The Ontario Securities Commission

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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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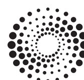
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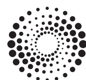

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Table of Contents

Chapter 1 Notices / News Releases 1257
1.1 Notices ...... (nil)
1.2 Notices of Hearing ...... (nil)
1.3 Notices of Hearing with Related Statements of Allegations 1257
1.3.1 CI Investments Inc. – ss. 127(1), 127(2), 127.1 1257
1.4 News Releases ...... (nil)
1.5 Notices from the Office of the Secretary 1260
1.5.1 Hussain Dhala 1260
1.5.2 2241153 Ontario Inc. et al. 1260
1.5.3 Lawrence Zeiben et al. 1261
1.5.4 CI Investments Inc. 1261
1.5.5 Fred Louis Sebastian 1262
1.6 Notices from the Office of the Secretary with Related Statements of Allegations ...... (nil)

Chapter 2 Decisions, Orders and Rulings 1263
2.1 Decisions 1263
2.1.1 Perk.com Inc. 1263
2.1.2 Capital Power L.P. – s. 1(10)(a)(ii) 1267
2.1.3 IA Clarington Canadian Mid Cap Dividend Fund – s. 1(10)(a)(ii) 1268
2.1.4 Canaccord Genuity Corp. 1269
2.1.5 TD Split Inc. – s. 1(10)(a)(ii) 1273
2.1.6 Fiera Capital Corporation and Canadian Convertibles Plus Fund 1274
2.1.7 Associated Foreign Exchange, ULC 1277
2.2 Orders 1283
2.2.1 Hussain Dhala – ss. 127(1), 127(10) 1283
2.2.2 FPS Pharma Inc. – s. 144 1284
2.2.3 Lawrence Zeiben et al. – s. 127(1) 1285
2.2.4 Fred Louis Sebastian – ss. 127(1), 127(10) 1287
2.3 Orders with Related Settlement Agreements ...... (nil)
2.4 Rulings ...... (nil)

Chapter 3 Reasons: Decisions, Orders and Rulings 1289
3.1 OSC Decisions 1289
3.1.1 Hussain Dhala – ss. 127(1), 127(10) 1289
3.1.2 2241153 Ontario Inc. et al. – s. 127 1292
3.1.3 Lawrence Zeiben et al. 1299
3.1.4 Fred Louis Sebastian – ss. 127(1), 127(10) 1305
3.2 Director's Decisions ...... (nil)
3.3 Court Decisions ...... (nil)

Chapter 4 Cease Trading Orders 1309
4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders 1309
4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders 1309
4.2.2 Outstanding Management & Insider Cease Trading Orders 1309

Chapter 5 Rules and Policies ...... (nil)

Chapter 6 Request for Comments ...... (nil)

Chapter 7 Insider Reporting 1311

Chapter 9 Legislation ...... (nil)

Chapter 11 IPOs, New Issues and Secondary Financings 1439

Chapter 12 Registrations 1445
12.1.1 Registrants 1445

Chapter 13 SROs, Marketplaces, Clearing Agencies and Trade Repositories 1447
13.1 SROs 1447
13.1.1 IIROC – Amendment to "Short Marking Exempt Order" Definitions – Notice of Commission Approval 1447
13.2 Marketplaces 1448
13.2.1 TSX – Housekeeping Amendments to the TSX Company Manual – Notice of Housekeeping Rule Amendments 1448
13.3 Clearing Agencies ...... (nil)
13.4 Trade Repositories ...... (nil)

Chapter 25 Other Information ...... (nil)

Index 1457

Chapter 1

Notices / News Releases

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 CI Investments Inc. – ss. 127(1), 127(2), 127.1

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.

NOTICE OF HEARING
(Subsections 127(1) and 127(2) and section 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(2) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission located at 20 Queen Street West, 17th Floor, on February 10, 2016 at 3 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated February 5, 2016, on a no-contest basis, between Staff of the Commission and CI Investments Inc. pursuant to subsections 127(1) and 127(2) and section 127.1, and make such other order as the Commission may consider appropriate;

BY REASON OF the allegations set out in the Statement of Allegations dated February 5, 2016 and such additional allegations as counsel may advise and the Commission may permit;

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

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

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 5th day of February, 2016.

"Josée Turcotte"
Secretary to the Commission

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. THE RESPONDENT

1. CII is a corporation incorporated pursuant to the laws of Ontario. CII is registered with the Commission in a number of categories, including as an Investment Fund Manager and Portfolio Manager.

II. BACKGROUND

2. In June 2015, CII self-reported a matter to Staff relating to the understatement of the net asset value ("NAV") of certain of its mutual funds for a period of over five years, as a result of which unitholders bought and redeemed units at an understated value.

3. The understatement of the NAVs arose from unrecorded interest (the "Interest") that had accumulated between December 2009 and June 2015 in bank accounts set up by seven of CII's mutual funds (the "Forward Funds"). The Interest was earned on money deposited by the Forward Funds as collateral for forward purchase agreements that were unique to these Forward Funds. The Interest, although accruing, was not recorded as an asset in the accounts of the respective Forward Funds and not included in the NAV calculation of the Forward Funds. As a result, the NAV of each Forward Fund, and any fund that invested in the Forward Funds (the "Affected Funds"), was understated for several years and unitholders bought and redeemed units at an understated value.

4. When it reported the matter to Staff, CII advised Staff that:

   a. CII intended to pay appropriate compensation to current and former investors of the Affected Funds; and

   b. CII had begun taking corrective action, including implementing enhanced controls and supervision to prevent a re-occurrence of the matter in the future.

III. CII's CONDUCT

5. From December 2009 to January 2012, CII launched the Forward Funds, which used cash collateral forward purchase agreements in order to gain exposure to investment opportunities on a tax efficient basis. The total Affected Funds consist of 23 CII mutual funds, as well as 69 segregated funds, which invested, directly or indirectly, in the Forward Funds.

6. There were inadequacies in CII's system of controls and supervision to sufficiently address the unique cash collateral feature of the Forward Funds and to ensure that the Interest earned in the cash collateral accounts was recorded and included in the NAV calculation of the Forward Funds such that the unitholders' NAV was understated (the "Forward Fund Control and Supervision Inadequacy").

IV. BREACH OF ONTARIO SECURITIES LAW

7. With respect to the Forward Fund Control and Supervision Inadequacy, CII failed to establish, maintain and apply policies and procedures to establish a system of controls and supervision:

   a. sufficient to (1) provide reasonable assurance that CII, and the individuals acting on behalf of CII, were in compliance with securities legislation; (2) manage the risks associated with the development and monitoring of new products in accordance with prudent business practices; (3) accurately calculate NAVs of the Forward Funds at all times such that the NAV is not understated for unitholders; and (4) monitor and supervise its third-party service providers; and

b. that was reasonably likely to identify and correct the Forward Fund Control and Supervision Inadequacy in a timely manner.

