Berry and McQuillen:

(i) were employed by Scotia Capital Inc. ("**Scotia Capital**"), an IIROC member;

(ii) solicited client orders during the distribution of new issues that resulted in Scotia Capital contravening UMIR 7.7(5) (as it existed prior to May 2005);

(iii) conducted off-marketplace trades that were not printed on a marketplace or recognized exchange which resulted in Scotia Capital contravening UMIR 6.4.; and

(iii) were personally liable for Scotia Capital's contraventions of UMIR pursuant to the extension of responsibility provision in UMIR 10.3(4).

[6] On February 8, 2007, McQuillen entered into the Settlement Agreement with RS. In the Settlement Agreement he acknowledged that his conduct in trading securities as alleged had breached UMIR 6.4 and 7.7(5).

[7] An RS hearing panel (the "**Settlement Panel**") approved the Settlement Agreement on February 28, 2007 and ordered that McQuillen pay a fine of $25,000 as contemplated by the Settlement Agreement. No other sanctions were imposed.

[8] Following the approval of the Settlement Agreement, RS published the Settlement Agreement and a Discipline Notice that stated that McQuillen had engaged in a pattern of trading consisting of soliciting client orders and conducting off-market trades contrary to UMIR 6.4 and 7.7(5).

[9] Approximately six years later, on January 14, 2013, after a seven-day contested hearing, an IIROC hearing panel (the "**Berry Panel**") concluded that Berry's trading did not contravene UMIR 6.4 and 7.7(5) (the "**Berry Decision**"). Accordingly, all of the allegations against Berry in the Statement of Allegations were dismissed.

[10] The trading referred to in paragraph 9 above was the identical trading upon which the Settlement Agreement was based.

[11] On March 19, 2014, McQuillen filed an application with IIROC seeking an order to set aside the Settlement Approval, vacate the Settlement Agreement and expunge his disciplinary record. McQuillen submitted that, in view of the Berry Decision, leaving the settlement standing would be manifestly unfair to him and contrary to the public interest.

[12] IIROC rejected McQuillen's application in an e-mail to McQuillen (the "**Harris E-mail**") dated April 22, 2014 from A. Douglas Harris, Vice-President and General Counsel of IIROC.

[13] The Harris E-mail stated that "[u]nfortunately, there is no jurisdiction in IIROC's Dealer Member Rules or otherwise for an IIROC Hearing Panel to reconsider or reverse an earlier decision. The Hearing Panel (and IIROC) are *functus officio* and cannot re-open the matter. As an IIROC Hearing Panel lacks jurisdiction to make the order you are requesting, I cannot act upon the material you have provided. … I am sorry that we cannot be of assistance." The Harris E-mail also indicated that "… the body with jurisdiction to review a decision of an IIROC Hearing Panel in Ontario is the Ontario Securities Commission … I suggest you begin your inquiries with the Office of the Secretary to the Commission."

[14] As a result, McQuillen brought the Application.

3. Positions of the Parties

[15] The following is a summary of the principal submissions of the parties.

(a) The Applicant

[16] McQuillen submits that he continues to suffer the stigma of (i) his acknowledgement in the Settlement Agreement that he breached UMIR, and (ii) the sanction by RS imposed under the Settlement Agreement. McQuillen submits that those breaches of UMIR have now been found by the Berry Panel not to have occurred. In these circumstances, he submits that the Settlement Approval should be set aside and his disciplinary record should be expunged. McQuillen submits that the Settlement Agreement should not stand and that permitting it to do so would be manifestly unfair to him.

[17] McQuillen submits that the Commission has jurisdiction to hear the Application and that in the circumstances the Commission should revoke the Settlement Approval. McQuillen also submits that IIROC erred in law in reaching the Refusal Decision.

[18] McQuillen also requests the Commission to exempt him from (or otherwise waive) the 30-day notice requirement for filing the Application under subsection 8(2) of the Act. McQuillen submits that the Commission has jurisdiction to do so under section 147 of the Act.

[19] McQuillen also made submissions regarding the common law contractual principles that apply to the Settlement Agreement. Given my conclusions in this matter, it is not necessary for me to address those matters.

(b) IIROC Staff

[20] IIROC Staff submits that UMIR does not expressly give IIROC hearing panels the jurisdiction to reconsider or reverse an earlier hearing panel decision. IIROC Staff submits that, as hearing panels are not courts of inherent jurisdiction and do not have implied powers, an IIROC panel's jurisdiction is circumscribed by the provisions set out in Part 10 of UMIR.

[21] Further, IIROC Staff submits that the Refusal Decision is not a "decision" that is reviewable by the Commission under subsection 21.7 of the Act. IIROC Staff says that the Harris E-mail is not an exercise of any power under UMIR and is simply a statement regarding the contents of UMIR. Accordingly, IIROC Staff submits that the Commission has no jurisdiction to review the Refusal Decision.

[22] IIROC Staff also submits that the Applicant is well out of time to bring the Application to the Commission with respect to the Settlement Approval (which occurred on February 28, 2007). Subsection 8(2) of the Act provides that a request for a hearing and review of a decision of a self-regulatory organization ("**SRO**") must be made within 30 days of the decision. The Applicant is also out of time to request a hearing and review of the Refusal Decision (which was made on April 22, 2014).

[23] If the Commission concludes that it has jurisdiction to conduct a hearing and review of the Settlement Approval, IIROC Staff submits that the Commission should not set aside the Settlement Approval or vacate the Settlement Agreement, which is irrevocable and binding on the Applicant.

[24] In any event, IIROC Staff submits that these circumstances are not unfair to McQuillen.

(c) OSC Staff

[25] Staff of the Commission ("**OSC Staff**") submits that the Commission has no jurisdiction under section 147 of the Act to waive the 30-day notice requirement under subsection 8(2) of the Act and that the Commission should dismiss the Application because it is out of time.

[26] OSC Staff also submits that, if the Commission concludes it does have jurisdiction to review the Settlement Approval, the Commission should do so by applying the principles in *Canada Malting* (*Re Canada Malting Co.* (1986), 9 OSCB 3565 ("***Canada Malting***")). OSC Staff submits that none of the principles in *Canada Malting* apply here.

[27] OSC Staff adopts IIROC Staff's submission that there was no suggestion that McQuillen entered into the Settlement Agreement other than on voluntary, informed and unequivocal basis. McQuillen was represented by experienced counsel, who would have made him aware of the nature of the allegations and the case against him, as well as both the risk of settlement and the risk of litigation. Accordingly, the Settlement Agreement should stand.

[28] In any event, OSC Staff submits that it would not be an appropriate exercise of the Commission's discretion under subsections 21.7(1) or 21.1(4) to set aside a settlement agreement of an SRO on these facts and that dismissing the Application is not unfair to McQuillen.

II. THE ISSUES

[29] In considering the Application, I will address the following issues:

(a) whether the Commission has jurisdiction to intervene in this matter and to set aside the Settlement Approval and vacate the Settlement Agreement;

(b) the appropriate standard of review under section 21.7 of the Act;

(c) whether the Applicant has satisfied any of the grounds established in Canada Malting upon which the Commission may intervene in the Settlement Approval; and

(d) if the Commission has jurisdiction to intervene, whether it is appropriate for the Commission to do so.

III. THE LAW

[30] The following is a discussion of the relevant law applicable to this matter.

1. Jurisdiction in this Matter

[31] IIROC Staff takes the position that IIROC has no jurisdiction to reconsider the Settlement Approval because there is no express IIROC rule permitting IIROC to do so. That is the position taken in the Harris E-mail. On the other hand, the Applicant takes the position that IIROC has inherent jurisdiction to re-open the Settlement Approval. Because of my conclusions discussed below, that is not a question I have to decide. I do note, however, that both IIROC and the Commission have the authority to impose substantial sanctions on market participants that can have very far-reaching and negative consequences for the persons involved. It would seem to me that, if neither IIROC nor the Commission has jurisdiction to reconsider the Settlement Approval in any circumstances, that would be a material and unfortunate defect in our securities regulatory regime and one that could undermine confidence in that regime.

[32] In my view, however, the Commission does have jurisdiction to reconsider the Settlement Approval as a matter of our overriding supervisory jurisdiction over SROs such as IIROC under subsection 21.1(4) of the Act. In this respect, the Commission made the following comments in *TSX Inc. (Re)* (2007), 30 OSCB 8917 ("***TSX Inc.***"):

> Subsection 21(5) of the Act sets out the Commission's powers and oversight regarding stock exchanges. It is clear from paragraph 21(5)(e) of the Act [now subsection 21.1(4) of the Act] that the Commission has a supervisory power over "any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange". Therefore, in situations where sections 8 and 21.7 of the Act do not apply, the Commission nonetheless has the ability to exercise its oversight function of a recognized stock exchange under paragraph 21(5)(e).
>
> Although we have determined that there is no reviewable decision pursuant to sections 8 or 21.7 of the Act, we recognize that this Commission does have an overriding supervisory power with respect to SROs under paragraph 21(5)(e) of the Act. We agree with Commission Staff's characterization of the Commission's powers under this paragraph, which are discussed above at paragraph 100.
>
> In our view, it is within the jurisdiction of the Commission to exercise its supervisory power under paragraph 21(5)(e) of the Act to review the decision of the TSX to make the TSX Filing.

> The Commission clearly has oversight jurisdiction over SROs under that section. We must determine, however, whether there are circumstances in which the Commission should exercise its discretion to exercise its oversight powers.
>
> (*TSX Inc.*, *supra* at paras. 134 to 137)

[33] Accordingly, the Commission has jurisdiction to conduct a hearing and review of the Settlement Approval pursuant to its overriding supervisory jurisdiction over IIROC under subsection 21.1(4) of the Act. I make no decision whether the Commission also has authority to address the Application pursuant to its inherent jurisdiction under the Act.

[34] Having said that, because of my conclusions discussed below, I will address the Application as a hearing and review of the Settlement Approval under section 21.7 and section 8 of the Act.

2. Jurisdiction under Section 21.7 of the Act

[35] The Commission has authority under section 21.7 of the Act to hold a hearing and review of any direction, decision, order or ruling of an SRO such as IIROC. That section provides as follows:

> **21.7 (1) Review of decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by–law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self–regulatory organization, recognized quotation and trade reporting system, recognized clearing agency or designated trade repository may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[36] Subsection 8(2) of the Act provides that:

> **(2) Review of Director's Decisions** – Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

[37] There is no dispute that McQuillen is a person directly affected by the Settlement Approval and the Refusal Decision. Further, the Settlement Approval is a decision of an SRO for purposes of subsection 21.7(1) of the Act. It is not necessary for me to determine whether the Refusal Decision is a decision for that purpose (see paragraph 95 of these reasons).

[38] Subsection 8(3) of the Act provides that, upon a hearing and review, the Commission may confirm the decision or make such other decision as it considers proper. That section provides as follows:

> **8(3) Power on review** – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

3. Standard of Review and Grounds for Intervention

[39] In a section 21.7 hearing and review, the Commission exercises original jurisdiction akin to a trial de novo and may admit new evidence. A hearing and review is broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or the contravention of a principle of natural justice (*Investment Industry Regulatory Organization of Canada v. Vitug* (2010), 33 OSCB 3965 at para. 43; aff'd 2010 ONSC 4464 (Div. Ct.) ("***Re Vitug***"); and *Boulieris v. Investment Dealers Association of Canada*, (2004) 27 OSCB 1597 at paras. 29-30; aff'd (2005) 198 OAC 81 (Div. Ct.) ("***Re Boulieris***")).

[40] Although the broad scope of the Commission's authority on a hearing and review is well established, in practice the Commission takes a more restrained approach to applications under section 21.7 of the Act (*Re Boulieris*, *supra* at para. 31).

[41] The Commission will generally defer to an SRO decision that is central to the SRO's specialized expertise, such as interpreting and applying its own by-laws or making factual determinations central to its expertise (*HudBay Minerals Inc. (Re)*, (2009), 32 OSCB 3733 at paras. 103-104 ("***HudBay***"); *Investment Dealers Association of Canada v. Kasman* (2009), 32 OSCB 5729 at para. 43 ("***Re Kasman***"); and *Re Vitug*, *supra* at paras. 45-47).

[42] Nonetheless, there are circumstances in which the Commission will intervene in a decision of an SRO. Those grounds were established in *Canada Malting* and are the following as they relate to the Application:

(a) the IIROC Hearing Panel proceeded on an incorrect principle;

(b) the IIROC Hearing Panel erred in law;

(c) the IIROC Hearing Panel overlooked material evidence;

(d) new and compelling evidence is presented to the Commission that was not before the IIROC Hearing Panel; or

(e) the IIROC Hearing Panel's perception of the public interest conflicts with that of the Commission.

(*Canada Malting*, *supra* at para. 24)

[43] The *Canada Malting* test for intervention has been applied in a number of subsequent Commission decisions, including *Boulieris*, *supra* at para. 31, *HudBay*, *supra* at para. 105 and *Kasman*, *supra* at para. 44. In *HudBay*, in discussing when the Commission may intervene in a decision of the TSX, the Commission panel described the burden on an applicant as follows:

> We recognize, however, that if the Commission is too interventionist in reviewing decisions made by an exchange, that would introduce an unacceptable degree of uncertainty in our regulatory regime and in capital markets. In *Canada Malting*, the Commission stated:
>
> > The TSE supported the Applicants in their request for standing. However, it went on to note the difficulty that would be created for listed companies if the TSE could be second–guessed by the OSC on the initiative of a company's shareholders every time a notice for filing is accepted under By–law 19.06 [the predecessor of section 604 of the TSX Manual].
> >
> > If the right of appeal meant that the OSC were to review every decision of the TSE on the merits, then companies issuing securities would be faced with the possibility of subsequently being forced to unwind the transaction or face delisting or trading sanctions on the basis that the Commission had decided to substitute its discretion for that of the TSE under By–law 19.06. In our view, this would introduce an unacceptable degree of uncertainty into the capital markets.
>
> (*HudBay*, *supra* at para. 114)

[44] It is, therefore, only in rare circumstances that the Commission will intervene in an SRO decision. Before the Commission will do so, it must be satisfied that the applicant has met the "heavy burden" of demonstrating that its case fits within at least one of the five grounds for intervention identified in *Canada Malting*.

4. Principles Governing Settlement Agreements

[45] The nature of RS' approval of the Settlement Agreement is a central issue in this matter.

[46] The Commission has described the exercise of its jurisdiction to approve a settlement agreement as follows:

> When considering the approval of a settlement agreement, the Commission must ensure that the settlement agreement is in the public interest and that it achieves the purposes of the Act which are to (a) provide protection to investors from unfair, improper or fraudulent practices; and (b) foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).
>
> The Commission's public interest role was explained in *Re Mithras Management Ltd.* (1990). 13 OSCB 1600 as follows:
>
> > … 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 concluded [*sic*] 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 … (at 1610 and 1611)

In order to approve a settlement agreement, the Commission must conclude that doing so is in the public interest. The role of the Commission in considering a proposed settlement agreement has been articulated in several cases. For instance, in *Re Koonar et al.* (2002), 25 O.S.C.B. 2691, the Commission stated:

> The role of the panel in reviewing a settlement agreement is not to substitute the sanctions it would impose in a contested hearing for what is proposed in the settlement agreement, but rather to make sure the agreed sanctions are within acceptable parameters. (*Re Koonar et al.*, *supra* at 2692. See also *Re Melnyk* (2007), 30 O.S.C.B. 5253; *Re Pollitt* (2004), 27 O.S.C.B. 9643 at para. 33; and *Nortel Networks Corp.*, transcript of oral reasons of the Commission, May 22, 2007, p. 52.)

Accordingly, the Commission must consider all of the circumstances of the particular case to determine whether the sanctions are in the "appropriate range" of acceptable sanctions. The Commission has in the past rejected settlement agreements on the basis that the sanctions agreed to did not fall within the "appropriate range". As stated in *Re Rankin* (at paragraph 19) "*[our] role in considering the settlement is not to renegotiate the terms of the Settlement Agreement or to suggest changes to the agreed facts, statements and sanctions set forth in the Settlement Agreement*". Nevertheless, the Commission cannot approve a settlement agreement where, in its view, the sanctions agreed to fall short of the appropriate range of acceptable sanctions. [Emphasis added]

(*Re Leung* (2008), 31 OSCB 8764 at paras. 14 to 17)

[47] Similar principles apply to the approval by an IIROC hearing panel of a settlement agreement. Those principles have been described as follows:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.
>
> This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, *but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing*. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. [Emphasis added]
>
> (*Re Milewski* [1999] I.D.A.C.D. No. 17 at p. 13-14, (adopted by the IIROC hearing panel in *Re Prodigy Wealth Management Corp.* 2009 IIROC 51 at para. 9)

[48] Accordingly, approving a settlement agreement requires the Commission or IIROC to determine whether the proposed sanctions fall within a range of reasonable sanctions or outcomes. The panel considering a settlement relies on the facts set forth in the settlement agreement and does not make an independent finding of the facts or that particular rules have been breached. The terms of a settlement agreement are negotiated and agreed to by staff of the regulatory authority and the respondent[s]. A settlement agreement will be approved as being in the public interest only where the sanctions imposed are appropriate based upon the uncontested facts and circumstances set forth in the settlement agreement.

[49] In *Re AiT Advanced Information Technologies Corp.* ("***AiT***"), the Commission concluded that a settlement agreement previously approved by the Commission should be revoked where the conclusion that a breach of securities law had occurred was found not to be the case. The Commission stated:

> First, let me say I commend Staff and the Executive Director for bringing this matter forward. The basis of the 'settlement agreements' was certain acts that occurred transgressed and violated section 75 of the Act. At a subsequent contested hearing, a learned panel, two members of whom are here with me today, Commissioner Wigle and Commissioner Perry, found on identical facts (there was never any difference in the facts upon which the original acknowledgments and orders were based and the subsequent facts), after a full hearing, that AiT was not in breach of section 75 of the Act and was not required to make timely disclosure of its negotiations with 3M for the purchase by 3M of all of the shares of AiT at the time specified in the allegations. That conclusion is found at paragraph 266 of the Reasons and Decision in *Re AiT Advanced Information Technologies Corp.* (2008), 31 O.S.C.B. 712 of the tribunal dated the 14th day of January, 2008. The subsequent paragraph, paragraph 267, repeats the conclusion in the sense that it says 'having reached the conclusion that AiT did not breach section 75 of the Act, the allegations against Weinstein must be dismissed'.
>
> There are many reasons why this matter – the earlier settlements – should be set aside, notwithstanding that they were settlements and not hearings. First and foremost, as Mr. Fabello submitted, is logic and fairness. One can never go wrong using logic and fairness. Logic and fairness certainly dictates that the settlement agreements entered into by AiT and by Mr. Ashe ought to be revoked pursuant to section 144 of the Act. Notwithstanding that everyone, in good faith, at the time believed it to be a violation of the Act, the basis for that conclusion has subsequently been found not to have been a violation.
>
> *The learned tribunal, having heard all of competing arguments [sic] on the issue, has determined there was not a violation of the Act. Mr. Ashe therefore could not be a party to AiT's being in violation of the Act because there was no violation of the Act.* So it is absolutely not contrary to the public interest and, in fact, it is very strongly in the public interest that the order go as requested. [Emphasis added]
>
> (*Re AiT Advanced Information Technologies Corp.* (2008), 31 OSCB 10027 at paras. 2-4; *Re AiT Advanced Technologies*, (2008), 31 OSCB 8922 (section 144 order); and *Re Ashe* (2007), 30 OSCB 1864 (section 127 order))

[50] I have concluded that the matter before me is on all fours with *AiT* for the reasons discussed in paragraphs 90 to 92 of these reasons. In reaching that conclusion, I recognise that the application and remedy sought in *AiT* were consented to by all parties. That is not the case in respect of the Application.

[51] The Commission was clear in *Rankin* (2011) 34 O.S.C.B. 11797 ("***Rankin***") that the threshold for re-opening a settlement agreement is a high one. The Commission stated that:

> Because of the diverse circumstances in which a section 144 application can be brought, it is not practical to articulate all of the principles and criteria that should apply to all such applications. Based on the Commission decisions discussed in paragraphs 62 to 70 of these reasons, for purposes of the Application, we will apply the following principles:
>
> (a) it is not generally in the public interest for the Commission to re-open settlements previously entered into and approved or to revoke administrative sanctions previously imposed;
>
> (b) accordingly, a revocation or variation of a Commission sanctions order under section 144 of the Act should be granted only in the most unusual or rarest of circumstances;
>
> (c) the Commission should revoke or vary a previous sanctions order where:
>
> i. there is manifest unfairness to a respondent; or
>
> ii. the facts and circumstances clearly demonstrate that the relevant sanctions order cannot be permitted to stand (such as in Re AiT);
>
> (d) in determining whether to revoke or vary a sanctions order, we must consider all of the facts and circumstances; and
>
> (e) the onus is on the applicant to show that the revocation or variation of the sanctions order is justified and not prejudicial to the public interest.
>
> (*Rankin*, *supra* at para. 84)

[52] I note that, while *Rankin* articulated these principles, the decision of the Commission in *Rankin* was not to re-open the settlement agreement.

5. The Principle of Finality in Criminal Matters

[53] IIROC and OSC Staff submit that the Settlement Agreement is final and irrevocable regardless of the Berry Decision. They say that principle is not unique to the provisions of the UMIR. It has been applied by the courts in the criminal context. The Supreme Court of Canada has held that:

> …
>
> The acquittal of Marshall determines nothing in respect of the conviction of the accused. *Remillard v. R.* (1921), 62 S.C.R. 21; 35 C.C.C. 227, 59 D.L.R. 340, makes it perfectly clear that the jury verdict is only conclusive as between the Crown and the accused at the trial. It follows then, that the majority's conclusion that the conviction cannot stand is erroneous.
>
> (*R. v. Hick* [1991] 3 SCR 383 at para. 6)

[54] Similarly in *Van Pham*, the British Columbia Provincial Court (Criminal Division) sentenced a person who had pled guilty despite his co-accused being acquitted:

> … In Mr. Pham's case, he entered a guilty plea prior to a trial taking place. Mr. Pham was prepared to risk his co-accused being acquitted and he still having to live with having to go through with his plea of guilty. As things turned out, of course, his co-accused were [*sic*] acquitted and he has continued on, as he was required to do, with sentencing on his guilty plea entered prior to his co-accused's trial. …
>
> (*R. v. Sang Van Pham* 2001 BCPC 0092 ("***Van Pham***") at para. 10)

[55] On the other hand, McQuillen submits that in criminal cases, courts have long accepted that they possess an inherent jurisdiction to set aside a guilty plea in the interests of justice, in some cases many years after the disposition of the matter on the basis of such a plea. This jurisdiction can be exercised where, owing to judicial developments after a guilty plea, it becomes apparent that the accused's conduct did not fall within the offence with which he was charged and for which he was ultimately found guilty and punished (*R. v. Hanemaayer* 2008 ONCA 580, at para. 20 and *R. v. Grainger* (1978), 42 CCC (2d) 119 (Ont. CA) at paras. 6-7).

[56] While criminal cases may not be of much assistance in this matter, it seems to me that those cases indicate that, in rare cases, there may be grounds for a guilty plea to be set aside where it subsequently becomes apparent that the accused's conduct did not constitute a criminal offence.

IV. ANALYSIS

1. The Settlement Agreement

[57] There is no doubt that the Settlement Agreement was entered into by McQuillen on an informed basis with legal advice and that it is binding on him. Accordingly, as IIROC Staff submits, the Settlement Agreement was voluntary, informed and unequivocal. There is equally no doubt that under UMIR a settlement agreement approved by a hearing panel "becomes final and no party to the Settlement Agreement may appeal or seek a review of the matter" (UMIR Part 10.8, section 3.6(b)). The Settlement Agreement was duly approved by the Settlement Panel and McQuillen agreed not to appeal or seek a review of the Settlement Agreement. The governing principle is that a settlement agreement is binding and permanent and cannot be re-opened. The same principle applies to Commission settlements.

[58] The question is whether, notwithstanding that principle, McQuillen should be permitted to re-open the Settlement Approval and the Settlement Agreement based on the circumstances discussed in these reasons.

2. Jurisdiction to Intervene

[59] I have concluded that, subject to the comments below, I have jurisdiction in this matter to conduct a hearing and review of the Application. My reasons for that conclusion are discussed commencing at paragraph 31 of these reasons.

3. Exemption from 30-Day Notice Requirement

[60] Under subsection 8(2) of the Act, an application to the Commission for a hearing and review of an SRO decision must be brought within 30 days of the decision that is being appealed. McQuillen is clearly out of time in bringing the Application. The Settlement Agreement was entered into and approved by RS approximately seven years ago. Accordingly, in order to have jurisdiction under section 21.7 of the Act to hear the Application, I must have authority to exempt McQuillen from the 30-day notice requirement.

[61] Obviously, at the time the 30-day notice period expired, no decision had been made by the Berry Panel and, accordingly, there were no grounds for an application by McQuillen to the Commission based on that decision. The Settlement Agreement was entered into by RS and McQuillen on February 28, 2007. The Berry Decision was issued on January 14, 2013.

[62] Under section 147 of the Act, the Commission has broad discretion to grant exemptions where, in the Commission's opinion, doing so would not be prejudicial to the public interest. Such exemptions may be granted "from any requirement of Ontario securities law". OSC Staff submits that section 147 does not apply to matters of a procedural nature such as the 30-day notice requirement under subsection 8(2) of the Act. I do not agree with that submission.

[63] Section 147 of the Act on its face gives the Commission a very broad exempting power with respect to "requirements" of Ontario securities law. OSC Staff submits, however, that subsection 8(2) of the Act is a procedural provision that does not constitute a "requirement" of Ontario securities law. It makes little sense to me to interpret section 147 of the Act to permit the Commission to grant exemptions from the substantive provisions of the Act but not to permit the Commission to grant procedural exemptions. In the vernacular, subsection 8(2) imposes a "procedural requirement". I see no reason why section 147 should not be interpreted by its terms to apply to both substantive and procedural requirements of the Act. I recognize, in coming to this conclusion, that there appears to have been no previous Commission decisions addressing the application of section 147.

[64] Accordingly, I find that I have authority under section 147 of the Act to grant an exemption from the 30-day notice requirement under subsection 8(2) of the Act with respect to the Application. In the circumstances, I exempt McQuillen from that procedural requirement. I note in this respect that I do not need to rely on the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, in order to grant that exemption.

4. The Principles from Canada Malting

[65] In a hearing and review under section 21.7 of the Act, the Commission applies the principles set forth in Canada Malting (see paragraph 42 of these reasons). It is clear that the only Canada Malting factor that is relevant to this hearing and review is that new and compelling evidence has been presented to me that was not before the Settlement Panel.

[66] The Commission has accepted that a hearing and review under section 21.7 of the Act is not limited to considering only the information and evidence that was before the panel that made the decision appealed from. In *HudBay*, the Commission stated that:

> Accordingly, it is well established that in a hearing and review under section 21.7 of the Act the Commission exercises original jurisdiction and the hearing and review can be conducted as a trial *de novo* (*Boulieris*, *supra* at para. 29 and *Re Taub*, *supra* at para. 30). As a result, the Commission has original jurisdiction to make a decision and can, in its discretion, admit new evidence that was not before the TSX. That general statement is subject to the Commission concluding that it has grounds to intervene based on one of the five grounds for intervention set out in *Canada Malting* (see paragraph 105 of these Reasons).
>
> Our review is not, however, a review only of the information record that was before the TSX when it made its decision. The question we must decide is not whether we would have come to the same conclusion as the TSX based on the information record that was before it. The question is whether, given all of the information and evidence that is now before us, we have grounds to interfere with the TSX Decision. In our view, we are entitled to consider not only the information and documents that were before the TSX in making its decision but also the additional information and evidence before us on this Application (recognizing, however, that the Commission has the discretion to determine the evidence that it is prepared to admit in a review under section 21.7 of the Act). It is important to note that we have concluded that we have before us more extensive information, documents and evidence with respect to HudBay, Lundin and the Transaction than the TSX had before it in making the TSX Decision.
>
> If any additional support for that conclusion is necessary, it can be found in the grounds established by *Canada Malting* for intervention in a decision of the TSX. One of the grounds for intervention established in *Canada Malting* is whether the Commission has received new and compelling

> evidence that was not before the TSX. In the matter before us, we have received what we consider to be new and compelling evidence with respect to HudBay's governance practices relating to the approval of the Transaction that was not before the TSX. In addition, we are entitled to intervene where our perception of the public interest differs from that of the TSX. The exercise of our public interest jurisdiction requires us to consider all of the relevant evidence before us, not only the information record that was before the TSX at the time it made the TSX Decision.
>
> (*HudBay*, *supra* at paras. 111 to 113)

[67] In this case, the new and potentially compelling evidence before me is the Berry Decision. That decision was not, and could not have been, before the Settlement Panel when it approved the Settlement Agreement. Accordingly, the Berry Decision is new evidence; the question is whether that evidence is compelling. The following are the most important considerations in answering that question.

5. The Berry Decision

[68] The Statement of Allegations alleged that the conduct of Berry and McQuillen breached UMIR 6.4 and 7.7(5). The allegations were identical with respect to Berry and McQuillen and were based on the same trading and factual circumstances. There were no separate or different allegations made against McQuillen.

[69] McQuillen was Berry's administrative assistant, hired to assist Berry in the administration of his trading activities, including the preparation of trade tickets. Berry supervised McQuillen's activities and all of McQuillen's trading activities were carried out by him on behalf of Berry. The following comments were made by the Berry Panel in this respect:

> Berry was McQuillen's immediate supervisor. McQuillen assisted Berry in all aspects of his trading activities, including speaking with clients, completing trade tickets, entering both client trades and inventory trades and assisting with the administrative responsibilities on the Preferred Desk.
>
> Both Berry and McQuillen traded for the 08 account each under their own individual identification number.
>
> *Berry approved all trades entered by McQuillen for the 08 account.* When Berry was away from the office, McQuillen entered orders and kept Berry advised of such orders while he was away or upon his return to the office.
>
> McQuillen prepared the trade tickets related to the solicitations of client orders and off-marketplace trades in question. An audit trail of the Trading exists at Scotia, stemming from the tickets. [Emphasis added]
>
> (Berry Decision, *supra* at paras. 13 to 16)

[70] That means that exactly the same trading was the basis of the allegations against each of Berry and McQuillen. IIROC Staff submits, however, that it was McQuillen's job to complete trade tickets and that the Berry Panel made the following comments with respect to that role:

> The particulars set out above indicate solicitations by Berry and MacQuillen [*sic*], with tickets time-stamped by MacQuillen [*sic*]. The evidence shows that Berry, by his own admission, was a poor ticket writer, so MacQuillen [sic*]* was hired to relieve him of that task. In time, they became a team, and while tickets continued to be made out by MacQuillen [*sic*], he also did some trades and substituted for Berry on days when the latter was away. The evidence also shows, however, that even though MacQuillen [*sic*] was originally hired to do Berry's ticketing (for which he had received some training), *he was somewhat erratic at times and didn't always enter appropriate trade dates*. [Emphasis added]
>
> (Berry Decision, at para. 43)

[71] Accordingly, IIROC Staff submits that McQuillen carried on activities that Berry did not (i.e., the preparation of trade tickets) and those activities meant that, by implication, the Berry Panel could have made a different finding against McQuillen (had he been a respondent before the Berry Panel) than the finding against Berry. I do not accept that submission.

[72] There was no allegation in the Statement of Allegations with respect to McQuillen's completion of trade tickets. The Berry Panel understood that issue was not before them. The Panel stated that:

> … This is not to say, of course, that accurate ticketing is of a minor concern, but we are not dealing here with violations of the Universal Market Integrity Rules or with breaches of ticketing rules and regulations.
>
> (Berry Decision, at para. 47)

[73] I would also note that the Berry Panel commented on Berry's activities in running a parallel trading book:

> … We agree – and have already said so – that in so doing Berry ran a parallel book, an undertaking that may have been in contravention of syndication rules and practices. But, we repeat, that is not what he is charged with, and it would, therefore, be inappropriate to make any further comment on this aspect.
>
> (Berry Decision, at para. 56)

[74] Neither the completion of trade tickets nor the running of a parallel trading book were matters that were before the Berry Panel because they were not alleged in the Statement of Allegations. The Berry Panel clearly understood that. The only relevant question was whether Berry breached UMIR 6.4 and/or 7.7(5). Accordingly, the passing comment by the Berry Panel with respect to the completion by McQuillen of trade tickets is not relevant on this hearing and review.

6. The Berry Panel's Findings

[75] The Berry Panel found that Berry's trading did not contravene UMIR 6.4 or 7.7(5). The Berry Panel stated that:

> … It is our view that the Respondent traded in a new, unlisted security and he did not, therefore, cause Scotia Capital to contravene UMIR 6.4.
>
> (Berry Decision, at para. 53)

[76] The Panel also stated with respect to UMIR 7.7(5) that:

> We agree with this view. We also agree that Rule 7.7(5), as it existed at the time, can, without doing violence to the wording, be interpreted in a manner consistent with the evil designed to be cured by its predecessor, that is to say manipulation of the price of existing shares.
>
> (Berry Decision, at para. 60)

[77] The Berry Panel concluded based on this analysis that there was no contravention of UMIR 7.7(5).

[78] As a result, Berry's trading was found by the Berry Panel not to have contravened UMIR 6.4 or 7.7(5). That finding was, in the case of UMIR 6.4, based upon the legal conclusion as to when the trades occurred, and, in the case of UMIR 7.7(5), based upon the policy rationale for that rule.

[79] The Berry Panel concluded on substantive grounds, after a contested hearing, that Berry's trading did not contravene UMIR. That conclusion put an end to IIROC's allegations against Berry and the Berry Panel dismissed the allegations against him.

[80] As a result, it logically follows that, had McQuillen continued to be a respondent in the Berry proceeding, the alleged breaches by McQuillen of UMIR would have been dismissed on the same basis as they were dismissed against Berry. That follows as a matter of logic and I do not need any evidence to prove that conclusion. The converse is also true: if the Berry Decision had been before the Settlement Panel, the Settlement Panel would not have approved the Settlement Agreement and imposed any sanction on McQuillen.

[81] I find that the Berry Decision is new and compelling evidence before me that was not before the Settlement Panel. The fundamental assumption reflected in the Settlement Agreement was that McQuillen's trading had breached UMIR 6.4 and 7.7(5). The Berry Decision concluded that the same trading did not breach UMIR. Had the Berry Decision been before the Settlement Panel, that Panel would have realized that the findings of the Berry Panel completely undermined and were dispositive of the Settlement Agreement.

7. Different Facts Before the Panels

[82] IIROC Staff in their submissions made much of the circumstance that the facts before the Settlement Panel were different than the facts determined by the Berry Panel. IIROC Staff submits that there was no suggestion in the Settlement

Agreement that the dates of the relevant trades were anything other than the first day of trading (in contrast to the conclusion of the Berry Panel as to when the trading occurred). Both those submissions are true. But the Settlement Panel was not called upon to determine the facts or reach the substantive conclusions set forth in the Settlement Agreement. Those facts and conclusions were based on the negotiated agreement between RS Staff and McQuillen. The Settlement Panel assumed that those facts and the substantive conclusions were true for purposes of considering and approving the Settlement Agreement. (The role of the Commission and an SRO in approving a settlement agreement is described commencing at paragraph 45 of these reasons.) The important point is that the panel considering a settlement relies on the facts set forth in the settlement agreement and does not make an independent finding as to the facts or that particular rules have been breached.

[83] The assumption made by an SRO hearing panel that the facts and substantive conclusions set forth in a settlement agreement are true is completely appropriate (and is consistent with the assumptions made by a Commission hearing panel in approving a settlement agreement between OSC Staff and a respondent). The Berry Panel determined the facts and came to substantive conclusions after a contested hearing. That is not what the Settlement Panel determined.

[84] Accordingly, different facts were before the Settlement Panel and the Berry Panel and different conclusions were reached with respect to the contravention of UMIR. That is what gives rise to the matter before me.

8. Other Considerations

[85] IIROC Staff also submits that there would be great harm and an "opening of the floodgates" if we permit McQuillen to re-open the Settlement Approval and the Settlement Agreement in these circumstances. I do not accept that submission.

[86] It is clear that the Commission will interfere in an SRO decision only in the rarest of circumstances (see paragraph 44 of these reasons). Further, the governing principle with respect to settlements is that a settlement agreement is binding and permanent and cannot be re-opened. That principle is reflected in the terms of a settlement agreement. I have reached the conclusion that the Settlement Approval should be revoked and the Settlement Agreement vacated only after a careful consideration of (i) the specific allegations against Berry and McQuillen made in the Statement of Allegations; (ii) the identical nature of the trading by Berry and McQuillen that formed the basis for those allegations; and (iii) the reasons of the Berry Panel and the precise legal basis upon which that Panel dismissed the allegations against Berry. I have concluded in the circumstances that there is no basis upon which the Berry Panel could have dismissed the allegations against Berry and not against McQuillen. Accordingly, these reasons recognize that the Commission will re-open a settlement only in unique and the rarest of circumstances; in circumstances such as those in which McQuillen now finds himself.

9. Manifest Unfairness

[87] I am applying the principles established in *Rankin* in re-opening the Settlement Approval and the Settlement Agreement (see paragraph 51 of these reasons).

[88] I find that there is manifest unfairness to McQuillen if the Settlement Agreement is permitted to stand. In the circumstances, it would be manifestly unfair for the sanction under the Settlement Agreement to be imposed (i) on an administrative assistant who was acting throughout under the supervision of Berry; (ii) who did not directly profit from the trading involved (as did Berry and Scotia Capital); (iii) whose actual trading did not, in fact, breach UMIR as alleged; (iv) where no sanctions were imposed on Berry in respect of exactly the same trading; and (v) who realistically had little choice but to agree to a settlement rather than contest IIROC Staff's position at a hearing on the merits with the time and expense that would have entailed. I do not accept the submissions of IIROC Staff and OSC Staff that these circumstances are not manifestly unfair to McQuillen. McQuillen continues to suffer damage to his reputation and career as a result of the Settlement Agreement that he should not suffer.

[89] As noted above, the Commission stated in *AiT* that:

> There are many reasons why this matter – the earlier settlements – should be set aside, notwithstanding that they were settlements and not hearings. First and foremost, as Mr. Fabello submitted, is logic and fairness. One can never go wrong using logic and fairness. Logic and fairness certainly dictates that the settlement agreements entered into by AiT and by Mr. Ashe ought to be revoked pursuant to section 144 of the Act. Notwithstanding that everyone, in good faith, at the time believed it to be a violation of the Act, the basis for that conclusion has subsequently been found not to have been a violation.
>
> (*AiT*, *supra* at para. 3)

[90] *AiT* was a Commission decision in which parties to settlement agreements were permitted to re-open the settlements as a result of a subsequent adjudicative decision of the Commission negating the conclusion upon which the settlement

agreements were based that a breach of Ontario securities law had occurred. In my view, that decision was based on circumstances comparable to the facts and circumstances before me in this matter.

[91] IIROC Staff submits, however, that *AiT* is distinguishable because it was a decision made under section 144 of the Act that permits the Commission to make an order revoking or varying a decision of the Commission if in the Commission's opinion doing so is not prejudicial to the public interest. I do not accept that submission. Once I have concluded that I have jurisdiction to hear and grant the relief requested in the Application, that distinction becomes irrelevant.