8. As a result, the Forward Fund Control and Supervision Inadequacy constituted a breach of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

9. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, this 5th day of February, 2016.

1.5 Notices from the Office of the Secretary

1.5.1 Hussain Dhala

FOR IMMEDIATE RELEASE
February 3, 2016

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

AND

IN THE MATTER OF
HUSSAIN DHALA

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated February 2, 2016 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 2241153 Ontario Inc. et al.

FOR IMMEDIATE RELEASE
February 4, 2016

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE,
SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV
and EVGUENI TODOROV

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

A copy of the Reasons and Decision dated February 3, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.5.3 Lawrence Zeiben et al.

FOR IMMEDIATE RELEASE
February 5, 2016

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

AND

IN THE MATTER OF
LAWRENCE ZEIBEN, GRIT INTERNATIONAL INC.
and TEXAS PETROLEUM INC.

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated February 4, 2016 are available at www.osc.gov.on.ca.

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1.5.4 CI Investments Inc.

FOR IMMEDIATE RELEASE
February 5, 2016

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing to consider whether it is in the public interest to approve the Settlement Agreement dated February 5, 2016, on a no-contest basis, between Staff of the Commission and CI Investments Inc.

The hearing pursuant to subsections 127(1) and 127(2) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") will be held at the offices of the Commission located at 20 Queen Street West, 17th Floor, on February 10, 2016 at 3:00 p.m.

A copy of the Notice of Hearing dated February 5, 2016 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 5, 2016 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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For investor inquiries:

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

1.5.5 Fred Louis Sebastian

FOR IMMEDIATE RELEASE
February 8, 2016

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

AND

IN THE MATTER OF
FRED LOUIS SEBASTIAN

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated February 5, 2016 are available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Perk.com Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – 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 BAR – it is impracticable to prepare financial statements – filer granted relief to include alternative financial information, comprised of audited statements for Corona for the 9 month period ended September 30, 2015 with comparative unaudited statements for the year ended December 31, 2014, as financial statement disclosure for a significant acquisition.

Applicable Legislative Provisions

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

February 1, 2016

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
PERK.COM INC.
(THE “FILER” OR “PERK”)

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 pursuant to Section 13.1 of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) from the requirement in Part 8 of NI 51-102 to include in a business acquisition report (a **BAR**) relating to the acquisition (the **Acquisition**) by the Filer of all of the issued and outstanding shares of Corona Labs Inc. (**Corona**) from Fuse Powered Inc. (the **Vendor**), certain financial statements required pursuant to Item 3 of Form 51-102F4 and Section 8.4 of NI 51-102 on the condition that the Filer include in the BAR, the Alterative Financial Statements (as defined herein) (the **Exemption Sought**).

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

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

(b) the 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 and Alberta (collectively, the **Passport Jurisdictions**); and

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

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:

1. The Filer, formerly named Mira VI Acquisition Corp. (**Mira VI**), was incorporated under the *Business Corporations Act* (Ontario) on November 5, 2014. On July 10, 2015, Mira VI Subco Inc. (**Mira VI Subco**), a wholly owned subsidiary of Mira VI, merged with Perk.com Inc. (**Perk US**), resulting in Perk US becoming a wholly owned subsidiary of Mira VI.

2. The head office of the Filer is located at 720 Brazos St., Suite 110 Austin, Texas, 78701 U.S.A.

3. The authorized share capital of the Filer currently consists of an unlimited number of Common Shares and an unlimited number of Class A Restricted Voting Shares. As of January 20, 2016, there are 19,753,858 issued and outstanding Common Shares and 2,158,474 issued and outstanding Class A Restricted Voting Shares.

4. The Filer is a reporting issuer under the Legislation and the securities legislation of the Passport Jurisdictions (collectively, the **Passport Jurisdiction Legislation**) and is not in default of any requirement under the Legislation or the Passport Jurisdiction Legislation.

5. The common shares, of the Filer are listed on the Toronto Stock Exchange under the symbol “PER”.

6. The Filer is not a party to any proceeding or, to the best of its knowledge, information and belief, any pending proceeding under the Legislation (or the Passport Jurisdiction Legislation).

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

The Acquisition

8. On November 30, 2015, the Filer announced that it had entered into an agreement to acquire 100% of the equity interest of Corona, subject to customary conditions precedent.

9. The acquisition of Corona was completed by the Filer on December 3, 2015.

The BAR Requirement

10. Pursuant to Part 8 of NI 51-102, an issuer must file a BAR within 75 days after the date of an acquisition should it be determined that the acquisition was a “significant acquisition”. The three 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 is considered to be a “significant acquisition” if any of the described tests are triggered.

11. Based on the available financial information for Corona, the Filer has determined that the Acquisition does not trigger the optional “asset test” in paragraph 8.3(4)(a) of NI 51-102. Perk’s total assets as at September 30, 2015 were US$43,834,000. Corona’s assets as at September 30, 2015, were US$117,200 and would represent approximately 0.3% of Perk’s assets as of September 30, 2015 under the optional “asset test”.

12. The Filer has also determined that the Acquisition does not trigger the optional “investment test” in paragraph 8.3(4)(b) of NI 51-102. The purchase price paid in the Acquisition was CDN$3,000,000 (US$2,240,000) which represents approximately 5.0% of Perk’s assets as of September 30, 2015 under the optional “investment test”.

13. Paragraph 8.3(4)(c) of NI 51-102 prescribes the optional “profit or loss test” as follows:

    “The specified profit or loss calculated under the following subparagraph (i) exceeds 20% of the specified profit or loss calculated under the following subparagraph (ii):

(i) the reporting issuer's proportionate share of the consolidated specified profit or loss of the business or related businesses for the later of

(A) the most recently completed financial year of the business or related businesses; or

(B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses;

(ii) the reporting issuer's consolidated specified profit or loss for the later of

(A) the most recently completed financial year, without giving effect to the acquisition; or

(B) the 12 months ended on the last day of the most recently completed interim period of the reporting issuer, without giving effect to the acquisition."

14. While the acquisition of Corona does not trigger the requirement for the Filer to file a BAR pursuant to the optional "asset test" or the optional "investment test", the acquisition of Corona does trigger the requirement for the Filer to file a BAR pursuant to the optional "profit and loss test" as the absolute value of the loss of Corona is greater than 20% of the absolute value of Perk's losses for the relevant period.

Financial Statement Requirement

15. Corona was founded in 2008 and operated as a standalone private company until November 2011. The Vendor, which is also a private company, acquired Corona in November 2014. Following such acquisition, the Vendor required Corona to upgrade its accounting processes and systems in order to provide better accounting data and information.

16. Annual financial statements for the year ended December 31, 2014 for Corona do exist but the Filer's Chief Financial Officer and VP Finance have concluded that it is not possible to audit them because:

(a) certain required historical accounting records of Corona have been lost and are unavailable;

(b) Corona has had a turnover in accounting staff and the personnel that would have the information necessary to complete an audit are no longer employees of Corona; in addition, certain accounting records for fiscal 2014 were maintained by personnel of the Vendor who are unlikely to be available to auditors; this lack of continuity/availability would specifically limit an auditor's ability to fulfill its obligations in conducting an audit under U.S. AICPA GAAS; and

(c) Corona's accounting records for fiscal 2014, to the extent they exist, are not comprehensive enough to allow an auditor to fulfill its obligations in conducting an audit under U.S. AICPA GAAS.

17. Pursuant to Section 8.4 of NI 51-102 and Item 3 of Form 51-102F4, absent the Exemption Sought, the Filer would be required to include in its BAR for the Acquisition, the following financial statements:

(a) an audited statement of comprehensive income, a statement of changes in equity and a statement of cash flows for Corona for the year ended December 31, 2014, and an audited statement of financial position at the end of that year;

(b) an unaudited statement of comprehensive income, statement of changes in equity and statement of cash flows for Corona for the year ended December 31, 2013, and an unaudited statement of financial position as at the end of that year;

(c) an unaudited interim financial report for Corona for the nine month interim period ended September 30, 2015, and an unaudited interim financial report for the comparable period in the preceding financial year;

(d) a pro forma statement of financial position of the Filer as at the date of the Filer's most recent statement of financial position filed, at September 30, 2015, that gives effect, as if it had taken place as at the date of that pro forma statement of financial position, to the Acquisition;

(e) a pro forma income statement of the Filer that gives effect to the Acquisition for:

(i) the Filer's financial year ended December 31, 2014 as if the Acquisition had taken place at the beginning of the 2014 financial year; and

(ii) the Filer's nine month interim period ended September 30, 2015 as if the Acquisition had taken place at the beginning of the 2015 financial year; and

(f) pro forma earnings per share based on the pro forma financial statements referred to in paragraph ((e)) above.

18. The Filer proposes to include the following alternative financial statements regarding the Acquisition in the BAR (the **Alternative Financial Statements**) as a condition of obtaining the Exemption Sought:

(a) an audited statement of comprehensive income, a statement of changes in equity and a statement of cash flow for Corona for the nine month period ended September 30, 2015; and an audited statement of financial position of Corona as at September 30, 2015;

(b) an unaudited statement of comprehensive income, a statement of changes in equity and statement of cash flows for the year ended December 31, 2014; and an audited statement of financial position for Corona as at December 31, 2014;

(c) a pro forma statement of financial position of the Filer as at the date of the Filer's most recent statement of financial position filed, at September 30, 2015, that gives effect, as if it had taken place as at the date of that pro forma statement of financial position, to the Acquisition;

(d) a pro forma income statement of the Filer that gives effect to the Acquisition for:

(i) the Filer's financial year ended December 31, 2014 as if the Acquisition had taken place at the beginning of the 2014 financial year; and

(ii) the Filer's nine month interim period ended September 30, 2015 as if the Acquisition had taken place at the beginning of the 2015 financial year; and

(e) pro forma earnings per share based on the pro forma financial statements referred to in paragraph ((d)) above.

19. The Alternative Financial Statements will be prepared in accordance with accounting policies permitted by International Financial Reporting Standards, and audited in accordance with the auditing standards of the American Institute of Certified Public Accountants.

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 the Filer includes the Alternative Financial Statements in the BAR in respect of the Acquisition.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 Capital Power L.P. – s. 1(10)(a)(ii)

Headnote

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

Ontario Statutes

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

Citation: Re Capital Power L.P., 2016 ABASC 28

February 2, 2016

Dentons Canada LLP
15th Floor, Bankers Court
850 – 2 Street SW
Calgary, AB T2P 0R8

Attention: Patricia Anderson

Dear Madam:

Re: Capital Power L.P. (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Denise Weeres"
Manager, Legal
Corporate Finance

2.1.3 IA Clarington Canadian Mid Cap Dividend Fund – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application under securities legislation of each of the provinces and territories, except British Columbia, that the applicant is not a reporting issuer.

Applicable Legislative Provisions

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

January 29, 2016

IA Clarington Canadian Mid Cap Dividend Fund
c/o IA Clarington Investments Inc.
522 University Avenue, Suite 700
Toronto (Ontario) M5G 1Y7

Attention: Ms Dolores Di Felice

Dear Ms Di Felice:

Re: IA Clarington Canadian Mid Cap Dividend Fund (the "Applicant") – Application for a decision under the securities legislation of Alberta, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, Ontario, Saskatchewan, Yukon, Northwest Territories, Nunavut and Québec (the "Jurisdictions") that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant's status as a reporting issuer is revoked.

"Hugo Lacroix"
Senior Director, Investment Funds
Autorité des marchés financiers

2.1.4 Canaccord Genuity Corp.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from requirement to deliver prospectus subject to sending or delivering a prescribed summary disclosure document to purchasers with trade confirmation when acting as agent of the purchaser – Relief conditional on implementing alternative prospectus delivery requirement – Relief consistent with the implementation of the Canadian Securities Administrators Point of Sale Disclosure Project, which contemplates rule-making to codify new alternative prospectus delivery requirement – Securities Act (Ontario).

January 5, 2016

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

AND

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

AND

IN THE MATTER OF
CANACCORD GENUITY CORP.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting exemptive relief from the Prospectus Delivery Requirement (as defined below) in connection with distributions of an ETF Security (as defined below) (the Exemption Sought).

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

(a) the British Columbia 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 Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon, and

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

Interpretation

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

"Authorized Dealer" means a registered dealer that has entered, or intends to enter, into an agreement with the manager of an ETF (an ETF Manager) authorizing the dealer to subscribe for, purchase and redeem Units from one or more ETFs on a continuous basis from time to time;

"Designated Broker" means a registered dealer that has entered, or intends to enter, into an agreement with an ETF Manager to perform certain duties in relation to the ETF, including posting a liquid two-way market for the trading of the ETF's listed securities on an exchange or another marketplace;

"ETF" means an open end mutual fund that has listed a class of securities on an exchange in Canada;

"ETF Facts" means a prescribed disclosure document in accordance with the regulations, in respect of one or more classes or series of ETF Securities being distributed under a prospectus;

"ETF Security" means a listed security of an ETF;

"Prospectus Delivery Requirement" means the requirement under the Legislation that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement;