[92] IIROC Staff also submits that the respondents under the *AiT* settlements were the issuer itself and Mr. Ashe ("**Ashe**"), who was the CEO and a director of the issuer. Once the underlying conduct was held not to have been a breach of Ontario securities law, the issuer and Ashe could not be derivatively liable in respect of that conduct. While that may be true, Berry and McQuillen engaged in identical trading that was found by the Berry Panel not to have breached UMIR. That puts McQuillen in a comparable position to that of the issuer and Ashe in *AiT*.

[93] IIROC Staff also submits that McQuillen has had the benefit of his settlement for seven years and should not now be permitted to re-open it to also have the benefit of the Berry Decision. A deal is a deal, they say. In response, I would only say that McQuillen appears to have suffered negative consequences to his reputation and career from the Settlement Agreement which, at the end of the day, he should not have suffered. McQuillen would not have brought the Application unless he was convinced that he has been significantly and adversely affected by the settlement.

[94] Similarly, OSC Staff says, in effect, that McQuillen did not "pay for" the benefits of the Berry Decision by participating in the lengthy litigation that led to it. I would say two things in response to that submission. First, it was a realistic and reasonable decision for McQuillen to have reached a settlement with IIROC rather than engaging in expensive and lengthy litigation with an uncertain outcome. (I note in passing that the Berry litigation has extended over a period of approximately six years.) Second, that submission ignores the manifest unfairness to McQuillen of the circumstances in which he now finds himself.

[95] IIROC Staff also submits that the Harris E-mail simply communicated information to McQuillen and was not a decision of IIROC that was subject to review by the Commission. Because of my conclusions in this matter, it is not necessary for me to address that matter; nor have I found it necessary to address the submissions made with respect to the contract law principles that may apply to the Settlement Agreement.

[96] I want to be clear that I intend by these reasons no criticism whatsoever of the Settlement Panel in addressing and approving the Settlement Agreement. The Settlement Panel acted in good faith and its approval of the Settlement Agreement was completely justified in the circumstances.

VI. CONCLUSION

[97] I have authority under subsection 8(3) of the Act to confirm the Settlement Approval or to make such other decision as I consider proper.

[98] Based on the considerations discussed in these reasons, I have concluded that it is manifestly unfair to McQuillen to allow the Settlement Approval and the Settlement Agreement to stand. Accordingly, it is in the public interest to grant the relief requested in the Application.

[99] I order that:

1. The Settlement Approval is set aside and the Settlement Agreement is vacated;

2. IIROC shall expunge McQuillen's disciplinary record as a result of the Settlement Agreement, or if that is not practicable, IIROC shall include a prominent statement to that effect in conjunction with any future reference by IIROC to the Settlement Agreement or to McQuillen having breached UMIR;

3. IIROC shall repay $25,000 to McQuillen; and

4. Any party may apply to the Commission for directions as to the interpretation or application of this order.

DATED at Toronto this 12th day of September, 2014.

"James E. A. Turner"

3.1.6 Gold-Quest International and Sandra Gale

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL and SANDRA GALE

ORAL REASONS AND DECISION

Hearing:	September 10, 2014		
Decision:	September 11, 2014		
Panel:	Alan J. Lenczner	–	Commissioner and Chair of the Panel
Appearances:	Christie Johnson	–	For Staff of the Commission
	Derek Ricci	–	For Sandra Gale
		–	No one appeared for the Respondent, Gold-Quest International

ORAL REASONS AND DECISION

The following text has been prepared for the purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts from the transcript of the hearing. The excerpts have been edited and the text has been approved by the Panel for the purpose of providing a public record of the decision.

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") on September 10, 2014 (the "**Sanctions Hearing**") to consider whether it is in the public interest to make an order in respect of sanctions against Gold-Quest International ("**Gold-Quest**") and Sandra Gale ("**Gale**").

[2] This matter comes before the Commission on an Agreed Statement of Facts ("**Agreed Statement of Fact**") which has been executed by the Director of Enforcement and Gale on June 27, 2014. The Agreed Statement of Fact will be an Appendix to these reasons.

[3] In the Agreed Statement of Fact, Gale acknowledges that she breached section 25 and section 53 of the Act, and in addition acted contrary to the public interest. The matter before me today is the appropriate level of sanctions that should be imposed upon Gale.

[4] The object of the Act is two-fold. First, it is to protect investors from harm, and to deter other participants in the capital markets from acting contrary to the Act or to the public interest. It is also an object of the act to maintain the integrity of the capital markets. Gale, through her counsel, acknowledges that there should be a series of non-monetary sanctions so as to remove her from the capital markets. Those non-monetary sanctions will, prospectively, prohibit Gale for 15 years from trading in securities with a sole exemption that she can trade her RRSP with a number of conditions attached, which will be laid out in the order. She is also prohibited from becoming or acting as an officer or director of any registrant, investment fund manager or issuer. She must also resign any position that she has in any of those types of entities.

[5] Gale, through her counsel, takes no issue with any of these non-monetary sanctions. The issue that remains between Staff and Gale is whether a disgorgement order in the amount of $207,641.00 should be imposed, and as well, an administrative penalty of $50,000.

[6] I note that the $207,641.00 is the amount of commission that Gale received from Gold-Quest resulting from her improper conduct and breaches of the Act. I also note that the amount of $50,000 as an administrative penalty represents approximately 1-2% of the US $4.3 million dollars that was raised from Ontario investors in what other panels, dealing with the same matter, called a Ponzi scheme, and I agree with that characterization.

[7] I want to make it crystal clear that in ordinary circumstances, disgorgement should be ordered in order to remove from a respondent that has been found to have breached the Act or acted contrary to the public interest, any gain resulting from those

breaches. I also think that in vast majority of situations, an administrative penalty of this magnitude is appropriate. General deterrence is one of the goals of the Act and that general deterrence can only be accomplished by these types of monetary penalties.

[8] At the same time, I am mindful that courts including the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132 indicated that:

> "… 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 …" (para 43).

I think that the non-monetary penalties requested by Staff in this case achieve those goals.

[9] The Supreme Court of Canada further said that "the sanctions under the section are preventive in nature and prospective in orientation" (para 45). That court and other courts have indicated that punishment of an individual is not one of the objects of the Act and one of the roles that the Commission should fulfill.

[10] My observations to this point indicate that general deterrence does include monetary sanctions of the type, and in the amount, that Staff is seeking, and that I would normally impose. However, in this particular case, I look at a number of mitigating factors and remind myself that the penalty or the sanctions to be imposed must be proportionate to other cases.

[11] The mitigating factors that motivate me in this case are that Gale was not the initiator of the investment products or the designer of those products. She did not know that this was a Ponzi scheme and that it was fraudulent. Gale had a genuine belief in the investments that not only she made, but that she encouraged others to make.

[12] As distinct from the *Re Gold-Quest International et al.* (2010), 33 OSCB 11179, involving Donald and Lisa Buchanan, Gale has been remorseful. She has also not blamed anyone for her predicament, and has accepted responsibility for her misconduct. Gale has cooperated in avoiding the need for a full hearing on the merits. More particularly, Gale is now 71 years of age, she does not intend, and could not in any event, engage in the capital markets. She has no assets to her name and no realistic likelihood of gaining meaningful employment. Further, Gale lives on government pensions of about $1500 dollars a month. In my view, asking her to disgorge $207,641.00 and pay $50,000 administrative penalty would be, for her, punitive.

[13] There is no likelihood that Gale will ever have the ability to pay these amounts. She owes $223,008.52 to the Canada Revenue Agency, four chartered banks, and other credit agencies. She is not likely to get credit from anyone again. I believe that having an order for payment over her head will only complicate her life, and will not achieve any meaningful deterrence for others. General deterrence has already been spoken to, and anyone that is not similarly situated to Gale would not get the benefit of the exercise of the Commission's discretion, as I am now doing.

[14] In conclusion, I have a draft order from Staff which I am going to approve with the exception of the paragraphs relating to monetary penalties.

[15] In respect of Gold-Quest, I note that the Alberta Securities Commission has issued orders against Gold-Quest including a permanent ban on the trading of its securities. By virtue of clause 4 in s.127(10), I am satisfied that it would be in the public interest to reciprocate that order in Ontario. I order that all trading in the shares of Gold-Quest cease permanently.

[16] I want to thank counsel for their excellent submissions. I particularly want to thank Mr. Ricci for attending as LAP counsel. It is always helpful to the Commission to have that kind of assistance.

[17] I am also going to reprimand Ms. Gale for her conduct. I hope she has learned a lesson and that her conduct will always be within the boundaries of the law going forward.

DATED at Toronto this 11th day of September, 2014.

"Alan Lenczner"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Mercator Transport Group Corporation	10 September 14	22 September 14		
MountainStar Gold Inc.	11 September 14	23 September 14		
Pro-Trans Ventures Inc.	10 September 14	22 September 14		
Red Ore Gold Inc.	11 September 14	23 September 14		
Sacre-Coeur Minerals Ltd.	11 September 14	23 September 14		
Tuscany International Drilling Inc.	15 September 14	26 September 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

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
Penn West Petroleum Ltd.	8 August 14	20 August 14	20 August 14		

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Chapter 5

Rules and Policies

5.1.1 Amendments to NI 81-102 Mutual Funds

AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *MUTUAL FUNDS*

1. National Instrument 81-102 Mutual Funds is amended by this Instrument.

2. The title is amended by replacing "*Mutual Funds****" with "****Investment Funds****".***

3. Section 1.1 is amended

(a) in the definition of "borrowing agent***" by replacing "***a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) in the definition of "clone fund***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***another mutual fund***" with "***another investment fund***",***

(c) in the definition of "currency cross hedge***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) by replacing the definition of "custodian***" with the following:***

"custodian" means the institution appointed by an investment fund to hold portfolio assets of the investment fund;***,***

(e) by adding the following definition:

"dealer managed investment fund" means an investment fund the portfolio adviser of which is a dealer manager;***,***

(f) by repealing the definition of "dealer managed mutual fund***",***

(g) in the definition of "designated rating***" by replacing "***mutual fund***" with "***investment fund***",***

(h) in the definition of "floating rate evidence of indebtedness***" by replacing paragraph (b) with the following:***

(b) the evidence of indebtedness was issued, or is fully and unconditionally guaranteed as to principal and interest, by any of the following:

(i) the government of Canada or the government of a jurisdiction of Canada;

(ii) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has a designated rating;***,***

(i) in the definition of "fundamental investment objectives***" by replacing "***a mutual fund***" with "***an investment fund***", by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and by replacing "***other mutual funds***" with "***other investment funds***",***

(j) by adding the following definitions:

"investment fund conflict of interest investment restrictions" means the provisions of securities legislation that are referred to in Appendix D;

"investment fund conflict of interest reporting requirements" means the provisions of securities legislation that are referred to in Appendix E;***,***

(k) ***by replacing the definition of "***investor fees***" with the following:***

"investor fees" means, in connection with the purchase, conversion, holding, transfer or redemption of securities of an investment fund, all fees, charges and expenses that are or may become payable by a securityholder of the investment fund to,

(a) in the case of a mutual fund, a member of the organization of the mutual fund other than a member of the organization acting solely as a participating dealer, and

(b) in the case of a non-redeemable investment fund, the manager of the non-redeemable investment fund;***,***

(l) ***in the definition of "***long position***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(m) ***in the definition of "***management expense ratio***" by replacing "***a mutual fund***" with "***an investment fund***",***

(n) ***by replacing the definition of "***manager***" with the following:***

"manager" means an investment fund manager;***,***

(o) ***by repealing the definitions of "***mutual fund conflict of interest investment restrictions***" and "***mutual fund conflict of interest reporting requirements***",***

(p) ***in the following definitions by replacing "***a mutual fund***" with "***an investment fund***":***

(i) ***"***non-resident sub-adviser***";***

(ii) ***"***performance data***",***

(q) ***in the definition of "***portfolio adviser***" by replacing "***mutual fund***" with "***investment fund***" wherever it occurs,***

(r) ***in the definition of "***portfolio asset***" by replacing "***a mutual fund***" with "***an investment fund***",***

(s) ***in the definition of "***purchase***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***",***

(t) ***by repealing the definition of "***redemption payment date***",***

(u) ***in the definition of "***report to securityholders***" by replacing "***a mutual fund***" with "***an investment fund***",***

(v) ***by replacing the definition of "***sales communication***" with the following:***

"sales communication" means a communication relating to, and by, an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, a participating dealer or a person or company providing services to any of them, that

(a) is made

(i) to a securityholder of the investment fund or participant in the asset allocation service, or

(ii) to a person or company that is not a securityholder of the investment fund or participant in the asset allocation service, to induce the purchase of securities of the investment fund or the use of the asset allocation service, and

(b) in the case of an investment fund, is not contained in any of the following documents of the investment fund:

1. A prospectus or preliminary or *pro forma* prospectus.

2. An annual information form or preliminary or *pro forma* annual information form.

3. A fund facts document or preliminary or *pro forma* fund facts document.

4. Financial statements, including the notes to the financial statements and the auditor's report on the financial statements.

5. A trade confirmation.

6. A statement of account.

7. Annual or interim management report of fund performance;***,***

(w) by adding the following definition:

"scholarship plan" has the meaning ascribed to that term in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;***,***

(x) in the definition of "short position***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(y) in the definition of "specified dealer***" by replacing "***, or***" with "***;***",***

(z) in the definition of "sub-custodian***" by replacing "***a mutual fund" ***with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(aa) in the definition of "underlying market exposure***" by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***".***

4. (1) Section 1.2 is amended

(a) by renumbering it as subsection 1.2(1),

(b) by replacing "; and***" with "***,***" at the end of paragraph (a),***

(c) by adding the following paragraph immediately after paragraph (a):

(a.1) a non-redeemable investment fund that is a reporting issuer, and***, and***

(d) in paragraph (b) by replacing "a mutual fund***" with "***an investment fund***" and by replacing "***paragraph (a)***" with "***paragraphs (a) and (a.1)***".***

(2) Section 1.2, as amended by subsection (1), is amended by adding the following subsections:

(2) Despite subsection (1), this Instrument does not apply to a scholarship plan.

(3) Despite subsection (1), in Québec, in respect of investment funds organized under an Act to establish the *Fonds de solidarité des travailleurs du Québec (F.T.Q.)* (chapter F-3.2.1), an Act to establish *Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi* (chapter F-3.1.2), or an Act constituting *Capital régional et coopératif Desjardins* (chapter C-6.1), the following requirements apply :

(a) sections 2.12 to 2.17;

(b) Part 6;

(c) Part 15, except for paragraph 15.8(2)(b);

(d) Part 19;

(e) Part 20.

(4) For greater certainty, in British Columbia, if a provision of this Instrument conflicts or is inconsistent with a provision of the *Employee Investment Act* (British Columbia) or the *Small Business Venture Capital Act* (British Columbia), the provision of the Employee Investment Act or the Small Business Venture Capital Act, as the case may be, prevails.***.***

5. Section 1.3 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "separate mutual fund***" with "***separate investment fund***", and***

(c) by replacing "A mutual fund***" with "***An investment fund***".***

6. Section 2.1 is amended by replacing "shall***" with "***must***" wherever it occurs.***

7. Section 2.2 is amended

(a) by replacing subsection (1) with the following:

(1) An investment fund must not purchase a security of an issuer

(a) if, immediately after the purchase, the investment fund would hold securities representing more than 10% of

(i) the votes attaching to the outstanding voting securities of the issuer; or

(ii) the outstanding equity securities of the issuer; or

(b) for the purpose of exercising control over, or management of, the issuer.***,***

(b) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by replacing "shall***" with "***must***" wherever it occurs.***

8. (1) Section 2.3 is amended

(a) by renumbering it as subsection 2.3(1), and

(b) by replacing "shall***" with "***must***".***

(2) Section 2.3, as amended by subsection (1), is amended by adding the following subsection:

(2) A non-redeemable investment fund must not do any of the following:

(a) purchase real property;

(b) purchase a mortgage, other than a guaranteed mortgage;

(c) purchase an interest in a loan syndication, or loan participation, if the purchase would require the non-redeemable investment fund to assume any responsibilities in administering the loan in relation to the borrower.***.***

9. Section 2.4 is amended by replacing "shall***" with "***must***" wherever it occurs.***

10. The heading in section 2.5 is amended by replacing "Mutual Funds***" with "***Investment Funds***".***

11. (1) Subsection 2.5(1) is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "another mutual fund***" with "***another investment fund***", and***

(c) by replacing "other mutual fund***" with "***other investment fund***" wherever it occurs.***

(2) Subsection 2.5(2) is amended

(a) by replacing "A mutual fund shall***" with "***An investment fund must***",***

(b) by replacing "another mutual fund***" with "***another investment fund***",***

(c) by replacing paragraph (a) with the following:

(a) if the investment fund is a mutual fund, the other investment fund is a mutual fund that is subject to this Instrument and offers or has offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*,

(a.1) if the investment fund is a non-redeemable investment fund, one or both of the following apply:

(i) the other investment fund is subject to this Instrument;

(ii) the other investment fund complies with the provisions of this Instrument applicable to a non-redeemable investment fund,***,***

(d) in paragraph (b) by replacing "other mutual fund***" with "***other investment fund***" and by replacing "***other mutual funds***" with "***other investment funds***",***

(e) by replacing paragraph (c) with the following:

(c) if the investment fund is a mutual fund, the investment fund and the other investment fund are reporting issuers in the local jurisdiction,

(c.1) if the investment fund is a non-redeemable investment fund, the other investment fund is a reporting issuer in a jurisdiction in which the investment fund is a reporting issuer.***, and***

(f) in paragraphs (d), (e) and (f) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs and by replacing "***other mutual fund***" with "***other investment fund***" wherever it occurs.***

(3) Subsection 2.5(3) is amended

(a) by replacing "Paragraphs (2)(a) and (c)***" with "***Paragraphs (2)(a), (a.1), (c) and (c.1)***",***

(b) in paragraph (a) by replacing "a mutual fund***" with "***an investment fund***", and***

(c) in paragraph (b) by replacing "mutual fund***" with "***investment fund***" wherever it occurs.***

(4) Subsection 2.5(4) is amended

(a) by replacing "other mutual fund***" with "***other investment fund***", and***

(b) by replacing "a mutual fund***" with "***an investment fund***".***

(5) Subsection 2.5(5) is amended by replacing "a mutual fund***" with "***an investment fund***".***

(6) Subsection 2.5(6) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "another mutual fund***" with "***another investment fund***",***

(c) by replacing "shall***" with "***must***",***

(d) by replacing "other mutual fund***" with "***other investment fund***", and***

(e) by replacing "the mutual fund***" with "***the investment fund***".***

(7) Subsection 2.5(7) is amended

(a) by replacing "The mutual fund***" with "***The investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***",***

(c) by replacing "a mutual fund***" with "***an investment fund***", and***

(d) by replacing "another mutual fund***" with "***another investment fund***".***

12. Section 2.6 is amended

(a) by replacing "A mutual fund shall not***" with "***An investment fund must not,***",***

(b) in paragraph (a) by adding "in the case of a mutual fund,***" before "***borrow***",***

(c) in paragraph (b) by adding "in the case of a mutual fund,***" before "***purchase***",***

(d) in paragraph (c) by adding "in the case of a mutual fund,***" before "***sell***", and***

(e) in paragraph (d) by replacing "mutual fund***" with "***investment fund***".***

13. Section 2.7 is amended by replacing "shall***" with "***must***" wherever it occurs.***

14. Section 2.8 is amended by replacing "shall***" with "***must***" wherever it occurs.***

15. (1) Section 2.9 is amended by renumbering it as subsection 2.9(1).

(2) Section 2.9, as amended by subsection (1), is amended by adding the following subsection:

(2) Section 2.2 does not apply to the use of specified derivatives by a non-redeemable investment fund for hedging purposes.**.**

16. Section 2.10 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(c) by replacing "shall***" with "***must***" wherever it occurs, and***

(d) by replacing "A mutual fund***" with "***An investment fund***" wherever it occurs.***

17. The heading in section 2.11 is amended by replacing "a Mutual Fund***" with "***an Investment Fund***".***

18. (1) Subsection 2.11(1) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "a mutual fund***" with "***an investment fund***",***

(c) by replacing "unless***" with "***, unless,***",***

(d) by replacing paragraph (a) with the following:

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for a mutual fund intending to engage in the activity;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, intending to engage in the activity;

(ii) the date on which the activity is intended to begin; and***, and***

(e) in paragraph (b) by replacing "mutual fund***" with "***investment fund***", and by replacing "***required for mutual funds intending to engage in the activity***" with "***referred to in paragraph (a) or (a.1), as applicable***".***

(2) Subsection 2.11(2) is amended by adding ", other than an exchange-traded mutual fund that is not in continuous distribution,***" after "***A mutual fund***".***

(3) Section 2.11 is amended by adding the following subsection:

(3) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception has contained the disclosure referred to in paragraph (1)(a.1)***.***

19. Section 2.12 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(c) by replacing "The mutual fund***" with "***The investment fund***",***

(d) by replacing item 12 of subsection (1) with the following:

12. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions and not yet returned to it or sold by the investment fund in repurchase transactions under section 2.13 and not yet repurchased does not exceed 50% of the net asset value of the investment fund***.,***

(e) by replacing "A mutual fund***" with "***An investment fund***" wherever it occurs, and***

(f) by replacing "shall***" with "***must***" wherever it occurs.***

20. Section 2.13 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(c) by replacing item 11 of subsection (1) with the following:

11. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions under section 2.12 and not yet returned to it or sold by the investment fund in repurchase transactions and not yet repurchased does not exceed 50% of the net asset value of the investment fund***., and***

(d) by replacing "A mutual fund***" with "***An investment fund***".***

21. Section 2.14 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***", and***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

22. Section 2.15 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) by replacing "shall***" with "***must***" wherever it occurs,***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) in subsection (1) by replacing "in administering***" with "***to administer***", and***

(e) in paragraph (4)(c) by replacing "the mutual fund's***" with "***the investment fund's***".***

23. Section 2.16 is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "shall***" with "***must***" wherever it occurs,***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by replacing "a mutual fund***" with "***an investment fund***".***

24. Section 2.17 is replaced with the following:

2.17 Commencement of Securities Lending, Repurchase and Reverse Repurchase Transactions by an Investment Fund

(1) An investment fund must not enter into securities lending, repurchase or reverse repurchase transactions unless,

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for mutual funds entering into those types of transactions;

(b) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, entering into those types of transactions;

(ii) the date on which the investment fund intends to begin entering into those types of transactions; and

(c) the investment fund provides to its securityholders, at least 60 days before it begins entering into those types of transactions, written notice that discloses its intent to begin entering into those types of transactions and the disclosure referred to in paragraph (a) or (b), as applicable.

(2) Paragraph (1)(c) does not apply to a mutual fund that has entered into reverse repurchase agreements as permitted by a decision of the securities regulatory authority or regulator.

(3) Paragraph (1)(c) does not apply to a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, if each prospectus of the mutual fund filed since its inception contains the disclosure referred to in paragraph (1)(a).

(4) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception contains the disclosure referred to in paragraph (1)(b)..

25. Section 2.18 is amended by adding the following subsection:

(3) A non-redeemable investment fund must not describe itself as a "money market fund"..

26. Section 3.1 is amended by replacing "No person or company shall***" with "***A person or company must not***".***

27. ***The following provisions are amended by replacing "***shall***" with "***must***":***

(a) ***subsection 3.1(2);***

(b) ***section 3.2.***

28. ***Subsection 3.3(1) is amended***

(a) ***by replacing "***None of the costs***" with "***The costs***", and***

(b) ***by replacing "***shall***" with "***must not***".***

29. ***Section 4.1 is amended***

(a) ***by replacing "***mutual fund***" with "***investment fund***" wherever it occurs,***

(b) ***by replacing "***shall***" with "***must***" wherever it occurs, and***

(c) ***in subsection (5) by replacing "***corresponding provisions contained in securities legislation***" with "***provisions of securities legislation that are***".***

30. ***Section 4.2 is amended***

(a) ***by replacing "***A mutual fund shall***" with "***An investment fund must***",***

(b) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(c) ***by replacing "***a mutual fund***" with "***an investment fund***".***

31. ***Section 4.3 is amended***

(a) ***by replacing "***a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) ***in subsection (1) by adding ":" after "***is***",***

(c) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) ***by replacing "***another mutual fund***" with "***another investment fund***" wherever it occurs.***

32. ***Section 4.4 is amended***

(a) ***by replacing "***a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) ***by replacing "***shall***" with "***must***" wherever it occurs,***

(c) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) ***by replacing "***A mutual fund***" with "***An investment fund***" wherever it occurs, and***

(e) ***in subsection (5) by adding "***any of the following:***" after "***by***" and by deleting "***or***" at the end of paragraph (a).***

33. ***(1)*** ***Section 5.1 is amended***

(a) ***by renumbering it as subsection 5.1(1),***

(b) ***by replacing "***a mutual fund***" with "***an investment fund***",***

(c) ***by adding "***the occurrence of each of the following:***" after "***before***",***

(d) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(e) ***by replacing "***another mutual fund***" with "***another issuer***" wherever it occurs,***

(f) ***by replacing "***other mutual fund***" with "***other issuer***" wherever it occurs,***

(g) ***by deleting "***or***" at the end of subparagraph (f)(ii),***

(h) ***by replacing "***.***" with "***;***" at the end of paragraph (g), and***

(i) ***by adding the following paragraph:***

(h) the investment fund implements any of the following:

(i) in the case of a non-redeemable investment fund, a restructuring into a mutual fund;

(ii) in the case of a mutual fund, a restructuring into a non-redeemable investment fund;

(iii) a restructuring into an issuer that is not an investment fund.**.**

(2) ***Section 5.1, as amended by subsection (1), is amended by adding the following subsection:***

(2) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h)**.**.

34. ***Section 5.2 is amended***

(a) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(b) ***by replacing "***section 5.1***" with "***subsection 5.1(1)***" wherever it occurs,***

(c) ***by replacing "***shall***" with "***must***" wherever it occurs, and***

(d) ***by replacing "***a mutual fund***" with "***an investment fund***" wherever it occurs.***

35. ***(1)*** ***Subsection 5.3(1) is amended***

(a) ***by replacing "***section 5.1***" with "***subsection 5.1(1)***",***

(b) ***by replacing "***a mutual fund***" with "***an investment fund***",***

(c) ***by replacing "***paragraphs 5.1(a)***" with "***paragraphs 5.1(1)(a)***" wherever it occurs,***

(d) ***in paragraph (a) by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(e) ***in subparagraph (a)(iii) by adding "***at least***" after "***sent***",***

(f) ***in paragraph (b) by replacing "***if***" with "***if, in the case of a mutual fund,***", and***

(g) ***in subparagraph (b)(iii) by adding "***at least***" after "***sent***".***

(2) ***Subsection 5.3(2) is replaced with the following:***

(2) Despite subsection 5.1(1), the approval of securityholders of an investment fund is not required to be obtained for a change referred to in paragraph 5.1(1)(f) if either of the following paragraphs apply:

(a) all of the following apply:

(i) the independent review committee of the investment fund has approved the change under subsection 5.2(2) of NI 81-107;

(ii) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument and NI 81-107 apply and that is managed by the manager, or an affiliate of the manager, of the investment fund;

(iii) the reorganization or transfer of assets of the investment fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h), (i), (j) and (k);

(iv) the prospectus of the investment fund discloses that, although the approval of securityholders may not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change;

(v) the notice referred to in subparagraph (iv) to securityholders is sent at least 60 days before the effective date of the change;

(b) all of the following apply:

(i) the investment fund is a non-redeemable investment fund that is being reorganized with, or its assets are being transferred to, a mutual fund that is

(A) a mutual fund to which this Instrument and NI 81-107 apply,

(B) managed by the manager, or an affiliate of the manager, of the investment fund,

(C) not in default of any requirement of securities legislation, and

(D) a reporting issuer in the local jurisdiction and the mutual fund has a current prospectus in the local jurisdiction;

(ii) the transaction is a tax-deferred transaction under subsection 85(1) of the ITA;

(iii) the securities of the investment fund do not give securityholders of the investment fund the right to request that the investment fund redeem the securities;

(iv) since its inception, there has been no market through which securityholders of the investment fund could sell securities of the investment fund;

(v) every prospectus of the investment fund discloses that

(A) securityholders of the investment fund, other than the manager, promoter or an affiliate of the manager or promoter, will cease to be securityholders of the investment fund within 30 months following the completion of the initial public offering by the investment fund, and

(B) the investment fund will, within 30 months following the completion of the initial public offering of the investment fund, undertake a reorganization with, or transfer its assets to, a mutual fund that is managed by the manager of the investment fund or by an affiliate of the manager of the investment fund;

(vi) the mutual fund bears none of the costs and expenses associated with the transaction;

(vii) the reorganization or transfer of assets of the investment fund complies with subparagraphs 5.3(2)(a)(i), (iv) and (v) and paragraphs 5.6(1)(d) and (k)..

36. The heading in section 5.3.1 is amended by replacing "the Mutual Fund***" with "***an Investment Fund***".***

37. Section 5.3.1 is amended

(a) by replacing "the mutual fund may***" with "***an investment fund must***", and***

(b) in paragraphs (a) and (b) by replacing "mutual fund***" with "***investment fund***" wherever it occurs.***

38. Section 5.4 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "section 5.1***" with "***subsection 5.1(1)***",***

(c) by replacing "shall***" with "***must***" wherever it occurs,***

(d) in subsection (1) by replacing "not less than***" with "***at least***",***

(e) by replacing "paragraphs 5.1(a)***" with "***paragraphs 5.1(1)(a)***",***

(f) by replacing "the mutual fund***" with "***the investment fund***", and***

(g) by replacing "the mutual fund's***" with "***the investment fund's***".***

39. Section 5.5 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) in subsection (1) by adding the following paragraph immediately after paragraph (a):

(a.1) a change of control of the manager of an investment fund occurs;**,**

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) by replacing "another mutual fund***" with "***another issuer***", and***

(e) by repealing subsection (2).

40. (1) Subsection 5.6(1) is replaced with the following:

(1) Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all of the following paragraphs apply:

(a) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument applies and that

(i) is managed by the manager, or an affiliate of the manager, of the investment fund,

(ii) a reasonable person would consider to have substantially similar fundamental investment objectives, valuation procedures and fee structure as the investment fund,

(iii) is not in default of any requirement of securities legislation, and

(iv) is a reporting issuer in the local jurisdiction and, if it is a mutual fund, also has a current prospectus in the local jurisdiction;

(b) the transaction is a "qualifying exchange" within the meaning of section 132.2 of the ITA or is a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA;

(c) the transaction contemplates the wind-up of the investment fund as soon as reasonably possible following the transaction;

(d) the portfolio assets of the investment fund to be acquired by the other investment fund as part of the transaction

(i) may be acquired by the other investment fund in compliance with this Instrument, and

(ii) are acceptable to the portfolio adviser of the other investment fund and consistent with the other investment fund's fundamental investment objectives;

(e) the transaction is approved

(i) by the securityholders of the investment fund in accordance with paragraph 5.1(1)(f), unless subsection 5.3(2) applies, and

(ii) if required, by the securityholders of the other investment fund in accordance with paragraph 5.1(1)(g);

(f) the materials sent to securityholders of the investment fund in connection with the approval under paragraph 5.1(1)(f) include

(i) a circular that, in addition to other requirements prescribed by law, describes the proposed transaction, the investment fund into which the investment fund will be reorganized, the income tax considerations for the investment funds participating in the transaction and their securityholders, and, if the investment fund is a corporation and the transaction involves its shareholders becoming securityholders of an investment fund that is established as a trust, a description of the material differences between being a shareholder of a corporation and being a securityholder of a trust,

(ii) if the other investment fund is a mutual fund, the most recently filed fund facts document for the other investment fund, and

(iii) a statement that securityholders may, in respect of the reorganized investment fund,

(A) obtain all of the following documents at no cost by contacting the reorganized investment fund at an address or telephone number specified in the statement:

(I) if the reorganized investment fund is a mutual fund, the current prospectus;

(II) the most recently filed annual information form, if one has been filed;

(III) as applicable, the most recently filed fund facts document;

(IV) the most recently filed annual financial statements and interim financial reports;

(V) the most recently filed annual and interim management reports of fund performance, or

(B) access those documents at a website address specified in the statement;

(g) the investment fund has complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the investment fund or of the investment fund;

(h) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction;

(i) if the investment fund is a mutual fund, securityholders of the investment fund continue to have the right to redeem securities of the investment fund up to the close of business on the business day immediately before the effective date of the transaction;

(j) if the investment fund is a non-redeemable investment fund, all of the following apply:

(i) the investment fund issues and files a news release that discloses the transaction;

(ii) securityholders of the investment fund may redeem securities of the investment fund at a date that is after the date of the news release referred to in subparagraph (i) and before the effective date of the transaction;

(iii) the securities submitted for redemption in accordance with subparagraph (ii) are redeemed at a price equal to their net asset value per security on the redemption date;

(k) the consideration offered to securityholders of the investment fund for the transaction has a value that is equal to the net asset value of the investment fund calculated on the date of the transaction.

(1.1) Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all the conditions in paragraph 5.3(2)(b) are satisfied and the independent review committee of the mutual fund involved in the transaction has approved the transaction in accordance with subsection 5.2(2) of NI 81-107**.**

(2) Subsection 5.6(2) is amended by

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "shall***" with "***must***",***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by replacing "a mutual fund***" with "***an investment fund***".***

41. (1) Subsection 5.7(1) is amended

(a) by replacing "shall***" with "***must***",***

(b) by replacing "subsection 5.5(2)***" with "***(a.1)***",***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) in subparagraph(a)(iv) by adding "or regulator***" after "***authority***",***

(e) by replacing subparagraph (b)(ii) with the following:

(ii) details of the total annual returns of the investment fund and, if the other issuer is an investment fund, the other issuer for each of the previous five years.***, and***

(f) by replacing subparagraph (b)(iii) with the following:

(iii) a description of the differences between, as applicable, the fundamental investment objectives, investment strategies, valuation procedures and fee structure of the investment fund and the other issuer and any other material differences between the investment fund and the other issuer, and ***.***

(2) Subsection 5.7(2) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "shall***" with "***must***",***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by replacing "situate***" with "***situated***".***

(3) Subsection 5.7(3) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(c) by replacing "situate***" with "***situated***".***

42. Section 5.8 is amended

(a) in subsection (1) by replacing "No person or company that is a manager of a mutual fund may***" with "***A person or company must not***" and by replacing "***the mutual fund***" with "***an investment fund***",***

(b) in paragraph (1)(a) by replacing "the mutual fund***" with "***the investment fund***",***

(c) in subsection (2) by replacing "No mutual fund shall***" with "***A mutual fund must not***", and***

(d) in subsection (3) by replacing "shall***" with "***must***".***

43. The Instrument is amended by adding the following section:

5.8.1 Termination of a Non-Redeemable Investment Fund

(1) A non-redeemable investment fund must not terminate unless the investment fund first issues and files a news release that discloses the termination.

(2) A non-redeemable investment fund must not terminate earlier than 15 days or later than 90 days after the filing of the news release under subsection (1).

(3) Subsections (1) and (2) do not apply in respect of a transaction referred to in paragraph 5.1(1)(f)**.**.

44. Section 5.9 is amended by replacing "mutual fund***" with "***investment fund***" wherever it occurs.***

45. Section 6.1 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) by replacing "shall***" with "***must***" wherever it occurs,***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) in subsection (3) by deleting ", for each appointment,***",***

(e) by replacing paragraph (3)(a) with the following:

(a) in the case of an appointment by the custodian, the investment fund consents in writing to the appointment,

(a.1) in the case of an appointment by a sub-custodian, the investment fund and the custodian of the investment fund consent in writing to the appointment,**,**

(f) in paragraph (3)(b) by replacing "a person or company***" with "***an entity***" and by replacing "***;***" with "***,***",***

(g) in paragraph (3)(c) by replacing ";***" with "***,***",***

(h) in subsection (4) by replacing "paragraph (3)(a)***" with "***paragraphs (3)(a) and (a.1)***" and by replacing "***persons or companies***" with "***entities***", and***

(i) in subsection (5) by replacing "each person or company that is appointed sub-custodian***" with "***all entities that are appointed sub-custodians***".***

46. Section 6.2 is replaced with the following:

6.2 **Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada** – If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

1. a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

2. a trust company that is incorporated under the laws of Canada or a jurisdiction and licensed or registered under the laws of Canada or a jurisdiction, and that has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;

3. a company that is incorporated under the laws of Canada or of a jurisdiction, and that is an affiliate of a bank or trust company referred to in paragraph 1 or 2, if either of the following applies:

    (a) the company has equity, as reported in its most recent audited financial statements that have been made public, of not less than $10,000,000;

    (b) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.***.***

47. Section 6.3 is replaced with the following:

6.3 **Entities Qualified to Act as Sub-Custodian for Assets Held outside Canada –** If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:

1. an entity referred to in section 6.2;

2. an entity that

    (a) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada,

    (b) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country, and

    (c) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

3. an affiliate of an entity referred to in paragraph 1 or 2 if either of the following applies:

    (a) the affiliate has equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of $100,000,000;

    (b) the entity referred to in paragraph 1 or 2 has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund.***.***

48. Section 6.4 is amended

(a) by replacing subsection (1) with the following:

(1) All custodian agreements and sub-custodian agreements of an investment fund must provide for

    (a) the location of portfolio assets,

    (b) any appointment of a sub-custodian,

    (c) requirements concerning lists of sub-custodians,

    (d) the method of holding portfolio assets,

(e) the standard of care and responsibility for loss, and

(f) requirements concerning review and compliance reports.*,*

(b) ***in subsection (2) by replacing "***a mutual fund shall***" with "***an investment fund must***" and by replacing "***the mutual fund***" with "***the investment fund***",***

(c) ***by adding the following subsection immediately after subsection (2):***

(2.1) An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part.*, and*

(d) ***by replacing subsection (3) with the following:***

(3) A custodian agreement or sub-custodian agreement concerning the portfolio assets of an investment fund must not

(a) provide for the creation of any security interest on the portfolio assets of the investment fund except for a good faith claim for payment of the fees and expenses of the custodian or a sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from the custodian or a sub-custodian for the purpose of settling portfolio transactions; or

(b) contain a provision that would require the payment of a fee to the custodian or a sub-custodian for the transfer of the beneficial ownership of portfolio assets of the investment fund, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.*.*

49. ***Section 6.5 is replaced with the following:***

6.5 **Holding of Portfolio Assets and Payment of Fees**

(1) Except as provided in subsections (2) and (3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund, or any of their respective nominees, with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(2) The custodian or a sub-custodian of an investment fund, or an applicable nominee, must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.

(3) The custodian or a sub-custodian of an investment fund may deposit portfolio assets of the investment fund with a depository, or a clearing agency, that operates a book-based system.