"Prospectus Right of Rescission" means the right of action, given to a purchaser under the Legislation, for rescission or damages against a dealer, for failure of the dealer to send or deliver a prospectus to a purchaser of a security or its agent to whom a prospectus and any amendment was required to be sent or delivered but was not sent or delivered in compliance with the Prospectus Delivery Requirement; in Quebec, such a purchaser may apply to have the transaction rescinded or the price revised, at the purchaser's option, without prejudice to the purchaser's claim for damages; collectively, these rights are referred to as the "Prospectus Rights of Rescission";

"Right of Withdrawal" means the right, given to a purchaser under the Legislation, to withdraw from an agreement of purchase and sale for a security to which the Prospectus Delivery Requirement applies if the dealer from which the purchaser purchases the security receives written notice evidencing the intention of the purchaser not to be bound by the agreement within two business days of receipt of the latest prospectus and any amendment; in Québec, this right is called a right to rescind; collectively, these rights are referred to as the "Rights of Withdrawal"; and

"Trade Confirmation Right of Rescission" means the right, given to a purchaser of an ETF Security under the Legislation to rescind the purchase within 48 hours after receiving confirmation of the purchase.

Representations

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

1. the Filer is registered as an investment dealer in each of the provinces and territories of Canada;

2. the head office of the Filer is located in Vancouver, British Columbia;

3. ETF Securities are, or will be, distributed on a continuous basis in one or more jurisdictions of Canada pursuant to a prospectus; ETF Securities are generally only subscribed for or purchased directly from an ETF by Authorized Dealers or Designated Brokers; investors are generally expected to purchase ETF Securities through dealers executing trades using the facilities of an exchange or another marketplace; ETF Securities may also be issued directly to ETF investors upon the reinvestment of distributions of income or capital gains;

4. commencing in early 2016, the Filer will be an Authorized Dealer and/or Designated Broker that intends to, from time to time, subscribe for and purchase newly issued ETF Securities (Creation Units) directly from one or more ETFs; the Filer will also purchase and sell ETF Securities of the same class as the Creation Units in the secondary market; Creation Units are generally commingled with ETF Securities purchased in the secondary market; as such, it will not be practicable for the Filer to determine whether a particular re-sale of ETF Securities involves Creation Units or ETF Securities purchased in the secondary market;

5. the Filer may also be engaged in purchasing and selling, in the secondary market, ETF Securities of ETFs for which it is not an Authorized Dealer or Designated Broker;

Prospectus Delivery Requirement

6. the first re-sale of a Creation Unit on an exchange or another marketplace in Canada will typically constitute a distribution of Creation Units under the Legislation and the Filer is subject to the Prospectus Delivery Requirement in connection with such re-sales; re-sales of ETF Securities purchased by the Filer in the secondary market, that are not Creation Units, would not ordinarily constitute a distribution of ETF Securities;

7. compliance with the Prospectus Delivery Requirement is not practicable in the circumstances of re-sales of Creation Units on an exchange or another marketplace by the Filer as the Filer will often not know the identity of a purchaser and will generally not know whether a sale involves Creation Units;

8. the OSC has granted relief to various ETF managers (ETF Managers) from the requirements to include an underwriter's certificate in jurisdictions of Canada where the applicable securities legislation contains such an obligation and to include a statement respecting purchasers' statutory rights of withdrawal and rescission in an ETF's prospectus (the ETF Relief); conditions of the ETF Relief include that an ETF must file a prescribed summary disclosure document with the applicable jurisdiction of Canada on the System for Electronic Document Analysis and Retrieval (the Summary Document);

9. under the Legislation, if the Prospectus Delivery Requirement applies in respect of a sale of Creation Units, the purchaser of the Creation Units has a Right of Withdrawal and a Prospectus Right of Rescission;

10. where the Exemption Sought is being relied upon by the Filer in respect of a re-sale of Creation Units, the Right of Withdrawal and Prospectus Right of Rescission will not be available to the purchaser of Creation Units because the Prospectus Delivery Requirement, which triggers these rights, will not apply; and;

11. the Filer, when acting for a purchaser of an ETF Security, is required under the Legislation to deliver a trade confirmation to the purchaser in connection with each trade of an ETF Security, unless the Filer is exempt from the requirement in respect of a particular trade; in applicable jurisdictions of Canada, purchasers of ETF Securities will continue to have the Trade Confirmation Right of Rescission as it is not affected by the grant of an exemption from the Prospectus Delivery Requirement.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the Filer is in compliance with the following conditions:

1. the Filer undertakes to the principal regulator that it will, unless the Filer has previously done so, send or deliver to each purchaser of an ETF Security who is a customer of the Filer, and to whom a trade confirmation is required under the Legislation to be sent or delivered by the Filer in connection with the purchase, the latest Summary Document filed in respect of the ETF Security not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of the ETF Security;

2. the Filer provides to each ETF Manager of an ETF for which it is an Authorized Dealer or Designated Broker, an executed acknowledgement:

   (a) acknowledging receipt of a copy of this decision;

   (b) agreeing to send or deliver the Summary Document in accordance with this decision;

   (c) undertaking that the Filer will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under this decision at the same time to an investor purchasing ETF Securities of each such ETF; and

   (d) confirming that the Filer has in place written policies and procedures to ensure that there is compliance with the conditions of this decision;

3. the Filer provides to each ETF Manager of an ETF in whose ETF Securities it is generally engaged in purchasing and selling in the secondary market on behalf of its customers, but for which it is not an Authorized Dealer or Designated Broker, an executed acknowledgement:

   (a) acknowledging receipt of a copy of this decision;

   (b) agreeing to send or deliver the Summary Document in accordance with this decision;

   (c) undertaking that the Filer will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under this decision at the same time to an investor purchasing ETF Securities of each such ETF; and

(d) confirming that the Filer has in place written policies and procedures to ensure that there is compliance with the conditions of this decision;

4. the Filer files with the principal regulator, to the attention of the Director, Corporate Finance, and with the OSC, to the attention of the Director, Investment Funds and Structured Products, on or before January 31st in each calendar year, commencing January 31, 2017, a certificate signed by an ultimate designated person certifying that, to the best of the knowledge of such person after making due inquiry, the Filer has complied with the terms and conditions of this decision, during the previous calendar year; and

5. if an ETF Manager files an ETF Facts instead of a Summary Document with respect to a class or series of ETF Securities, the latest ETF Facts filed in respect of such class or series of ETF Securities must be substituted for a Summary Document in order to satisfy the foregoing conditions with respect to any purchase of such class or series of ETF Securities that occurs after the date of the filing of such ETF Facts.

The decision will terminate on the latest of: (i) the coming into force of any legislation or rule dealing with the Exemption Sought or (ii) the end date of any applicable transition period for any legislation or rule dealing with the Exemption Sought.