(4) The custodian or a sub-custodian of an investment fund arranging for the deposit of portfolio assets of the investment fund with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or of the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(5) An investment fund must not pay a fee to the custodian or a sub-custodian of the investment fund for the transfer of beneficial ownership of portfolio assets of the investment fund other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.*.*

50. ***Section 6.6 is amended***

(a) ***by replacing "***a mutual fund***" with "***an investment fund***",***

(b) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(c) ***by replacing "***shall***" with "***must***" wherever it occurs,***

(d) ***by replacing "***A mutual fund***" with "***An investment fund***" wherever it occurs,***

(e) ***in subsection (3) by replacing "***a custodian or sub-custodian***" with "***the custodian or a sub-custodian***" and by replacing "***described in***" with "***imposed by***", and***

(f) ***in subsection (4) by replacing "***a custodian or sub-custodian***" with "***the custodian or a sub-custodian***".***

51. ***Section 6.7 is amended***

(a) ***by replacing "***a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) ***by replacing "***shall***" with "***must***" wherever it occurs,***

(c) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs,***

(d) ***in subsection (2) by replacing "***not more than***" with "***within***", and***

(e) ***by replacing paragraph (2)(c) with the following:***

(c) whether, to the best of the knowledge and belief of the custodian, each sub-custodian satisfies section 6.2 or 6.3, as applicable.***.***

52. ***Section 6.8 is amended***

(a) ***by replacing "***A mutual fund***" with "***An investment fund***" wherever it occurs,***

(b) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(c) ***by replacing subsection (4) with the following:***

(4) The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.***.***

53. ***Section 6.8.1 is amended***

(a) ***by replacing "***the mutual fund's***" with "***the investment fund's***",***

(b) ***by replacing "***a mutual fund***" with "***an investment fund***",***

(c) ***by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) ***by replacing "***A mutual fund***" with "***An investment fund***" wherever it occurs.***

54. ***Section 6.9 is amended***

(a) ***by replacing "***A mutual fund***" with "***An investment fund***",***

(b) ***by replacing "***institution***" with "***entity***", and***

(c) ***by replacing "***the mutual fund***" with "***the investment fund***" .***

55. ***Section 7.1 is amended***

(a) ***by replacing "***shall not pay***" with "***must not pay***", and***

(b) ***by replacing "***no securities of a mutual fund shall***" with "***securities of a mutual fund must not***".***

56. ***Section 8.1 is amended by replacing "***No securities of a mutual fund shall be sold***" with "***A person or company must not sell securities of a mutual fund***".***

57. ***The heading in Part 9 is amended by replacing "***a Mutual Fund***" with "***an Investment Fund***".***

58. Section 9.0.1 is replaced with the following:

9.0.1 **Application** – This Part, other than subsection 9.3(2), does not apply to an exchange-traded mutual fund that is not in continuous distribution.*.*

59. Section 9.1 is amended by replacing "shall***" with "***must***" wherever it occurs.***

60. (1) Section 9.3 is amended

(a) by renumbering it as subsection 9.3(1), and

(b) by replacing "shall***" with "***must***".***

(2) Section 9.3, as amended by subsection (1), is amended by adding the following subsection:

(2) The issue price of a security of an exchange-traded mutual fund that is not in continuous distribution, or of a non-redeemable investment fund, must not,

(a) as far as reasonably practicable, be a price that causes dilution of the net asset value of other outstanding securities of the investment fund at the time the security is issued, and

(b) be a price that is less than the most recent net asset value per security of that class, or series of a class, calculated prior to the pricing of the offering.*.*

61. Section 9.4 is amended by replacing "shall***" with "***must***" wherever it occurs.***

62. The Instrument is amended by adding the following Part immediately after Part 9:

Part 9.1 WARRANTS AND SPECIFIED DERIVATIVES

9.1.1 Issuance of Warrants or Specified Derivatives – An investment fund must not

(a) issue a conventional warrant or right, or

(b) enter into a position in a specified derivative the underlying interest of which is a security of the investment fund.*.*

63. The heading in Part 10 is amended by replacing "a Mutual Fund***" with "***an Investment Fund***".***

64. (1) Subsection 10.1(1) is amended

(a) by replacing "No mutual fund***" with "***An investment fund***",***

(b) by replacing "shall***" with "***must not***", and***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

(2) Subsection 10.1(2) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***",***

(c) by adding "by the following times:***" after "***delivered***", and***

(d) by replacing paragraph (a) with the following:

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, by the time of delivery of a redemption order to an order receipt office of the mutual fund;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, by the time of delivery of a redemption order;*.*

(3) Subsection 10.1(3) is replaced with the following:

(3) A manager of an investment fund must provide to securityholders of the investment fund at least annually a statement containing the following:

(a) a description of the requirements referred to in subsection (1);

(b) a description of the requirements established by the investment fund under subsection (2);

(c) a detailed reference to all documentation required for redemption of securities of the investment fund;

(d) detailed instructions on the manner in which documentation is to be delivered to participating dealers, the investment fund or a person or company providing services to the investment fund to which a redemption order may be made;

(e) a description of all other procedural or communication requirements;

(f) an explanation of the consequences of failing to meet timing requirements.*.*

65. Section 10.2 is amended by replacing "shall***" with "***must***" wherever it occurs.***

66. Section 10.3 is amended

(a) by replacing "shall***" with "***must***", and***

(b) by adding the following subsection:

(4) The redemption price of a security of a non-redeemable investment fund must not be a price that is more than the net asset value of the security determined on a redemption date specified in the prospectus or annual information form of the investment fund.*.*

67. Section 10.4 is amended

(a) by replacing subsection (1.1) with the following:

(1.1) Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

(1.2) A non-redeemable investment fund must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.*,*

(b) in subsection (3) by replacing "A mutual fund***" with "***An investment fund***", and***

(c) in subsection (5) by replacing "a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs.***

68. Section 10.5 is amended by replacing "shall***" with "***must***" wherever it occurs.***

69. (1) Subsection 10.6(1) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***", and***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

(2) Subsection 10.6(2) is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by adding ", (1.1) or (1.2)***" after "***subsection 10.4(1)***", and***

(c) by adding "or regulator***" after "***authority***".***

(3) Subsection 10.6(3) is amended

(a) by replacing "A mutual fund shall***" with "***An investment fund must***",***

(b) by replacing "the mutual fund***" with "***the investment fund***", and***

(c) by replacing "authorities***" with "***authority or regulator***".***

70. The heading in section 11.1 is amended by adding "and Service Providers***" after "***Distributors***".***

71. (1) Subsection 11.1(1) is replaced with the following:

(1) Cash received by a principal distributor of a mutual fund, by a person or company providing services to the mutual fund or the principal distributor, or by a person or company providing services to a non-redeemable investment fund, for investment in, or on the redemption of, securities of the investment fund, or on the distribution of assets of the investment fund, until disbursed as permitted by subsection (3),

(a) must be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of section 11.3, and

(b) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other investment fund securities.***.***

(2) Subsection 11.1(2) is amended

(a) by replacing "distributor or person***" with "***distributor, a person***", and***

(b) by replacing "shall***" with "***, or a person or company providing services to the non-redeemable investment fund, must***".***

(3) Subsection 11.1(3) is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "for the purpose of***" with "***for any of the following purposes:***",***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by deleting "or***" at the end of paragraph (b).***

(4) Subsection 11.1(4) is amended

(a) by replacing "shall***" with "***must***",***

(b) by replacing "the mutual funds***" with "***the investment funds***", and***

(c) by replacing "a mutual fund***" with "***an investment fund***" .***

(5) Subsection 11.1(5) is amended

(a) by replacing "a mutual fund***" with "***an investment fund***", and***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

72. Section 11.2 is amended by replacing "shall***" with "***must***" wherever it occurs.***

73. Section 11.3 is amended

(a) by replacing "dealer, or a person***" with "***dealer, a person***",***

(b) ***by adding "***or a person or company providing services to an investment fund,***" before "***that deposits cash***",***

(c) ***by replacing "***shall***" with "***must***",***

(d) ***in subparagraph (a)(iii) by replacing "***dealer or of a person***" with "***dealer, of a person***" and by adding "***or of a person or company providing services to the investment fund,***" before "***and***", and***

(e) ***in subparagraph (a)(iv) by replacing "***dealer, or of a person***" with "***dealer, of a person***" and by adding "***or of a person or company providing services to the investment fund;***" at the end of the subparagraph.***

74. Section 11.4 is amended

(a) ***by adding the following subsection immediately after subsection (1.2):***

(1.3) Section 11.1 does not apply to CDS Clearing and Depository Services Inc.***, and***

(b) ***by replacing "***shall***" with "***must***".***

75. Section 11.5 is amended

(a) ***by replacing "***mutual fund***" with "***investment fund***" wherever it occurs, and***

(b) ***by replacing "***shall***" with "***must***".***

76. Section 12.1 is amended by replacing "shall***" with "***must***" wherever it occurs.***

77. Section 14.1 is amended by replacing "shall***" with "***must***".***

78. Section 15.1 is amended

(a) ***by replacing "***a mutual fund***" with "***an investment fund***",***

(b) ***by replacing "***may***" with "***must***", and***

(c) ***by deleting "***only***".***

79. Section 15.2 is amended

(a) ***in subsection (1) by replacing "***no sales communication shall***" with "***a sales communication must not***",***

(b) ***in paragraph (1)(b) by adding "***, as applicable,***" after "***the fund facts document***" and by replacing "***a mutual fund***" with "***an investment fund***", and***

(c) ***in subsection (2) by replacing "***shall***" with "***must***" .***

80. Section 15.3 is amended

(a) ***by replacing "***shall***" with "***must***" wherever it occurs,***

(b) ***in subsection (1) by replacing "***a mutual fund***" with "***an investment fund***",***

(c) ***in subsection (2) by replacing "***15.6(a)***" with "***15.6(1)(a)***",***

(d) ***by adding the following subsection immediately after subsection (2):***

(2.1) A sales communication for a non-redeemable investment fund that is restricted by paragraph 15.6(1)(a) from disclosing performance data must not provide performance data for any benchmark or investment, other than a non-redeemable investment fund under common management with the non-redeemable investment fund to which the sales communication pertains.***,***

(e) ***in subsection (5) by replacing "***a mutual fund***" with "***an investment fund***" and by replacing "***the mutual fund***" with "***the investment fund***",***

(f) ***in subsection (6) by deleting "***, either under National Policy Statement No. 39 or***", and***

(g) ***in subsection (7) by replacing "***mutual fund***" with "***investment fund***".***

81. ***(1)*** ***Subsection 15.4(1) is amended***

(a) ***by replacing "***shall***" with "***must***", and***

(b) ***by deleting "***principal distributor or participating***".***

(2) ***Subsection 15.4(2) is amended***

(a) ***by replacing "***shall***" with "***must***", and***

(b) ***by replacing "***mutual fund***" with "***investment fund***" wherever it occurs.***

(3) ***Subsection 15.4(3) is amended by replacing "***shall***" with "***must***".***

(4) ***Section 15.4 is amended by adding the following subsection immediately after subsection (3):***

(3.1) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that does not contain performance data must contain a warning in substantially the following words:

[*If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:*] "You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [*state the exchange or other market on which the securities of the investment fund are listed or quoted*]. If the [units or shares] are purchased or sold on [*state the exchange or other market*], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them."

[*State the following in all cases:*] "There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated."**.**

(5) ***The following subsections are amended by replacing "***shall***" with "***must***":***

(a) ***subsection 15.4(4);***

(b) ***subsection 15.4(5);***

(c) ***subsection 15.4(6).***

(6) ***Section 15.4 is amended by adding the following subsection immediately after subsection (6):***

(6.1) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that contains performance data must contain a warning in substantially the following words:

[*If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:*] "You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [*state the exchange or other market on which the securities of the investment fund are listed or quoted*]. If the [units or shares] are purchased or sold on [*state the exchange or other market*], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them."

[*State the following in all cases:*] "There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. The indicated rate[s] of return is [are] the historical annual compounded total

return[s] including changes in [share or unit] value and reinvestment of all [dividends or distributions] and does [do] not take into account [*state the following, as applicable:*] [certain fees such as redemption fees or optional charges or] income taxes payable by any securityholder that would have reduced returns. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.". **.**

(7) The following subsections are amended by replacing "shall***" with "***must***":***

(a) subsection 15.4(7);

(b) subsection 15.4(8);

(c) subsection 15.4(9).

(8) Subsection 15.4(10) is amended

(a) by replacing "a mutual fund***" with "***an investment fund***",***

(b) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(c) by replacing "shall***" with "***must***".***

(9) Subsection 15.4(11) is amended by replacing "shall***" with "***must***".***

82. Section 15.5 is amended

(a) in subsection (1) by replacing "No person or company shall***" with "***A person or company must not***", and***

(b) by replacing "shall***" with "***must***" wherever it occurs.***

83. Section 15.6 is replaced with the following:

15.6 Performance Data - General Requirements

(1) A sales communication pertaining to an investment fund or asset allocation service must not contain performance data of the investment fund or asset allocation service unless all of the following paragraphs apply:

(a) one of the following subparagraphs applies:

(i) in the case of a mutual fund, either of the following applies:

(A) the mutual fund has distributed securities under a prospectus in a jurisdiction for a period of at least 12 consecutive months;

(B) the mutual fund previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months;

(ii) in the case of a non-redeemable investment fund, the non-redeemable investment fund has been a reporting issuer in a jurisdiction for at least 12 consecutive months;

(iii) in the case of an asset allocation service, the asset allocation service has been operated for at least 12 consecutive months and has invested only in participating funds each of which has distributed securities under a prospectus in a jurisdiction for at least 12 consecutive months;

(iv) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (i), (ii) or (iii), the sales communication is sent only to one of the following:

(A) securityholders of the investment fund or participants in the asset allocation service;

(B) securityholders of an investment fund or participants in an asset allocation service under common management with the investment fund or asset allocation service;

(b) the sales communication includes standard performance data of the investment fund or asset allocation service and, in the case of a written sales communication, the standard performance data is presented in type size that is equal to or larger than that used to present the other performance data;

(c) the performance data reflects or includes references to all elements of return;

(d) except as permitted by subsection 15.3(3), the sales communication does not contain performance data for a period that is,

(i) in the case of a mutual fund, before the time when the mutual fund offered its securities under a prospectus;

(ii) in the case of a non-redeemable investment fund, before the non-redeemable investment fund was a reporting issuer;

(iii) in the case of an asset allocation service, before the asset allocation service commenced operation.

(2) Despite subparagraph (1)(d)(i), a sales communication pertaining to a mutual fund referred to in clause (1)(a)(i)(B) that contains performance data of the mutual fund must include performance data for the period that the fund existed as a non-redeemable investment fund and was a reporting issuer.**.**

84. Section 15.7 is amended by replacing "shall***" with "***must***".***

85. The Instrument is amended by adding the following section immediately after section 15.7:

15.7.1 Advertisements for Non-Redeemable Investment Funds – An advertisement for a non-redeemable investment fund must not compare the performance of the non-redeemable investment fund with any benchmark or investment other than any of the following:

(a) one or more non-redeemable investment funds that are under common management or administration with the non-redeemable investment fund to which the advertisement pertains;

(b) one or more non-redeemable investment funds that have fundamental investment objectives that a reasonable person would consider similar to the non-redeemable investment fund to which the advertisement pertains;

(c) an index.**.**

86. (1) Subsection 15.8(2) is amended

(a) by replacing "asset allocation service or to a mutual fund***" with "***asset allocation service, or to an investment fund***",***

(b) by replacing "may***" with "***, must not***",***

(c) by replacing "only if***" with "***unless,***",***

(d) by replacing paragraph (a) with the following:

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund,

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and***, and***

(e) in paragraph (b) by replacing "paragraph (a)***" with "***paragraphs (a), (a.1) and (a.2)***".***

(2) Subsection 15.8(3) is amended

(a) by replacing "may***" with "***must not***",***

(b) by replacing "only if***" with "***unless,***",***

(c) by replacing paragraph (a) with the following:

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund,

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and***, and***

(d) in paragraph (b) by replacing "paragraph (a)***" with "***paragraphs (a), (a.1) and (a.2)***".***

(3) Subsection 15.8(4) is amended by replacing "shall***" with "***must***".***

87. Section 15.9 is amended

(a) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs,***

(b) by replacing "shall***" with "***must***" wherever it occurs,***

(c) by replacing "a mutual fund***" with "***an investment fund***",***

(d) by replacing "another mutual fund***" with "***another investment fund***", and***

(e) by replacing "other mutual fund***" with "***other investment fund***".***

88. Section 15.10 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***" wherever it occurs,***

(b) by replacing "shall***" with "***must***" wherever it occurs,***

(c) in subsection (1) by replacing "section***" with "***Part***",***

(d) in subsection (2) by replacing the definition of "standard performance data***" with the following:***

"standard performance data" means, as calculated in each case in accordance with this Part,

(a) for a money market fund, either of the following:

(i) the current yield;

(ii) the current yield and effective yield, if the effective yield is reported in a type size that is at least equal to that of the current yield, and

(b) for any investment fund other than a money market fund, the total return;***, and***

(e) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

89. Section 15.11 is amended

(a) by replacing "shall***" with "***must***" wherever it occurs,***

(b) by replacing "a mutual fund***" with "***an investment fund***",***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs, and***

(d) by replacing item 6 of subsection (1) with the following:

6. In the case of a mutual fund, a complete redemption occurs at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.

7. In the case of a non-redeemable investment fund, a complete redemption occurs at the net asset value of one security at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.**.**

90. Section 15.12 is amended by replacing "shall***" with "***must***".***

91. Section 15.13 is amended

(a) in subsection (1) by replacing "mutual fund shall***" with "***investment fund must***", and***

(b) by replacing subsection (2) with the following:

(2) A communication by an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, participating dealer or a person providing services to the investment fund or asset allocation service must not describe the investment fund as a commodity pool or as a vehicle for investors to participate in the speculative trading of, or leveraged investment in, derivatives, unless the investment fund is a commodity pool as defined in National Instrument 81-104 *Commodity Pools*.**.**

92. The heading in section 15.14 is amended by replacing "Mutual Funds***" with "***Investment Funds***".***

93. Section 15.14 is amended

(a) by replacing "a mutual fund***" with "***an investment fund***", and***

(b) by replacing "shall***" with "***must***" wherever it occurs.***

94. Section 18.1 is amended

(a) by replacing "A mutual fund***" with "***An investment fund***",***

(b) by replacing "shall***" with "***must***", and***

(c) by replacing "the mutual fund***" with "***the investment fund***" wherever it occurs.***

95. Section 18.2 is amended

(a) by replacing subsection (1) with the following:

(1) An investment fund that is not a corporation must make, or cause to be made, the records referred to in section 18.1 available for inspection, free of charge, during normal business hours at its principal or head office by a securityholder or a representative of a securityholder, if the securityholder has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than either of the following:

(a) in the case of a mutual fund, attempting to influence the voting of securityholders of the mutual fund or a matter relating to the relationships among the mutual fund, the members of the organization of the mutual fund, and the securityholders, partners, directors and officers of those entities;

(b) in the case of a non-redeemable investment fund, attempting to influence the voting of securityholders of the non-redeemable investment fund or a matter relating to the relationships among the non-redeemable investment fund, the manager and portfolio adviser of the non-redeemable investment fund and any of their affiliates, and the securityholders, partners, directors and officers of those entities.***, and***

(b) in subsection (2) by replacing "A mutual fund shall***" with "***An investment fund must***" and by replacing "***the mutual fund***" with "***the investment fund***" wherever it occurs.***

96. Subsection 19.2(3) is amended by replacing "shall***" with "***must***".***

97. Subsection 19.3(1) is amended by replacing ";***" with "***.***".***

98. (1) Section 20.4 is amended

(a) by renumbering it as subsection 20.4(1), and

(b) by replacing "2.3(b)***" with "***2.3(1)(b)***".***

(2) Section 20.4, as amended by subsection (1), is amended by adding the following subsection:

(2) If a non-redeemable investment fund has adopted fundamental investment objectives to permit it to invest in mortgages, paragraph 2.3(2)(b) does not apply to the non-redeemable investment fund if the non-redeemable investment fund was established, and has a prospectus for which a receipt was issued, on or before September 22, 2014.**.**

99. Appendix C is amended

(a) by replacing "British Columbia***" with "***All Jurisdictions***",***

(b) by replacing " s. 81 of the Securities Rules (British Columbia)***" with "***s. 13.6 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations****",***

(c) by deleting "New Brunswick***" and "***s. 13.2 of Local Rule 31-501 *Registration Requirements****", and***

(d) by deleting "Nova Scotia***" and "***s. 67 of the General Securities Rules***".***

100. The Instrument is amended by adding the following appendices after Appendix C:

Appendix D

Investment Fund Conflict of Interest Investment Restrictions

Jurisdiction	Securities Legislation Reference
All Jurisdictions	ss. 13.5(2)(a) and (b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
Alberta	ss. 185(2) and (3) of the *Securities Act* (Alberta)
British Columbia	s. 6(2) of BC Instrument 81-513 *Self-Dealing*
New Brunswick	s. 137(2) of the *Securities Act* (New Brunswick)
Newfoundland and Labrador	ss. 112(2), 112(3), 119(2)(a) and 119(2)(b) of the *Securities Act* (Newfoundland and Labrador)

Jurisdiction	Securities Legislation Reference
Nova Scotia	ss. 119(2) and (3) of the *Securities Act* (Nova Scotia)
Ontario	ss. 111(2) and (3) of the *Securities Act* (Ontario)
Saskatchewan	ss. 120(2) and (3) of the *The Securities Act, 1988* (Saskatchewan)

Appendix E

Investment Fund Conflict of Interest Reporting Requirements

Jurisdiction	Securities Legislation Reference
Alberta	s. 191(1)(a) of the *Securities Act* (Alberta)
British Columbia	s. 9(a) of BC Instrument 81-513 *Self-Dealing*
New Brunswick	s. 143(1)(a) of the *Securities Act* (New Brunswick)
Newfoundland and Labrador	s. 118(1)(a) of the *Securities Act* (Newfoundland and Labrador)
Nova Scotia	s. 125(1)(a) of the *Securities Act* (Nova Scotia)
Ontario	s. 117(1)(a) of the *Securities Act* (Ontario)
Saskatchewan	s. 126(1)(a) of the *The Securities Act, 1988* (Saskatchewan)*.*

Transition

101. (1) If a non-redeemable investment fund filed a prospectus on or before September 22, 2014,

(a) until September 21, 2015, sections 2.12 to 2.17 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund, and

(b) until March 21, 2016, sections 2.2, 2.3 and 2.5 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund.

(2) If a mutual fund filed a prospectus on or before September 22, 2014, until March 21, 2016, subsection 2.5(2) of National Instrument 81-102 *Mutual Funds*, as amended by subsection 11(2) of this Instrument, does not apply to the mutual fund if the mutual fund complies with subsection 2.5(2) of National Instrument 81-102 *Mutual Funds* as that provision was in force on September 21, 2014.

(3) Despite any amendments to the contrary in this Instrument, if a sales communication, other than an advertisement, was printed before September 22, 2014, the sales communication may be used until March 23, 2015.

Effective date

102. (1) Subject to subsection (2), this Instrument comes into force on September 22, 2014.

(2) Subsection 64(3) of this Instrument comes into force on January 1, 2015.

5.1.2 Changes to Companion Policy 81-102CP Mutual Funds

BLACKLINE SHOWING CHANGES TO
COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102 *MUTUAL FUNDS*

The following shows, by way of blackline, changes to Companion Policy 81-102CP. These changes become effective on September 22, 2014.

COMPANION POLICY 81-102CP TO
NATIONAL INSTRUMENT 81-102 *~~MUTUAL~~INVESTMENT FUNDS*
TABLE OF CONTENTS

Companion Policy 81-102CP
to
National Instrument 81-102 *~~Mutual~~Investment Funds*

PART 1 PURPOSE

1.1 Purpose – The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to National Instrument 81-102 *~~Mutual~~Investment Funds* (the "Instrument"), including

(a) the interpretation of various terms used in the Instrument;

(b) recommendations concerning the operating procedures that the Canadian securities regulatory authorities suggest that ~~mutual~~investment funds subject to the Instrument, or persons performing services for ~~mutual~~the investment funds, adopt to ensure compliance with the Instrument;

(c) discussions of circumstances in which the Canadian securities regulatory authorities have granted relief from particular requirements of National Policy Statement No. 39 ("NP39"), the predecessor to the Instrument, and the conditions that those authorities imposed in granting that relief; and

(d) recommendations concerning applications for approvals required under, or relief from, provisions of the Instrument.

PART 2 COMMENTS ON DEFINITIONS CONTAINED IN THE INSTRUMENT

2.1 "asset allocation service" – The definition of "asset allocation service" in the Instrument includes only specific administrative services in which an investment in mutual funds subject to the Instrument is an integral part. The Canadian securities regulatory authorities do not view this definition as including general investment services such as discretionary portfolio management that may, but are not required to, invest in mutual funds subject to this Instrument.

2.2 "cash equivalent" – The definition of "cash equivalent" in the Instrument includes certain evidences of indebtedness of Canadian financial institutions. This includes banker's acceptances.

2.3 "clearing corporation" – The definition of "clearing corporation" in the Instrument includes both incorporated and unincorporated organizations, which may, but need not, be part of an options or futures exchange.

2.4 "debt-like security" – Paragraph (b) of the definition of "debt-like security" in the Instrument provides that the value of the component of an instrument that is not linked to the underlying interest of the instrument must account for less than 80 ~~percent~~% of the aggregate value of the instrument in order that the instrument be considered a debt-like security. The Canadian securities regulatory authorities have structured this provision in this manner to emphasize what they consider the most appropriate manner to value these instruments. That is, one should first value the component of the instrument that is not linked to the underlying interest, as this is often much easier to value than the component that is linked to the underlying interest. The Canadian securities regulatory authorities recognize the valuation difficulties that can arise if one attempts to value, by itself, the component of an instrument that is linked to the underlying interest.

2.4.1 ~~"Predecessor terms"~~ "designated rating" and "designated rating organization" – ~~We~~The Canadian securities regulatory authorities recognize there are existing contracts that use the predecessor terms "approved credit rating", "approved rating" and "approved credit rating organization". The content of the new definitions "designated rating" and "designated rating organization" is substantially the same as the content of their respective predecessor terms, only the terminology has changed. Therefore, it is reasonable to interpret the predecessor terms as having the same meaning as the definition of "designated rating" and "designated rating organization" in ~~NI 81-102,~~the Instrument, as applicable.

2.5 "fundamental investment objectives"

(1) The definition of "fundamental investment objectives" is relevant in connection with paragraph 5.1(1)(c) of the Instrument, which requires that the approval of securityholders of ~~a mutual~~an investment fund be obtained before any change is made to the fundamental investment objectives of the ~~mutual~~investment fund. The fundamental investment objectives of ~~a mutual~~an investment fund are required to be disclosed in a ~~simplified~~ prospectus under Part B of Form 81-101F1 *Contents of Simplified Prospectus* or under the requirements of Form 41-101F2 *Information Required in an Investment Fund Prospectus*. The definition of "fundamental investment objectives" contained in the Instrument uses the language contained in the disclosure requirements of ~~Part B of~~ Form 81-101F1~~,~~ 1 and Form 41-101F2, and the definition should be read to include the matters that would have to be disclosed under the Item of ~~Part B of~~ the applicable form concerning "Fundamental Investment Objectives". Accordingly, any change to the ~~mutual~~investment fund requiring a change to that disclosure would trigger the requirement for securityholder approval under paragraph 5.1(1)(c) of the Instrument.

(2) Form 41-101F2 and Part B of Form 81-101F1 ~~sets~~set out, among other things, the obligation that ~~a mutual~~an investment fund disclose in a ~~simplified~~ prospectus both its fundamental investment objectives and its investment strategies. The matters required to be disclosed under the Item of ~~Part B of~~ the applicable form relating to "Investment Strategies" are not "fundamental investment objectives" under the Instrument.

(3) Generally speaking, the "fundamental investment objectives" of ~~a mutual~~an investment fund are those attributes that define its fundamental nature. For example, ~~mutual~~investment funds that are guaranteed or insured, or that pursue a highly specific investment approach such as index funds or derivative funds, may be defined by those attributes. Often the manner in which ~~a mutual~~an investment fund is marketed will provide evidence as to its fundamental nature; ~~a mutual~~an investment fund whose advertisements emphasize, for instance, that investments are guaranteed likely will have the existence of a guarantee as a "fundamental investment objective".

(4) **[Deleted]**

(5) One component of the definition of "fundamental investment objectives" is that those objectives distinguish ~~a mutual~~an investment fund from other ~~mutual~~investment funds. This component does not imply that the fundamental investment objectives for each ~~mutual~~investment fund must be unique. Two or more ~~mutual~~investment funds can have identical fundamental investment objectives.

2.6 "guaranteed mortgage" – A mortgage insured under the *National Housing Act* (Canada) or similar provincial statutes is a "guaranteed mortgage" for the purposes of the Instrument.

2.7 "hedging"

(1) One component of the definition of "hedging" is the requirement that hedging transactions result in a "high degree of negative correlation between changes in the value of the investment or position, or group of investments or positions, being hedged and changes in the value of the instrument or instruments with which the investment or position is hedged". The Canadian securities regulatory authorities are of the view that there need not be complete congruence between the hedging instrument or instruments and the position or positions being hedged if it is reasonable to regard the one as a hedging instrument for the other, taking into account the closeness of the relationship between fluctuations in the price of the two and the availability and pricing of hedging instruments.

(2) The definition of "hedging" includes a reference to the "maintaining" of the position resulting from a hedging transaction or series of hedging transactions. The inclusion of this component in the definition requires ~~a mutual~~an investment fund to ensure that a transaction continues to offset specific risks of the ~~mutual~~investment fund in order that the transaction be considered a "hedging" transaction under the Instrument; if the "hedging" position ceases to provide an offset to an existing risk of ~~a mutual~~an investment fund, then that position is no longer a hedging position under the Instrument, and can be held by the ~~mutual~~investment fund only in compliance with the specified derivatives rules of the Instrument that apply to non-hedging positions. The component of the definition that requires the "maintaining" of a hedge position does not mean that ~~a mutual~~an investment fund is locked into a specified derivatives position; it simply means that the specified derivatives position must continue to satisfy the definition of "hedging" in order to receive hedging treatment under the Instrument.

(3) Paragraph (b) of the definition of "hedging" has been included to ensure that currency cross hedging continues to be permitted under the Instrument. Currency cross hedging is the substitution of currency risk associated with one currency for currency risk associated with another currency, if neither currency is a currency in which the ~~mutual~~investment fund determines its net asset value per security and the aggregate amount of currency risk to which the ~~mutual~~investment fund is exposed is not increased by the substitution. Currency cross hedging is to be distinguished from currency hedging, as that term is ordinarily used. Ordinary currency hedging, in the context of ~~mutual~~investment funds, would involve replacing the ~~mutual~~investment fund's exposure to a "non-net asset value" currency with exposure to a currency in which the ~~mutual~~investment fund calculates its net asset value per security. That type of currency hedging is subject to paragraph (a) of the definition of "hedging".

2.8 "illiquid asset" – A portfolio asset of a mutual fund that meets the definition of "illiquid asset" will be an illiquid asset even if a person or company, including the manager or the portfolio adviser of a mutual fund or a partner, director or officer of the manager or portfolio adviser of a mutual fund or any of their respective associates or affiliates, has agreed to purchase the asset from the mutual fund. That type of agreement does not affect the words of the definition, which defines "illiquid asset" in terms of whether that asset cannot be readily disposed of through market facilities on which public quotations in common use are widely available.

2.9 "manager" – The definition of "manager" under the Instrument only applies to the person or company that actually directs the business of the ~~mutual~~investment fund, and does not apply to others, such as trustees, that do not actually carry out this function. Also, a "manager" would not include a person or company whose duties are limited to acting as a service provider to the ~~mutual~~investment fund, such as a portfolio adviser.

2.10 "option" – The definition of "option" includes warrants, whether or not the warrants are listed on a stock exchange or quoted on an over-the-counter market.

2.11 "performance data" – The term "performance data" includes data on an aspect of the investment performance of ~~a mutual~~an investment fund, an asset allocation service, security, index or benchmark. This could include data concerning return, volatility or yield. The Canadian securities regulatory authorities note that the term "performance data" would not include a rating prepared by an independent organization reflecting the credit quality, rather than the performance, of, for instance, ~~a mutual~~an investment fund's portfolio or the participating funds of an asset allocation service.

2.12 "public medium" – An "advertisement" is defined in the Instrument to mean a sales communication that is published or designed for use on or through a "public medium". The Canadian securities regulatory authorities interpret the term "public medium" to include print, television, radio, tape recordings, video tapes, computer disks, the Internet, displays, signs, billboards, motion pictures and telephones.

2.13 "purchase"

(1) The definition of a "purchase", in connection with the acquisition of a portfolio asset by ~~a mutual~~an investment fund, means an acquisition that is the result of a decision made and action taken by the ~~mutual~~investment fund.

(2) The Canadian securities regulatory authorities consider that the following types of transactions would generally be purchases of a security by ~~a mutual~~an investment fund under the definition:

1. The ~~mutual~~investment fund effects an ordinary purchase of the security, or, at its option, exercises, converts or exchanges a convertible security held by it.

2. The ~~mutual~~investment fund receives the security as consideration for a security tendered by the ~~mutual~~investment fund into a take-over bid.

3. The ~~mutual~~investment fund receives the security as the result of a merger, amalgamation, plan of arrangement or other reorganization for which the ~~mutual~~investment fund voted in favour.

4. The ~~mutual~~investment fund receives the security as a result of the automatic exercise of an exchange or conversion right attached to another security held by the ~~mutual~~investment fund in accordance with the terms of that other security or the exercise of that exchange or conversion right at the option of the ~~mutual~~investment fund.

5. (a) The ~~mutual~~investment fund has become legally entitled to dispose of the collateral held by it under a securities loan or repurchase agreement and to apply proceeds of realization to satisfy the obligations of the counterparty of the ~~mutual~~investment fund under the transaction, and

   (b) sufficient time has passed after the event described in paragraph (a) to enable the ~~mutual~~investment fund to sell the collateral in a manner that maintains an orderly market and that permits the preservation of the best value for the ~~mutual~~investment fund.

(3) The Canadian securities regulatory authorities consider that the following types of transactions would generally not be purchases of a security by ~~a mutual~~an investment fund under the definition:

1. The ~~mutual~~investment fund receives the security as a result of a compulsory acquisition by an issuer following completion of a successful take-over bid.

2. The ~~mutual~~investment fund receives the security as a result of a merger, amalgamation, plan of arrangement or other reorganization that the ~~mutual~~investment fund voted against.

3. The ~~mutual~~investment fund receives the security as the result of the exercise of an exchange or conversion right attached to a security held by the ~~mutual~~investment fund made at the discretion of the issuer of the security held by the ~~mutual~~investment fund.

4. The ~~mutual~~investment fund declines to tender into an issuer bid, even though its decision is likely to result in an increase in its percentage holdings of a security beyond what the ~~mutual~~investment fund would be permitted under the Instrument to purchase.

2.14 "restricted security" – A special warrant is a form of restricted security and, accordingly, the provisions of the Instrument applying to restricted securities apply to special warrants.

2.15 "sales communication"

(1) The term "sales communication" ~~refers to~~includes a communication ~~to~~by an investment fund to (i) a securityholder of ~~a mutual~~the investment fund and ~~to~~(ii) a person or company that is not a securityholder if the purpose of the communication is to induce the purchase of securities of the ~~mutual~~investment fund. A sales communication therefore does not include a communication solely between ~~a mutual~~an investment fund or its promoter, manager, principal distributor or portfolio adviser and a participating dealer, or between the principal distributor or a participating dealer and its registered salespersons, that is indicated to be internal or confidential and that is not designed to be passed on by any principal distributor, participating dealer or registered salesperson to any securityholder of, or potential investor in, the ~~mutual~~investment fund. In the view of the Canadian securities regulatory authorities, if a communication of that type were so passed on by the principal distributor, participating dealer or registered salesperson, the communication would be a sales communication made by the party passing on the communication if the recipient of the communication were a securityholder of the ~~mutual~~investment fund or if the intent of the principal distributor, participating dealer or registered salesperson in passing on the communication were to induce the purchase of securities of the ~~mutual~~investment fund.

(2) The term "sales communication" is defined in the Instrument such that the communication need not be in writing and includes any oral communication. The Canadian securities regulatory authorities are of the view that the requirements in the Instrument pertaining to sales communications would apply to statements made at an investor conference to securityholders or to others to induce the purchase of securities of the ~~mutual~~investment fund.

(3) The Canadian securities regulatory authorities are of the view that image advertisements that are intended to promote a corporate identity or the expertise of ~~a mutual~~an investment fund manager fall outside the definition of "sales communication". However, an advertisement or other communication that refers to a specific ~~mutual~~investment fund or funds or promotes any particular investment portfolio or strategy would be a sales communication and therefore be required to include warnings of the type now described in section 15.4 of the Instrument.

(4) ~~Paragraph~~In the case of an investment fund, paragraph (b) of the definition of a "sales communication" in the Instrument excludes sales communications contained in certain documents that the ~~mutual~~investment fund is required to prepare, including audited or unaudited financial statements, statements of account and confirmations of trade. The Canadian securities regulatory authorities are of the view that if information is contained in these types of documents that is not required to be included by securities legislation, any such additional material is not excluded by paragraph (b) of the definition of sales communication and may, therefore, constitute a sales communication if the additional material otherwise falls within the definition of that term in the Instrument.

2.16 "specified derivative"

(1) The term "specified derivative" is defined to mean an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to or based on an underlying interest. Certain instruments, agreements or securities that would otherwise be specified derivatives within the meaning of the definition are then excluded from the definition for purposes of the Instrument.

(2) Because of the broad ambit of the lead-in language to the definition, it is impossible to list every instrument, agreement or security that might be caught by that lead-in language but that is not considered to be a derivative in any normal commercial sense of that term. The Canadian securities regulatory authorities consider conventional floating rate debt instruments, ~~securities of a mutual fund or commodity pool, non redeemable~~ securities of an investment fund, American depositary receipts and instalment receipts generally to be within this category, and generally will not treat those instruments as specified derivatives in administering the Instrument.

(3) However, the Canadian securities regulatory authorities note that these general exclusions may not be applicable in cases in which a mutual fund invests in one of the vehicles described in subsection (2) with the result that the mutual fund obtains or increases exposure to a particular underlying interest in excess of the limit set out in section 2.1 of the Instrument. In such circumstances, the Canadian securities regulatory authorities are likely to consider that instrument a specified derivative under the Instrument.

2.17 "standardized future" – The definition of "standardized future" refers to an agreement traded on a futures exchange. This type of agreement is called a "futures contract" in the legislation of some jurisdictions, and an "exchange contract" in the legislation of some other jurisdictions (such as British Columbia and Alberta). The term "standardized future" is used in the Instrument to refer to these types of contracts, to avoid conflict with existing local definitions.

2.18 "swap" – The Canadian securities regulatory authorities are of the view that the definition of a swap in the Instrument would include conventional interest rate and currency swaps, as well as equity swaps.

PART 3 INVESTMENTS

3.1 Evidences of Indebtedness of Foreign Governments and Supranational Agencies

(1) Section 2.1 of the Instrument prohibits mutual funds from purchasing a security of an issuer, other than a government security or a security issued by a clearing corporation if, immediately after the purchase, more than 10 ~~percent~~% of their net asset value would be invested in securities of that issuer. The term "government security" is defined in the Instrument as an evidence of indebtedness that is issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada, the government of a jurisdiction or the government of the United States of America.

(2) Before the Instrument came into force, the Canadian securities regulatory authorities granted relief from the predecessor provision of NP39 to a number of international bond funds in order to permit those mutual funds to pursue their fundamental investment objectives with greater flexibility.

(3) The Canadian securities regulatory authorities will continue to consider applications for relief from section 2.1 of the Instrument if the mutual fund making the application demonstrates that the relief will better enable the mutual fund to meet its fundamental investment objectives. This relief will ordinarily be restricted to international bond funds.

(4) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, that has been provided to a mutual fund has generally been limited to the following circumstances:

1. The mutual fund has been permitted to invest up to 20 ~~percent~~% of its net asset value in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated "AA" by Standard & Poor's Rating Services (Canada) or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

2. The mutual fund has been permitted to invest up to 35 ~~percent~~% of its net asset value in evidences of indebtedness of any one issuer, if those securities are issued by issuers described in paragraph 1 and are rated "AAA" by Standard & Poor's Rating Services (Canada) or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

(5) It is noted that the relief described in paragraphs 3.1(4)1 and 2 cannot be combined for one issuer.

(6) **[Deleted]**

(7) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, has generally been provided only if

(a) the securities that may be purchased under the relief referred to in subsection (4) are traded on a mature and liquid market;

(b) the acquisition of the evidences of indebtedness by the mutual fund is consistent with its fundamental investment objectives;

(c) the prospectus or simplified prospectus of the mutual fund disclosed the additional risks associated with the concentration of the net asset value of the mutual fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the fund has so invested and the risks, including foreign exchange risks, of investing in the country in which that issuer is located; and

(d) the prospectus or simplified prospectus of the mutual fund gave details of the relief provided by the Canadian securities regulatory authorities, including the conditions imposed and the type of securities covered by the exemption.

3.2 Index Mutual Funds

(1) An "index mutual fund" is defined in section 1.1 of the Instrument as a mutual fund that has adopted fundamental investment objectives that require it to

(a) hold the securities that are included in a permitted index or permitted indices of the mutual fund in substantially the same proportion as those securities are reflected in that permitted index or permitted indices; or

(b) invest in a manner that causes the mutual fund to replicate the performance of that permitted index or those permitted indices.

(2) This definition includes only mutual funds whose entire portfolio is invested in accordance with one or more permitted indices. The ~~CSA recognizes~~Canadian securities regulatory authorities recognize that there may be mutual funds that invest part of their portfolio in accordance with a permitted index or indices, with a remaining part of the portfolio being actively managed. Those mutual funds cannot avail themselves of the relief provided by subsection 2.1(5) of the Instrument, which provides relief from the "10 ~~percent~~% rule" contained in subsection 2.1(1) of the Instrument, because they are not "index mutual funds". The ~~CSA~~Canadian securities regulatory authorities acknowledge that there may be circumstances in which the principles behind the relief contained in subsection 2.1(5) of the Instrument is also applicable to "partially-indexed" mutual funds. Therefore, the ~~CSA~~Canadian securities regulatory authorities will consider applications from those types of mutual funds for relief analogous to that provided by subsection 2.1(5) of the Instrument.

(3) It is noted that the manager of an index mutual fund may make a decision to base all or some of the investments of the mutual fund on a different permitted index than a permitted index previously used. This decision might be made for investment reasons or because that index no longer satisfies the definition of "permitted index" in the Instrument. It is noted that this decision by the manager will be considered by the Canadian securities regulatory authorities generally to constitute a change of fundamental investment objectives, thereby requiring securityholder approval under paragraph 5.1(1)(c) of the Instrument. In addition, this decision would also constitute a material change for the mutual fund, thereby requiring an amendment to the prospectus of the mutual fund and the issuing of a press release under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

3.2.1 Control Restrictions – An investment fund generally holds a passive stake in the businesses in which it invests; that is, an investment fund generally does not seek to obtain control of, or become involved in, the management of investee companies. This key restriction on the type of investment activities that may be undertaken by an investment fund is codified in section 2.2 of the Instrument. Exceptions to this are labour sponsored or venture capital funds, where some degree of involvement in the management of the investees is generally an integral part of the investment strategy.

In determining whether an investment fund exercises control over, or is involved in the management of, an investee company, for the purposes of compliance with section 2.2 of the Instrument, the Canadian securities regulatory authorities will generally consider indicators, including the following:

(a) any right of the investment fund to appoint directors, or observers, of the board of the investee company;

(b) any right of the investment fund to restrict the management of the investee company, or to approve or veto decisions made by the management of the investee company;

(c) any right of the investment fund to restrict the transfer of securities by other securityholders of the investee company.

The Canadian securities regulatory authorities will take the above factors into consideration when considering the nature of an investment fund's investment in an issuer to determine whether the investment fund is in compliance with section 2.2 of the Instrument. The Canadian securities regulatory authorities will also refer to the applicable accounting standards in determining whether an investment fund is exercising control over an issuer.

3.3 Special Warrants – ~~A mutual~~ An investment fund is required by subsection 2.2(3) of the Instrument to assume the conversion of each special warrant it holds. This requirement is imposed because the nature of a special warrant is such that there is a high degree of likelihood that its conversion feature will be exercised shortly after its issuance, once a prospectus relating to the underlying security has been filed.

3.3.1 Illiquid assets

(1) Although section 2.4 of the Instrument does not apply to non-redeemable investment funds, the Canadian securities regulatory authorities expect the manager of an investment fund (whether a mutual fund or a non-redeemable investment fund) to establish an effective liquidity risk management policy that considers the liquidity of the types of assets in which the investment fund will be invested, and the fund's obligations and other liabilities (for example, meeting redemption requests, or margin calls from derivative counterparties). Appropriate internal limits for the investment fund's liquidity needs, in line with its investment strategies, should be established.

(2) As portfolio assets may become illiquid when market conditions change, the Canadian securities regulatory authorities are of the view that the manager should regularly measure, monitor and manage the liquidity of the investment fund's portfolio assets, keeping in mind the time to liquidate each portfolio asset, the price the asset may be sold at and the pattern of redemption requests.

(3) Furthermore, the Canadian securities regulatory authorities are of the view that illiquid assets are generally more difficult to value, for the purposes of calculating an investment fund's net asset value, than assets which are liquid. As a result, where a non-redeemable investment fund has a large proportion of its assets invested in illiquid assets, this raises concerns about the accuracy of the fund's net asset value and the amount of any fees calculated with reference to net asset value. Accordingly, staff of the Canadian securities regulatory authorities may raise comments or questions in the course of their reviews of the prospectuses or continuous disclosure documents of non-redeemable investment funds where such funds have a significant proportion of their assets invested in illiquid assets.

3.4 Investment in Other ~~Mutual~~Investment Funds

(1) **[Deleted]**

(2) Subsection 2.5(7) of the Instrument provides that certain investment restrictions and reporting requirements do not apply to investments in other ~~mutual~~investment funds made in accordance with section 2.5 of the Instrument. In some cases, ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds will be exempt from the requirements of section 2.5 of the Instrument because of an exemption granted by the regulator or securities regulatory authority. In these cases, assuming the ~~mutual~~investment fund complies with the terms of the exemption, its investments in other ~~mutual~~investment funds would be considered to have been made in accordance with section 2.5 of the Instrument. It is also noted that subsection 2.5(7) of the Instrument applies only with respect to ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds, and not for any other investment or transaction.

3.5 Instalments of Purchase Price – Paragraph 2.6(d) of the Instrument prohibits ~~a mutual~~an investment fund from purchasing a security, other than a specified derivative, that by its terms may require the ~~mutual~~investment fund to make a contribution in addition to the payment of the purchase price. This prohibition does not extend to the purchase of securities that are paid for on an instalment basis in which the total purchase price and the amounts of all instalments are fixed at the time the first instalment is made.

3.6 Purchase of Evidences of Indebtedness – Paragraph 2.6(f) of the Instrument prohibits ~~a mutual~~an investment fund from lending either cash or a portfolio asset other than cash. The Canadian securities regulatory authorities are of the view that the purchase of an evidence of indebtedness, such as a bond or debenture, a loan participation or loan syndication as permitted by paragraph 2.3(1)(i) or (2)(c) of the Instrument, or the purchase of a preferred share that is treated as debt for accounting purposes, does not constitute the lending of cash or a portfolio asset.

3.7 Securities Lending, Repurchase and Reverse Repurchase Transactions

(1) Section 2.12, 2.13 and 2.14 of the Instrument each contains a number of conditions that must be satisfied in order that ~~a mutual~~an investment fund may enter into a securities lending, repurchase or reverse repurchase transaction in compliance with the Instrument. It is expected that, in addition to satisfying these conditions, the manager on behalf of the ~~mutual~~investment fund, in co-ordination with an agent, will ensure that the documentation evidencing these types of transactions contains customary provisions to protect the ~~mutual~~investment fund and to document the transaction properly. Among other things, these provisions would normally include

(a) a definition of an "event of default" under the agreement, which would include failure to deliver cash or securities, or to promptly pay to the ~~mutual~~investment fund amounts equal to dividends and interest paid, and distributions made, on loaned or sold securities, as required by the agreement;

(b) provisions giving non-defaulting parties rights of termination, rights to sell the collateral, rights to purchase identical securities to replace the loaned securities and legal rights of set-off in connection with their obligations if an event of default occurs; and

(c) provisions that deal with, if an event of default occurs, how the value of collateral or securities held by the non-defaulting party that is in excess of the amount owed by the defaulting party will be treated.

(2) Section 2.12, 2.13 and 2.14 of the Instrument each imposes a requirement that ~~a mutual~~an investment fund that has entered into a securities lending, repurchase or reverse repurchase transaction hold cash or securities of at least 102 ~~percent~~% of the market value of the securities or cash held by the ~~mutual~~investment fund's counterparty under the transaction. It is noted that the 102 ~~percent~~% requirement is a minimum requirement, and that it may be appropriate for the manager of ~~a mutual~~an investment fund, or the agent acting on behalf of the ~~mutual~~investment fund, to negotiate

the holding of a greater amount of cash or securities if necessary to protect the interests of the ~~mutual~~investment fund in a particular transaction, having regard to the level of risk for the ~~mutual~~investment fund in the transaction. In addition, if the recognized best practices for a particular type of transaction in a particular market calls for a higher level of collateralization than 102~~ percent~~%, it is expected that, absent special circumstances, the manager or the agent would ensure that its arrangements reflect the relevant best practices for that transaction.

(3) Paragraph 3 of subsection 2.12(1) of the Instrument refers to securities lending transactions in terms of securities that are "loaned" by ~~a mutual~~an investment fund in exchange for collateral. Some securities lending transactions are documented so that title to the "loaned" securities is transferred from the "lender" to the "borrower". The Canadian securities regulatory authorities do not consider this fact as sufficient to disqualify those transactions as securities loan transactions within the meaning of the Instrument, so long as the transaction is in fact substantively a loan. References throughout the Instrument to "loaned" securities, and similar references, should be read to include securities "transferred" under a securities lending transaction.

(4) ~~Paragraph~~Subparagraph 6(d) of subsection 2.12(1) permits the use of irrevocable letters of credit as collateral in securities lending transactions. The Canadian securities regulatory authorities believe that, at a minimum, the prudent use of letters of credit will involve the following arrangements:

(a) the ~~mutual~~investment fund should be allowed to draw down any amount of the letter of credit at any time by presenting its sight draft and certifying that the borrower is in default of its obligations under the securities lending agreement, and the amount capable of being drawn down would represent the current market value of the outstanding loaned securities or the amount required to cure any other borrower default; and

(b) the letter of credit should be structured so that the lender may draw down, on the date immediately preceding its expiration date, an amount equal to the current market value of all outstanding loaned securities on that date.

(5) Paragraph 9 of subsection 2.12(1) and paragraph 8 of subsection 2.13(1) of the Instrument each provides that the agreement under which ~~a mutual~~an investment fund enters into a securities lending or repurchase transaction include a provision requiring the ~~mutual~~investment fund's counterparty to promptly pay to the ~~mutual~~investment fund, among other things, distributions made on the securities loaned or sold in the transaction. In this context, the term "distributions" should be read broadly to include all payments or distributions of any type made on the underlying securities, including, without limitation, distributions of property, stock dividends, securities received as the result of splits, all rights to purchase additional securities and full or partial redemption proceeds. This extended meaning conforms to the meaning given the term "distributions" in several standard forms of securities loan agreements widely used in the securities lending and repurchase markets.

(6) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each make reference to the "delivery" and "holding" of securities or collateral by the ~~mutual~~investment fund. The Canadian securities regulatory authorities note that these terms will include the delivery or holding by an agent for ~~a mutual~~an investment fund. In addition, the Canadian securities regulatory authorities recognize that under ordinary market practice, agents pool collateral for securities lending/repurchase clients; this pooling of itself is not considered a violation of the Instrument.

(7) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each require that the securities involved in a securities lending, repurchase or reverse repurchase transaction be marked to market daily and adjusted as required daily. It is recognized that market practice often involves an agent marking to market a portfolio at the end of a business day, and effecting the necessary adjustments to a portfolio on the next business day. So long as each action occurs on each business day, as required by the Instrument, this market practice is not a breach of the Instrument.

(8) As noted in subsection (7), the Instrument requires the daily marking to market of the securities involved in a securities lending, repurchase or reverse repurchase transaction. The valuation principles used in this marking to market may be those generally used by the agent acting for the ~~mutual~~investment fund, even if those principles deviate from the principles that are used by the ~~mutual~~investment fund in valuing its portfolio assets for the purposes of calculating net asset value.

(9) Paragraph 6 of subsection 2.13(1) of the Instrument imposes a requirement concerning the delivery of sales proceeds to the ~~mutual~~investment fund equal to 102~~ per cent~~% of the market value of the securities sold in the transaction. It is noted that accrued interest on the sold securities should be included in the calculation of the market value of those securities.

(10) Section 2.15 of the Instrument imposes the obligation on a manager of ~~a mutual~~an investment fund to appoint an agent or agents to administer its securities lending and repurchase transactions, and makes optional the ability of a manager to appoint an agent or agents to administer its reverse repurchase transactions. A manager that appoints more than

one agent to carry out these functions may allocate responsibility as it considers best. For instance, it may be appropriate that one agent be responsible for domestic transactions, with one or more agents responsible for offshore transactions. Managers should ensure that the various requirements of sections 2.15 and 2.16 of the Instrument are satisfied for all agents.

(11) It is noted that the responsibilities of an agent appointed under section 2.15 of the Instrument include all aspects of acting on behalf of ~~a mutual~~an investment fund in connection with securities lending, repurchase or reverse repurchase agreements. This includes acting in connection with the reinvestment of collateral or securities held during the life of a transaction.

(12) Subsection 2.15(3) of the Instrument requires that an agent appointed by ~~a mutual~~an investment fund to administer its securities lending, repurchase or reverse repurchase transactions shall be a custodian or sub-custodian of the ~~mutual~~investment fund. It is noted that the provisions of Part 6 of the Instrument generally apply to the agent in connection with its activities relating to securities lending, repurchase or reverse repurchase transactions. The agent must have been appointed as custodian or sub-custodian in accordance with section 6.1, and must satisfy the other requirements of Part 6 in carrying out its responsibilities.

(13) Subsection 2.15(~~5~~4) of the Instrument provides that the manager of ~~a mutual~~an investment fund ~~shall~~must not authorize an agent to enter into securities lending, repurchase or, if applicable, reverse repurchase transactions on behalf of the ~~mutual~~investment fund unless there is a written agreement between the agent, the manager and the ~~mutual~~investment fund that deals with certain prescribed matters. Subsection (~~5~~4) requires that the manager and the ~~mutual~~investment fund, in the agreement, provide instructions to the agent on the parameters to be followed in entering into the type of transaction to which the agreement pertains. The parameters would normally include

(a) details on the types of transactions that may be entered into by the ~~mutual~~investment fund;

(b) types of portfolio assets of the ~~mutual~~investment fund to be used in the transaction;

(c) specification of maximum transaction size, or aggregate amount of assets that may be committed to transactions at any one time;

(d) specification of permitted counterparties;

(e) any specific requirements regarding collateralization, including minimum requirements as to amount and diversification of collateralization, and details on the nature of the collateral that may be accepted by the ~~mutual~~investment fund;

(f) directions and an outline of responsibilities for the reinvestment of cash collateral received by the ~~mutual~~investment fund under the program to ensure that proper levels of liquidity are maintained at all times; and

(g) duties and obligations on the agent to take action to obtain payment by a borrower of any amounts owed by the borrower.

(14) The definition of “cash cover” contained in section 1.1 of the Instrument requires that the portfolio assets used for cash cover not be “allocated for specific purposes”. Securities loaned by a mutual fund in a securities lending transaction have been allocated for specific purposes and therefore cannot be used as cash cover by the mutual fund for its specified derivatives obligations.

(15) ~~A mutual~~An investment fund sometimes needs to vote securities held by it in order to protect its interests in connection with corporate transactions or developments relating to the issuers of the securities. The manager and the portfolio adviser of ~~a mutual~~an investment fund, or the agent of the ~~mutual~~investment fund administering a securities lending program on behalf of the ~~mutual~~investment fund, should monitor corporate developments relating to securities that are loaned by the ~~mutual~~investment fund in securities lending transactions, and take all necessary steps to ensure that the ~~mutual~~investment fund can exercise a right to vote the securities when necessary. This may be done by way of a termination of a securities lending transaction and recall of loaned securities, as described in paragraph 11 of subsection 2.12(1) of the Instrument.

(16) As part of the prudent management of a securities lending, repurchase or reverse repurchase program, managers of ~~mutual~~investment funds, together with their agents, should ensure that transfers of securities in connection with those programs are effected in a secure manner over an organized market or settlement system. For foreign securities, this may entail ensuring that securities are cleared through central depositories. ~~Mutual~~Investment funds and their agents should pay close attention to settlement arrangements when entering into securities lending, repurchase and reverse repurchase transactions.

3.7.1 Money Market Funds – Section 2.18 of the Instrument imposes daily and weekly liquidity requirements on money market funds. Specifically, money market funds must keep 5% of their assets invested in cash or readily convertible into cash within one day, and 15% of their assets invested in cash or readily convertible into cash within one week. Assets that are "readily convertible to cash" would generally be short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. Such assets can be sold in the ordinary course of business within one business day (in the case of the daily liquidity requirement) or within five business days (in the case of the weekly liquidity requirement) at approximately the value ascribed to them by the money market fund. The ~~CSA~~Canadian securities regulatory authorities note that the securities do not have to mature within the one and five business day periods. For example, direct obligations of the Canadian or U.S. government, or of a provincial government, that mature after one or five business days but that can be readily converted to cash within one or five business days, would likely be eligible for the 5% and 15% liquidity requirements.

3.8 Prohibited Investments

(1) Subsection 4.1(4) of the Instrument permits a dealer managed ~~mutual~~investment fund to make an investment otherwise prohibited by subsection 4.1(1) of the Instrument and the corresponding provisions in securities legislation referred to in Appendix C to ~~NI 81-102~~the Instrument if the independent review committee of the dealer managed ~~mutual~~investment fund has approved the transaction under subsection 5.2(2) of ~~NI 81-107. The CSA~~National Instrument 81-107 *Independent Review Committee for Investment Funds* ("NI 81-107"). The Canadian securities regulatory authorities expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

(2) Subsection 4.3(2) of the Instrument permits ~~a mutual~~an investment fund to purchase a class of debt securities from, or sell a class of debt securities to, another ~~mutual~~investment fund managed by the same manager or an affiliate of the manager where the price payable for the security is not publicly available, if the independent review committee of the ~~mutual~~investment fund has approved the transaction under subsection 5.2(2) of NI 81-107 and the requirements in section 6.1 of NI 81-107 have been met. The ~~CSA~~Canadian securities regulatory authorities expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

(3) In providing its approval under paragraph 4.3(2)~~, the CSA~~ of the Instrument, the Canadian securities regulatory authorities expect the independent review committee to have satisfied itself that the price of the security is fair. It may do this by considering the price quoted on a marketplace (e.g., CanPx or TRACE), or by obtaining a quote from an independent, arm's-length purchaser or seller, immediately before the purchase or sale.

PART 4 USE OF SPECIFIED DERIVATIVES

4.1 Exercising Options on Futures – Paragraphs 2.8(1)(d) and (e) of the Instrument prohibit a mutual fund from, among other things, opening and maintaining a position in a standardized future except under the conditions referred to in those paragraphs. Opening and maintaining a position in a standardized future could be effected through the exercise by a mutual fund of an option on futures. Therefore, it should be noted that a mutual fund cannot exercise an option on futures and assume a position in a standardized future unless the applicable provisions of paragraphs 2.8(1)(d) or (e) are satisfied.

4.2 Registration Matters – The Canadian securities regulatory authorities remind industry participants of the following requirements contained in securities legislation:

1. ~~A mutual~~An investment fund may only invest in or use clearing corporation options and over-the-counter options if the portfolio adviser advising with respect to these investments

   (a) is permitted, either by virtue of registration as an adviser under the securities legislation or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice or an exemption from the requirement to be registered, to provide that advice to the ~~mutual~~investment fund under the laws of that jurisdiction; and

   (b) has satisfied all applicable option proficiency requirements of that jurisdiction ~~which, ordinarily, will involve completion of the Canadian Options Course~~.

2. ~~A mutual~~An investment fund may invest in or use futures and options on futures only if the portfolio adviser advising with respect to these investments or uses is registered as an adviser under the securities or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice, if this registration is required in that jurisdiction, and meets the proficiency requirements for advising with respect to futures and options on futures in the jurisdiction.

3. A portfolio adviser of ~~a mutual~~an investment fund that receives advice from a non-resident sub-adviser as contemplated by section 2.10 of the Instrument is not relieved from the registration requirements described in paragraphs 1 and 2.

4. In Ontario, a non-resident sub-adviser is required, under the commodity futures legislation of Ontario, to be registered in Ontario if it provides advice to another portfolio adviser of ~~a mutual~~an investment fund in Ontario concerning the use of standardized futures by the ~~mutual~~investment fund. Section 2.10 of the Instrument does not exempt the non-resident sub-adviser from this requirement. A non-resident sub-adviser should apply for an exemption in Ontario if it wishes to carry out the arrangements contemplated by section 2.10 without being registered in Ontario under that legislation.

4.3 Leveraging – The Instrument is designed to prevent the use of specified derivatives for the purpose of leveraging the assets of the mutual fund. The definition of "hedging" prohibits leveraging with specified derivatives used for hedging purposes. The provisions of subsection 2.8(1) of the Instrument restrict leveraging with specified derivatives used for non-hedging purposes.

4.4 Cash Cover – The definition of "cash cover" in the Instrument prescribes the securities or other portfolio assets that may be used to satisfy the cash cover requirements relating to specified derivatives positions of mutual funds required by Part 2 of the Instrument. The definition of "cash cover" includes various interest-bearing securities; the definition includes interest accrued on those securities, and so mutual funds are able to include accrued interest for purposes of cash cover calculations.

PART 5 LIABILITY AND INDEMNIFICATION

5.1 Liability and Indemnification

(1) Subsection 4.4(1) of the Instrument contains provisions that require that any agreement or declaration of trust under which a person or company acts as manager of ~~a mutual~~an investment fund provide that the manager is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to discharge any of the manager's responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section. Subsection 4.4(2) of the Instrument provides that ~~a mutual~~an investment fund ~~shall~~must not relieve the manager from that liability.

(2) The purpose of these provisions is to ensure that the manager remains responsible to the ~~mutual~~investment fund and therefore indirectly to its securityholders for the duty of care that is imposed by the securities legislation of most jurisdictions, and to clarify that the manager is responsible ~~to ensure~~for ensuring that service providers perform to the level of that standard of care. The Instrument does not regulate the contractual relationships between the manager and service providers; whether a manager can seek indemnification from a service provider that fails to satisfy that standard of care is a contractual issue between those parties.

(3) Subsection 4.4(5) of the Instrument provides that section 4.4 does not apply to any losses to ~~a mutual~~an investment fund or securityholder arising out of an action or inaction by a custodian or ~~subcustodian~~sub-custodian or by a director of ~~a mutual~~an investment fund. A separate liability regime is imposed, on custodians or sub-custodians by section 6.6 of the Instrument. Directors are subject to the liability regime imposed by the relevant corporate legislation.

5.2 Securities Lending, Repurchase and Reverse Repurchase Transactions

(1) As described in section 5.1, section 4.4 of the Instrument is designed to ensure that the manager of ~~a mutual~~an investment fund is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to discharge any of the manager~~'~~'s responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section.

(2) The retention by a manager of an agent under section 2.15 of the Instrument to administer the ~~mutual~~investment fund's securities lending, repurchase or reverse repurchase transactions does not relieve the manager from ultimate responsibility for the administration of those transactions in accordance with the Instrument and in conformity with the standard of care imposed on the manager by statute and required to be imposed on the agent in the relevant agreement by subsection 2.15(~~6~~4) of the Instrument.

(3) ~~Because the agent is required to be a~~Under subsection 2.15(3) of the Instrument, the custodian or sub-custodian of ~~the mutual fund, its~~an investment fund must be the agent appointed to act on behalf of the investment fund to administer securities lending, repurchase or reverse repurchase transactions of the investment fund. The activities of the agent, as custodian or sub-custodian, are not within the responsibility of the manager of the ~~mutual~~investment fund, as provided for in subsection 4.4(5) of the Instrument. However, the activities of the agent, in its role as administering the

~~mutual~~investment funds' securities lending, repurchase or reverse repurchase transactions, are within the ultimate responsibility of the manager, as provided for in subsection 4.4(6) of the Instrument.

PART 6 SECURITYHOLDER MATTERS

6.1 Meetings of Securityholders – Subsection 5.4(1) of the Instrument imposes a requirement that a meeting of securityholders of ~~a mutual~~an investment fund called for the purpose of considering any of the matters referred to in ~~section~~subsection 5.1(1) of the Instrument must be called on notice sent at least 21 days before the date of the meeting. Industry participants are reminded that the provisions of National ~~Policy Statement No. 41,~~Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or a successor instrument, may apply to any meetings of securityholders of ~~mutual~~investment funds and that those provisions may require that a longer period of notice be given.

6.2 Limited Liability

(1) ~~Mutual~~Investment funds generally are structured in a manner that ensures that investors are not exposed to the risk of loss of an amount more than their original investment. This is a very important and essential attribute of ~~mutual~~investment funds.

(2) ~~Mutual~~Investment funds that are structured as corporations do not raise pressing liability problems because of the limited liability regime of corporate statutes.

(3) ~~Mutual~~Investment funds that are structured as limited partnerships may raise some concerns about the loss of limited liability if limited partners participate in the management or control of the partnership. The Canadian securities regulatory authorities encourage managers of ~~mutual~~investment funds that are structured as limited partnerships to consider this issue in connection with the holding of meetings of securityholders, even if required under ~~section~~subsection 5.1(1) of the Instrument. In addition, in the view of the Canadian securities regulatory authorities, all managers of ~~mutual~~investment funds that are structured as limited partnerships should ~~consider whether disclosure and~~include a discussion of this issue ~~should be included~~ as a risk factor in prospectuses.

6.3 Calculation of Fees

(1) Paragraph 5.1(1)(a) of the Instrument requires securityholder approval before the basis of the calculation of a fee or expense that is charged to ~~a mutual~~an investment fund is changed in a way that could result in an increase in charges to the ~~mutual~~investment fund. The Canadian securities regulatory authorities note that the phrase "basis of the calculation" includes any increase in the rate at which a particular fee is charged to the ~~mutual~~investment fund.

(2) The ~~CSA~~Canadian securities regulatory authorities are of the view that the requirement of ~~subsection~~paragraph 5.1(1)(a) of the Instrument would not apply in instances where the change to the basis of the calculation is the result of separate individual agreements between the manager of the ~~mutual~~investment fund and individual securityholders of the ~~mutual~~investment fund, and the resulting increase in charges is payable directly or indirectly by those individual securityholders only.

6.4. Fund Conversions

(1) For the purposes of subparagraphs 5.1(1)(h)(i), (ii) and (iii) of the Instrument, the Canadian securities regulatory authorities consider that any change that will restructure an investment fund from its original structure requires the prior approval of the securityholders of the investment fund. For example, a non-redeemable investment fund may be designed to convert into a mutual fund on a specified date, or it may be designed to convert into a mutual fund after a specified date if the securities of the investment fund have traded at a specified discount to their net asset value per security for more than a set period of time. In each case, when the event that triggers the conversion occurs, the redemption feature of the securities of the non-redeemable investment fund changes and the securities of the non-redeemable investment fund will typically become redeemable at their net asset value per security daily. This change in the redemption feature of the securities of the investment fund may not be implemented unless securityholder approval has been obtained under subparagraph 5.1(1)(h)(i) of the Instrument. Another example of a change requiring securityholder approval is where an investment fund seeks to obtain control, or become involved in the management, of companies in which it invests, which is inconsistent with the nature of an investment fund. In such a situation, the investment fund would be required to obtain securityholder approval under subparagraph 5.1(1)(h)(iii) of the Instrument, in order to convert into a non-investment fund issuer, before it could become involved in the management of, or exercise control over, investees.

(2) For the purposes of subsection 5.1(2) of the Instrument, the Canadian securities regulatory authorities consider the costs and expenses associated with a change referred to in paragraph 5.1(1)(h) of the Instrument to include costs

associated with the securityholder meeting to obtain approval of the change, the costs of preparing and filing a prospectus to commence continuous distribution of securities if the investment fund is converting from a non-redeemable investment fund to a mutual fund in continuous distribution, and brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction.

PART 7 CHANGES

7.1 Integrity and Competence of ~~Mutual~~Investment Fund Management Groups

(1) Paragraph 5.5(1)(a) of the Instrument requires that the approval of the securities regulatory authority be obtained before the manager of ~~a mutual~~an investment fund is changed. ~~Subsection~~Paragraph 5.5(~~2~~1)(a.1) of the Instrument contemplates similar approval to a change in control of a manager.

(2) In connection with each of these approvals, applicants are required by section 5.7 of the Instrument to provide information to the securities regulatory authority concerning the integrity and experience of the persons or companies that are proposed to be involved in, or control, the management of the ~~mutual~~investment fund after the proposed transaction.

(3) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the proposed new management group that will manage ~~a mutual~~an investment fund after a change in manager if the application set out, among any other information the applicant wishes to provide

(a) the name, registered address and principal business activity or the name, residential address and occupation or employment of

(i) if the proposed manager is not a public company, each beneficial owner of securities of each shareholder, partner or limited partner of the proposed manager, and

(ii) if the proposed manager is a public company, each beneficial owner of securities of each shareholder of the proposed manager that is the beneficial holder, directly or indirectly, of more than 10 ~~percent~~% of the outstanding securities of the proposed manager; and

(b) information concerning

(i) if the proposed manager is not a public company, each shareholder, partner or limited partner of the proposed manager,

(ii) if the proposed manager is a public company, each shareholder that is the beneficial holder, directly or indirectly, of more than 10 ~~percent~~% of the outstanding securities of the proposed manager,

(iii) each director and officer of the proposed manager, and

(iv) each proposed director, officer or individual trustee of the ~~mutual~~investment fund.

(4) The Canadian securities regulatory authorities would generally consider it helpful if the information relating to the persons and companies referred to in paragraph (3)(b) included

(a) for a company

(i) its name, registered address and principal business activity,

(ii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly, and

(iii) particulars of any existing or potential conflicts of interest that may arise as a result of the activities of the company and its relationship with the management group of the ~~mutual~~investment fund; and

(b) for an individual

(i) his or her name, birthdate and residential address,

(ii) his or her principal occupation or employment,

(iii) his or her principal occupations or employment during the five years before the date of the application, with a particular emphasis on the individual's experience in the financial services industry,

(iv) the individual's educational background, including information regarding courses successfully taken that relate to the financial services industry,

(v) his or her position and responsibilities with the proposed manager or the controlling shareholders of the proposed manager or the ~~mutual~~investment fund,

(vi) whether he or she is, or within five years before the date of the application has been, a director, officer or promoter of any reporting issuer other than the ~~mutual~~investment fund, and if so, disclosing the names of the reporting issuers and their business purpose, with a particular emphasis on relationships between the individual and other ~~mutual~~investment funds,

(vii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly,

(viii) particulars of any existing or potential conflicts of interest that may arise as a result of the individual's outside business interests and his or her relationship with the management group of the ~~mutual~~investment fund, and

(ix) a description of the individual's relationships to the proposed manager and other service providers to the ~~mutual~~investment fund.

(5) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the persons or companies that are proposed to manage ~~a mutual~~an investment fund after a change of control of the manager, if the application set out, among any other information that applicant wishes to provide, a description of

(a) the proposed corporate ownership of the manager of the ~~mutual~~investment fund after the proposed transaction, indicating for each proposed direct or indirect shareholder of the manager of the ~~mutual~~investment fund the information about that shareholder referred to in subsection (4);

(b) the proposed officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund, indicating for each individual, the information about that individual referred to in subsection (4);

(c) any anticipated changes to be made to the officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund that are not set out in paragraph (b); and

(d) the relationship of the members of the proposed controlling shareholders and the other members of the management group to the manager and any other service provider to the ~~mutual~~investment fund.

7.2 Mergers ~~and Conversions of Mutual~~of Investment Funds – Subsection 5.6(1) of the Instrument provides that mergers ~~or conversions~~ of ~~mutual~~investment funds may be carried out on the conditions described in that subsection without prior approval of the securities regulatory authority. The Canadian securities regulatory authorities consider that the types of transactions contemplated by subsection 5.6(1) of the Instrument when carried out in accordance with the conditions of that subsection address the fundamental regulatory concerns raised by mergers ~~and conversions of mutual~~of investment funds. Subsection 5.6(1) of the Instrument is designed to facilitate consolidations of ~~mutual~~investment funds within fund families that have similar fundamental investment objectives and strategies and that are operated in a consistent and similar fashion. Since subsection 5.6(1) will be unavailable unless the ~~mutual~~investment funds involved in the transaction have substantially similar fundamental investment objectives and strategies and are operated in a substantially similar fashion, the Canadian securities regulatory authorities do not expect that the portfolios of the consolidating funds will be required to be realigned to any great extent before a merger. If realignment is necessary, the Canadian securities regulatory authorities note that paragraph 5.6(1)(h) of the Instrument provides that none of the costs and expenses associated with the transaction may be borne by the ~~mutual~~investment fund. Brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction would, in the view of the Canadian securities regulatory authorities, be costs and expenses associated with the transaction.

7.3 Regulatory Approval for Reorganizations

(1) Paragraph 5.7(1)(b) of the Instrument requires certain details to be provided in respect of an application for regulatory approval required by paragraph 5.5(1)(b) that is not automatically approved under subsection 5.6(1). The Canadian securities regulatory authorities will be reviewing this type of proposed transaction, among other things, to ensure that adequate disclosure of the differences between the ~~funds~~issuers participating in the proposed transaction is given to securityholders of the ~~mutual~~investment fund that will be merged, reorganized or amalgamated with another ~~mutual fund~~issuer.

(2) If ~~a mutual~~an investment fund is proposed to be merged, amalgamated or reorganized with ~~a mutual~~an investment fund that has a net asset value that is smaller than the net asset value of the terminating ~~mutual~~investment fund, the Canadian securities regulatory authorities will consider the implications of the proposed transaction on the smaller continuing ~~mutual~~investment fund. The Canadian securities regulatory authorities believe that this type of transaction generally would constitute a material change for the smaller continuing ~~mutual~~investment fund, thereby triggering the requirements of paragraph 5.1(1)(g) of the Instrument and Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

7.4 [Deleted]

7.5 Circumstances in Which Approval of Securityholders Not Required

(1) Subsection 5.3(2) of the Instrument provides that ~~a mutual~~an investment fund's reorganization with, or transfer of assets to, another ~~mutual fund~~issuer may be carried out on the conditions described in ~~the subsection~~paragraph 5.3(2)(a) or (b) without the prior approval of the securityholders of the ~~mutual~~investment fund.

(2) If the manager refers the change contemplated in subsection 5.3(2) of the Instrument to the ~~mutual~~investment fund's independent review committee, and subsequently seeks the approval of the securityholders of the ~~mutual~~investment fund, the ~~CSA~~Canadian securities regulatory authorities expect the manager to include a description of the independent review committee's determination in the written notice to securityholders referred to in section 5.4 of ~~this~~the Instrument.

(3) The Canadian securities regulatory authorities expect the written notice referred to in subparagraph 5.3(2)(a)(iv) and (v) of the Instrument to include, at a minimum, the expected date of the reorganization, the name of the other investment fund with which the investment fund will be reorganized, how a securityholder of the investment fund may obtain a copy of the other investment fund's fund facts, simplified prospectus or annual information form, as applicable, and a description of the determination of the investment fund's independent review committee with respect to the reorganization.

7.6 Change of Auditor – Section 5.3.1 of the Instrument requires that the independent review committee of the ~~mutual~~investment fund give its prior approval to the manager before the auditor of the ~~mutual~~investment fund may be changed.

7.7 Connection to NI 81-107 – There may be matters under ~~section~~subsection 5.1(1) of the Instrument that may also be a conflict of interest matter as defined in NI 81-107. The ~~CSA~~Canadian securities regulatory authorities expect any matter under ~~section~~subsection 5.1(1) of the Instrument subject to review by the independent review committee to be referred by the manager to the independent review committee before seeking the approval of securityholders of the ~~mutual~~investment fund. The ~~CSA~~Canadian securities regulatory authorities further expect the manager to include a description of the independent review committee's determination in the written notice to securityholders referred to in subsection 5.4(2) of ~~this~~the Instrument.

7.8 Termination of an Investment Fund – Subsection 5.8(2) of the Instrument requires a mutual fund that is terminating to give notice of the termination to all securityholders of the mutual fund. Section 5.8.1 of the Instrument requires a non-redeemable investment fund that is terminating to issue and file a press release announcing the termination. Investment funds for which the termination is a material change must also comply with the requirements of Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

PART 8 CUSTODIANSHIP OF PORTFOLIO ASSETS

8.1 Standard of Care – The standard of care prescribed by section 6.6 of the Instrument is a minimum standard only. Similarly, the provisions of section 6.5 of the Instrument, designed to protect ~~a mutual~~an investment fund from loss in the event of the insolvency of those holding its portfolio assets, are minimum requirements. The Canadian securities regulatory authorities are of the view that the requirements set out in section 6.5 may require custodians and sub-custodians to take such additional steps as may be necessary or desirable properly to protect the portfolio assets of the

~~mutual~~investment fund in a foreign jurisdiction and to ensure that those portfolio assets are unavailable to satisfy the claims of creditors of the custodian or sub-custodian, having regard to creditor protection and bankruptcy legislation of any foreign jurisdiction in which portfolio assets of ~~a mutual~~an investment fund may be located.

8.2 Book-Based System

(1) Subsection 6.5(3) of the Instrument provides that a custodian or sub-custodian of ~~a mutual~~an investment fund may arrange for the deposit of portfolio assets of the ~~mutual~~investment fund with a depository, or clearing agency, that operates a book-based system. Such depositories or clearing agencies include The Canadian Depository For Securities Limited, the Depository Trust Company or any other domestic or foreign depository or clearing agency that is incorporated or organized under the laws of a country or a political subdivision of a country and operates a book-based system in that country or political subdivision or operates a transnational book-based system.

(2) A depository or clearing agency that operates a book-based system used by ~~a mutual~~an investment fund is not considered to be a custodian or sub-custodian of the ~~mutual~~investment fund.

8.3 Compliance – Paragraph 6.7(1)(c) of the Instrument requires the custodian of ~~a mutual~~an investment fund to make any changes periodically that may be necessary to ensure that the custodian and sub-custodian agreements comply with Part 6, and that there is no sub-custodian of the ~~mutual~~investment fund that does not satisfy the applicable requirements of sections 6.2 or 6.3. The Canadian securities regulatory authorities note that necessary changes to ensure this compliance could include a change of sub-custodian.

PART 9 CONTRACTUAL PLANS

9.1 Contractual Plans – Industry participants are reminded that the term "contractual plan" used in Part 8 of the Instrument is a defined term in the securities legislation of most jurisdictions, and that contractual plans as so defined are not the same as automatic or periodic investment plans. The distinguishing feature of a contractual plan is that sales charges are not deducted at a constant rate as investments in mutual fund securities are made under the plan; rather, proportionately higher sales charges are deducted from the investments made during the first year, or in some plans the first two years.