"Peter J. Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.1.5 TD Split Inc. – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application under securities legislation of each of the provinces and territories, except British Columbia, that the applicant is not a reporting issuer.

Applicable Legislative Provisions

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

February 1, 2016

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Dear Sirs/Mesdames:

Re: TD Split Inc. (the "Applicant")

Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Vera Nunes"
Acting Director, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.6 Fiera Capital Corporation and Canadian Convertibles Plus Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – investment fund manager obtaining relief from the requirement to obtain the approval of securityholders before changing the fundamental investment objective of a non-redeemable investment fund – relief required as a result of changes to tax law eliminating certain tax benefits associated with character conversion transactions – manager required to send written notice at least 30 days before the effective date of the change to the investment objective of the funds setting out the change, the reasons for such change and a statement that the funds will no longer distribute gains under forward contracts that are treated as capital gains for tax purposes – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.1(1)(c), 19.1.

(Translation)

February 5, 2016

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

AND

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

AND

**IN THE MATTER OF
FIERA CAPITAL CORPORATION
(the Filer)**

AND

**CANADIAN CONVERTIBLES PLUS FUND
(the Fund)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for exemptive relief from the requirement to obtain prior securityholder approval before changing the fundamental investment objectives of the Fund under paragraph 5.1(1)(c) of *Regulation 81-102 respecting Investment Funds* (c. V-1.1, r. 39) (**Regulation 81-102**) (the **Requested Relief**).

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

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

b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (c. V-1.1, r.1) (**Regulation 11-102**) is intended to be relied upon in each jurisdiction of Canada, other than Québec and Ontario, and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* (c. V-1.1, r.3), Regulation 11-102 and Regulation 81-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

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

2. The head office of the Filer is located at 1501 McGill College Avenue, Suite 800, Montreal, Québec H3A 3M8. The Fund's head office is located at 1 Adelaide Street, Suite 600, Toronto, Ontario M5C 2V9.

3. The Fund is an investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust.

4. Neither the Filer nor the Fund is in default of securities legislation in any jurisdiction of Canada.

5. The Fund is a non-redeemable investment fund. Its units were qualified for distribution pursuant to a prospectus dated February 23, 2011 that was prepared and filed in accordance with the securities legislation of each jurisdiction of Canada. Accordingly, the Fund is a reporting issuer or the equivalent in each jurisdiction of Canada. The units of the Fund are listed on the Toronto Stock Exchange.

6. Under its current fundamental investment objectives and strategies, the Fund is a party to a forward purchase and sale agreement (the **Forward Agreement**). The Forward Agreement provides the Fund with exposure to the returns of the securities of another investment fund, Diversified Convertibles Fund (the **Reference Fund**). The following are the current fundamental investment objectives of the Fund:

   > *The Fund's investment objectives are to provide holders of Units with: (i) quarterly tax-advantaged distributions; (ii) preservation of capital; and (iii) the opportunity for capital appreciation. The Fund seeks to achieve these objectives through exposure to an actively managed, diversified portfolio of securities (the Portfolio) comprised primarily of convertible debentures of Canadian issuers. To achieve exposure to the Portfolio, the Fund entered into the Forward Agreement.*

7. The following are the fundamental investment objectives of the Reference Fund:

   > *The Fund's investment objective is to provide holders of Units with preservation of capital and the opportunity for capital appreciation by investing in an actively managed diversified Portfolio comprised primarily of convertible debentures of Canadian issuers.*

8. Through the use of the Forward Agreement, the Fund provides tax-advantaged distributions to securityholders because the Fund will realize capital gains (or capital losses) on the disposition of securities acquired under the Forward Agreement, rather than ordinary income. Ordinary income is subject to taxation at a higher rate in Canada than capital gains.

9. The Forward Agreement is expected to expire and terminate on March 6, 2016 (the **Forward Expiry Date**).

10. The ITA was amended in December 2013 to implement proposals that were first announced in the March 21, 2013 federal budget regarding the income tax treatment of character conversion transactions (the **Tax Changes**). Under the Tax Changes, the favourable tax treatment of character conversion transactions will be eliminated after a prescribed date (the **Effective Date**). The Effective Date for the Fund will be the Forward Expiry Date.

11. Due to the Tax Changes, the Fund will no longer be able to, after the Forward Agreement matures, provide tax-advantaged distributions to securityholders.

12. The Filer has determined that, as a result of the Tax Changes, it would be more efficient and less costly for the Fund to seek to achieve its fundamental investment objectives after the Effective Date by investing its assets directly in the same, or substantially the same, assets as those held by the Reference Fund.

13. The Filer wishes to amend the fundamental investment objectives of the Fund to remove all references to the use of the Forward Agreement to gain exposure to the Portfolio, to delete references to "tax-advantaged" distributions and to clarify that the Fund will invest directly in securities similar to those held by the Reference Fund.

14. Following such amendment, the revised fundamental investment objectives of the Fund will be:

> *The Fund's investment objectives are to provide holders of Units with: (i) quarterly cash distributions; (ii) preservation of capital; and (iii) the opportunity for capital appreciation.*
>
> *To achieve its investment objectives, the Fund invests in an actively managed, diversified portfolio of securities (the Portfolio) comprised primarily of convertible debentures of Canadian issuers.*

15. The Filer will also make conforming changes to the investment strategies and investment restrictions of the Fund to reflect the Fund's direct investment in the Portfolio.

16. The Filer expects to effect an inter-fund transfer of the portfolio assets of the Reference Fund to the Fund in accordance with applicable securities laws including any previous exemption granted to the Filer. The Reference Fund will be wound up as soon as practicable after the transfer of its portfolio assets.

17. The Filer has complied with the material change report requirements set out in Part 11 of *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (c. V-1.1, r. 42) in connection with the Filer's decision to make the changes to the fundamental investment objectives of the Fund set out above.

18. The Filer has determined that it would be in the best interests of the Fund and not prejudicial to the public interest to receive the Requested Relief.

Decision

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

The decision of the Decision Maker under the Legislation is that the Requested Relief is granted, provided that, at least 30 days before the effective date of the change in the fundamental investment objectives of the Fund, the Filer will send to each securityholder of the Fund a written notice that sets out the change to the fundamental investment objectives, the reasons for such change and a statement that the Fund will no longer distribute gains under the Forward Agreement that are treated as capital gains for tax purposes.