PART 10 SALES AND REDEMPTIONS OF SECURITIES

10.1 General ~~—~~ The purposes of Parts 9, 10 and 11 of the Instrument ~~are intended to ensure~~include ensuring that

(a) investors' cash is received by ~~a mutual~~an investment fund promptly;

(b) the opportunity for loss of an investors' cash before investment in the ~~mutual~~investment fund is minimized; and

(c) the ~~mutual~~investment fund or the appropriate investor receives all interest that accrues on cash during the periods between delivery of the cash by an investor until investment in the ~~mutual~~investment fund, in the case of the purchase of ~~mutual~~investment fund securities, or between payment of the cash by the ~~mutual~~investment fund until receipt by the investor, in the case of redemptions.

10.2 Interpretation

(1) ~~The Instrument refers to "securityholders" of a mutual fund in several provisions, most notably in Parts 9 and 10 when referring to purchase and redemption orders received by a mutual fund or a participating dealer or principal distributor from "securityholders".~~ **[Deleted]**

(2) The Instrument refers to "securityholders" of an investment fund in several provisions. ~~Mutual~~Investment funds must keep a record of the holders of their securities. ~~A mutual~~An investment fund registers a holder of its securities on this record as requested by the person or company placing a purchase order or as subsequently requested by that registered securityholder. The Canadian securities regulatory authorities are of the view that ~~a mutual~~an investment fund is entitled to rely on its register of holders of securities to determine the names of such holders and in its determination as to whom it is to take instructions from.

(3) Accordingly, when the Instrument refers to "securityholder" of ~~a mutual~~an investment fund, it is referring to the securityholder registered as a holder of securities on the records of the ~~mutual~~investment fund. If that registered securityholder is a participating dealer acting for its client, the ~~mutual~~investment fund deals with and takes instructions from that participating dealer. The Instrument does not regulate the relationship between the participating dealer and its

client for whom the participating dealer is acting as agent. The Canadian securities regulatory authorities note however, that the participating dealer should, as a matter of prudent business practice, obtain appropriate instructions, in writing, from its client when dealing with the client's beneficial holdings in ~~a mutual~~an investment fund.

10.3 Receipt of Orders

(1) A principal distributor or participating dealer of a mutual fund should endeavour, to the extent possible, to receive cash to be invested in the mutual fund at the time the order to which they pertain is placed.

(2) A dealer receiving an order for redemption should, at the time of receipt of the investor's order, obtain from the investor all relevant documentation required by the mutual fund in respect of the redemption including, without limitation, any written request for redemption that may be required by the mutual fund, duly completed and executed, and any certificates representing the mutual fund securities to be redeemed, so that all required documentation is available at the time the redemption order is transmitted to the mutual fund or to its principal distributor for transmittal to the mutual fund.

10.4 Backward Pricing – ~~Sections~~Subsections 9.3(1) and 10.3(1) of the Instrument provide that the issue price or the redemption price of a security of a mutual fund to which a purchase order or redemption order pertains shall be the net asset value per security, next determined after the receipt by the mutual fund of the relevant order. For clarification, the Canadian securities regulatory authorities emphasize that the issue price and redemption price cannot be based upon any net asset value per security calculated before receipt by the mutual fund of the relevant order.

10.5 Coverage of Losses

(1) Subsection 9.4(6) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a failed settlement of a purchase of securities of the mutual fund. Similarly, subsection 10.5(3) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a redemption that could not be completed due to the failure to satisfy the requirements of the mutual fund concerning redemptions.

(2) The Canadian securities regulatory authorities have not carried forward into the Instrument the provisions contained in NP39 relating to a participating dealer's ability to recover from their clients or other participating dealers any amounts that they were required to pay to a mutual fund. If participating dealers wish to provide for such rights they should make the appropriate provisions in the contractual arrangements that they enter into with their clients or other participating dealers.

10.6 Issue Price of Securities for Non-Redeemable Investment Funds

(1) Paragraph 9.3(2)(a) of the Instrument provides that the issue price of the securities of a non-redeemable investment fund must not, as far as reasonably practicable, be a price that causes dilution of the net asset value of the other outstanding securities of the investment fund at the time the security is issued. The Canadian securities regulatory authorities consider that, to satisfy this requirement, the issue price of the securities should generally not be a price that is less than the net asset value per security of that class, or series of a class, determined on the date of issuance. However, the Canadian securities regulatory authorities recognize that the determination of what is "reasonably practicable" is fact-specific and will vary depending on the type of offering or issuance.

(2) For example, the Canadian securities regulatory authorities generally expect that any issuances of new securities of a non-redeemable investment fund in connection with a merger of the fund, or any issuances of new securities to the manager of the non-redeemable investment fund as payment of management fees, be issued at a price that is not less than the NAV per security on the date of issuance. However, the Canadian securities regulatory authorities have observed when an existing non-redeemable investment fund issues new securities under a prospectus, the issue price typically exceeds the net asset value per security on the day before the date of the prospectus, such that the net proceeds of the offering on a per unit basis is no less than the net asset value per security on the day before the date of the prospectus. The Canadian securities regulatory authorities do not consider this issue price to cause dilution to the net asset value of other outstanding securities of the investment fund.

PART 11 COMMINGLING OF CASH

11.1 Commingling of Cash

(1) Part 11 of the Instrument requires principal distributors and participating dealers to account separately for cash they may receive for the purchase of, or upon the redemption of, ~~mutual~~investment fund securities. Those principal distributors and participating dealers are prohibited from commingling any cash so received with their other assets or

with cash held for the purchase or upon the sale of securities of other types of securities. The Canadian securities regulatory authorities are of the view that this means that dealers may not deposit into the trust accounts established under Part 11 cash obtained from the purchase or sale of other types of securities such as guaranteed investment certificates, government treasury bills, segregated funds or bonds.

(2) Subsections 11.1(2) and 11.2(2) of the Instrument state that principal distributors and participating dealers, respectively, may not use any cash received for the investment in ~~mutual~~investment fund securities to finance their own operations. The Canadian securities regulatory authorities are of the view that any costs associated with returned client cheques that did not have sufficient funds to cover a trade ("NSF cheques") are a cost of doing business and should be borne by the applicable principal distributor or participating dealer and should not be offset by interest income earned on the trust accounts established under Part 11 of the Instrument.

(3) No overdraft positions should arise in these trust accounts.

(4) Subsections 11.1(3) and 11.2(3) of the Instrument prescribe the circumstances under which a principal distributor or participating dealer, respectively, may withdraw funds from the trust accounts established under Part 11 of the Instrument. This would prevent the practice of "lapping". Lapping occurs as a result of the timing differences between trade date and settlement date, when cash of ~~a mutual~~an investment fund client held for a trade which has not yet settled is used to settle a trade for another ~~mutual~~investment fund client who has not provided adequate cash to cover the settlement of that other trade on the settlement date. The Canadian securities regulatory authorities view this practice as a violation of subsections 11.1(3) and 11.2(3) of the Instrument.

(5) Subsections 11.1(4) and 11.2(4) of the Instrument require that interest earned on cash held in the trust accounts established under Part 11 of the Instrument be paid to the applicable ~~mutual~~investment fund or its securityholders "pro rata based on cash flow". The Canadian securities regulatory authorities are of the view that this requirement means, in effect, that the applicable ~~mutual~~investment fund or securityholder should be paid the amount of interest that the ~~mutual~~investment fund or securityholder would have received had the cash held in trust for that ~~mutual~~investment fund or securityholder been the only cash held in that trust account.

(6) Paragraph 11.3(b) of the Instrument requires that trust accounts maintained in accordance with sections 11.1 or 11.2 of the Instrument bear interest "at rates equivalent to comparable accounts of the financial institution". A type of account that ordinarily pays zero interest may be used for trust accounts under sections 11.1 or 11.2 of the Instrument so long as zero interest is the rate of interest paid on that type of account for all depositors other than trust accounts.

PART 12 [Deleted]

PART 13 PROHIBITED REPRESENTATIONS AND SALES COMMUNICATIONS

13.1 Misleading Sales Communications

(1) Part 15 of the Instrument prohibits misleading sales communications relating to ~~mutual~~investment funds and asset allocation services. Whether a particular description, representation, illustration or other statement in a sales communication is misleading depends upon an evaluation of the context in which it is made. The following list sets out some of the circumstances, in the view of the Canadian securities regulatory authorities, in which a sales communication would be misleading. No attempt has been made to enumerate all such circumstances since each sales communication must be assessed individually.

1. A statement would be misleading if it lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement not misleading.

2. A representation about past or future investment performance would be misleading if it is

   (a) a portrayal of past income, gain or growth of assets that conveys an impression of the net investment results achieved by an actual or hypothetical investment that is not justified under the circumstances;

   (b) a representation about security of capital or expenses associated with an investment that is not justified under the circumstances or a representation about possible future gains or income; or

   (c) a representation or presentation of past investment performance that implies that future gains or income may be inferred from or predicted based on past investment performance or portrayals of past performance.

3. A statement about the characteristics or attributes of ~~a mutual~~an investment fund or an asset allocation service would be misleading if

   (a) it concerns possible benefits connected with or resulting from services to be provided or methods of operation and does not give equal prominence to discussion of any risks or associated limitations;

   (b) it makes exaggerated or unsubstantiated claims about management skill or techniques; characteristics of the ~~mutual~~investment fund or asset allocation service; an investment in securities issued by the fund or recommended by the service; services offered by the fund, the service or their respective manager; or effects of government supervision; or

   (c) it makes unwarranted or incompletely explained comparisons to other investment vehicles or indices.

4. A sales communication that quoted a third party source would be misleading if the quote were out of context and proper attribution of the source were not given.

(2) Performance data information may be misleading even if it complies technically with the requirements of the Instrument. For instance, subsections 15.8(1) and (2) of the Instrument contain requirements that the standard performance data for ~~mutual~~investment funds given in sales communications be for prescribed periods falling within prescribed amounts of time before the date of the appearance or use of the advertisement or first date of publication of any other sales communication. That standard performance data may be misleading if it does not adequately reflect intervening events occurring after the prescribed period. An example of such an intervening event would be, in the case of money market funds, a substantial decline in interest rates after the prescribed period.

(3) An advertisement that presents information in a manner that distorts information contained in the preliminary prospectus or prospectus, or preliminary prospectus, preliminary fund facts document and preliminary annual information form or prospectus, fund facts document and annual information form, as applicable, of ~~a mutual~~an investment fund or that includes a visual image that provides a misleading impression will be considered to be misleading.

(4) Any discussion of the income tax implications of an investment in ~~a mutual~~an investment fund security should be balanced with a discussion of any other material aspects of the offering.

(5) Paragraph 15.2(1)(b) of the Instrument provides that sales communications must not include any statement that conflicts with information that is contained in, among other things and as applicable, a prospectus or fund facts document. The Canadian securities regulatory authorities are of the view that a sales communication that provides performance data in compliance with the requirements of Part 15 of the Instrument for time periods that differ from those shown in a prospectus, fund facts document or management report of fund performance does not violate the requirements of paragraph 15.2(1)(b) of the Instrument.

(6) Subsection 15.3(1) of the Instrument permits ~~a mutual~~an investment fund or asset allocation service to compare its performance to, among other things, other types of investments or benchmarks on certain conditions. Examples of such other types of investments or benchmarks to which the performance of ~~a mutual~~an investment fund or asset allocation service may be compared include consumer price indices; stock, bond or other types of indices; averages; returns payable on guaranteed investment certificates or other certificates of deposit; and returns from an investment in real estate.

(7) Paragraph 15.3(1)(c) of the Instrument requires that, if the performance of ~~a mutual~~an investment fund or asset allocation service is compared to that of another investment or benchmark, the comparison sets out clearly any factors necessary to ensure that the comparison is fair and not misleading. Such factors would include an explanation of any relevant differences between the ~~mutual~~investment fund or asset allocation service and the investment or benchmark to which it is compared. Examples of such differences include any relevant differences in the guarantees of, or insurance on, the principal of or return from the investment or benchmark; fluctuations in principal, income or total return; any differing tax treatment; and, for a comparison to an index or average, any differences between the composition or calculation of the index or average and the investment portfolio of the ~~mutual~~investment fund or asset allocation service.

13.2 Other Provisions

(1) Subsection 15.9(1) of the Instrument imposes certain disclosure requirements for sales communications in circumstances in which there was a change in the business, operations or affairs of ~~a mutual~~an investment fund or asset allocation service during or after a performance measurement period of performance data contained in the sales communication that could have materially affected the performance of the ~~mutual~~investment fund or asset allocation

service. Examples of these changes are changes in the management, investment objectives, portfolio adviser, ownership of the manager, fees and charges, or of policies concerning the waiving or absorbing of fees and charges, of the ~~mutual~~investment fund or asset allocation service; or of a change in the characterization of ~~the~~a mutual fund as a money market fund. A reorganization or restructuring of an investment fund that results in a conversion of a non-redeemable investment fund into a mutual fund, or the conversion of a mutual fund into a non-redeemable investment fund, would also be an example of such a change.

(1.1) Subparagraph 15.6(1)(d)(i) of the Instrument prohibits a sales communication pertaining to a mutual fund from including performance data for a period that is before the time when the mutual fund offered its securities under a prospectus. Where the mutual fund has previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months, either as a mutual fund or a non-redeemable investment fund, subsection 15.6(2) requires any sales communication that contains performance data of the mutual fund to include performance data for the period that the fund existed as a non-redeemable investment fund. The Canadian securities regulatory authorities are of the view that performance data pertaining to a mutual fund that has converted from a non-redeemable investment fund should include both the periods before and after the converting transaction, similar to the past performance information presented in the mutual fund's management report of fund performance. Performance data must not be included for any period before the time the non-redeemable investment fund was a reporting issuer.

(2) Paragraph 15.11(1)5 of the Instrument requires that no non-recurring fees and charges that are payable by some or all securityholders and no recurring fees and charges that are payable by some but not all securityholders be assumed in calculating standard performance data. Examples of non-recurring types of fees and charges are front-end sales commissions and contingent deferred sales charges, and examples of recurring types of fees and charges are the annual fees paid by purchasers who purchased on a contingent deferred charge basis.

(3) Paragraphs 15.11(1)2 and 15.11(2)2 of the Instrument require that no fees and charges related to optional services be assumed in calculating standard performance data. Examples of these fees and charges include transfer fees, except in the case of an asset allocation service, and fees and charges for registered retirement savings plans, registered retirement income funds, registered education savings plans, pre-authorized investment plans and systematic withdrawal plans.

(4) The Canadian securities regulatory authorities are of the view that it is inappropriate and misleading for ~~a mutual~~an investment fund that is continuing following a merger to prepare and use *pro forma* performance information or financial statements that purport to show the combined performance of the two funds during a period before their actual merger. The Canadian securities regulatory authorities are of the view that such *pro forma* information is hypothetical, involving the making of many assumptions that could affect the results.

(5) Subsections 15.8(2) and (3) of the Instrument require disclosure of standard performance data of a mutual fund, in some circumstances, from "the inception of the mutual fund". It is noted that paragraph 15.6(1)(d) generally prohibits disclosure of performance data for a period that is before the time when the mutual fund offered its securities under a prospectus or before an asset allocation service commenced operation. Also, each of Instruction (1) to Item 5 of Part B of Form 81-101F1 *Contents of Simplified Prospectus* and Instruction (1) to Item 2 of Part I of Form 81-101F3 *Contents of Fund Facts Document* requires disclosure of the date on which a mutual fund's securities first became available to the public as the date on which the mutual fund "started". Therefore, consistent with these provisions, the words "inception of the mutual fund" in subsections 15.8(2) and (3) of the Instrument should be read as referring to the beginning of the distribution of the securities of the mutual fund under a prospectus of the mutual fund, and not from any previous time in which the mutual fund may have existed but did not offer its securities under a prospectus. If a mutual fund previously existed as a non-redeemable investment fund, the words "inception of the mutual fund" in subsections 15.8(2) and (3) of the Instrument should be read as referring to the date that the non-redeemable investment fund became a reporting issuer.

(6) Paragraph 15.6(1)(a) of the Instrument contains a prohibition against the inclusion of performance data for a mutual fund that has been distributing securities for less than 12 consecutive months. The creation of a new class or series of security of an existing mutual fund does not constitute the creation of a new mutual fund and therefore does not subject the mutual fund to the restrictions of paragraph 15.6(1)(a) unless the new class or series is referable to a new portfolio of assets.

(7) Section 15.14 of the Instrument contains the rules relating to sales communications for multi-class ~~mutual~~investment funds. Those rules are applicable to ~~a mutual~~an investment fund that has more than one class of securities that are referable to the same portfolio of assets. Section 15.14 does not deal directly with asset allocation services. It is possible that asset allocation services could offer multiple "classes"; the Canadian securities regulatory authorities recommend that any sales communications for those services generally respect the principles of section 15.14 in order to ensure that those sales communications not be misleading.

(8) The Canadian securities regulatory authorities believe that the use of hypothetical or *pro forma* performance data for new classes of securities of a multi-class ~~mutual~~investment fund would generally be misleading.

13.3 Sales Communications of Non-Redeemable Investment Funds During the Waiting Period and the Distribution Period – The Canadian securities regulatory authorities remind non-redeemable investment funds of the restrictions contained in securities legislation relating to the distribution of material and advertising and marketing in connection with a prospectus offering during the waiting period and during the distribution period following the issuance of a receipt for the final prospectus. Part 15 of the Instrument does not vary any of the restrictions imposed during these periods.

PART 14 [Deleted]

PART 15 SECURITYHOLDER RECORDS

15.1 Securityholder Records

(1) Section 18.1 of the Instrument requires the maintenance of securityholder records, including past records, relating to the issue and redemption of securities and distributions of the ~~mutual~~investment fund. Section 18.1 of the Instrument does not require that these records need be held indefinitely. It is up to the particular ~~mutual~~investment fund, having regard to prudent business practice and any applicable statutory limitation periods, to decide how long it wishes to retain old records.

(2) The Canadian securities regulatory authorities are of the view that the requirements in section 18.1 to maintain securityholder records may be satisfied if the investment fund maintains up to date records of registered securityholders. Each investment fund may decide whether it wishes to maintain records of beneficial securityholders.

PART 16 EXEMPTIONS AND APPROVALS

16.1 Need for Multiple or Separate Applications – The Canadian securities regulatory authorities note that a person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each prospectus or simplified prospectus refiling unless there has been some change in an important fact relating to the granting of the exemption. This also applies to exemptions from NP39 granted before the Instrument; as provided in section 19.2 of the Instrument, it is not necessary to obtain an exemption from the corresponding provision of the Instrument.

16.2 Exemptions under Prior Policies

(1) Subsection 19.2(1) of the Instrument provides that a mutual fund that has obtained, from the regulatory or securities regulatory authority, an exemption from a provision of NP 39 before the Instrument came into force is granted an exemption from any substantially similar provision of the Instrument, if any, on the same conditions, if any, contained in the earlier exemption.

(2) The Canadian securities regulatory authorities are of the view that the fact that a number of small amendments have been made to many of the provisions of the Instrument from the corresponding provision of NP39 should not lead to the conclusion that the provisions are not "substantially similar", if the general purpose of the provisions remain the same. For instance, even though some changes have been made in the Instrument, the Canadian securities regulatory authorities consider paragraph 2.2(1)(a) of the Instrument to be substantially similar to paragraph 2.04(1)(b) of NP39, in that the primary purpose of both provisions is to prohibit mutual funds from acquiring securities of an issuer sufficient to permit the mutual fund to control or significantly influence the control of that issuer.

(3) The ~~CSA~~Canadian securities regulatory authorities are of the view that the new provisions of the Instrument relating to mutual funds investing in other mutual funds introduced on December 31, 2003 are not "substantially similar" to those of the Instrument which they replace.

16.3 Waivers and Orders concerning "Fund of Funds"

(1) The ~~CSA~~Canadian securities regulatory authorities in a number of jurisdictions have provided waivers and orders from NP39 and securities legislation to permit "fund of funds" to exist and carry on investment activities not otherwise permitted by NP39 or securities legislation. Some of those waivers and orders contained "sunset" provisions that provided that they expired when legislation or a ~~CSA~~ policy or rule of the Canadian securities regulatory authorities came into force that effectively provided for a new "fund of funds" regime. For greater certainty, the Canadian securities regulatory authorities note that the coming into force of the Instrument will not trigger the "sunset" of those waivers and orders.

(2) For greater certainty, note that the coming into force of ~~National~~the Instrument ~~81-102~~ did not trigger the "sunset" of those waivers and orders. However, the coming into force of section 19.3 of the Instrument will effectively cause those waivers and orders to expire one year after its coming into force.

5.1.3 Amendments to NI 81-106 Investment Fund Continuous Disclosure

AMENDMENTS TO
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.

2. Subsection 1.2(3) is repealed.

3. Section 1.3 is amended

(a) by replacing subsection (2) with the following:

(2) Terms defined in National Instrument 81-102 *Investment Funds* and used in this Instrument have the respective meanings ascribed to them in that Instrument***., and***

(b) by adding the following subsection:

(3) Terms defined in National Instrument 81-104 *Commodity Pools* or National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments except that references in those definitions to "mutual fund" must be read as references to "investment fund". ***.***

4. Paragraph 3.5(1)2(c) is amended by replacing "National Instrument 81-102 *Mutual Funds****" with "***National Instrument 81-102 *Investment Funds****".***

5. Section 3.8 is amended by adding the following subsections:

(4) An investment fund must include, in the notes to the financial statements, a reconciliation of the gross amount generated from the securities lending transactions of the investment fund to the revenue from securities lending disclosed in the statement of comprehensive income of the investment fund under item 4 of section 3.2.

(5) The disclosure referred to in subsection (4) must include each of the following:

(a) the name of each person or company who was entitled to receive payments out of the gross amount generated from the securities lending transactions of the investment fund;

(b) the amount each recipient named under paragraph (a) was entitled to receive;

(c) the aggregate of the amounts disclosed under paragraph (b) as a percentage of the gross amount generated from the securities lending transactions of the investment fund. ***.***

6. Subsection 14.2(2) is amended by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

7. The Instrument is amended by adding the following section:

18.5.2 Securities Lending – For financial years beginning before January 1, 2016, an investment fund is not required to comply with subsections 3.8(4) and (5)***.***

8. Subsection 18.6(1) is amended by replacing "National Instrument 81-102 *Mutual Funds****" with "***National Instrument 81-102 *Investment Funds****".***

9. Item 4.1(1) of Form 81-106F1 is amended by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

10. Item 4.3(5) of Form 81-106F1 is amended by replacing "National Instrument 81-102***" with "***National Instrument 81-102 *Investment Funds****".***

11. This Instrument comes into force on September 22, 2014.

5.1.4 Change to Companion Policy 81-106CP Investment Fund Continuous Disclosure

CHANGE TO
COMPANION POLICY 81-106CP TO
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. The change to Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is set out in this Schedule.

2. Section 2.7 is changed by adding the following subsection:

(3) The Canadian securities regulatory authorities consider that, for the purposes of disclosing the gross amount generated from securities lending transactions in the notes to the financial statements of an investment fund pursuant to subsection 3.8(4) of the Instrument, all amounts generated in relation to the securities lending transactions of the investment fund must be disclosed, prior to the deduction of any amounts paid to securities lending agents or other service providers pursuant to any revenue sharing arrangement. Furthermore, for the purposes of subsection 3.8(4) of the Instrument, the Canadian securities regulatory authorities are of the view that any proceeds generated as a result of investing the collateral delivered to the investment fund in connection with a securities lending transaction form part of the gross amount from the securities lending transaction and must be included in the amount disclosed in the notes to the financial statements under subsection 3.8(4) of the Instrument..

3. This change becomes effective on September 22, 2014.

5.1.5 Amendments to NI 81-101 Mutual Fund Prospectus Disclosure

AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.

2. Section 1.1 is amended

(a) in the definition of "commodity pool***" by replacing "***National Instrument 81-102 *Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****", and***

(b) in the definition of "precious metals fund***" by replacing "***National Instrument 81-102 *Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

3. Section 1.2 is amended by replacing "National Instrument 81-102 *Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

4. General Instruction (2) of Form 81-101F1 is amended

(a) by replacing "*National Instrument 81-102 Mutual Funds****" with "****National Instrument 81-102 Investment Funds****", and***

(b) by deleting "*However, subsection 1.3(3) of National Instrument 81-102 does not apply to this Form****".***

5. Item 5(1) of Part A of Form 81-101F1 is amended by replacing "registrar and auditor***" with "***registrar, auditor and securities lending agent***".***

6. Item 5(4.1) of Part A of Form 81-101F1 is amended by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

7. Item 4(1) of Part B of Form 81-101F1 is amended by replacing "registrar and auditor***" with "***registrar, auditor and securities lending agent***".***

8. Item 4(4.1) of Part B of Form 81-101F1 is amended by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

9. Item 7(10) of Part B of Form 81-101F1 is amended by replacing "National Instrument 81-102 *Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

10. Item 9(1.2) of Part B of Form 81-101F1 is amended by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

11. General Instruction (2) of Form 81-101F2 is amended by replacing "*National Instrument 81-102 Mutual Funds****" with "****National Instrument 81-102 Investment Funds****".***

12. Form 81-101F2 is amended by adding the following immediately after Item 10.9:

10.9.1 – Securities Lending Agent

(1) State the name of each securities lending agent of the mutual fund and the municipality of each securities lending agent's principal or head office.

(2) State whether any securities lending agent of the mutual fund is an affiliate or associate of the manager of the mutual fund.

(3) Briefly describe the essential terms of each agreement with each securities lending agent. Include the amount of collateral required to be delivered in connection with a securities lending transaction as a percentage of the market value of the loaned securities, and briefly describe any indemnities provided in, and the termination provisions of, each such agreement.**.**

13. ***General Instructions (2) and (17) of Form 81-101F3 are amended by replacing "****National Instrument 81-102 Mutual Funds****" with "****National Instrument 81-102 Investment Funds****".***

14. ***Instruction (1) to Item 5 of Part I of Form 81-101F3 is amended by replacing "****National Instrument 81-102 Mutual Funds****" with "****National Instrument 81-102 Investment Funds****".***

15. This Instrument comes into force on September 22, 2014.

5.1.6 Amendments to NI 41-101 General Prospectus Requirements

AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "NI 81-102***" with the following:***

"NI 81-102" means National Instrument 81-102 *Investment Funds*;**.**

3. Subsection 14.8.1(1) is amended by deleting "except that each reference in that definition to "a mutual fund" must be read as "an investment fund"***".***

4. General Instruction (8) of Form 41-101F2 is amended

(a) by deleting "*subsidiaries and****" wherever it occurs; and***

(b) by replacing "*a subsidiary or investee****" with "****an investee****".***

5. Item 1.3(1) of Form 41-101F2 is amended by deleting ", including any options or warrants,***".***

6. Item 3.4(1) of Form 41-101F2 is amended by replacing "auditor and principal distributor***" with "***auditor, principal distributor and securities lending agent***".***

7. Item 14.1 of Form 41-101F2 is amended by replacing subsection (2) with the following:

(2) Describe how the issue price of the securities of the investment fund is determined.**.**

8. (1) Item 15.1 of Form 41-101F2 is amended by renumbering it as subsection 15.1(1).

(2) Item 15.1 of Form 41-101F2, as amended by subsection (1), is amended by adding the following paragraphs immediately after paragraph (a):

(a.1) the dates on which securities of the investment fund will be redeemed,

(a.2) the dates on which payment of the proceeds of redemption will be made by the investment fund, **.**

(3) Item 15.1 of Form 41-101F2, as amended by subsection (1), is amended by adding the following subsection:

(2) If the proceeds of redemption are computed by reference to the net asset value per security and amounts may be deducted from the net asset value per security, describe each amount that may be deducted and the entity to which each amount is paid. If there is a maximum amount or percentage that may be deducted from the net asset value per security, disclose that amount or percentage.**.**

9. Item 19.9(1) of Form 41-101F2 is amended

(a) by deleting "or of a subsidiary of the investment fund***",***

(b) by deleting "or any of its subsidiaries***",***

(c) by deleting "or from a subsidiary of the investment fund***",***

(d) by deleting "or a subsidiary of the investment fund***", and***

(e) by deleting "or by a subsidiary of the investment fund***".***

10. Form 41-101F2 is amended by adding the following immediately after Item 19.10:

19.11 – Securities Lending Agent

(1) Under the sub-heading "Securities Lending Agent", state the name of each securities lending agent of the investment fund and the municipality of each securities lending agent's principal or head office.

(2) State whether any securities lending agent of the investment fund is an affiliate or associate of the manager of the investment fund.

(3) Briefly describe the essential terms of each agreement with each securities lending agent. Include the amount of collateral required to be delivered in connection with a securities lending transaction as a percentage of the market value of the loaned securities, and briefly describe any indemnities provided in, and the termination provisions of, each such agreement. **.**

11. Item 21.2 of Form 41-101F2 is amended by deleting "or its subsidiaries***".***

12. Item 21.3 of Form 41-101F2 is repealed.

13. Item 25.8 of Form 41-101F2 is amended by adding "and NI 81-102***" after "***the Instrument***".***

14. Item 27 of Form 41-101F2 is repealed.

15. Paragraph (5)(d) of the Instructions under Item 29.2 of Form 41-101F2 is amended by deleting "or its subsidiaries***".***

16. Item 39.4 is amended by deleting "or a subsidiary of the investment fund***".***

17. Instruction (5) of Item 10 of Part B of Form 41-101F3 is amended by replacing "*National Instrument 81-102 Mutual Funds***" with "****National Instrument 81-102 Investment Funds***".**

18. This Instrument comes into force on September 22, 2014.

5.1.7 Amendments to NI 81-107 Independent Review Committee for Investment Funds

AMENDMENTS TO
NATIONAL INSTRUMENT 81-107
INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

1. National Instrument 81-107 Independent Review Committee for Investment Funds is amended by this Instrument.

2. In the following provisions "National Instrument 81-102 *Mutual Funds"* ***is replaced with "***National Instrument 81-102 *Investment Funds":*

(a) subsection 3.10(6);

(b) paragraph 5.2(1)(a);

(c) paragraph 5.2(1)(c).

3. Subsection 6.2(2) is amended

(a) by replacing "mutual fund conflict of interest investment restrictions" ***with*** "investment fund conflict of interest investment restrictions"***, and***

(b) by replacing "a mutual fund" ***with*** "an investment fund"***.***

4. Subsection 6.2(3) is amended

(a) by replacing "mutual fund conflict of interest investment restrictions" ***with*** "investment fund conflict of interest investment restrictions"***, and***

(b) by replacing "National Instrument 81-102 *Mutual Funds"* ***with "***National Instrument 81-102 *Investment Funds" .***

5. Appendix A – Conflict of Interest or Self-Dealing Provisions is amended by replacing "National Instrument 81-102 *Mutual Funds"* ***with "***National Instrument 81-102 *Investment Funds".***

6. This Instrument comes into force on September 22, 2014.

5.1.8 Changes to Commentary in NI 81-107 Independent Review Committee for Investment Funds

CHANGES TO
COMMENTARY IN NATIONAL INSTRUMENT 81-107
INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

Note: This Schedule applies to the commentary interspersed with National Instrument 81-107 Independent Review Committee for Investment Funds in most jurisdictions.

1. The changes to Commentary in National Instrument 81-107 Independent Review Committee for Investment Funds are set out in this Schedule.

2. Commentary 1 to section 1.1 is changed by replacing "National Instrument 81-102 *Mutual Funds****" with "***National Instrument 81-102 *Investment Funds****".***

3. Commentary 4 to section 5.1 is changed by replacing "National Instrument 81-102 *Mutual Funds****" with "***NI 81-102**".***

4. These changes become effective on September 22, 2014.

5.1.9 Amendments to NI 24-101 Institutional Trade Matching and Settlement, NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, NI 33-109 Registration Information, NI 44-102 Shelf Distributions, NI 45-106 Prospectus and Registration Exemptions, NI 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, NI 81-104 Commodity Pools, and NI 81-105 Mutual Fund Sales Practices

AMENDMENTS TO SPECIFIED INSTRUMENTS

1. National Instrument 24-101 Institutional Trade Matching and Settlement, National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, National Instrument 33-109 Registration Information, National Instrument 44-102 Shelf Distributions, National Instrument 45-106 Prospectus and Registration Exemptions, National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, National Instrument 81-104 Commodity Pools, and National Instrument 81-105 Mutual Fund Sales Practices are amended by this Instrument.

2. The National Instruments named in section 1 are amended

(a) by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds"* ***wherever it occurs,***

(b) by replacing "National Instrument 81-102 – *Mutual Funds"* ***with "***National Instrument 81-102 *Investment Funds"* ***wherever it occurs, and***

(c) by replacing "National Instrument 81-102 *Mutual Funds"* ***with "***National Instrument 81-102 *Investment Funds"* ***wherever it occurs.***

3. This Instrument comes into force on September 22, 2014.

5.1.10 Change to Companion Policy 81-104CP Commodity Pools

CHANGE TO
COMPANION POLICY 81-104CP TO NATIONAL INSTRUMENT 81-104 *COMMODITY POOLS*

1. The change to Companion Policy 81-104CP to National Instrument 81-104 Commodity Pools is set out in this Annex.

2. Section 1.1 is changed by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

3. This change becomes effective on September 22, 2014.

5.1.11 Change to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

CHANGE TO
COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. The change to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is set out in this Annex.

2. Appendix B – Terms not defined in NI 31-103 or this Companion Policy is changed by replacing "National Instrument 81-102 *Mutual Funds"* ***with "***National Instrument 81-102 *Investment Funds"****.***

3. This change becomes effective on September 22, 2014.

5.1.12 Change to NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

CHANGE TO
NATIONAL POLICY 11-203
PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

1. The change to National Policy 11-203 Process For Exemptive Relief Applications In Multiple Jurisdictions is set out in this Annex.

2. Section 5.5 is changed by replacing "National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds****".***

3. This change becomes effective on September 22, 2014.

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Chapter 6

Request for Comments

6.1.1 Proposed Amendments to OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO OSC RULE 13-502 FEES
AND COMPANION POLICY 13-502CP FEES

September 18, 2014

Introduction

The current fee structure under the *Securities Act* and the *Commodity Futures Act* was established in 2003 and the OSC typically re-evaluates its fee levels every three years. In February, the OSC committed to re-examine its fee structure early to consider issues raised by market participants and to ensure it remains appropriate and sound.

The Commission is publishing for a 90-day comment period proposed amendments (the Proposed Amendments or Proposed Rule) to OSC Rule 13-502 *Fees* (the Current Rule) made under the *Securities Act (*OSA), together with proposed changes (the Proposed CP Changes) to Companion Policy 13-502CP. In this Notice, the proposed versions of the Current Rule and the Companion Policy are referred to as the Proposed Rule and the Proposed CP, respectively. The Proposed Amendments and the Proposed CP Changes are referred to collectively as the Proposed Materials.

The Proposed Materials are available on the Commission's website (www.osc.gov.on.ca). Related proposed changes to OSC Rule 13-503 (*Commodity Futures* Act) Fees are also being published for comment in this Bulletin.

The on-going feedback received by us on Commission fees charged suggests that they are considered by market participants to be a modest component of their overall cost structures. The input sought by the Commission includes whether any part of the proposals put forth today would, if implemented, change this assessment.

We request comments on the Proposed Materials by December 17, 2014.

Substance and Purpose of the Proposed Materials

The fee structure is designed to recover the costs the OSC incurs to provide protection to investors and promote efficient capital markets that are aligned with global markets. The two main types of fees charged under the Current Rule are participation fees and activity fees.

Participation fees are based on the cost of a broad range of regulatory services that cannot be practicably or easily attributed to individual activities or entities and are intended to serve as a proxy for the market participant's use of the Ontario capital markets. Participation fee levels are set using a tiered structure. Fees for issuers are based on average market capitalization in a fiscal year; fees for registrants are based on their Ontario revenues. Participation fees are set based on estimates of OSC operating costs for upcoming periods. The Current Rule has four main categories of participation fees:

a. corporate finance participation fees for reporting issuers;

b. capital markets participation fees for registrants and certain unregistered capital markets participants;

c. participation fees for specified regulated entities (such as exchanges, alternative trading systems, clearing agencies and trade repositories), which are based on different factors depending on the type of regulated entity. For example, the entity's Canadian trading share, for exchanges and certain ATSs;

d. participation fees for designated rating organizations which are set at a flat rate.

When the Current Rule was introduced in 2013, the calculations of participation fees were changed to be based on historical data or a reference fiscal year (RFY). Under the Current Rule, market participants who had a decline in their Ontario revenue or market capitalization across the fee cycle do not see any reduction in their fees. Similarly, those participants who experienced growth in Ontario revenue or market capitalization did not see any increase in their fees. At the time of the publication of the

Current Rule the OSC undertook to monitor carefully the participation fees collected and to assess the impact of using the RFY and to also consider whether any adjustments were necessary.

The Proposed Amendments introduce adjustments so that the fees charged by the OSC are aligned more closely with the Commission's costs and address concerns raised by market participants about the use of the RFY. The Proposed Rule will remove the use of the RFY and market participants will be required to calculate their participation fees payable using their most recent financial year information and, for registrants, the most recent financial year ending in the calendar year. The key advantage of this proposed change for participants is that the fees will more closely track current market conditions. The fees payable will increase or decrease based on actual changes in business conditions and performance. The disadvantage of this change is that it will reduce the predictability of fees receivable by the OSC.

Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix C of the Current Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class. Under the Current Rule, there is also a provision in narrow circumstances for charging a variable cost-based fee for certain filings by entities such as exchanges, alternative trading systems and clearing agencies, in light of the high degree of variability of the costs in these filings. A small number of new fees are proposed primarily to achieve better matching of revenues to costs incurred for a specific activity (i.e. takeover bid fees) or to improve fairness or consistency of approach within the rule. Various minor administrative changes are also proposed to improve fairness, improve compliance or reduce regulatory burden (e.g. by reducing the collection of minor fees).

The proposed CP Changes reflect the Proposed Amendments. Further details on the Proposed Amendments and the Proposed CP Changes are provided below under the headings "Summary of Proposed Amendments" and "Summary of Proposed CP Changes".

Options to introduce new exempt market and derivative related fees were also considered. We are not proposing to include these fees in the Proposed Rule at this time because the underlying policy work on these issues has not been completed. Once this policy work is finalized, any proposed related fees will be included as consequential amendments to the fee rules within those policy proposals.

Anticipated Costs and Benefits and Supplementary Information

Background

The OSC, as a self-funded agency, strives to operate on a cost-recovery basis and is dependent on fees from market participants. Fees are generally set every three years based on the anticipated costs to be incurred over the following fee period. For the purpose of the Proposed Rule, the OSC used an annual growth factor of five percent over the current budget. Over recent years, the OSC has strived to contain costs. For example, the year over year cost increase from fiscal 2013 to fiscal 2014 was 2.5%. We also abide by all government fiscal directives. Despite this fiscal restraint, we need to make investments in infrastructure over the next few years including improvements in our information technology. We have also considered the requirement for additional resources in high growth areas. Given this, we believe that five percent is an appropriate growth rate which reflects our desire to keep cost increases to a minimum, while still allowing for some infrastructure spending and any growth required to regulate our increasingly complex marketplace.

Financial Impact

The Proposed Rule contemplates reverting back to the previous model of utilizing a market participant's most recent financial year information. We are proposing to keep participation fee rates at the levels that became effective on April 7, 2014. We are also proposing to keep the participation fees flat for the duration of the Proposed Rule. This means that the participation fee rate increase in the Current Rule will not be implemented. Our analysis indicates that there has been sufficient growth in the markets since the reference fiscal year to allow the OSC to keep participation fees at current levels while still allowing us to cover our costs over the term of the Proposed Rule. Although the participation fee rate will remain unchanged, the amount of fees to be paid by each market participant will likely be higher, given the fact that the market has grown since the reference fiscal year; however the impact on each market participant will vary and be dependent on whether their Ontario revenue or market capitalization has increased or declined.