"Hugo Lacroix"
Senior Director, Investment Funds
Autorité des marchés financiers

2.1.7 Associated Foreign Exchange, ULC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from dealer registration and prospectus requirements that may be applicable to certain trades in over-the-counter (OTC) derivatives with "permitted counterparties" – permitted counterparties will consist exclusively of persons or companies who are "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – relief sought in Ontario and certain other jurisdictions as interim response to current regulatory uncertainty associated with OTC derivatives in Canada – Filer intends to rely on comparable exemptions in orders or rules of general application in certain jurisdictions for trades with "qualified parties" and, in Quebec, the exemption under Quebec derivatives legislation for trades with "accredited counterparties" – relief granted subject to certain terms and conditions, including sunset provision of up to four years.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

February 5, 2016

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
ASSOCIATED FOREIGN EXCHANGE, ULC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the dealer registration requirement and the prospectus requirement in the Legislation that may otherwise be applicable to a trade in or distribution of an OTC Derivative (as defined below) made by either

i) the Filer to a "Permitted Counterparty" (as defined below), or

ii) by a Permitted Counterparty to the Filer,

shall not apply to the Filer or the Permitted Counterparty, as the case may be (the **Requested Relief**), subject to certain terms and conditions.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Manitoba, Newfoundland and Labrador, New Brunswick (to the extent Local Rule 91-501 *Derivatives* does not apply), Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon.

Interpretation

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

The terms **OTC Derivative** and **Underlying Interest** are defined in the Appendix (the **Appendix**) to this decision.

The term **Permitted Counterparty** means a person or company that is a "permitted client", as that term is defined in section 1.1 [*Definition of terms used throughout this Instrument*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

Representations

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

The Filer

1. The Filer is a British Columbia unlimited liability company (incorporation number BC 1031982). The Filer's principal office is located in Toronto, Ontario.

2. The Filer provides currency exchange services to commercial and individual customers. It is registered with the Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**) as a money service business. The Filer is registered with the autorité des marchés financiers (**AMF**) as a money service business in the Province of Quebec.

3. The Filer is not registered under the securities legislation of any of the provinces or territories in Canada in any capacity.

4. The Filer acquired substantially all of the business of Jameson Bank in June, 2014. As a result of this transaction, many of the clients of Jameson Bank became clients of the Filer. Many of the individuals who previously had senior roles with Jameson Bank become senior executives of the Filer.

5. The acquisition transaction was structured so that the Filer as the successor entity is not licensed or authorized to carry on the business of banking in Canada and is not subject to oversight or regulation by the Office of the Superintendent of Financial Institutions (**OSFI**).

6. As a result, the Filer is no longer able to rely on the provisions contained in section 35.1 of the Legislation which permit certain OSFI-regulated financial institutions to enter into OTC Derivative transactions with Permitted Counterparties. The Filer carries on limited activity in trading in foreign currencies with its customers.

7. The Filer qualifies as a "permitted client", as that term is defined in section 1.1 of NI 31-103.

8. The Filer is a subsidiary of Associated Foreign Exchange Holdings, Inc. (**AFEX Holdco**). AFEX Holdco is privately owned. Through its subsidiaries, AFEX Holdco has operations around the world, including offices throughout the United States and in the United Kingdom, Australia, New Zealand, Israel, Indonesia, Switzerland, Italy, Singapore, Mexico and Chile.

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

Proposed Conduct of OTC Derivative Transactions

10. The Filer proposes to enter into bilateral OTC Derivative transactions with counterparties located in all provinces and territories of Canada that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between the Filer and a Permitted Counterparty will consist of: a currency; a foreign exchange rate; a security; an economic indicator; an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.

11. The Filer will not offer or provide credit or margin to any of their Permitted Counterparties for purposes of an OTC Derivative transaction.

12. In lieu of a prospectus, the Filer will provide the Permitted Counterparty with a risk disclosure statement modelled on similar client disclosure statements which affiliates of the Filer provide to customers in compliance with the requirements of the jurisdictions in which the affiliate operates.

13. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada.

Regulatory Uncertainty and Fragmentation Associated with the Regulation of OTC Derivative Transactions in Canada

14. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as "securities" in the provinces and territories of Canada other than Quebec (the **Relevant Jurisdictions**).

15. In each of British Columbia, Saskatchewan, Prince Edward Island and New Brunswick, and in each of the Yukon, the Northwest Territories and Nunavut, OTC Derivative transactions are regulated as securities on the basis that the definition of the term "security" in the securities legislation of each of these jurisdictions includes an express reference to a "futures contract" or a "derivative".

16. In Alberta, the term "security" no longer includes an express reference to a "futures contract". Following the introduction, effective October 31, 2014, of a new framework and terminology for the regulation of derivatives, Alberta securities legislation now includes a definition of "derivative".

17. In each of Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, it is not certain whether, or in what circumstances, OTC Derivative transactions are "securities" because the definition of the term "security" in the securities legislation of each of these jurisdictions makes no express reference to a "futures contract" or a "derivative".

18. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Notice 91-702**). OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (the Ontario Act) and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.

19. In Quebec, OTC Derivative transactions are subject to the *Derivatives Act* (Quebec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Quebec's securities regulatory requirements.

20. In each of British Columbia, Alberta, Saskatchewan and New Brunswick (the **Blanket Order Jurisdictions**) and Quebec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as "Qualified Parties" in the Blanket Order Jurisdictions and "accredited counterparties" in Quebec.

21. The corresponding OTC Derivative Exemptions are as follows:

Province	OTC Derivative Exemption
British Columbia	Blanket Order 91-501 *Over-the-Counter Derivatives*
Alberta	ASC Blanket Order 91-506 *Over-the-Counter Trades in Derivatives*
Saskatchewan	General Order 91-907 *Over-the-Counter Derivatives*
Quebec	Section 7 of the *Derivatives Act* (Quebec)
New Brunswick	Local Rule 91-501 *Derivatives*

22. Before March 27, 2010, section 3.3 [*Accredited investor*] of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provided an exemption from the dealer registration requirement for certain trades made to "accredited investors", which may have been relied upon by persons or companies entering into OTC Derivative transactions considered to be securities. However, in Ontario and Newfoundland and Labrador this exemption was not available to most "market intermediaries" due to section 3.0 [*Removal of exemptions – market intermediaries*].

The Evolving Regulation of OTC Derivative Transactions as Derivatives

23. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Quebec, or indirectly through amendments to the definition of the term "security" in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.

24. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.

25. The Final Report of the Ontario Commodity Futures Act Advisory Committee published in January, 2007 concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.

26. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the Ontario Act that were made by the *Helping Ontario Families and Managing Responsibly Act, 2010* (Ontario).

27. The amendments to the Ontario Act establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed.

28. On August 25, 2015, the jurisdictions participating in the development of the Cooperative Capital Markets Regulatory System (Cooperative System) published for comment the revised consultation draft provincial/territorial *Capital Markets Act* (**CMA**) and draft initial regulations under the provincial/territorial legislation.

29. Part 4 [*Over-the-Counter Derivatives*] of Capital Markets Regulatory Authority (**CMRA**) Regulation 91-501 *Derivatives and Strip Bonds* contains registration and prospectus exemptions for trades in OTC Derivatives where each party to the trade is a "qualified party" (as defined in CMRA Regulation 91-501) or "permitted client" (as defined in NI 31-103), each acting as principal.

Rationale for Requested Relief

30. The Requested Relief would substantially address, for the Filer and its Permitted Counterparties, the regulatory uncertainty and fragmentation that is currently associated with the regulation of OTC Derivative transactions in Canada, by permitting these parties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation of each Relevant Jurisdiction that are comparable to the OTC Derivative Exemptions.

Books and Records

31. The Filer will become a "market participant" as a consequence of this decision. For the purposes of the Ontario Act, and as a market participant, the Filer is required by subsection 19(1) of the Ontario Act to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

32. For the purposes of its compliance with subsection 19(1) of the Ontario Act, the books and records that the Filer will keep will include books and records that:

    (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation;

    (c) identify all OTC Derivative transactions conducted on behalf of the Filer and each of its clients, including the name and address of all parties to the transaction and its terms; and

(d) set out for each OTC Derivative transaction entered into by the Filer, information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by the Filer in reliance upon the "accredited investor" prospectus exemption in section 2.3 [*Accredited investor*] of NI 45-106.

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 is that the Requested Relief is granted, provided that:

(a) the counterparty to any OTC Derivative transaction that is entered into by the Filer is a Permitted Counterparty;

(b) in the case of any trade made by the Filer to a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty; and

(c) the Requested Relief shall terminate on the date that is the earlier of:

(i) the date that is four years after the date of this decision; and

(ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

"Timothy Moseley"
Commissioner
Ontario Securities Commission

"Janet Leiper"
Commissioner
Ontario Securities Commission

Appendix

Definitions

"Clearing Corporation" means an association or organization through which Options or futures contracts are cleared and settled.

"Forward Contract" means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

"Option" means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

"OTC Derivative" means one or more of, or any combination of, an Option, a Forward Contract, or any instrument of a type commonly considered to be a derivative, in which:

(a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, swap or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

"Underlying Interest" means, for a derivative, the currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

2.2 Orders

2.2.1 Hussain Dhala – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
HUSSAIN DHALA

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

WHEREAS:

1. on November 17, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") in respect of Hussain Dhala ("Mr. Dhala");

2. on November 16, 2015, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

3. on December 16, 2015, Staff appeared before the Commission and brought an application to convert the matter to a written hearing, in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168, and subsection 5.1(1) of the *Statutory Power Procedures Act*, R.S.O. 1990, c. S.22, as amended;

4. on December 16, 2015, the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

5. Staff filed written submissions, a brief of authorities, a hearing brief and affidavits of service;

6. Mr. Dhala did not file responding materials; and

7. the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

i. Mr. Dhala permanently cease trading in any securities and derivatives pursuant to section 127(1), paragraph 2 of the *Securities Act*;

ii. Mr. Dhala is permanently prohibited from acquiring any securities pursuant to section 127(1), paragraph 2.1 of the *Securities Act*;

iii. Mr. Dhala shall resign any positions he holds as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 7 and 8.1 of the *Securities Act*;

iv. Mr. Dhala is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 8 and 8.2 of the *Securities Act*; and

v. Mr. Dhala is permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to section 127(1), paragraph 8.5 of the *Securities Act*.

DATED at Toronto this 2nd day of February, 2016.

"Janet Leiper"

2.2.2 FPS Pharma Inc. – s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

Statutes Cited

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

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

AND

IN THE MATTER OF
FPS PHARMA INC.

ORDER
(Section 144)

WHEREAS the securities of FPS PHARMA INC. (the Applicant) are subject to a temporary cease trade order made by the Director dated December 9, 2015 under paragraph 2 of subsection 127(1) and subsection 127(5) of the Ontario *Securities Act* (the Act) and a further cease trade order made by the Director on December 21, 2015 under paragraph 2 of subsection 127(1) of the Act (collectively, the Ontario Cease Trade Order), ordering that all trading in the securities of the Applicant cease until the Ontario Cease Trade Order is revoked by the Director;

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

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the Commission) under section 144 of the Act for a revocation of the Cease Trade Order.

Representations

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

1. The Applicant is a reporting issuer in the provinces of British Columbia, Alberta, Quebec and Ontario.

2. The Applicant is not in default of any requirements under Ontario securities law.

3. The Applicant has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.

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

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

6. The British Columbia Securities Commission (the BCSC) and the Autorité des marchés financiers (the AMF) also issued cease trade orders in respect of the securities of the Applicant on November 20, 2015 and December 17, 2015, respectively, as a result of the failure to make the filings described in the cease trade order. The BCSC revoked its cease trade order effective January 29, 2016 and the AMF revoked its cease trade order effective February 2, 2016.

7. Upon the issuance of this revocation order, the Applicant will issue a news release announcing the revocation of the Cease Trade Order. The Applicant will concurrently file the news release regarding the revocation of the Cease Trade Order on SEDAR.

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

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

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

DATED at Toronto this 4th day of February, 2016

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

2.2.3 Lawrence Zeiben et al. – s. 127(1)

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

AND

IN THE MATTER OF
LAWRENCE ZEIBEN, GRIT INTERNATIONAL INC.
and TEXAS PETROLEUM INC.

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

WHEREAS:

1. on August 4, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter, in respect of a Statement of Allegations filed by Enforcement staff ("Staff") of the Commission on August 4, 2015, in which Staff requested that the Commission make an order against Lawrence Zeiben ("Zeiben"), Grit International Inc. ("Grit") and Texas Petroleum Inc. ("Texas Petroleum") (collectively, the "Respondents") pursuant to subsection 127(1) of the *Securities Act* (the "Act");

2. Staff served and filed written submissions on September 8, 2015, and the Respondents did not respond to Staff's submissions;

3. The Respondents are subject to sanctions, conditions, restrictions and requirements imposed by a regulatory authority, within the meaning of paragraph 4 of subsection 127(10) of the Act; and

4. the Commission is of the opinion that it is in the public interest to make this order.

IT IS HEREBY ORDERED:

1. against Zeiben that:

   i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Zeiben shall cease permanently, except that Zeiben is not precluded from trading in, or purchasing, securities through a registrant (if, prior to such trade or acquisition, he gives the registrant a copy of this order) in:

      (a) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Zeiben's benefit;

      (b) one other account for Zeiben's benefit; or

      (c) both, provided that:

         1. 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; and

         2. Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

   ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Zeiben permanently;

   iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Zeiben resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager; and

   iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Zeiben be prohibited permanently from becoming or acting as an officer or director of any issuer, registrant or investment fund manager;

2. against Grit that:

   i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Grit shall cease permanently; and

   ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Grit permanently; and

3. against Texas Petroleum that:

   i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Texas Petroleum shall cease permanently; and

   ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Texas Petroleum permanently.