As discussed earlier in this notice, participation fees are currently calculated based on historical information, specifically information from a market participant's reference fiscal year. This change, which was implemented in April 2013, has been the subject of criticism from market participants due primarily to the disconnect between the reference year and their current market or fiscal situation. In particular, certain market participants whose fiscal information declined over the past two years expressed concern that they were required to pay more in participation fees than they otherwise would have. This concern led to the OSC's announcement to offer fee relief to certain market participants in February 2014. Additionally, other market participants

expressed concern over the complexity of having to reference their participation fee calculation to historical information. The use of the reference fiscal year also contributed to a number of incorrect filings.

Predictability of OSC Fee Revenues

The OSC's revenues, in particular revenue generated from participation fees, are directly tied to changes in market growth. For example, increases in the market capitalization could result in a reporting issuer being elevated to the next tier and paying a higher fee. This variability is tempered by the size of the tier, however this possibility still remains. The use of the reference fiscal year improved the predictability of fees for participants and the OSC's revenues. Reverting to using information from the most recent financial year will reduce our ability to accurately predict revenues and should there be a market decline, revenues may not be sufficient to cover costs.

Fairness of share of fees among registrants and issuers

The OSC strives to balance the level of fees charged to registrants and issuers in relation to costs incurred for each group. This is evident in the Current Rule whereby the percentage change in the participation fee rates for issuers and registrants was different for each group. The proposal to maintain participation fee rates at their current levels, will result in achieving appropriate levels of cost recovery from each group.

Activity fees

As has historically been the case, activity fees will generate just under 15% of total revenues. The OSC reviewed the current activity fees to determine whether the fee covered the average costs to perform the service as well as determine whether there were any other activities that should have fees associated with them. Overall, most activity fees either increased or remained flat with the majority of increases in the 6% to 8% range. Activity fees for Specified Regulated Entities are proposed to be increased by 10% to reflect the amount of staff effort required to address the filings.

Financial Summary

	2014/2015	2015/2016	2016/2017	2017/2018
		$ Thousands		
Total Revenues	101,325	114,289	114,631	115,677
less Expenses	102,976	108,125	113,531	119,208
Net Excess/(Shortfall)	(1,651)	6,164	1,100	(3,531)
Opening Surplus*	6,539	4,888	11,052	12,152
Closing Surplus*	4,888	11,052	12,152	8,621

* Does not include Reserve Fund of $20 million

Summary of the Proposed Amendments

The Proposed Amendments are described in detail below.

A. Participation Fees

The Proposed Amendments use the most recent financial year data for the purpose of calculating the amount of participation fee payable as the basis for determining issuer market capitalization and registrant revenues. We believe this change would achieve a closer link between current financial performance of market participants and the level of fees they are required to pay.

1) Corporate Finance Participation Fees

i. Streamline/Reduce the number of classes of issuers

The segmentation of classes of reporting issuers have been revised under the Proposed Amendments, such that there are now four classes of reporting issuers: Class 1, Class 2, Class 3A and Class 3B. All classes, with the exception of Class 3A reporting issuers, have been substantially amended. Class 3A reporting issuers currently pay a set participation fee that is not tied to enterprise value (whether determined by market capitalization or otherwise) on the basis that such issuers' participation in

Ontario capital markets is substantially limited. Staff continues to be of the view that the fee structure of Class 3A reporting issuers is reasonable. As such, the definition of Class 3A reporting issuer has not been amended.

The following is a summary of the changes to the other classes of reporting issuers.

Under the Current Rule, the general distinction between Class 3C reporting issuers and Class 3B reporting issuers is predicated on the volume of trading activity between foreign and domestic jurisdictions. Where trading volume is higher in Canada, foreign incorporated listed issuers are generally considered to be Class 3C reporting issuers and pay the same participation fees as Class 1 reporting issuers and Class 2 reporting issuers. On the other hand, where trading volume is higher in a foreign marketplace, such issuers are considered to be Class 3B reporting issuers and are required to pay participation fees on a generally reduced fee schedule than that of Class 1, 2 and 3C reporting issuers.

Under the Proposed Amendments, Class 3B reporting issuers will be reporting issuers who are either "designated foreign issuers" or "SEC foreign issuers", as such terms are defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102). Staff is of the view that the existing qualifications for issuers who utilize the foreign continuous disclosure regime under NI 71-102 is a more accurate reflection of participation in Ontario capital markets, as opposed to the current measure which only analyzes trading volume. Application and verification of Class 3B status is also simplified, as reporting issuers are already required to indicate whether they are "71-102 issuers" (being either a "SEC foreign issuer" or "designated foreign issuer") on their annual filings.

As a result of redefining Class 3B reporting issuers as described above, the Proposed Amendments also eliminate the segmentation of Class 3C reporting issuers by expanding the definition of Class 1 reporting issuers to include both domestic and foreign reporting issuers. As Class 3C reporting issuers are currently required to pay participation fees on the same schedule as Class 1 reporting issuers, current Class 3C reporting issuers who are redefined as Class 1 Reporting Issuers under the Proposed Rule will not be affected by this amendment. The definition of Class 1 reporting issuers has also been expanded to include all marketplaces, as opposed to those in Canada or the U.S. The expansion of marketplaces will classify reporting issuers who would have otherwise been Class 2 reporting issuers under the Current Rule as a result of being listed on a marketplace outside of North America (for example, the London Stock Exchange) as Class 1 reporting issuers. Staff notes that Class 2 reporting issuers are required to pay identical participation fees as Class 1 reporting issuers, however as they are not listed (or listed on an exchange outside of North America), the calculation of capitalization is derived from such issuers' financial statements. As such, this proposal is intended to achieve equality among listed reporting issuers by requiring such issuers to calculate their capitalization using the same methodology.

ii. Calculation of Issuer Capitalization

Staff has reviewed the current requirements for calculating participation fees and has considered ways to simplify and streamline information requirements, ease verifiability of compliance, and promote fairness of the fees charged.

Currently, the capitalization calculation for issuers (other than for Class 2 reporting issuers, which is derived off of an issuer's financial statements) is generally the sum of: (i) the average market value of an issuer's listed or quoted securities over its reference or previous fiscal year, and (ii) the market value of unlisted securities that are initially issued to Canadians and are generally available for purchase and sale through a dealer network.

Staff notes that the current capitalization calculation involving an issuer's listed or quoted securities, which entails multiplying the average monthly closing price of an issuer's security by the number of those securities issued and outstanding at the end of an issuer's fiscal year, could be materially impacted by stock splits or consolidations of an issuer's share capital. Moreover, Staff notes that issuers have also faced difficulties in identifying unlisted securities generally available for purchase and sale, and that the determination of market value of such securities created complexity in calculating an issuer's capitalization.

The Proposed Amendments require issuers (other than Class 2 reporting issuers) to calculate their capitalization as the sum of: (i) the total market value of all equity securities listed or quoted on a market place and (ii) the total fair value of its debt securities that are listed or quoted on a marketplace, trade over the counter or that are otherwise generally available for sale without regard to a statutory hold period. The market value of equity securities is calculated by multiplying the total number of securities of each class or series outstanding by the simple average of the closing prices of the class or series on the last trading day of each quarter. Staff is of the view that this approach simplifies the calculation as it involves less data points in determining the average price of a security and addresses unwarranted variances caused by splits or consolidations. Staff is also of the view that this approach eases variances in capitalization from year to year, as growth or decline is averaged out by calculating capitalization on a quarterly basis. With respect to the calculation of total market value of debt securities, Staff takes the view that a general approach should be used to capture debt securities along with further guidance in the companion policy to further clarify what we would expect to be included. As debt securities are generally recorded at fair market value on an issuer's financial statements, Staff is of the view that an issuer should be able to extract from its financial statements the values that would be captured without having to make a difficult estimate of fair market value. As a result, this amendment should increase usability and alleviate such difficulties.

2) Capital Markets Participation Fees

i. Calculation of Registrant Revenues

Staff reviewed the elements required to calculate a registrant's or unregistered capital markets participant's specified Ontario revenue for the purpose of calculating the amount of participation fee payable to identify any practical opportunities to simplify and streamline information requirements.

The Proposed Amendments clarify the definition of capital markets activities to include activities for which registration is required, or activities for which an exemption from registration is required under the OSA or Commodity Futures Act, or would be so required if those activities were carried on in Ontario. This proposed amendment would ensure all firms accurately determine the specified Ontario revenues when applying the Ontario percentage to the revenues subject to participation fees.

The Proposed Amendments also simplify and clarify the definition of Ontario percentage by outlining the requirements for registrants or unregistered capital markets participants that have a permanent establishment in Ontario only, a permanent establishment in Ontario and elsewhere, and all other scenarios.

No other changes are recommended as the various deductions allowed in the formula are there for fairness reasons that outweigh our streamlining goal. As part of our attempts to simplify the formula, Staff reviewed the deductions taken and how often they are being used. While the deductions are not taken by a significant amount of registrants, those using them are impacted by the deductions and it would be unfair to have these registrants experience an increase in their fees, especially since these deductions were created for fairness purposes.

ii. Filing and payment deadline for unregistered investment fund managers (IFMs)

The Current Rule, which requires unregistered IFMs to file the participation fee calculation and pay participation fees within 90 days after the end of its fiscal year, has been amended to align with registrants and exempt international firms by requiring a filing deadline of December 1 and fee payment deadline of December 31. The Current Rule also requires only unregistered IFMs to pay participation fees within 90 days after the end of its fiscal year and requires them to file the participation fee calculation at the time it pays its participation fees. There is no policy reason to treat unregistered IFMs differently than registrants and other unregistered exempt international dealers and advisers and the Proposed Amendments reflect these changes.

iii. Designated trade repositories (TR)

The amendments propose the participation fee for a designated TR to increase from current $30,000 to $75,000 plus $25,000 if the TR's share of total number of trades reported pursuant to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* is higher than 50% for any asset class. Staff have estimated that the current participation fee rate does not properly reflect the costs associated with the ongoing oversight of a TR. The new proposed fee is forecasted to be closer to the future actual costs of monitoring of how the TR meets the requirements under the TR Rule (91-507) and the designation order. The $25,000 premium is meant to approximate the increased costs associated with a larger TR.

3) Certification of participation fees

The amendments propose to add a certification requirement or revise the existing requirement for certain participation fees. For registrants, the requirement would change from "management sign-off" to Chief Compliance Officer sign-off or equivalent. For issuers, the Proposed Rule introduces a requirement for certification/signoff by an Officer of the issuer. These changes are expected to bring more rigor to the fee calculation process undertaken by participants and improve our confidence in the accuracy of the calculations and fees paid.

4) Proration of Fees

Participation fees paid by entities for their first year of operation as a recognized, designated, or exempt entity in Ontario will be pro-rated (based on the number of months divided by twelve). The fee would be payable on the date the entity becomes subject to regulation or exempt from regulation. The prorated participation fees for exchanges and ATSs will be based on current lowest participation fee an exchange or an ATS would pay.

The OSC is continuing to look for ways to increase the level of automation particularly where it interfaces with market participants. The forms set out in the Proposed Rule are only the current mode for collection of the prescribed information. The future format for the collection of the information prescribed in the Proposed Rule may need to be revised depending on the automated solution that is implemented.

B. Activity Fees

There are a number of proposed changes to the amounts of existing activity fees intended to better match the Commission's costs for specified activities and to reduce increases that would otherwise be required in the setting of participation fees. Proposed increases in activity fees reflect increases in OSC costs as well as increases in the complexity of much of the OSC's work which has resulted in greater time/resource requirements for certain activities.

1) New Activity Fees

i. Take-over bids

A fee is proposed to capture the filing of an information circular in connection with a going private transaction, reorganization, amalgamation, merger, arrangement or similar business combination. The proposed fees would better match our fees to our costs and reflect the significant volume of work involved on these corporate transactions

ii. Pre-Filing Fee

A fee at half the full corresponding application fee is proposed for certain pre-filings for Market Regulations recognitions and exemptions. This fee is proposed to be set at half the applicable fee rather than 100% as is the case with the other branches because application fees under other sections of Appendix C are materially less than the level of fees for these applications. The remaining difference between the pre-filing fee and the full application fee will be charged when a full application is received.

iii. Review of Permitted Individuals

An activity fee of $100 is proposed when permitted individuals file Form 33-109F4 – Registration of Individuals and Review of Permitted Individuals. The proposed fees would better match our fees to our costs involved in review and assessment of suitability.

iv. Designation as a trade repository

A new fee for TR designation is proposed at designation as a trade repository at $83,000, the same level as the fee for application for exemption from recognition as an exchange or clearing agency. The fee is based on the average actual costs incurred in MR for the last two applications for exemption.

v. Designation as a Designated Rating Organization (DRO)

A new fee of $15,000 for an application for designation as a DRO is being proposed. Previously, these applications were subject to the basic application fee. The proposed fee is based on the costs incurred on previous DRO applications. Also being proposed is a $15,000 fee for any application to vary an existing designation order for a DRO to reflect a merger, acquisition, reorganization or restructuring involving a DRO. Any other application for variation of a designation order for a DRO will be subject to a $4,800 fee.

2) Revised Activity Fees

i. Fee for prospectuses that "incorporate by reference" technical reports.

Appendix C of the Proposed Rule has been amended) to include a proposed additional fee for prospectuses that "incorporate by reference" technical reports. The current activity fee only applies as an additional fee if a technical report accompanies a prospectus. Other than in an IPO, technical reports are not always filed concurrently with prospectuses, due to the fact that this filing may be required on the happening of other events pursuant to National Instrument 43-101 *Standards of Disclosure for* Mineral *Projects*, such as where technical information is contained in an AIF or where it is initially disclosed in a news release. Under this proposal, if a short-form prospectus incorporates by reference a technical report, a fee of $2,500 would be payable. This reflects the fact that the technical report has to be reviewed in connection with the prospectus.

ii. Affiliated individuals

Amendments are proposed so that applications for exemptive relief that affect affiliated registrants engaging in an activity together will result in only one fee being charged. This reflects that the legal analysis for the relief is the same and that the relief for the affiliates is generally considered together.

iii. Multi-Part Applications

Currently, the applicant pays one activity fee even though relief is being sought from more than one section, The amendments propose to clarify that an additional activity fee may be required where relief from more than one provision is being sought in a single application. It also clarifies the amount of the fee for such applications. This proposal reflects the underlying policy for imposing activity fees and the fact that applications for multiple relief generally require more staff time, may, require a different analysis and can potentially involve multiple branches.

3) Adjustments in Amounts of Existing Activity Fees

There are a number of other proposed changes in the amounts of existing activity fees, made in order to better match the Commission's costs for specified activities. These increases helped offset any increases that would otherwise be required in the setting of the participation fee rates. Proposed increases in activity fees reflect increases in OSC costs as well as increases in the complexity of much of the OSC's work which has resulted in greater time/resource requirements for certain activities.

Overall most activity fees either increased or remained flat with most increases in the 6% - 8% range. Activity fees for Specified Regulated Entities were increased by 10%.

C. Late Fees

A number of proposals have been made to amend late fees under the Current Rule

- The Current Rule exempts unregistered IFMs from a filing fee if late in filing Form 13-502F4. There is no policy reason to treat unregistered IFMs differently than registrants and other unregistered exempt international dealers or advisers. Accordingly, we have proposed that unregistered IFMs will no longer be exempt from the late filing fee applicable to other registrants.

- The current maximum aggregate late fee per Appendix D is $5,000 for all documents required to be filed by the firm within a calendar year. We have proposed to increase the maximum late fee payable to $10,000 for the three largest categories of registrants.

- The Current Rule allows for a waiver of late fees (on participation fees only) of less than $10. The Proposed Rule would allow the OSC to waive any late fees due of less than $100. This change is being proposed in order to simplify this process and reduce administrative burden and costs both for the market participant and for the OSC to administer and collect these fees. The financial impact is immaterial.

The Proposed Amendments also include some non-material technical changes.

Proposed Companion Policy Changes

The purpose of the Proposed CP Changes is to clarify the Commission's view of the application of the Proposed Amendments, as well as to address the additional issues described below and to make a number of non-material technical changes. The most significant proposed amendments to the Companion Policy (CP) are with respect to refund requests. We receive a number of applications for refunds for amounts that are often significant. There is no specific guidance surrounding these requests. Language has been added to the CP to clarify the circumstances when, and the time frame within which a refund request will generally be considered by Staff. Staff will not generally consider a request for a refund made more than 90 days after the date a fee was paid.

Authority for the Proposed Amendments

Paragraph 43 of subsection 143(1) of the OSA authorizes the Commission to make rules "Prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law."

Alternatives Considered

The Commission did not consider any alternatives to rule amendments in the development of the Proposed Amendments.

Unpublished Materials

The Commission has not relied on any significant unpublished study, report, decision or other written materials in putting forward the Proposed Materials.

Request for Comments

We welcome your comments on the Proposed Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

Currently, the requirement to pay fees for late document filings (late fees), detailed in Appendix D to OSC Rule 13-502 *Fees* (the Fee Rule), is on the issuer whose document was filed late. For issuers that are investment funds, this means that the investment fund is required to pay the applicable late fee. As the investment fund manager is responsible for the operations of each investment fund, the OSC is seeking comment on whether any late fees payable by investment funds should be borne by the investment fund manager, rather than by the fund itself.

1 Do you agree with the proposal to change the requirement in respect of the payment of late fees, such that an investment fund manager would be required to pay the late fee in respect of any investment funds for which it acts as investment fund manager? Why or why not?

2 If the investment fund manager is made responsible for paying the late fees in respect of its investment funds, should any changes be made to the way late fees are calculated for investment fund filings? In particular, should the maximum aggregate fee payable under Appendix D for the late filing of annual financial statements and interim financial reports be changed?

3. What impact, if any, would requiring the investment fund manager to pay the late fees on behalf of its investment funds have on the investment fund industry and the way investment fund managers charge fees to their funds?

How to Provide Your Comments

You must provide your comments in writing by December 17, 2014. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The Commission will publish written comments received unless the Commission approves a commenter's request for confidentiality or the commenter withdraws its comment before the comment's publication.

Questions

Please refer your questions to:

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April 1, 2013 Unofficial Consolidation – Rule 13-502 Fees

ONTARIO SECURITIES COMMISSION

RULE 13-502 FEES

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ONTARIO SECURITIES COMMISSION

RULE 13-502 FEES

PART 1 — INTERPRETATION

1.1 Definitions — In this Rule,

"Canadian trading share", in relation to a person or company that is a specified regulated entity for a specified period, means the average in the specified period of the following:

(a) the share of the person or company of the total dollar values of trades of exchange-traded securities in Canada,

(b) the share of the person or company of the total trading volume of exchange-traded securities in Canada, and

(c) the share of the person or company of the total number of trades of exchange-traded securities in Canada;

"capitalization", in relation to a reporting issuer, means the capitalization of the reporting issuer determined in accordance with section 2.8, 2.9 or 2.10, as the case may be;

"capital markets activities" means activities for which registration is required, or activities for which an exemption from registration is required under the Act or under the *Commodity Futures Act*, or would be so required if those activities were carried on in Ontario;

"Class 1 reporting issuer" means a reporting issuer, other than a Class 3A reporting issuer or a Class 3B reporting issuer, that at the end of its previous financial year, has securities listed or quoted on a marketplace;

"Class 2 reporting issuer" means a reporting issuer other than a Class 1 reporting issuer, a Class 3A reporting issuer or a Class 3B reporting issuer;

"Class 3A reporting issuer" means a reporting issuer that is not incorporated under the laws of Canada or a province or territory and that

(a) had no securities listed or quoted on any marketplace at the end of its previous financial year, or

(b) had securities listed or quoted on a marketplace at the end of its previous financial year and all of the following apply:

(i) at the end of its previous financial year, securities registered in the names of persons or companies resident in Ontario represented less than 1% of the market value of all of the reporting issuer's outstanding securities for which it or its transfer agent or registrar maintains a list of registered owners;

(ii) the reporting issuer reasonably believes that, at the end of its previous financial year, securities beneficially owned by persons or companies resident in Ontario represented less than 1% of the market value of all its outstanding securities;

(iii) the reporting issuer reasonably believes that none of its securities traded on a marketplace in Canada during its previous financial year;

(iv) the reporting issuer has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of one or more of its subsidiaries, or

(B) to a person or company exercising a right previously granted by the reporting issuer or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration;

"Class 3B reporting issuer" means a reporting issuer that

(a) is not a Class 3A reporting issuer, and

(b) is a designated foreign issuer or an SEC foreign issuer as those terms are defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"generally accepted accounting principles", in relation to a person or company, means the generally accepted accounting principles used to prepare the financial statements of the person or company in accordance with Ontario securities law;

"highest trading marketplace" means

(a) the marketplace on which the highest volume in Canada of the class or series was traded in the previous financial year and which discloses regularly the prices at which those securities have traded,

(b) if the class or series was not traded in the previous financial year on a marketplace in Canada, the marketplace on which the highest volume in the United States of America of the class or series was traded in the previous financial year and which discloses regularly the prices at which those securities have traded, or

(c) if the class or series was not traded in the previous financial year on a marketplace in Canada or the United States of America, the marketplace on which the highest volume of the class or series was traded in the previous financial year and which discloses regularly the prices at which those securities have traded;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"interim period" has the same meaning as in NI 51-102;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"net assets", in relation to a person or company, means the total assets minus the total liabilities of the person or company, determined in accordance with the generally accepted accounting principles applying to the person or company;

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

"NI 33-109" means National Instrument 33-109 *Registration Information*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"Ontario percentage" means, in relation to a person or company for a previous financial year,

(a) in the case of a person or company that has a permanent establishment in Ontario in the previous financial year and no permanent establishment elsewhere, 100%,

(b) in the case of a person or company that has a permanent establishment in Ontario and elsewhere in the previous financial year and has taxable income in the previous financial year that is positive, the percentage of the taxable income that is taxable income earned in the year in Ontario, and

(c) in any other case, the percentage of the total revenues of the person or company for the previous financial year attributable to capital markets activities in Ontario;

"parent" means a person or company of which another person or company is a subsidiary;

"permanent establishment" means a permanent establishment as defined in subsection 400(2) of the *Income Tax Regulations* (Canada);

"permitted individual" has the same meaning as in NI 33-109;

"previous financial year" means, in relation to a person or company,

(a) the most recently completed financial year of the person or company, and

(b) for registrants and unregistered capital markets participants, the financial year of the person or company ending in the calendar year;

"registrant firm" means a registered dealer, registered adviser or registered investment fund manager;

"specified Ontario revenues", in relation to a person or company for a financial year, means the specified Ontario revenues of the person or company calculated for the financial year under section 3.5 or 3.6, as the case may be;

"specified period" means the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year;

"specified trading period" means, in respect of a reporting issuer's financial year, each period that is an interim period in the financial year and the period commencing on the first day of the financial year and ending on the last day of the financial year;

"specified regulated entity" means a person or company described in Column A of Appendix B.1 of the rule;

"subsidiary" means, subject to subsection 1(4) of the Act, a subsidiary of a person or company as determined in accordance with the generally accepted accounting principles applying to the person or company;

"taxable income" means taxable income as determined under the *Income Tax Act* (Canada);

"taxable income earned in the year in Ontario", in relation to a person or company for a financial year, means the taxable income of the person or company earned in the financial year in Ontario as determined under Part IV of the *Income Tax Regulations* (Canada);

"unregistered capital markets participant" means

(a) an unregistered investment fund manager, or

(b) an unregistered exempt international firm;

"unregistered exempt international firm" means a dealer or adviser that is not registered under the Act if one or both of the following apply:

(a) the dealer or adviser is exempt from the dealer registration requirement and the underwriter registration requirement only because of section 8.18 [*International dealer*] of NI 31-103;

(b) the dealer or adviser is exempt from the adviser registration requirement only because of section 8.26 [*International adviser*] of NI 31-103;

"unregistered investment fund manager" means an investment fund manager of one or more investment funds that is not registered as an investment fund manager in accordance with Ontario securities law, other than an investment fund manager that does not have a place of business in Ontario, and one or more of the following apply:

(a) none of the investment funds has security holders who are residents in Ontario;

(b) the investment fund manager and the investment funds have not, at any time after September 27, 2012, actively solicited Ontario residents to purchase securities of any of the investment funds.

1.2 Interpretation of "listed or quoted" — In this Rule, a reporting issuer is deemed not to have securities listed or quoted on a marketplace that lists or quotes the reporting issuer's securities unless the reporting issuer or an affiliate of the reporting issuer applied for, or consented to, the listing or quotation.

PART 2 — CORPORATE FINANCE PARTICIPATION FEES

Division 1: General

2.1 Application — This Part does not apply to an investment fund that has an investment fund manager.

2.2 Participation fee

(1) A reporting issuer that is a Class 1 reporting issuer or a Class 2 reporting issuer must, after each of its financial years, pay the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for the previous financial year.

(2) A reporting issuer that is a Class 3A reporting issuer must, after each of its financial years, pay a participation fee of $1,070.

(3) A reporting issuer that is a Class 3B reporting issuer must, after each of its financial years, pay the participation fee shown in Appendix A.1 opposite the capitalization of the reporting issuer for the previous financial year.

(4) Despite subsections (1) to (3), a participation fee is not payable by a participant under this section if the participant became a reporting issuer in the period that begins immediately after the time that would otherwise be the end of the previous financial year in respect of the participation fee and ends at the time the participation fee would otherwise be required to be paid under section 2.3.

2.3 Time of payment — A reporting issuer must pay the participation fee required under section 2.2 by the earlier of

(a) the date on which its annual financial statements for its previous financial year are required to be filed under Ontario securities law, and

(b) the date on which its annual financial statements for its previous financial year are filed.

2.4 Participation fee exemptions for subsidiaries

(1) Section 2.2 does not apply to a reporting issuer that is a subsidiary if all of the following apply:

(a) at the end of the subsidiary's previous financial year, the parent of the subsidiary was a reporting issuer;

(b) the audited financial statements of the parent prepared in accordance with NI 52-107 require the consolidation of the parent and the subsidiary;

(c) the parent has paid a participation fee under subsection 2.2(1) calculated based on the capitalization of the parent for the previous financial year;

(d) in the case of a parent that is a Class 1 reporting issuer, the capitalization of the parent for the previous financial year included the capitalization of the subsidiary as required under paragraph 2.8(1)(c);

(e) in the previous financial year,

(i) the net assets and total revenues of the subsidiary represented more than 90% of the consolidated net assets and total revenues of the parent in the parent's previous financial year, or

(ii) the subsidiary was entitled to rely on an exemption or waiver from the requirements in subsections 4.1(1), 4.3(1), 5.1(1) or section 5.2, and section 6.1 of NI 51-102.

(2) A reporting issuer referred to in subsection (1) must file a completed Form 13-502F6 that contains a certification signed by an officer of the reporting issuer, by the earlier of

(a) the date on which its annual financial statements for its previous financial year are required to be filed under Ontario securities law, or would have been required to be filed under Ontario securities law absent an exemption or waiver described in subparagraph (1)(e)(ii), and

(b) the date on which it files its annual financial statements for its previous financial year.

2.5 Participation fee estimate for Class 2 reporting issuers

(1) If the annual financial statements of a Class 2 reporting issuer are not available by the date referred to in paragraph 2.3(a), the Class 2 reporting issuer must, on that date,

(a) file a completed Form 13-502F2 showing a good faith estimate of the information required to calculate its capitalization as at the end of the previous financial year, and

(b) pay the participation fee shown in Appendix A opposite the estimated capitalization.

(2) A Class 2 reporting issuer that estimated its capitalization under subsection (1) must, when it files its annual financial statements for the previous financial year,

(a) calculate its capitalization under section 2.9,

(b) pay the participation fee shown in Appendix A opposite the capitalization, less the participation fee paid under subsection (1), and

(c) file a completed Form 13-502F2A that contains a certification signed by an officer of the reporting issuer.

(3) If the amount paid by a reporting issuer under subsection (1) exceeds the participation fee calculated under subsection (2), the issuer is entitled to a refund from the Commission of the amount overpaid.

(4) A request for a refund under subsection (3) must be made to the Commission by the same date on which the form referred to in paragraph 2(c) is required to be filed.

2.6 Filing report and certification

(1) At the time that it pays the participation fee required by this Part,

(a) a Class 1 and a Class 3B reporting issuer must file a completed Form 13-502F1,

(b) a Class 2 reporting issuer must file a completed Form 13-502F2, and

(c) a Class 3A reporting issuer must file a completed Form 13-502F3A.

(2) A form required to be filed under subsection (1) must contain a certification signed by an officer of the reporting issuer.

2.7 Late fee

(1) A reporting issuer that is late in paying a participation fee under this Part must pay an additional late fee of 0.1% of the unpaid portion of the participation fee for each business day on which any portion of the participation fee was due and unpaid.

(2) If a late fee calculated under subsection (1) is less than $100, it is deemed to be nil.

Division 2: Calculating Capitalization

2.8 Class 1 reporting issuers

(1) The capitalization of a Class 1 reporting issuer for the previous financial year is the total of all of the following:

(a) for each class or series of the reporting issuer's equity securities listed or quoted on a marketplace,

(i) the sum of the market value of the securities listed or quoted on a marketplace at the end of the last trading day of each specified trading period in the previous financial year of the reporting issuer, calculated for each specified trading period as follows:

A x B

in which,

"A" is equal to the closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace, and

"B" is equal to the number of securities in the class or series of such security outstanding at the end of the specified trading period,

(ii) divided by the number of specified trading periods in the reporting issuer's previous financial year in which the security of the reporting issuer was listed or quoted on a marketplace at the end of the last trading day of a specified trading period;

(b) the fair value of the outstanding debt securities of the reporting issuer at the end of the previous financial year that are,

(i) listed or quoted on a marketplace,

(ii) traded over the counter, or

(iii) available for purchase or sale without regard to a statutory hold period;

(c) the capitalization for the previous financial year of a subsidiary that is exempt under subsection 2.4(1), calculated in accordance with paragraphs (1)(a) and (1)(b), and excluding any securities of the subsidiary held by the parent that have been included in the capitalization of the parent for the previous financial year.

2.9 Class 2 reporting issuers

(1) The capitalization of a Class 2 reporting issuer for the previous financial year is the total of all of the following items, as shown in its audited statement of financial position as at the end of the previous financial year:

(a) retained earnings or deficit;

(b) contributed surplus;

(c) share capital or owners' equity, options, warrants and preferred shares;

(d) non-current borrowings, including the current portion;

(e) finance leases, including the current portion;

(f) non-controlling interest;

(g) items classified on the statement of financial position as non-current liabilities, and not otherwise referred to in this subsection;

(h) any other item forming part of equity not otherwise referred to in this subsection.

(2) Despite subsection (1), a reporting issuer may calculate its capitalization using unaudited annual financial statements if it is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

(3) Despite subsection (1), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may calculate its capitalization using the monthly filed distribution report for the last month of the previous financial year if it is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

2.10 Class 3B reporting issuers — The capitalization of a Class 3B reporting issuer must be determined under section 2.8, as if it were a Class 1 reporting issuer.

2.11 Reliance on published information

(1) Subject to subsection (2), in determining its capitalization, a reporting issuer may rely on information made available by a marketplace on which its securities trade.

(2) If a reporting issuer reasonably believes that the information made available by a marketplace is incorrect, the issuer must make a good faith estimate of the information required.

PART 3 — CAPITAL MARKETS PARTICIPATION FEES

Division 1: General

3.1 Participation fee – Registrant firms and unregistered capital markets participants

(1) A registrant firm or an unregistered capital markets participant must, by December 31 in each year, pay the participation fee shown in Appendix B opposite the specified Ontario revenues for the previous financial year of the firm or participant.

(2) A registrant firm or an unregistered capital markets participant must, by December 1 in each year, file a completed Form 13-502F4 showing the information required to determine the participation fee referred to in subsection (1).

(3) Despite subsection (2), a firm that becomes registered, or provides notification that it qualifies as an unregistered capital markets participant, between December 1 and 31, must file a completed Form 13-502F4 within 60 days of the date of registration or notification.

(4) Subsection (1) does not apply to a person or company that ceased at any time in the financial year to be an unregistered investment fund manager if the person or company did not become a registrant firm in the year.

(5) Despite subsection (1), the participation fee for an unregistered investment fund manager as at December 31, 2015 is nil provided that

(a) the unregistered investment fund manager has a financial year ending in 2015 between January 1 and the day immediately prior to the effective date of this Rule, and

(b) the unregistered investment fund manager paid the applicable participation fee for the financial year referred to in paragraph (a) within 90 days of its financial year end.

3.2 Estimating specified Ontario revenues for late financial year end

(1) If the annual financial statements of a registrant firm or an unregistered capital markets participant for a previous financial year are not completed by December 1 in the calendar year in which the previous financial year ends, the firm or participant must,

(a) by December 1, file a completed Form 13-502F4 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the previous financial year, and

(b) by December 31, pay the participation fee shown in Appendix B opposite its estimated specified Ontario revenues for the previous financial year.

(2) A registrant firm or an unregistered capital markets participant that estimated its specified Ontario revenues for a previous financial year under subsection (1) must, not later than 90 days after the end of the previous financial year,

(a) calculate its specified Ontario revenues,

(b) determine the participation fee shown in Appendix B opposite the specified Ontario revenues, and

(c) if the participation fee determined under paragraph (b) exceeds the participation fee paid under subsection (1), pay the balance owing and file a completed Form 13-502F4 and Form 13-502F5.

(3) A registrant firm or unregistered capital markets participant that pays an amount under subsection (1) that exceeds the participation fee determined under subsection (2) is entitled to a refund from the Commission of the excess.

(4) A request for a refund under subsection (3) must be made to the Commission by the same date on which the form referred to in paragraph (2)(c) is required to be filed.

3.3 Certification – A form required to be filed under section 3.1 or 3.2 must contain a certification signed by

(a) the chief compliance officer of the registrant or the unregistered capital markets participant, or

(b) in the case of an unregistered capital markets participant without a chief compliance officer, an individual acting in a similar capacity.

3.4 Late fee

(1) A person or company that is late in paying a participation fee under this Part must pay an additional late fee of 0.1% of the unpaid portion of the participation fee for each business day on which any portion of the participation fee was due and unpaid.

(2) A late fee calculated under subsection (1) is deemed to be nil if it is less than $100.

Division 2: Calculating Specified Ontario Revenues

3.5 Calculating specified Ontario revenues for IIROC and MFDA members

(1) The specified Ontario revenues for a previous financial year of a registrant firm that was an IIROC or MFDA member at the end of the previous financial year is calculated by multiplying

(a) the registrant firm's total revenues for the previous financial year, less the portion of the total revenue not attributable to capital markets activities,

by

(b) the registrant firm's Ontario percentage for the previous financial year.

(2) For the purpose of paragraph (1)(a), "total revenues" for a previous financial year means,

(a) for a registrant firm that was an IIROC member at the end of the previous financial year, the amount shown as total revenue for the previous financial year on Statement E of the *Joint Regulatory Financial Questionnaire and Report* filed with IIROC by the registrant firm; and

(b) for a registrant firm that was an MFDA member at the end of the previous financial year, the amount shown as total revenue for the previous financial year on Statement D of the MFDA *Financial Questionnaire and Report* filed with the MFDA by the registrant firm.

3.6 Calculating specified Ontario revenues for others

(1) The specified Ontario revenues for a previous financial year of a registrant firm that was not a member of IIROC or the MFDA at the end of the previous financial year, or an unregistered capital markets participant, is calculated by multiplying

(a) the firm's total revenues, as shown in the audited financial statements prepared in accordance with NI 52-107 for the previous financial year, less deductions permitted under subsection (2),

by

(b) the firm's Ontario percentage for the previous financial year.

(2) For the purpose of paragraph (1)(a), a person or company may deduct the following items, if earned in the previous financial year, from its total revenues:

(a) revenues not attributable to capital markets activities;

(b) redemption fees earned on the redemption of investment fund securities sold on a deferred sales charge basis;

(c) administration fees earned relating to the recovery of costs from investment funds managed by the person or company for operating expenses paid on behalf of the investment funds by the person or company;

(d) advisory or sub-advisory fees paid during the financial year by the person or company to

(i) a registrant firm, as "registrant firm" is defined in this Rule or in Rule 13-503 (*Commodity Futures Act*) Fees, or

(ii) an unregistered exempt international firm;

(e) trailing commissions paid during the financial year by the person or company to a registrant firm described in subparagraph (d)(i).

(3) Despite subsection (1), an unregistered capital markets participant may calculate its gross revenues using unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

PART 4 – PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES

4.1 Recognized exchange

(1) A recognized exchange must, no later than April 30 in each calendar year, pay the participation fee shown in Column B of Appendix B.1 opposite the corresponding Canadian trading share of the exchange for the specified period in Rows A1 to A6 of Column A.

(2) If there are two or more recognized exchanges, each of which is related to each other,

(a) the obligation under subsection (1) and Appendix B.1 must be calculated as if the recognized exchanges are a single entity, and

(b) each recognized exchange is jointly and severally liable in respect of the obligation.

4.2 Recognized quotation and trade reporting system

A recognized quotation and trade reporting system must, no later than April 30 in each calendar year, pay the participation fee shown in Column B of Appendix B.1 opposite the corresponding Canadian trading share of the quotation and trade reporting system for the specified period in Rows A1 to A6 of Column A.

4.3 Alternative trading system

(1) An alternative trading system described in Row C1 in Column A of Appendix B.1 must, no later than April 30 in each calendar year, pay a participation fee equal to the lesser of

(a) the participation fee set for the alternative trading system in Column B of Appendix B.1 as if it were a recognized exchange, opposite the corresponding Canadian trading share of the alternative trading system for the specified period in Rows A1 to A6 of Column A, less the capital markets participation fee paid under section 3.1 or 3.2 by the person or company on its specified Ontario revenues in the preceding financial year, and

(b) $17,000

(2) An alternative trading system described in Row C2 in Column A of Appendix B.1 must, no later than April 30 in each calendar year, pay a participation fee equal to the lesser of

(a) $30,000, less the capital markets participation fee paid under section 3.1 or 3.2 by the person or company on its specified Ontario revenues in the preceding financial year, and

(b) $8,750

(3) An alternative trading system described in row C3 in Column A of Appendix B.1 must, no later than April 30 in each calendar year, pay a participation fee equal to the lesser of

(a) $30,000, less the capital markets participation fee paid under section 3.1 or 3.2 by the person or company on its specified Ontario revenues in the preceding financial year, and

(b) $17,000

(4) If the amount determined under paragraph 1(a), 2(a) or 3(a) is negative, the amount must be refunded to the person or company not later than June 1 in the calendar year.

(5) If there are two or more alternative trading systems that trade the same asset class, each of which is related to each other,

(a) the obligation under subsections (1) to (3) and Appendix B.1 must be calculated as if the alternative trading systems are a single entity, and

(b) each alternative trading system is jointly and severally liable in respect of the obligation.

(6) If there are two or more alternative trading systems, each of which is related to each other and each of which trades different asset classes, each alternative trading system must pay a participation fee as determined under subsection (1), (2) or (3).

4.4 Recognized clearing agencies

A recognized clearing agency must, no later than April 30 in each calendar year, pay the aggregate of the participation fees shown in Column B of Appendix B.1 opposite the services described in Rows D1 to D6 of Column A that are provided by the clearing agency in the specified period.

4.5 Other specified regulated entities

A person or company described in row B1, E1 or F1 in Column A of Appendix B.1 must, no later than April 30 in each calendar year, pay the participation fee shown in Column B of Appendix B.1 opposite the corresponding description in Row B1, E1 or F1, as the case may be.

4.6 Participation fee on recognition, designation, etc.

(1) A person or company must, on the date it first becomes a specified regulated entity, pay a participation fee of

A x B ÷ C, where

"A" is

(i) in the case of a recognized exchange, a recognized quotation and trade reporting system or an alternative trading system, $30,000,

(ii) in the case of an exchange exempt from recognition under the Act, $10,000,

(iii) in the case of a recognized clearing agency, the aggregate of the participation fees shown in Column B of Appendix B.1 opposite the services described in Rows D1 to D6 of Column A that are to be provided by the clearing agency in the specified period,

(iv) in the case of a clearing agency exempt from recognition under the Act, $10,000,

(v) in the case of a designated trade repository, $75,000,

"B" is the number of complete months remaining from the month in which the person or company first became a specified regulated entity until March 31, and

"C" is 12

(2) If a person or company first becomes a specified regulated entity between January 1 and March 31 of a calendar year, the fee required to be paid under subsection (1) is in addition to the fee required to be paid by the person or company in the same calendar year under section 4.1 to section 4.5.

4.7 Form – A payment made under section 4.1 to section 4.6 must be accompanied by a completed Form 13-502F7.

4.8 Late fee

(1) A person or company that is late paying a participation fee under this Part must pay an additional late fee of 0.1% of the unpaid portion of the participation fee for each business day on which any portion of the participation fee was due and unpaid.

(2) If the late fee calculated under subsection (1) is less than $100, it is deemed to be nil.

PART 5 – PARTICIPATION FEES FOR DESIGNATED CREDIT RATING ORGANIZATIONS

5.1 Payment of participation fee

(1) A designated credit rating organization must, after each financial year,

(a) pay a participation fee of $15,000, and

(b) file a completed Form 13-502F8.

(2) A designated credit rating organization must comply with subsection (1) by the earlier of

(a) the date on which it is required to file a completed Form 25-101FI Designated Rating Organization Application and Annual Filing in respect of the financial year under National Instrument 25-101 *Designated Rating Organizations*, and

(b) the date on which it files a completed form 25-101FI Designated Rating Organization Application and Annual Filing in respect of the financial year.

5.2 Late fee

(1) A designated credit rating organization that is late paying a participation fee under this Part must pay an additional late fee of 0.1% of the unpaid portion of the participation fee for each business day on which any portion of the participation fee was due and unpaid.

(2) If a late fee calculated under subsection (1) is less than $100, it is deemed to be nil.

PART 6 — ACTIVITY FEES

6.1 Activity fees – General — A person or company must, when filing a document or taking an action described in any of Rows A to O of Column A of Appendix C, pay the activity fee shown opposite the description of the document or action in Column B.

6.2 Information request — A person or company that makes a request described in any of Rows P1 to P3 of Column A of Appendix C must pay the fee shown opposite the description of the request in Column B of Appendix C before receiving the document or information requested.

6.3 Investment fund families and affiliated registrants — Despite section 6.1, only one activity fee must be paid for an application made by or on behalf of

(a) two or more investment funds that have

(i) the same investment fund manager, or

(ii) investment fund managers that are affiliates of each other; or

(b) two or more registrants that

(i) are affiliates of each other, and

(ii) make an application described in item E of Column A of Appendix C in respect of a joint activity.

6.4 Late fee

(1) A person or company that files or delivers a form or document listed in Row A or B of Column A of Appendix D after the form or document was required to be filed or delivered must, when filing or delivering the form or document, pay the late fee shown in Column B of Appendix D opposite the description of the form or document.

(2) A person or company that files a Form 55-102F2 Insider Report after it was required to be filed must pay the late fee shown in Row C of Column B of Appendix D on receiving an invoice from the Commission.

(3) Subsection (2) does not apply to the late filing of Form 55-102F2 Insider Report by an insider of a reporting issuer if

(a) the head office of the reporting issuer is located outside Ontario; and

(b) the insider is required to pay a late fee for the filing in another province or territory.

PART 7 — CURRENCY CONVERSION

7.1 Canadian dollars — If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 8 — EXEMPTION

8.1 Exemption — The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 9 — REVOCATION AND EFFECTIVE DATE

9.1 Revocation — Rule 13-502 Fees, which came into force on _____, is revoked.

9.2 Effective date — This Rule comes into force on _____.

APPENDIX A
CORPORATE FINANCE PARTICIPATION FEES

Capitalization for the Previous Financial Year	Participation Fee (effective April 1, 2015)
Under $10 million	$890
$10 million to under $25 million	$1,070
$25 million to under $50 million	$2,590
$50 million to under $100 million	$6,390
$100 million to under $250 million	$13,340
$250 million to under $500 million	$29,365
$500 million to under $1 billion	$40,950
$1 billion to under $5 billion	$59,350
$5 billion to under $10 billion	$76,425
$10 billion to under $25 billion	$89,270
$25 billion and over	$100,500

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Previous Financial Year	Participation Fee (effective April 1, 2015)
under $10 million	$890
$10 million to under $25 million	$1,070
$25 million to under $50 million	$1,195
$50 million to under $100 million	$2,135
$100 million to under $250 million	$4,450
$250 million to under $500 million	$9,780
$500 million to under $1 billion	$13,650
$1 billion to under $5 billion	$19,785
$5 billion to under $10 billion	$25,460
$10 billion to under $25 billion	$29,755
$25 billion and over	$33,495

APPENDIX B
CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the Previous Financial Year	Participation Fee (effective April 1, 2015)
under $250,000	$835
$250,000 to under $500,000	$1,085
$500,000 to under $1 million	$3,550
$1 million to under $3 million	$7,950
$3 million to under $5 million	$17,900
$5 million to under $10 million	$36,175
$10 million to under $25 million	$74,000
$25 million to under $50 million	$110,750
$50 million to under $100 million	$221,500
$100 million to under $200 million	$367,700
$200 million to under $500 million	$745,300
$500 million to under $1 billion	$962,500
$1 billion to under $2 billion	$1,213,800
$2 billion and over	$2,037,000

APPENDIX B.1
PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES
Part 3.1 of the Rule

Row	Specified Regulated Entity (Column A)	Participation Fee (Column B)
	A. Recognized exchange and recognized quotation and trade reporting system	
A1	A person or company with a Canadian trading share for the specified period of up to 5%.	$30,000
A2	A person or company with a Canadian trading share for the specified period of 5% to up to 15%.	$50,000
A3	A person or company with a Canadian trading share for the specified period of 15% to up to 25%.	$135,000
A4	A person or company with a Canadian trading share for the specified period of 25% to up to 50%.	$275,000
A5	A person or company with a Canadian trading share for the specified period of 50% to up to 75%.	$400,000
A6	A person or company with a Canadian trading share for the specified period of 75% or more.	$500,000
	B. Exchanges Exempt from Recognition under the Act	
B1	A person or company that is exempted by the Commission from the application of subsection 21(1) of the *Act*.	$10,000
	C. Alternative Trading Systems	
C1	Each alternative trading system for exchange-traded securities only.	Lesser of (a) The amount in A1 to A6 determined based on Canadian trading share of alternative trading system less capital markets participation fee paid in respect of previous year, and (b) $17,000
C2	Each alternative trading system only for unlisted debt or securities lending.	Lesser of (a) $30,000 less capital markets participation fee paid in respect of the previous year, and

Row	Specified Regulated Entity (Column A)	Participation Fee (Column B)
		(b) $8,750
C3	Each alternative trading system not described in Row C1 or C2.	Lesser of (a) $30,000 less capital markets participation fee paid in respect of the previous year, and (b) $17,000
	D. Recognized Clearing Agencies - Services	
D1	Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction.	$10,000
D2	Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money.	$20,000
D3	Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.*	$20,000
D4	Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight.	$150,000
D5	Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight.	$70,000
D6	Depositary services, being the provision of centralized facilities as a depository for securities.	$20,000
	E. Clearing Agencies Exempt from Recognition under the Act	
E1	Each clearing agency that is exempted by the Commission from the application of subsection 21.2(1) of the *Act*.	$10,000

Row	Specified Regulated Entity (Column A)	Participation Fee (Column B)
	F. Designated Trade Repositories	
F1	Each designated trade repository designated under subsection 21.2.2(1) of the *Act*.	$75,000 (plus an additional $25,000 if the trade repository's share of the total number of trades of any asset class reported under OSC Rule 91-507 is greater than 50% of global trades in that asset class).

APPENDIX C

ACTIVITY FEES

Row	Document or Activity (Column A)	Fee (Column B)
	A. Prospectus Filings	
A1	Preliminary or Pro Forma Prospectus in Form 41-101F1 (including if PREP procedures are used)	$3,800
A2	Additional fee(s) for Preliminary or Pro Forma Prospectus of an issuer that is accompanied by, or incorporates by reference, technical report(s) that has not or have not been previously incorporated by reference in a Preliminary or Pro Forma Prospectus	$2,500 for each technical report
A3	Preliminary Short Form Prospectus in Form 44-101F1 (including if shelf or PREP procedures are used) or a Registration Statement on Form F-9 or F-10 filed by an issuer that is incorporated or that is organized under the laws of Canada or a jurisdiction in Canada province or territory in connection with a distribution solely in the United States under MJDS as described in the companion policy to NI 71-101 *The Multijurisdictional Disclosure System*.	$3,800
A4	Prospectus Filing by or on behalf of certain investment Funds	
	(a) Preliminary or Pro Forma Simplified Prospectus and Annual Information Form in Form 81-101F1 and Form 81-101F2	The greater of (i) $3,800 for a prospectus, and (ii) $400 for each mutual fund in a prospectus.
	(b) Preliminary or Pro Forma Prospectus in Form 41-101F2 or Scholarship Plan Prospectus in Form 41-101F3	The greater of (i) $3,800 for a prospectus, and (ii) $650 for each investment fund in a prospectus.
A5	Review of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*).	$3,800

Row	Document or Activity (Column A)	Fee (Column B)
A6	Filing of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the issuer.	$500
	B. Fees relating to exempt distributions under OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and NI 45-106 *Prospectus and Registration Exemptions*	
B1	Application for recognition, or renewal of recognition, as an accredited investor	$500
B2	Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer	$500
B3	Filing of a rights offering circular in Form 45-101F	$3,800 (plus an additional fee of $2,000 in connection with any application or filing described in any of Rows B1 to B3 if neither the applicant nor the filer or an issuer of which the applicant or filer is a wholly owned subsidiary is subject to, or is reasonably expected to become subject to, a participation fee under this Rule)
	C. Notice of exemption	
C1	Provision of Notice under paragraph 2.42(2)(a) of NI 45- 106 *Prospectus and Registration Exemptions*	$2,000
	D. Syndicate Agreement	
D1	Filing of Prospecting Syndicate Agreement	$500

Row	Document or Activity (Column A)	Fee (Column B)
	E. Applications for specifically enumerated relief, approval, recognition, designation, etc.	
E1	An application for relief from this Rule.	$1,800
E2	An application for relief from any of the following: (a) NI 31-102 *National Registration Database*; (b) NI 33-109 *Registration Information*; (c) section 3.11 [*Portfolio manager – advising representative*] of NI 31-103; (d) section 3.12 [*Portfolio manager – associate advising representative*] of NI 31-103; (e) section 3.13 [*Portfolio manager – chief compliance officer*] of NI 31-103; (f) section 3.14 [*Investment fund manager – chief compliance officer*] of NI 31-103; (g) section 9.1 [*IIROC membership for investment dealers*] of NI 31-103; (h) section 9.2 [*MFDA membership for mutual fund dealers*] of NI 31-103.	$1,800
E3	An application for relief from any of the following: (a) section 3.3 [*Time limits on examination requirements*] of NI 31-103; (b) section 3.5 [*Mutual fund dealer – dealing representative*] of NI 31-103; (c) section 3.6 [*Mutual fund dealer – chief compliance officer*] of NI 31-103; (d) section 3.7 [*Scholarship plan dealer – dealing representative*] of NI 31-103; (e) section 3.8 [*Scholarship plan dealer – chief compliance officer*] of NI 31-103; (f) section 3.9 [*Exempt market dealer – dealing representative*] of NI 31-103, (g) section 3.10 [*Exempt market dealer – chief compliance officer*] of NI 31-103.	$500
E4	An application under subparagraph 1(10)(a)(ii) of the *Act*	$1,000

Row	Document or Activity (Column A)	Fee (Column B)
E5	An application (a) under section 30 or subsection 38(3) of the Act or subsection 1(6) of the *Business Corporations Act*; and (b) under section 144 of the Act for an order to partially revoke a cease-trade order to permit trades solely for the purpose of establishing a tax loss, as contemplated under section 3.2 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*.	Nil
E6	An application other than a pre-filing, where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under NI 41-101 or NI 81-101).	$4,800
E7	An application for approval under subsection 213(3) of the *Loan and Trust Corporations Act*	$1,500
E8	An application (a) made under subsection 46(4) of the *Business Corporations Act* for relief from the requirements under Part V of that *Act* (b) for consent to continue in another jurisdiction under paragraph 4(b) of Ont. Reg. 289/00 made under the *Business Corporations Act* *Note: These fees are in addition to the fee payable to the Minister of Finance as set out in the Schedule attached to the Minister's Fee Orders relating to applications for exemption orders made under the Business Corporations Act to the Commission*.	$400
	F. Market Regulation Recognitions and Exemptions	
F1	An application for recognition of an exchange under section 21 of the *Act*	$110,000
F2	An application for exemption from the requirement to be recognized as an exchange under section 21 of the *Act*	$83,000
F3	An application by a marketplace that trades OTC derivatives, including swap execution facilities, for exemption from the requirement to be recognized under section 21 of the *Act*	$20,000
F4	An application by clearing agencies for recognition under section 21.2 of the *Act*	$110,000

Row	Document or Activity (Column A)	Fee (Column B)
F5	An application for exemption from the requirement to be recognized as a clearing agency under section 21.2 of the *Act*	$83,000 (plus an additional fee of $100,000 in connection with an application described in any of Rows F1 to F5 that (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
	G. Initial Filing for ATS	
G1	Review of the initial Form 21-101F2 of a new alternative trading system	$55,000
	H. Trade Repository	
H1	Application for designation as a trade repository under section 21.2.2 of the *Act*	$83,000
	I. Pre-Filings	
I1	Each pre-filing relating to the items described in Rows F1 to F5, G1 and H1 of Appendix C	One-half of the otherwise applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.
I2	Any other pre-filing *Note: The fee for a pre-filing under this section will be credited against the applicable fee payable if and when the corresponding formal filing (e.g., an application or a preliminary prospectus) is actually proceeded with; otherwise, the fee is nonrefundable.*	The applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.

Row	Document or Activity (Column A)	Fee (Column B)
	J. Take-Over Bid and Issuer Bid Documents	
J1	Filing of a take-over bid or issuer bid circular under subsection 94.2(2),(3) or (4) of the *Act*, the filing of an information circular by a person or company in connection with a solicitation that is not made by or on behalf of management, or the filing of an information circular in connection with a special meeting to be held to consider the approval of a going private transaction, reorganization, amalgamation, merger, arrangement, consolidation or similar business combination (other than a second step business combination in compliance with MI 61-101).	$4,500 (plus $2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, or reasonably expected to become subject to, a participation fee under this Rule)
J2	Filing of a notice of change or variation under section 94.5 of the *Act*	Nil
	K. Registration-Related Activity	
K1	New registration of a firm in one or more categories of registration	$1,300
K2	Addition of one or more categories of registration	$700
K3	Registration of a new representative as a dealer and/or adviser on behalf of a registrant firm	$200 per individual, unless the individual makes an application to register in the same category of registration within three months of terminating employment with a previous firm.
K4	Review of permitted individual	$100 per individual
K5	Change in status from not being a representative on behalf of a registrant firm to being a representative on behalf of the registrant firm	$200 per individual
K6	Registration as a chief compliance officer or ultimate designated person of a registrant firm, if the individual is not registered as a representative on behalf of the registrant firm	$200 per individual
K7	Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	$1,000

Row	Document or Activity (Column A)	Fee (Column B)
K8	Application for amending terms and conditions of registration	$800
	L. Registrant Acquisitions	
L1	Notice required under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] or 11.10 [*Registered firm whose securities are acquired*] of NI 31-103	$3,600
	M. Certified Statements	
M1	Request for certified statement from the Commission or the Director under section 139 of the Act	$100
	N. Designated Rating Organizations	
N1	An application for designation of a credit rating organization under section 22 of the *Act*	$15,000
	An application for a variation of a designation of a credit rating organization under subsection 144(1) of the *Act* if the application (a) reflects a merger of a credit rating organization, (b) reflects an acquisition of a major part of the assets of a credit rating organization, (c) involves the introduction of a new business that would significantly change the risk profile of a credit rating organization, or (d) reflects a major reorganization or restructuring of a credit rating organization	$15,000
N3	Any other application for a variation of a designation of a credit rating organization under subsection 144(1) of the *Act*	$4,800
	O. Any Application not otherwise Listed in this Rule	
O1	An application for (a) relief from one section of the Act, a regulation or a rule, or (b) recognition or designation under one section of the Act, a regulation or a	$4,800
O2	An application for (a) relief from two or more sections of the Act, a regulation or a rule made at the same time, or (b) recognition or designation under two or more sections of the Act, a regulation or a rule made at the same time.	$7,000

Row	Document or Activity (Column A)	Fee (Column B)
O3	An application made under O1 or O2 if none of the following is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant);	The amount in O1 or O2 is increased by $2,000
O4	An application under subsection 144(1) of the *Act* if the application (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency.	The amount in O1 or O2 is increased by $100,000
	P. Requests to the Commission	
P1	Request for a copy (in any format) of Commission public records	$0.50 per image
P2	Request for a search of Commission public records	$7.50 for each 15 minutes search time spent by any person
P3	Request for one's own individual registration form.	$30

APPENDIX D – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document (Column A)	Late Fee (Column B)
A. Fee for late filing or delivery of any of the following forms documents: (a) Annual financial statements and interim financial information; (b) Annual information form filed under NI 51-102 or NI 81-106 *Investment Fund Continuous Disclosure*; (c) Notice under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] of NI 31-103, (d) Filings for the purpose of amending Form 3 or Form 4 under the Regulation or Form 33-109F4 or Form 33-109F6 under NI 33-109 *Registration Information*, including the filing of Form 33-109F1; (e) Any form or document required to be filed or delivered by a registrant firm or individual in connection with the registration of the registrant firm or individual under the Act with respect to (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-502F1; (g) Form 13-502F2; (h) Form 13-502F3A; (i) Form 13-502F4; (j) Form 13-502F5; (k) Form 13-502F6; (l) Form 13-502F7; (m) Form 13-502F8	For each form or document required to be filed or delivered, $100 for every business day following the date the form or document was required to be filed or delivered until the date the form or document is filed or delivered, subject to a maximum aggregate late fee of, (a) if the person or company is subject to a participation fee under Part 3 of the Rule and the estimated specified Ontario revenues for the previous financial year are greater than or equal to $500 million, $10,000 for all forms or documents required to be filed or delivered by the person or company in the calendar year, (b) in the case of a reporting issuer, $5,000 per fiscal year for all forms or documents required to be filed or delivered by the reporting issuer in its fiscal year, or (c) in all other cases, $5,000 for all forms or documents required to be filed or delivered by the person or company in the calendar year.

Document (Column A)	Late Fee (Column B)
B. Fee for late filing Forms 45-501F1 and 45-106F1	$100 for every business day following the date the form was required to be filed by a person or company until the date the form is filed, to a maximum of $5,000 for all forms required to be filed by the person or company in the calendar year.
C Fee for late filing of Form 55-102F2 – *Insider Report*	$50 per calendar day per insider per issuer (subject to a maximum of $1,000 per issuer within any one year beginning on April 1st and ending on March 31st.). The late fee does not apply to an insider if (a) the head office of the issuer is located outside Ontario, and (b) the insider is required to pay a late fee for the filing in a jurisdiction in Canada other than Ontario.

FORM 13-502F1

CLASS 1 AND CLASS 3B REPORTING ISSUERS – PARTICIPATION FEE

MANAGEMENT CERTIFICATION

I, _____, an officer of the reporting issuer noted below have examined this Form 13-502F1 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

Reporting Issuer Name: _____

End date of previous financial year: _____

Type of Reporting Issuer: ☐ **Class 1 reporting issuer** ☐ **Class 3B reporting issuer**

Highest Trading Marketplace: _____
(refer to the definition of "highest trading marketplace" under OSC Rule 13-502 *Fees*)

Market value of listed or quoted equity securities:
(in Canadian Dollars - refer to section 7.1 of OSC Rule 13-502 *Fees*)

Equity Symbol _____

1st Specified Trading Period (dd/mm/yy)
(refer to the definition of "specified trading period" under OSC Rule 13-502 *Fees*) _____ to _____

Closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace **$**_____ (i)

Number of securities in the class or series of such security outstanding at the end of the last trading day of the specified trading period _____ (ii)

Market value of class or series (i) x (ii) **$**_____ (A)

2nd Specified Trading Period (dd/mm/yy)
(refer to the definition of "specified trading period" under OSC Rule 13-502 *Fees*) _____ to _____

Closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace **$**_____ (iii)

Number of securities in the class or series of such security outstanding at the end of the last trading day of the specified trading period _____ (iv)

Market value of class or series (iii) x (iv) **$**_____ (B)

3rd Specified Trading Period (dd/mm/yy)
(refer to the definition of "specified trading period" under OSC Rule 13-502 *Fees*) _____ to _____

Closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace **$** _____ (v)

Number of securities in the class or series of such security outstanding at the end of the last trading day of the specified trading period _____ (vi)

Market value of class or series (v) x (vi) **$**_____ (C)

4th Specified Trading Period (dd/mm/yy)
(refer to the definition of "specified trading period" under OSC Rule 13-502 *Fees*) _____ to _____

Closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace _____ (vii)

Number of securities in the class or series of such security outstanding at the end of the last trading day of the specified trading period _____ (viii)

Market value of class or series (vii) x (viii) **$**_____ (D)

5th Specified Trading Period (dd/mm/yy)
(if applicable - refer to the definition of "specified trading period" under OSC Rule 13-502 *Fees*) _____ to _____

Closing price of the security in the class or series on the last trading day of the specified trading period in which such security was listed or quoted on the highest trading marketplace **$**_____ (ix)

Number of securities in the class or series of such security outstanding at the end of the last trading day of the specified trading period _____ (x)

Market value of class or series (ix) x (x) **$**_____ (E)

Average Market Value of Class or Series
(Calculate the simple average of the market value of the class or series of security for each applicable specified trading period (i.e. A through E above))

$_____ **(1)**

(Repeat the above calculation for each other class or series of equity securities of the reporting issuer (and a subsidiary pursuant to paragraph 2.8(1)(c) of OSC Rule 13-502 *Fees*, if applicable) that was listed or quoted on a marketplace at the end of the previous financial year)

Fair value of outstanding debt securities:
(See paragraph 2.8(1)(b), and if applicable, paragraph 2.8(1)(c) of OSC Rule 13-502 *Fees*) **$**_____ **(2)**

(Provide details of how value was determined)

Capitalization for the previous financial year	(1) + (2)	**$**_____
Participation Fee (For Class 1 reporting issuers, from Appendix A of OSC Rule 13-502 *Fees*, select the participation fee) (For Class 3B reporting issuers, from Appendix A.1 of OSC Rule 13-502 *Fees*, select the participation fee)		**$**_____
Late Fee, if applicable (As determined under section 2.7 of OSC Rule 13-502 *Fees*)		**$**_____
Total Fee Payable (Participation Fee plus Late Fee)		**$**_____

FORM 13-502F2
CLASS 2 REPORTING ISSUERS – PARTICIPATION FEE

MANAGEMENT CERTIFICATION

I, _____, an officer of the reporting issuer noted below have examined this Form 13-502F2 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

Reporting Issuer Name: _____

End date of previous financial year: _____

Financial Statement Values:
(Use stated values from the audited financial statements of the reporting issuer as of the end of its previous financial year)

Retained earnings or deficit	$_____ (A)
Contributed surplus	$_____ (B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	$_____ (C)
Non-current borrowings (including the current portion)	$_____ (D)
Finance leases (including the current portion)	$_____ (E)
Non-controlling interest	$_____ (F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	$_____ (G)
Any other item forming part of equity and not set out specifically above	$_____ (H)
Capitalization for the previous financial year (Add items (A) through (H))	$_____
Participation Fee (From Appendix A of OSC Rule 13-502 *Fees*, select the participation fee beside the capitalization calculated above)	$_____
Late Fee, if applicable (As determined under section 2.7 of OSC Rule 13-502 *Fees*)	$_____
Total Fee Payable (Participation Fee plus Late Fee)	$_____

FORM 13-502F2A
ADJUSTMENT OF FEE PAYMENT FOR CLASS 2 REPORTING ISSUERS

MANAGEMENT CERTIFICATION

I, _____, an officer of the reporting issuer noted below have examined this Form 13-502F2A (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

Reporting Issuer Name: _____

Financial year end date used to calculate capitalization: _____

State the amount of participation fee paid under subsection 2.2(1) of OSC Rule 13-502 *Fees*: **$**_____ (i)

Show calculation of actual capitalization based on audited financial statements:

Financial Statement Values:

Retained earnings or deficit	**$**_____ (A)
Contributed surplus	**$**_____ (B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	**$**_____ (C)
Non-current borrowings (including the current portion)	**$**_____ (D)
Finance leases (including the current portion)	**$**_____ (E)
Non-controlling interest	**$**_____ (F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	**$**_____ (G)
Any other item forming part of equity and not set out specifically above	**$**_____ (H)

Capitalization
(Add items (A) through (H)) **$**_____

Participation Fee
(From Appendix A of OSC Rule 13-502 *Fees*, select the participation fee beside the capitalization calculated above) **$**_____ (ii)

Refund due (Balance owing)
(Indicate the difference between (i) and (ii) and enter nil if no difference)
(i) – (ii) = **$**_____

FORM 13-502F3A
CLASS 3A REPORTING ISSUERS – PARTICIPATION FEE

MANAGEMENT CERTIFICATION

I, _____, an officer of the reporting issuer noted below have examined this Form 13-502F3A (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

Reporting Issuer Name: _____
(Class 3A reporting issuer cannot be incorporated or organized under the laws of Canada or a province or territory of Canada)

Financial year end date: _____

Indicate, by checking the appropriate box, which of the following criteria the issuer meets:

☐ (a) had no securities listed or quoted on any marketplace at the end of its previous financial year, or

☐ (b) had securities listed or quoted on a marketplace at the end of its previous financial year and all of the following apply:

(i) at the end of its previous financial year, securities registered in the names of persons or companies resident in Ontario represented less than 1% of the market value of all of the reporting issuer's outstanding securities for which it or its transfer agent or registrar maintains a list of registered owners;

(ii) the reporting issuer reasonably believes that, at the end of its previous financial year, securities beneficially owned by persons or companies resident in Ontario represented less than 1% of the market value of all its outstanding securities;

(iii) the reporting issuer reasonably believes that none of its securities traded on a marketplace in Canada during its previous financial year;

(iv) the reporting issuer has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of one or more of its subsidiaries, or

(B) to a person or company exercising a right previously granted by the reporting issuer or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration;

Participation Fee
(From subsection 2.2(2) of OSC Rule 13-502 *Fees*) $1,070

Late Fee, if applicable
(As determined under section 2.7 of OSC Rule 13-502 *Fees*) **$**_____

Total Fee Payable
(Participation Fee plus Late Fee) **$**_____

FORM 13-502F4
CAPITAL MARKETS PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed and returned to the Ontario Securities Commission by December 1 each year, as required by section 3.1 or 3.2 of OSC Rule 13-502 *Fees* (the Rule), except in the case where firms register after December 1 in a calendar year or provide notification after December 1 in a calendar year of their status as an unregistered capital markets participant. In these exceptional cases, this form must be filed within 60 days of registration or notification after December 1.

2. This form is to be completed by firms registered under the *Securities Act* or by firms that are registered under both the *Securities Act* and the *Commodity Futures Act*. This form is also completed by unregistered capital markets participants.

3. For firms registered under the *Commodity Futures Act*, the completion of this form will serve as an application for the renewal of both the firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

4. IIROC members must complete Part I of this form and MFDA members must complete Part II. Unregistered capital markets participants and registrant firms that are not IIROC or MFDA members must complete Part III.

5. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

6. MFDA members may refer to Statement D of the MFDA Financial Questionnaire and Report for guidance.

7. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for the previous financial year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a previous financial year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same financial year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from capital markets activities in Ontario.

8. All figures must be expressed in Canadian dollars. All figures other than the participation fee must be rounded to the nearest thousand.

9. Information reported on this form must be certified by the chief compliance officer or equivalent to attest to its completeness and accuracy.

Management Certification

I, _____, of the registrant firm / unregistered capital markets participant noted below have examined this Form 13-502F4 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status (one selection)

❑ The firm is a member of the Mutual Fund Dealers Association (MFDA).

❑ The firm is a member of the Investment Industry Regulatory Organization of Canada (IIROC).

For a firm that does not hold membership with the MFDA or IIROC:

❑ The firm is an unregistered investment fund manager only

❑ All other firms

4. Financial Information

Is the firm providing a good faith estimate under section 3.2 of the Rule?
❑ Yes ❑ No (one selection)

If no, end date of previous financial year: _____/____/___
yyyy mm dd
If yes, end date of financial year for which the good faith estimate is provided: _____/____/___
yyyy mm dd

5. Participation Fee Calculation

Previous financial year $

Note: Dollar amounts stated in thousands, rounded to the neared thousand.

Part I — IIROC Members

1.	Total revenue for previous financial year from Statement E of the Joint Regulatory Financial Questionnaire and Report	**$**_____
2.	Less revenue not attributable to capital markets activities	$_____
3.	Revenue subject to participation fee (line 1 less line 2)	$_____
4.	Ontario percentage for previous financial year (See definition of "Ontario percentage" in the Rule)	_____%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	$_____
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	$_____

Part II — MFDA Members

1.	Total revenue for previous financial year from Statement D of the MFDA Financial Questionnaire and Report	$_____
2.	Less revenue not attributable to capital markets activities	$_____
3.	Revenue subject to participation fee (line 1 less line 2)	$_____
4.	Ontario percentage for previous financial year (See definition of "Ontario percentage" in the Rule)	_____%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	$_____
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	$_____

Part III – Advisers, Other Dealers, and Unregistered Capital Markets Participants Notes:

1. Total revenues is defined as the sum of all revenues reported on the audited financial statements, except where unaudited financial statements are permitted in accordance with subsection 3.6(3) of the Rule. Audited financial statements should be prepared in accordance with NI 52-107. Items reported on a net basis must be adjusted for purposes of the fee calculation to reflect gross revenues.

2. Redemption fees earned upon the redemption of investment fund units sold on a deferred sales charge basis are permitted as a deduction from total revenue on this line.

3. Administration fees permitted as a deduction are limited solely to those that are otherwise included in total revenues and represent the reasonable recovery of costs from the investment funds for operating expenses paid on their behalf by the registrant firm or unregistered capital markets participant.

4. Where the advisory services of a registrant firm, within the meaning of this Rule or OSC Rule 13-503 *(Commodity Futures Act) Fees*, or of an exempt international firm, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

5. Trailer fees paid to registrant firms described in note 4 are permitted as a deduction on this line to the extent they are otherwise included in gross revenues.

1.	Total revenue for previous financial year (note 1)	$_____
Less the following items:		
2.	Revenue not attributable to capital markets activities	$_____
3.	Redemption fee revenue (note 2)	$_____
4.	Administration fee revenue (note 3)	$_____
5.	Advisory or sub-advisory fees paid to registrant firms or exempt international firms (note 4)	$_____
6.	Trailer fees paid to registrant firms (note 5)	$_____
7.	Total deductions (sum of lines 2 to 6)	$_____
8.	Revenue subject to participation fee (line 1 less line 7)	$_____
9.	Ontario percentage for previous financial year (See definition of “Ontario percentage” in the Rule)	_____%
10.	Specified Ontario revenues (line 8 multiplied by line 9)	$_____
11.	Participation fee (From Appendix B of the Rule, select the participation fee beside the specified Ontario revenues calculated above)	$_____

FORM 13-502F5

ADJUSTMENT OF FEE FOR REGISTRANT FIRMS AND UNREGISTERED CAPITAL MARKETS PARTICIPANTS

Firm name: _____

End date of previous financial year:

Note: Paragraph 3.2(2)(c) of the Rule requires that this form must be filed concurrent with a completed Form 13-502F4 that shows the firm's actual participation fee calculation.

1.	Estimated participation fee paid under section 3.2 of the Rule:	$_____
2.	Actual participation fee calculated under paragraph 3.2(2)(b) of the Rule:	$_____
3.	Refund due (Balance owing): (Indicate the difference between lines 1 and 2)	$_____

FORM 13-502F6

SUBSIDIARY EXEMPTION NOTICE

MANAGEMENT CERTIFICATION

I, _____, an officer of the subsidiary noted below have examined this Form 13-502F6 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

Name of Subsidiary: _____

Name of Parent: _____

End Date of Subsidiary's Previous Financial year: _____

The reporting issuer (subsidiary) meets the following criteria set out under subsection 2.4(1) of OSC Rule 13-502 *Fees*:

(a) at the end of the subsidiary's previous financial year, the parent of the subsidiary was a reporting issuer;

(b) the audited financial statements of the parent prepared in accordance with NI 52-107 require the consolidation of the parent and the subsidiary;

(c) the parent has paid a participation fee under subsection 2.2(1) calculated based on the capitalization of the parent for its previous financial year;

(d) in the case of a parent that is a Class 1 reporting issuer, the capitalization of the parent for its previous financial year included the capitalization of the subsidiary as required under paragraph 2.8(1)(c);

(e) in its previous financial year,

(i) the net assets and total revenues of the subsidiary represented more than 90% of the consolidated net assets and total revenues of the parent in the parent's previous financial year, or

(ii) the subsidiary was entitled to rely on an exemption or waiver from the requirements in subsections 4.1(1), 4.3(1), 5.1(1) or section 5.2, and section 6.1 of NI 51-102.

If paragraph e(i) above applies, complete the following table:

	Net Assets for previous financial year	**Total Revenues for previous financial year**	
Reporting Issuer (Subsidiary)	$_____	$_____	(A)
Reporting Issuer (Parent)	$_____	$_____	(B)
Percentage (A/B)	_____%	_____%	

FORM 13-502F7

SPECIFIED REGULATED ENTITIES – PARTICIPATION FEE

Name of Specified Regulated Entity: _____

Applicable calendar year: _____ (2014 or later)

Type of Specified Regulated Entity: (check one)

- o Recognized exchange or recognized quotation and trade reporting system (complete (1) below)
- o Alternative trading system (complete (2) or (3) below, as applicable)
- o Recognized clearing agency (complete (4) below)
- o Exempt exchange, Exempt clearing agency or Designated Trade Repository (complete (5) below, as applicable)

(1) Participation Fee for applicable calendar year -- Recognized exchange or recognized quotation and trade reporting system

Filer should enter their Canadian trading share for the specified period below:

Canadian Trading Share Description	% (To be Entered by Filer)
Line 1: the share in the specified period of the total dollar values of trades of exchange-traded securities;	
Line 2: the share in the specified period of the total trading volume of exchange-traded securities;	
Line 3: the share in the specified period of the total number of trades of exchange-traded securities;	
Line 4: Average of Lines 1,2 & 3 above	
Line 5: Filer is required to Pay the Amount from the corresponding column in the table below based on the average calculated on Line 4 above:	$_____
Canadian trading share for the specified period of up to 5%	$30,000
Canadian trading share for the specified period of 5% to up to 15%	$50,000
Canadian trading share for the specified period of 15% to up to 25%	$135,000
Canadian trading share for the specified period of 25% to up to 50%	$275,000
Canadian trading share for the specified period of 50% to up to 75%.	$400,000
Canadian trading share for the specified period of 75% or more	$500,000

(2) Participation Fee for applicable calendar year -- Alternative trading system for exchange-traded securities

Line 6: If operating an alternative trading system for exchange-traded securities, enter participation fee based on your Canadian trading share (Line 5)	$_____
Line 7: Enter amount of capital markets participation fee paid based on Form 13-502F4 on December 31 of the prior year	$_____
Line 8: Subtract Line 7 from Line 6. If positive, enter the lesser of this amount and $17,000. If zero or negative, there is no Part 4 fee payable and there is a refund due to you of the amount determined.	$_____

(3) Participation fee for applicable calendar year – other alternative trading system

Line 9: If operating as an alternative trading system that is not for exchange-traded securities, enter $30,000	$_____
Line 10: Enter amount of capital markets participation fee based on Form 13-502F4 on December 31 of the prior year	$_____
Line 11: Subtract Line 10 from Line 9. If positive, enter (a) The lesser of this amount and $8,750 if trading in debt or securities trading (b) The lesser of this amount and $17,000 if you are a trading system other than that described in Line 6 or (a) above. If zero or negative, there is no Part 4 participation fee payable and there is a refund due to you.	$_____

(4) Participation Fee for applicable calendar year – Recognized clearing agency

For services offered in Ontario Market the filer should enter the corresponding amount in the Fees Payable Column:

Services:	Fee Payable
Line 12: Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction. Enter $10,000	$_____

Services:	Fee Payable
Line 13: Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money. Enter $20,000	$_____
Line 14: Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa.* Enter $20,000.	$_____
Line 15: Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight. Enter $150,000	$_____
Line 16: Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight. Enter $70,000.	$_____
Line 17: Depositary services, being the provision of centralized facilities as a depositary for securities. Enter $20,000.	$_____
Line 18: Total Participation Fee Payable (Sum of Lines 12-17):	$_____

(5) Participation Fee for applicable calendar year for other types of specified regulated entities:

Line 19: Filer is required to pay the amount below, as applicable. (a) If operating as an Exempt Exchange of Exempt Clearing Agency, enter $10,000 (b) If operating as a Designated Trade Repository, enter $75,000 plus an additional $25,000 if the trade repository's share of the total number of trades of any asset class reported under OSC Rule 91-507 is greater than 50% of global trades in that asset class	$_____

(6) Prorated Participation Fee:

Line 20: If this is the first time paying a participation fee as a specified regulated entity, prorate the amount under subsection 4.6(1) of the Rule.	$_____

(7) Late Fee

Line 21: Unpaid portion of Participation Fee from Sections (1), (2), (3), (4), (5), (6)	$_____
Line 22: Number of Business Days Late	$_____
Line 23: Fee Payable is as follows: Amount from Line 21*[Amount from Line 22*0.1%]	**$_____**

(8) Total Fee Payable

Line 24: Aggregate Participant Fee from Sections (1), (2), (3), (4), (5), (6)	$_____
Line 25: Late Fee from Line 23	$_____
Line 26: Fee Payable is amount from Line 24 plus amount from Line 25	$_____

FORM 13-502F8

DESIGNATED CREDIT RATING ORGANIZATIONS – PARTICIPATION FEE

Name of Designated Credit Rating Organization:	_____
Financial year end date:	_____
Participation Fee in respect of the financial year (From subsection 5.1(1) of the Rule)	$15,000
Late Fee, if applicable (From Section 5.2 of the Rule)	$_____
Total Fee Payable (Participation Fee plus Late Fee)	$_____

ONTARIO SECURITIES COMMISSION

COMPANION POLICY 13-502CP FEES

TABLE OF CONTENTS

PART TITLE

ONTARIO SECURITIES COMMISSION

COMPANION POLICY 13-502CP FEES

PART 1 – PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-502 *Fees* (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 – PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and general approach of the Rule

(1) The purpose of the Rule is to establish a fee regime that creates a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation fees

(1) Reporting issuers, registrant firms and unregistered capital markets participants, as well as specified regulated entities and designated rating organizations, are required to pay participation fees annually.

(2) Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a person or company under Parts 2 and 3 of the Rule is based on a measure of the person's or company's size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a reporting issuer, the participation fee is based on the issuer's capitalization, which is used to approximate its proportionate participation in the Ontario capital markets. In the case of a registrant firm or unregistered capital markets participant, the participation fee is based on the firm's revenues attributable to its capital markets activities in Ontario.

(3) Participation fees under Part 4 of the Rule are generally fixed annual amounts payable each calendar year. In the case of specified regulated entities to which Part 4 of the Rule applies, participation fees are generally specified for a particular organization or type of organization in Appendix B.1. The level of participation fees for recognized clearing agencies is determined by reference to the services they provide.

(4) Participation fees for designated rating organizations under Part 5 of the Rule are $15,000 per financial year.

(5) A person or company may be subject to participation fees under more than one part of the Rule. There is no cap on multiple participation fees except as described in subsection 2.7(2).

2.3 Application of participation fees – Although participation fees are determined with reference to information from a financial year of the payor generally ending before the time of their payment, they are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the payor and other market participants.

2.4 Registered individuals – The participation fee is paid at the firm level under the Rule. For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a representative of the firm.

2.5 Activity fees

(1) Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix C of the Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications, and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

(2) Under certain circumstances, Staff may consider reducing activity fees for applications made by or on behalf of two or more reporting issuers or registrants that are affiliates of each other, and who are applying for the same exemptive relief. In such circumstances, the activity fees will be reduced such that the activity fees paid on an application will be the same as if one reporting issuer or registrant filed the application.

2.6 Registrants under the *Securities Act* and the *Commodity Futures Act*

(1) The Rule imposes an obligation to pay a participation fee on registrant firms, defined in the Rule as a person or company registered under the Act as a dealer, adviser or investment fund manager. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*. Given the definition of "capital markets activities" under the Rule, the revenue of such an entity from its *Commodity Futures Act* activities must be included in its calculation of revenues when determining its fee under the Rule. Section 2.1 of OSC Rule 13-503 *(Commodity Futures Act) Fees* exempts such an entity from paying a participation fee under that rule if it has paid its participation fees under the *Securities Act* Rule.

(2) Note that dealers and advisers registered under the *Commodity Futures Act* are subject to activity fees under OSC Rule 13-503 *(Commodity Futures Act) Fees* even if they are not required to pay participation fees under that rule.

2.7 Refunds

(1) The Rule provides the specific circumstances where the Commission is required to refund fees in subsections 2.5(3) and 3.2(3) of the Rule. These subsections allow for a refund where a reporting issuer, registrant firm or unregistered capital markets participant overpaid an estimated participation fee provided the request is made within the time the related form was required to be filed.

(2) A further refund mechanism is provided under subsection 4.3(4). This subsection deals with a refund mechanism used to effect a cap of Part 3 and Part 4 participation fees for alternative trading systems, in an attempt to align the participation fees to those charged to other specified regulated entities.

(3) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee unless they meet the conditions set out in the Rule and discussed in subsections (1) and (2) above. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a reporting issuer, registrant firm or unregistered capital markets participant that loses that status later in the financial year in respect of which the fee was paid.

(4) While the Commission will also review requests for adjustments to fees paid in the case of incorrect calculations, unless there are exceptional circumstances, we will not generally issue a refund if a request is made more than 90 days after the fee was required to be paid.

2.8 Indirect avoidance of Rule – The Commission may examine arrangements or structures implemented by a person or company and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will review circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm to assess whether the firm has artificially reduced the firm's specified Ontario revenues and, consequently, its participation fee. Similarly, registrant firms or unregistered capital markets participants that operate under a cost recovery model in which there are no recorded revenues on their financial statements would be expected to report a reasonable proxy of the firm's capital markets activities in Ontario, subject to the conditions of any exemptive relief granted under section 8.1 of the Rule. In all cases, the Commission expects registrant firms and unregistered capital markets participants to pay participation fees based on all revenues attributable to capital markets activities in Ontario, irrespective of how these revenues are recorded or structured.

PART 3 – CORPORATE FINANCE PARTICIPATION FEES

3.1 Application to investment funds – Part 2 of the Rule does not apply to an investment fund if the investment fund has an investment fund manager. The reason for this is that under Part 3 of the Rule an investment fund's manager must pay a capital markets participation fee in respect of revenues generated from managing the investment fund.

3.2 Late fees – Section 2.7 of the Rule requires a reporting issuer to pay an additional fee when it is late in paying its participation fee. Reporting issuers should be aware that the late payment of participation fees may lead to the reporting issuer being noted in default and included on the list of defaulting reporting issuers available on the Commission's website.

3.3 Exemption for subsidiary entities – Under section 2.4 of the Rule, an exemption from participation fees is available to a reporting issuer that is a subsidiary entity if, among other requirements, the parent of the subsidiary entity has paid a participation fee applicable to the parent under section 2.2(1) of the Rule determined with reference to the parent's capitalization for the parent's financial year. For greater certainty, this condition to the exemption is not satisfied in

circumstances where the parent of a subsidiary entity has paid a participation fee in reliance on subsection 2.2(2) or (3) of the Rule.

3.4 Determination of market value

(1) Paragraph 2.8(1)(a) of the Rule requires the calculation of the capitalization of a reporting issuer to include the total market value of all of its equity securities listed or quoted on a marketplace. This includes, but is not limited to, any listed shares, warrants, subscription receipts and rights.

(2) Paragraph 2.8(1)(b) of the Rule requires the calculation of the capitalization of a reporting issuer to include the total fair value of its debt securities that are listed or quoted on a marketplace, trade over the counter or otherwise generally available for sale without regard to a statutory hold period. This paragraph is intended to include all capital market debt issued by the reporting issuer, whether distributed under a prospectus or prospectus exemption, and includes, but is not limited to, bonds, debentures (including the equity portion of convertible debentures), commercial paper, notes and any debt securities to which a credit rating is attached, but is not intended to include bank debt (such as term loans and revolving credit facilities) and mortgages.

(3) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.

3.5 Owners' equity and non-current borrowings – A Class 2 reporting issuer calculates its capitalization on the basis of certain items reflected in its audited statement of financial position. Two such items are "share capital or owners' equity" and "non-current borrowings, including the current portion". The Commission notes that "owners' equity" is designed to describe the equivalent of share capital for non-corporate issuers, such as partnerships or trusts. "Non-current borrowings" is designed to describe the equivalent of long term debt or any other borrowing of funds beyond a period of twelve months.

3.6 Identification of non-current liabilities – If a Class 2 reporting issuer does not present current and non-current liabilities as separate classifications on its statement of financial position, the reporting issuer will still need to classify these liabilities for purposes of its capitalization calculation. In these circumstances non-current liabilities means total liabilities minus current liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law.

PART 4 – CAPITAL MARKETS PARTICIPATION FEES

4.1 Liability for capital markets participation fees – Capital markets participation fees are payable annually by registrant firms and unregistered capital markets participants, as defined in section 1.1 of the Rule.

4.2 Filing forms under section 3.2 of the Rule – If the estimated participation fee paid under subsection 3.2(1) of the Rule by a registrant firm or an unregistered capital markets participant does not differ from its true participation fee determined under paragraph 3.2(2)(b) of the Rule, the registrant firm or unregistered capital markets participant is not required to file either a Form 13-502F4 or a Form 13-502F5 under paragraph 3.2(2)(c) of the Rule.

4.3 Late fees – Section 3.4 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm. The Commission may also consider measures in the case of late payment of fees by an unregistered capital markets participant, such as: in the case of an unregistered investment fund manager, prohibiting the manager from continuing to manage any investment fund or cease trading the investment funds managed by the manager; or, in the case of an unregistered exempt international firm, making an order pursuant to section 127 of the Act, that the corresponding exemptions from registration requirements under which the firm acts do not apply to the firm (either permanently or for such other period as specified in the order).

4.4 Form of payment of fees – Registrant firms pay through the National Registration Database. The filings and payments for unregistered capital markets participants should be sent via wire transfer or sent to the Ontario Securities Commission (Attention: Manager, Compliance and Registrant Regulation).

4.5 "Capital markets activities"

(1) A person or company must consider its capital markets activities when calculating its participation fee. The Commission is of the view that these activities include, without limitation, carrying on the business of trading in securities, carrying on the business of an investment fund manager, providing securities-related advice or

portfolio management services. The Commission notes that corporate advisory services may not require registration or an exemption from registration and would therefore, in those contexts, not be capital markets activities.

(2) The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

4.6 Permitted deductions — Subsection 3.6 of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for unregistered capital markets participants and registrant firms. The purpose of these deductions is to prevent the "double counting" of revenues that would otherwise occur.

4.7 Active solicitation — For the purposes of the definition of unregistered investment fund manager in section 1.1 of the Rule, "active solicitation" refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund's securities, such as proactive, targeted actions or communications that are initiated by an investment fund manager for the purpose of soliciting an investment. Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

4.8 Confidentiality of forms — The material filed under Part 3 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection.

PART 5 – OTHER PARTICIPATION FEES

5.1 General — Participation fees are also payable annually by specified regulated entities and designated credit rating organizations under Parts 4 and 5 of the Rule.

5.2 Specified regulated entities — The calculation of participation fees under Part 4 of the Rule is generally determined with reference to described classes of entities. The classes, and their level of participation fees, are set out in Appendix B.1 of the Rule.

(1) To provide more equitable treatment among exchanges and alternative trading systems (ATS) for exchange-traded securities and to take into account Part 3 participation fees payable by an alternative trading system entity for exchange-traded securities, its participation fee is adjusted under section 4.3.

For example, assume that participation fees under Part 3 for an eligible ATS payable on December 31, 2015 is $74,000 and the ATS's Canadian trading share is under 5%. In this case, the ATS would pay $74,000 on December 31 when filing its Form 13-502F4. Before April 30, 2016 when filing form 13-502F7, the fee payable will be shown as $17,000 (the lesser of (a) $30,000 from row A1 of Appendix B.1 and (b) $17,000). In this case, the ATS will be entitled to a refund of $57,000 ($74,000 paid on December 31 less $17,000 required to be paid under Part 4). A mechanism that is similar in principle applies to other ATS entities under subsections 4.2(2) and (3).

An ATS described in subsection 4.3(6) will pay an aggregate participation fee calculated based on the type of securities traded on each of its platforms. For example, an ATS that has a platform for trading equities and another one for trading fixed income securities would pay a participation fee for its equity platform calculated as described above and a participation fee for its fixed income platform as described in Appendix B.1 row C2.

(2) If a specified regulated entity is recognized during the specified period, it must pay to the Commission, immediately upon recognition, designation etc., a participation fee for the remaining specified period. The participation fee owed to the Commission will be pro-rated based on the number of remaining complete months to March 31 subsequent to it being recognized, designated, etc. For example, if an exchange was recognized on January 15, 2016, it will owe to the Commission a pro-rated participation fee in the amount of $5,000 for the two complete months remaining until March 31 (calculated as $30,000 x 2/12). A form 13-502F7 must be filed with the pro-rated payment.

Continuing with the example above, the recognized exchange will also need to calculate the participation fee due before April 30, 2016 and file a second Form 13-502F7 with this payment. For the purpose of calculating its Canadian trading share, the exchange should use the actual Canadian trading share for the months of February and March 2016 and zero for the months before it received recognition (i.e. April 2015 to January 2016).

ONTARIO SECURITIES COMMISSION

RULE 13-503 (COMMODITY FUTURES ACT) FEES

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ONTARIO SECURITIES COMMISSION

RULE 13-503 (COMMODITY FUTURES ACT) FEES

PART 1 — DEFINITIONS

1.1 Definitions — In this Rule

"CFA" means the *Commodity Futures Act*;

"CFA activities" means activities for which registration under the CFA is required, or activities for which an exemption from registration is required under the CFA, or would be so required if those activities were carried out in Ontario;

"generally accepted accounting principles", in relation to a person or company, means the generally accepted accounting principles used to prepare the financial statements of the person or company in accordance with Ontario securities law;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"Ontario percentage" means, in relation to a person or company for a previous financial year,

(a) in the case of a person or company that has a permanent establishment in Ontario in the previous financial year and no permanent establishment elsewhere, 100%,

(b) in the case of a person or company that has a permanent establishment in Ontario and elsewhere in the previous financial year and has taxable income in the previous financial year that is positive, the percentage of the taxable income that is taxable income earned in the year in Ontario, and

(c) in any other case, the percentage of the total revenues of the person or company for the previous financial year attributable to CFA activities in Ontario;

"permanent establishment" means a permanent establishment as defined in subsection 400(2) of the *Income Tax Regulations* (Canada);

"previous financial year" means, in relation to a registrant firm, the financial year of the firm ending in the calendar year;

"registrant firm" means a person or company registered as dealer or an adviser under the CFA;

"specified Ontario revenues" means the revenues determined in accordance with section 2.6 or 2.7;

"taxable income" means taxable income as determined under the *Income Tax Act* (Canada); and

"taxable income earned in the year in Ontario", in relation to a person or company for a financial year, means the taxable income of the person or company earned in the financial year in Ontario as determined under Part IV of the *Income Tax Regulations* (Canada).

PART 2 — PARTICIPATION FEES

2.1 Application — This Part does not apply to a registrant firm that is registered under the *Securities Act* and that has paid its participation fee under Rule 13-502 *Fees* under the *Securities Act*.

2.2 Participation fee

(1) A registrant firm must, by December 31 in each year, pay the participation fee shown in Appendix A opposite the specified Ontario revenues for the previous financial year of the firm.

(2) A registrant firm must, by December 1 in each year, file a completed Form 13-503F1 showing the information required to determine the participation fee referred to in subsection (1).

(3) Despite subsection (1), a firm that becomes registered between December 1 and 31 must file a completed Form 13-503F1 within 60 days of the date of registration.

2.3 Estimating specified Ontario revenues for late financial year end

(1) If the annual financial statements of a registrant firm for a previous financial year are not completed by December 1 in the calendar year in which the previous financial year ends, the firm must,

(a) by December 1, file a completed Form 13-503F1 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the previous financial year, and

(b) by December 31, pay the participation fee shown in Appendix A opposite its estimated specified Ontario revenues for the previous financial year.

(2) A registrant firm that estimated its specified Ontario revenues under subsection (1) must, not later than 90 days after the end of the previous financial year,

(a) calculate its specified Ontario revenues,

(b) determine the participation fee shown in Appendix A opposite the specified Ontario revenues,

(c) if the participation fee determined under paragraph (b) exceeds the participation fee paid under subsection (1), pay the balance owing and file a completed Form 13-503F1 and Form 13-503F2.

(3) A registrant firm that pays an amount under subsection (1) that exceeds the participation fee determined under subsection (2) is entitled to a refund from the Commission of the excess.

(4) A request for a refund under subsection (3) must be made to the Commission by the same date on which the form referred to in paragraph (2)(c) is required to be filed.

2.4 Certification — A form required to be filed under section 2.2 or 2.3 must contain a certification signed by the chief compliance officer of the registrant firm.

2.5 Late fee

(1) A registrant firm that is late in paying a participation fee under this Part must pay an additional late fee of 0.1% of the unpaid portion of the participation fee for each business day on which any portion of the participation fee was due and unpaid.

(2) A late fee calculated under subsection (1) is deemed to be nil if it is less than $100.

2.6 Calculating specified Ontario revenues for IIROC members

(1) The specified Ontario revenues for a previous financial year of a registrant firm that was an IIROC member at the end of the previous financial year is calculated by multiplying

(a) the registrant firm's total revenues for the previous financial year, less the portion of the total revenue not attributable to CFA activities, by

(b) the registrant firm's Ontario percentage for the previous financial year.

(2) For the purpose of paragraph (1)(a), "total revenues" for a previous financial year means the amount shown as total revenue for the previous financial year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm.

2.7 Calculating specified Ontario revenues for others

(1) The specified Ontario revenues of a registrant firm that was not a member of IIROC at the end of the previous financial year is calculated by multiplying

(a) the registrant firm's total revenues, as shown in the audited financial statements prepared in accordance with generally accepted accounting principles for the previous financial year, less deductions permitted under subsection (2), by

(b) the registrant firm's Ontario percentage for the previous financial year.

(2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items if earned in the previous year from its total revenues:

(a) revenues not attributable to CFA activities,

(b) advisory or sub-advisory fees paid during the previous financial year by the registrant firm to

(i) a registrant firm under the CFA or a registrant firm under the *Securities Act*, or

(ii) an unregistered exempt international firm, as defined in Rule 13-502 *Fees* under the *Securities Act*.

PART 3 — ACTIVITY FEES

3.1 **Activity fees — General —** A person or company must, when filing a document or taking an action described in Row A to F of Column A of Appendix B, pay the activity fee shown opposite the description of the document or action in Column B.

3.2 **Information request —**A person or company that makes a request described in any of Rows G1 to G3 of Column A of Appendix B must pay the fee shown opposite the description of the request in Column B of Appendix B before receiving the document or information requested.

3.3 **Late fee —** A person or company that files or delivers a form or document listed in Column A of Appendix C after the form or document was required to be filed or delivered must, when filing or delivering the form or document, pay the late fee shown in Column B of Appendix C opposite the description of the form or document.

PART 4 — CURRENCY CONVERSION

4.1 **Canadian dollars** — If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 5 — EXEMPTION

5.1 **Exemption —** The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 — REVOCATION AND EFFECTIVE DATE

6.1 **Revocation —** Rule 13-503 Fees which came into force on [*], is revoked.

6.2 **Effective date —** This Rule comes into force on [*].

APPENDIX A — PARTICIPATION FEES

Specified Ontario Revenues for the Previous Financial Year	Participation Fee (effective April 1, 2015)
under $250,000	$835
$250,000 to under $500,000	$1,085
$500,000 to under $1 million	$3,550
$1 million to under $3 million	$7,950
$3 million to under $5 million	$17,900
$5 million to under $10 million	$36,175
$10 million to under $25 million	$74,000
$25 million to under $50 million	$110,750
$50 million to under $100 million	$221,500
$100 million to under $200 million	$367,700
$200 million to under $500 million	$745,300
$500 million to under $1 billion	$962,500
$1 billion to under $2 billion	$1,213,800
$2 billion and over	$2,037,000

APPENDIX B - ACTIVITY FEES

Row	Document or Activity (Column A)	Fee (Column B)
	A. Application for Specifically enumerated relief, approval and recognition	
A1	Application under: (a) Section 24 or 40 or subsection 36(1) or 46(6) of the CFA, and (b) Subsection 27(1) of the Regulation to the CFA.	Nil
A2	An application for relief from this Rule.	$1,800
A3	An application for relief from any of the following: (a) OSC Rule 31-509 *(Commodity Futures Act) National Registration Database*; (b) OSC Rule 33-505 *(Commodity Futures Act) Registration Information*; (c) Subsection 37(7) of the Regulation to the CFA	$1,800
	B. Market Regulation Recognitions and Exemptions	
B1	An application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is not made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$110,000
B2	An application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$22,000
B3	An application for exemption from registration of an exchange under section 80 of the CFA if the application is not made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$83,000
B4	An application for exemption from registration of an exchange under section 80 of the CFA if the application is made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act;*	$22,000
B5	An application for recognition of a clearing house under section 17 of the CFA if the application is not made in conjunction with the application for recognition of a clearing agency under the *Securities Act;*	$110,000
B6	An application for recognition of a clearing house under section 17 of the CFA if the application is made in conjunction with the application for recognition of a clearing agency under the *Securities Act.*	$22,000 (plus an additional fee of $100,000 in connection with an application described in any of Rows B1 to B6 that (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency,

Row	Document or Activity (Column A)	Fee (Column B)
		(c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
	C. Registration-Related Activity	
C1	New registration of a firm in one or more categories of registration	$1,300
C2	Addition of one or more categories of registration	$700
C3	Registration of a new director, officer or partner (trading and/or advising), salesperson or representative *Notes:* *(i) Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.* *(ii) If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee.*	$200 per individual, unless the individual makes an application to register in the same category of registration within three months of terminating employment with a previous firm.
C4	Change in status from a non-trading or non-advising capacity to a trading or advising capacity	$200 per individual
C5	Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	$1,000
C6	Application for amending terms and conditions of registration	$800
D1	**D. Director Approval** An application for approval of the Director under Section 9 of the Regulation to the CFA *Note: No fee for an approval under subsection 9(3) of the Regulation to the CFA is payable if a notice covering the same circumstances is required under sections 11.9 or 11.10 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.*	$3,500
E1	**E. Pre Filings** Each pre-filing of an application *Note: The fee for a pre-filing of an application will be credited against the applicable fee payable if and when the corresponding formal filing is actually proceeded with; otherwise, the fee is nonrefundable.*	The applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.

Row	Document or Activity (Column A)	Fee (Column B)
	F. Any Application not otherwise listed in this Rule	
F1	An application for (a) relief from one section of the CFA, a regulation or a rule, or (b) recognition or designation under one section of the CFA, a regulation or a rule.	$4,800
F2	An application for (a) relief from two or more sections of the CFA, a regulation or a rule made at the same time, or (b) recognition or designation under two or more sections of the CFA, a regulation or a rule made at the same time.	$7,000
F3	An application made under F1 or F2 if none of the following is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 *Fees*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary;	The amount in F1 or F2 is increased by $2,000
F4	An application under subsection 78(1) of the CFA if the application (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction n of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency.	The amount in F1 or F2 is increased by $100,000
	G. Requests to the Commission	
G1	Request for a copy (in any format) of Commission public records	$0.50 per image
G2	Request for a search of Commission public records	$7.50 for each 15 minutes search time spent by any person
G3	Request for one's own individual registration form.	$30

APPENDIX C - ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document (Column A)	Late Fee (Column B)
Fee for late filing or delivery of any of the following forms or documents: (a) Annual financial statements and interim financial information; (b) Report under section 15 of the Regulation to the CFA; (c) Report under section 17 of the Regulation to the CFA; (d) Filings for the purpose of amending Form 5 under the Regulation to the CFA or Form 33-506F4 or Form 33-506F6 under OSC Rule 33-506, including the filing of Form 33-506F1; (e) Any form or document required to be filed or delivered by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to, (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-503F1; (g) Form 13-503F2.	For each form or document required to be filed or delivered, $100 for every business day following the date the form or document was required to be filed or delivered until the date the form or document is filed or delivered, subject to a maximum aggregate late fee of, (a) if the person or company is subject to a participation fee under Part 2 of the rule and the estimated specified Ontario revenues for the previous financial year are greater than or equal to $500 million, $10,000 for all forms or documents required to be filed or delivered by the person or company in the calendar year, or (b) in all other cases, $5,000 for all forms or documents required to be filed or delivered by the person or company in the calendar year.

FORM 13-503F1

(*Commodity Futures Act*) PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed by firms registered under the *Commodity Futures Act* but not under the *Securities Act*. It must be returned to the Ontario Securities Commission by December 1 each year, as required by section 2.2 of OSC Rule 13-503, except in the case where firms register after December 1 in a calendar year. In this exceptional case, this form must be filed within 60 days of registration.

2. The completion of this form will serve as an application for the renewal of both the firm and all its registered individuals wishing to renew under the *Commodity Futures Act.*

3. IIROC members must complete Part I of this form. All other registrant firms must complete Part II.

4. IIROC members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

5. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for the previous financial year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a previous financial year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same financial year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.

6. All figures must be expressed in Canadian dollars. All figures other than the participation fee must be rounded to the nearest thousand.

7. Information reported on this form must be certified by the chief compliance officer to attest to its completeness and accuracy.

Management Certification

I, _____, of the registrant firm noted below have examined this Form 13-503F1 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s)_____ _____
Name: Date:
Title:

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Financial Information

Is the firm providing a good faith estimate under section 2.3 of the Rule?

- Yes
- No (one selection)

If no, end date of previous financial year: _____/____/___
yyyy mm dd

If yes, end date of financial year for which the good faith estimate is provided: ____/____/___
yyyy mm dd

4. Participation Fee Calculation

		Previous financial Year $
	Note: Dollar amounts stated in thousands, rounded to the neared thousand.	
	Part I — IIROC Members	
1.	Total revenue for previous financial year from Statement E of the Joint Regulatory Financial Questionnaire and Report	$_____
2.	Less revenue not attributable to CFA activities	$_____
3.	Revenue subject to participation fee (line 1 less line 2)	$_____
4.	Ontario percentage for previous financial year (See definition of "Ontario percentage" in the Rule)	_____%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	$_____
6.	Participation fee (From Appendix A of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	$_____

Part II – Other Registrants:

1. Total revenues is defined as the sum of all revenues reported on the audited financial statements. Audited financial statements should be prepared in accordance with generally accepted accounting principles. Items reported on a net basis must be adjusted for purposes of the fee calculation to reflect gross revenues.

2. Where the advisory services of a registrant firm, or of an exempt international firm under Rule 13-502 *Fees* of the *Securities Ac*t, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in total revenues.

1.	Total revenue for previous financial year (note 1)	$_____
	Less the following items:	
2.	Revenue not attributable to CFA activities	$_____
3.	Advisory or sub-advisory fees paid to registrant firms or exempt international firms (note 2)	$_____
4.	Revenue subject to participation fee (line 1 less lines 2 and 3)	$_____

5.	Ontario percentage for previous financial year (See definition of “Ontario percentage” in the Rule)	_____%
6.	Specified Ontario revenues (line 4 multiplied by line 5)	$_____
	Participation fee (From Appendix A of the Rule, select the participation fee beside the specified Ontario revenues calculated above)	$_____

FORM 13-503F2

ADJUSTMENT OF FEE PAYMENT FOR
COMMODITY FUTURES ACT REGISTRANT FIRMS

Firm name: _____

End date of previous financial year:

Note: Paragraph 2.3(2) of the Rule requires that this form must be filed concurrent with a completed Form 13-503F1 that shows the firm's actual participation fee calculation.

1.	Estimated participation fee paid under section 2.3(1) of the Rule:	$_____
2.	Actual participation fee calculated under paragraph 2.3(2)(b) of the Rule:	$_____
3.	Refund due (Balance owing): (Indicate the difference between lines 1 and 2)	$_____

ONTARIO SECURITIES COMMISSION COMPANION POLICY
13-503CP (COMMODITY FUTURES ACT) FEES

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ONTARIO SECURITIES COMMISSION

COMPANION POLICY 13-503CP (COMMODITY FUTURES ACT) FEES

PART 1 — PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy — The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-503 (*Commodity Futures Act*) Fees (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 — PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and general approach of the Rule

(1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of OSC Rule 13-502 (the "OSA Fees Rule"), which governs fees paid under the *Securities Act*. Both rules are designed to create a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation fees

(1) Registrant firms are required to pay participation fees annually.

(2) Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a person or company under Part 2 of the Rule is based on a measure of the person's or company's size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a registrant firm, the participation fee is based on the firm's revenues attributable to its CFA activity in Ontario.

2.3 Application of participation fees — Although participation fees are determined with reference to information from a financial year of the payor generally ending before the time of their payment, they are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the payor and other market participants.

2.4 Registered individuals — The participation fee is paid at the firm level under the Rule. For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a salesperson, representative, partner, or officer of the firm.

2.5 Activity fees — Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix B of the Rule are considered in determining these fees (e.g., reviewing registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.6 Registrants under the CFA and the *Securities Act*

(1) A registrant firm that is registered both under the CFA and the Securities Act is exempted by section 2.1 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. The registrant firm will include revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under the OSA Fees Rule.

(2) A registrant firm that is registered both under the CFA and the *Securities Act* must pay activity fees under the CFA Rule even though it pays a participation fee under the OSA Fees Rule.

2.7 Refunds

(1) The Rule provides the specific circumstances where the Commission is required to refund fees in subsection 2.3(3) of the Rule. This subsection allows for a refund where a registrant firm overpaid an estimated participation fee provided the request is made within the time the related form was required to be filed.

(2) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee unless they meet the conditions set out in the rule and discussed in subsection (1) above. For example, there is no

refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the year for which the fee was paid.

(3) While the Commission will also review requests for adjustments to fees paid in the case of incorrect calculations, unless there are exceptional circumstances, we will not generally issue a refund if a request is made more than 90 days after the fee was required to be paid.

2.8 Indirect avoidance of Rule — The Commission may examine arrangements or structures implemented by a person or company and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will review circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, to assess whether the firm has artificially reduced the firm's specified Ontario revenues and, consequently, its participation fee.

2.9 Confidentiality of forms — The material filed under the Part 2 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection.

PART 3 — PARTICIPATION FEES

3.1 Liability for participation fees — Participation fees are payable annually by registrant firms as defined in Section 1.1 of the Rule.

3.2 Filing forms under section 2.3 of the Rule — If the estimated participation fee paid under subsection 2.3(1) of the Rule by a registrant firm does not differ from its true participation fee determined under subsection 2.3(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.3(3) of the Rule.

3.3 Late fees — Section 2.5 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm.

3.4 "CFA activities" — A person or company must consider its CFA activities when calculating its participation fee. The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

3.5 Permitted deductions — Subsection 2.7 of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for registrant firms. The purpose of these deductions is to prevent the "double counting" of revenues that would otherwise occur.

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

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Aumento Capital V Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 10, 2014
NP 11-202 Receipt dated September 10, 2014
Offering Price and Description:
Minimum of $600,000 -1,000,000 Common Shares
Maximum of $720,000 - 1,200,000 Common Shares
Price: $0.60 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2259091

Issuer Name:
Boyd Group Income Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated September 15, 2014
NP 11-202 Receipt dated September 15, 2014
Offering Price and Description:
$50,015,350 - 1,181,000 Units
Price: $42.35
and
$50,000,000 - 5.25% Convertible Unsecured Subordinated Debentures Due October 31, 2021
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Cormark Securities Inc.
CIBC World Markets Inc.
GMP Securities L.P.
Laurentian Bank Securities Inc.
Scotia Capital Inc.
Octagon Capital Corporation
Promoter(s):
-
Project #2259736

Issuer Name:
Dividend 15 Split Corp. II
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 9, 2014
Offering Price and Description:
Maximum: $ * - * Preferred Shares and * Class A Shares
Prices: $* per Preferred Share and $* per Class A Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2258675

Issuer Name:
Dividend 15 Split Corp. II
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 10, 2014
NP 11-202 Receipt dated September 11, 2014
Offering Price and Description:
Maximum: $44,062,500 - 2,350,000 Preferred Shares and 2,350,000 Class A Shares
Price: $10.00 Preferred Shares and $8.75 per Class A Shares
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2258675

Issuer Name:
EFLO Energy, Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 9, 2014
Offering Price and Description:
Minimum Offering: Cdn$10,000,000 - * Shares
Maximum Offering: Cdn$20,000,000 - * Shares
Price: Cdn$ * per Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2223694

Issuer Name:
First Asset Morningstar Developed Markets ex-North America Momentum Index ETF
First Asset Morningstar Developed Markets ex-North America Value Index ETF
First Asset Morningstar Emerging Markets Momentum Index ETF
First Asset Morningstar Emerging Markets Value Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Forma Long Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 10, 2014
Offering Price and Description:
Common Units, Advisor Class Units, Unhedged Common Units and Unhedged Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC.
Project #2259002

Issuer Name:
First Trust AlphaDEX U.S. Consumer Discretionary Sector Index ETF
First Trust AlphaDEX U.S. Consumer Staples Sector Index ETF
First Trust AlphaDEX U.S. Energy Sector Index ETF
First Trust AlphaDEX U.S. Financial Sector Index ETF
First Trust AlphaDEX U.S. Health Care Sector Index ETF
First Trust AlphaDEX U.S. Industrials Sector Index ETF
First Trust AlphaDEX U.S. Materials Sector Index ETF
First Trust AlphaDEX U.S. Technology Sector Index ETF
First Trust AlphaDEX U.S. Utilities Sector Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 12, 2014
NP 11-202 Receipt dated September 15, 2014
Offering Price and Description:
Hedged Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FT Portfolios Canada Co.
Project #2259983

Issuer Name:
Front Street Flow-Through 2014-II Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
Maximum Offering: $20,000,000 - 800,000 Units
Minimum Offering: $5,000,000 - 200,000 Units
Subscription Price: $25.00 per Unit
Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Raymond James Ltd.
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Manulife Securities Incorporated
Sherbrooke Street Capital (SSC) Inc.
Tuscarora Capital Inc.
Promoter(s):
FSC GP II Corp.
Front Street Capital 2004
Project #2259729

Issuer Name:
Mosaic Capital Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated September 12, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
$200,000,000.00
Common Shares
Preferred Shares
Warrants
Preferred Securities
Debt Securities
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2259748

Issuer Name:
Next Edge Bio-Tech Plus Fund
Next Edge Theta Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 12, 2014
NP 11-202 Receipt dated September 15, 2014
Offering Price and Description:
Class A, Class A1, Class F and Class F1 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Next Edge Capital Corp.
Project #2259775

Issuer Name:
NorthWest International Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 9, 2014
Offering Price and Description:
$35,000,000 - 7.25% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
NATIONALBANK FINANCIAL INC.
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
SCOTIA CAPITALINC.
DUNDEE SECURITIES LTD.
RAYMOND JAMES LTD.
MANULIFE SECURITIES INCORPORATED
DESJARDINS SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
ALL GROUP FINANCIAL SERVICES INC.
Promoter(s):
-
Project #2257627

Issuer Name:
PrairieSky Royalty Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 11, 2014
NP 11-202 Receipt dated September 11, 2014
Offering Price and Description:
$2,562,300,000 - 70,200,000 Commons Shares
Price: $36.50 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Bank Inc.
Credit Suisse Securities Canada Inc.
National Bank Financial Inc.
Barclays Capital Canada Inc.
Citigroup Global Markets Canada Inc.
Goldman Sachs Canada Inc.
J.P. Morgan Securities Canada Inc.
Merrill Lynch Canada Inc.
Morgan Stanley Canada Limited
Firstenergy Capital Corp.
Peters & Co. Limited
Altacorp. Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Promoter(s):
Encana Corporation
Project #2258491

Issuer Name:
Pro FTSE NA Dividend Index Fund
Pro FTSE RAFI Canadian Index Fund
Pro FTSE RAFI Emerging Markets Index Fund
Pro FTSE RAFI Global Index Fund
Pro FTSE RAFI Hong Kong China Index Fund
Pro FTSE RAFI US Index Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 11, 2014
NP 11-202 Receipt dated September 15, 2014
Offering Price and Description:
Class B and F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pro-Financial Asset Management Inc.
Project #2259476

Issuer Name:
Tamarack Valley Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 9, 2014
Offering Price and Description:
$115,115,000 - 16,100,000 Subscription Receipts each representing the right to receive one Common Share
Price: $7.15 per Subscription Receipt
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
GMP SECURITIES L.P.
CLARUS SECURITES INC.
PETERS & CO. LIMITED
RBC DOMINION SECURITIES INC.
ALTACORP CAPITAL INC.
Promoter(s):
-
Project #2257637

Issuer Name:
WesternOne Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 12, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
$35,000,000 - 4,375,000 Common Shares
Price: $8.00 per Offered Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
National Bank Financial Inc.
Raymond James Ltd.
BMO Nesbitt Burns Inc.
Dundee Securities Ltd.
Scotia Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Burgeonvest Bick Securities Limited
Promoter(s):
-
Project #2259773

Issuer Name:
Atrium Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 15, 2014
NP 11-202 Receipt dated September 15, 2014
Offering Price and Description:
$35,000,000.00 - 5.50% Convertible Unsecured Subordinated Debentures due September 30, 2021
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2257145

Issuer Name:
BMG BullionFund
(Class A, Class B1, Class B2, Class B3, Class C1, Class C2, Class C3, Class F, Class S1 and Class S2 Units)
BMG Gold BullionFund
(Class A, Class B1, Class B2, Class B3, Class C1, Class C2, Class C3, Class F, Class S1 and Class S2 Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 5, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
Class A, Class B1, Class B2, Class B3, Class C1, Class C2, Class C3, Class F, Class S1 and Class S2 Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Bullion Management Services Inc.
Project #2236736

Issuer Name:
Caterpillar Financial Services Limited
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated September 10, 2014
NP 11-202 Receipt dated September 11, 2014
Offering Price and Description:
Cdn$1,500,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2254759

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated September 9, 2014
NP 11-202 Receipt dated September 9, 2014
Offering Price and Description:
$250,002,000
13,158,000 Units
Price: $19.00 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
RBC Dominion Securities Inc
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd..
Promoter(s):
-
Project #2255185

Issuer Name:
Conservative Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated September 5, 2014
NP 11-202 Receipt dated September 11, 2014
Offering Price and Description:
Class E Units, Class F Units, Class O Units and Class P Units @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
SEI Investments Canada Company
Project #2228823

Issuer Name:
Fortis Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 11, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
$600,000,000
24,000,000 CUMULATIVE REDEEMABLE FIXED RATE RESET FIRST PREFERENCE SHARES, SERIES M
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #2257631

Issuer Name:
Stuart Olson Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 12, 2014
NP 11-202 Receipt dated September 12, 2014
Offering Price and Description:
$70,000,000.00
6.0% Convertible Unsecured Subordinated Debentures Due December 31, 2019
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
HSBC SECURITIES (CANADA) INC.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #2257809

Issuer Name:
Black Birch Capital Acquisition III Corp.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 15, 2014
Withdrawn on September 9, 2014
Offering Price and Description:
Maximum offering: $5,000,000 or 12,500,00 Units
Minimum offering: $3,000,000 or 7,500,000 Units
Price: $0.40 per Unit
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
Paul Haber
Project #2211193

Issuer Name:
Nutritional High International Inc. (formerly, Sonoma Capital Inc.)
Type and Date:
Preliminary Long Form Prospectus dated July 23, 2014
Withdrawn on September 12, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
FOUNDATION OPPORTUNITIES INC.
STATIS RIZAS
DAVID POSNER
ADAM K. SZWERAS
Project #2235583

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Baillie Gifford & Co Limited	Portfolio Manager	September 5, 2014
New Registration	Invisor Investment Management Inc.	Portfolio Manager	September 11, 2014
New Registration	Maple Rock Capital Partners Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	September 16, 2014

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Notice of Request for Comments – Republication of Performance Reporting and Fee/Charge Disclosure Amendments to Dealer Member Rule 200 and to Form 1

NOTICE OF REQUEST FOR COMMENT

THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

CLIENT RELATIONSHIP MODEL – PHASE 2

PERFORMANCE REPORTING AND FEE / CHARGE DISCLOSURE AMENDMENTS TO DEALER MEMBER RULE 200 AND DEALER MEMBER FORM 1 SCHEDULED TO BECOME EFFECTIVE ON EITHER JULY 15, 2015 OR JULY 15, 2016

IIROC is republishing for further public comment revised proposed amendments to Dealer Member Rule 200 and Dealer Member Form 1 that would introduce performance reporting and fee / charge disclosure requirements effective on either July 15, 2015 or July 15, 2016.

The proposals republished today are revisions to parts of proposed amendments to certain Member Rules and Form 1 that IIROC published on December 12, 2013. The primary purpose of the earlier proposals was to adopt requirements that are substantially the same as new requirements adopted by the Canadian Securities Administrators under the “Client Relationship Model” project. IIROC subsequently adopted parts of those proposals. The parts that are now being republished for further comment have been revised to address comments from staff of the Canadian Securities Administrators.

The IIROC Notice is available on our website at http://www.osc.gov.on.ca.

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