DATED at Toronto this 4th day of February, 2016.

"Timothy Moseley"

2.2.4 Fred Louis Sebastian – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
FRED LOUIS SEBASTIAN**

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

WHEREAS:

1. on November 17, 2015, 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 "*Securities Act*") in respect of Fred Louis Sebastian ("Mr. Sebastian");

2. on November 16, 2015, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

3. on December 16, 2015, Staff appeared before the Commission and brought an application to convert the matter to a written hearing, in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168, and subsection 5.1(1) of the *Statutory Power Procedures Act*, R.S.O. 1990, c. S.22, as amended;

4. on December 16, 2015, the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

5. Staff filed written submissions, a brief of authorities, a hearing brief and affidavits of service;

6. Mr. Sebastian did not file responding written submissions; and

7. the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

a. Mr. Sebastian permanently cease trading in securities and derivatives, pursuant to subsection 127(1), paragraph 2 of the *Securities Act*;

b. Mr. Sebastian is permanently prohibited from acquiring any securities pursuant to subsection 127(1), paragraph 2.1 of the *Securities Act*;

c. any exemptions contained in Ontario securities laws shall not apply to Mr. Sebastian permanently pursuant to subsection 127(1), paragraph 3 of the *Securities Act*;

d. Mr. Sebastian shall resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 7, 8.1 and 8.3 of the *Securities Act*;

e. Mr. Sebastian shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 8, 8.2 and 8.4 of the *Securities Act*;

f. Mr. Sebastian shall be permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to subsection 127(1), paragraph 8.5 of the *Securities Act*.

DATED at Toronto this 5th day of February, 2016.

"Janet Leiper"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Hussain Dhala – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
HUSSAIN DHALA

REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)

Hearing: In writing

Decision: February 2, 2016

Panel: Janet Leiper, C.S. – Commissioner

Appearances: Clare Devlin – For Staff of the Commission

No one appeared on behalf of Hussain Dhala

REASONS AND DECISION

I. INTRODUCTION

[1] This was an uncontested written hearing before the Ontario Securities Commission (the "Commission") to determine whether it is in the public interest to make an order imposing sanctions against Hussain Dhala, pursuant to the authority found in sections 127(1) and (10) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*").

[2] Mr. Dhala was served with a Notice of Hearing issued on November 17, 2015 and a Statement of Allegations dated November 16, 2015. Mr. Dhala did not appear on the return date for the hearing, December 16, 2015.

[3] On December 16, 2015, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by Rule 11 the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168. The application was granted and a timeline was set for service and filing of Staff and Mr. Dhala's written materials.

[4] Mr. Dhala was served with the Commission's Order of December 16, 2015 and the written materials from Staff on December 21, 2015. Mr. Dhala did not file evidence or make submissions. Staff have requested that the matter proceed.

[5] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Section 7(2), *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "*SPPA*")). The affidavits of service filed in these proceedings, as well as the evidence that the Notice of Hearing and Statement of Allegations were posted on the Commission's website since November 26, 2015, satisfy me that the matter may proceed in the absence of Mr. Dhala in accordance with the *SPPA*.

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[6] The *Securities Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed "sanctions, conditions, restrictions or requirements on a person or a company" (s. 127(10) 4). On receiving evidence of the fact of such orders, the Commission must determine whether, based on this finding, an order under s. 127(1) of the *Securities Act* should be made.

[7] Section 127(1) empowers the Commission to make orders where in its opinion, it is in the public interest to make such orders. In making this determination, the Commission has regard to the purposes of the *Securities Act*, which are to provide protection to investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[8] The purpose of orders under s. 127(1) of the *Securities Act* is "protective and prospective" and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets. (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 cited in *Re JV Raleigh Superior Holdings Inc.* (2013), 36 O.S.C.B. 4639 para. 17).

III. ANALYSIS

A. The BCSC Order

[9] On August 31, 2015, the British Columbia Securities Commission (the "BCSC") found that Mr. Dhala contravened sections 57(d) and 168.1(1)(a) of the *Securities Act*, RSBC 1996, c. 418 (the "*Act*"). The decision is reported at *Re Dhala*, 2015 BCSECCOM 336.

[10] The reasons reveal that Mr. Dhala, as the sole proprietor of HMD Capital, and as a self-employed day trader, convinced four members of his social circle to give him funds to invest. HMD Capital has never been registered under the *Act*. A total of $38,250 was provided from four individuals for investment. Mr. Dhala did not invest the funds. He used the money for personal expenses.

[11] One investor recovered $1,000.00 from Mr. Dhala and a second investor brought a successful civil claim for $10,350.00. The rest of the funds collected by Mr. Dhala were not recovered at the time of the reasons for decision.

[12] Section 57(b) provides that

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities … if the person knows, or reasonably should know, that the conduct
>
> …
>
> (b) perpetrates a fraud on any person.

[13] The BCSC found on a balance of probabilities that Mr. Dhala engaged in fraud by promising to invest funds in securities and currency trading, but instead using the funds for personal expenditures. He controlled the funds, he made the deposits and he was the source of the representations that led to the investors providing him with the funds.

[14] Section 168.1(1)(a) of the *Act* states that a person must not

> Make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act, that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

[15] The BCSC found that Mr. Dhala, during an interview with Commission investigators, falsely reported that he had taken money on the basis that he would invest it from one investor, the investor who had sued Mr. Dhala for a return of the funds. The Commission found this to be a false statement in a material respect because money had been taken from four different investors, not one.

[16] The BCSC considered the nature of the conduct, the harm to investors, the personal enrichment of Mr. Dhala, the principles of specific and general deterrence and with reference to similar orders in analogous situations, made the following order in the public interest:

a. Under section 161(1)(b), that Dhala permanently cease trading in securities and exchange contracts;

b. Under section 161(1)(d)(i) and (ii), that Dhala resign any position as, and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;

c. Under section 161(1)(d)(iii), that Dhala be permanently prohibited from becoming or acting as a registrant investment fund manager or promoter;

d. Under section 161(1)(d)(iv), that Dhala be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

e. Under section 161(1)(d)(v), that Dhala is permanently prohibited from engaging in investor relations activities;

f. Under section 161(1)(g), that Dhala disgorge to the Commission $26,900; and

g. Under section 162, that Dhala pay an administrative penalty of at least $125,000, where $100,000 of such fine is in respect of Dhala's fraudulent misconduct and $25,000 of such fine is in respect of Dhala's contravention of section 168.1(1)(a).

[17] Staff have established that Mr. Dhala was subject to an order made by a securities regulatory authority that imposed sanctions upon him, and thereby have established the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Securities Act*.

B. The Order Requested in the Public Interest

[18] Staff have requested that public interest order be made to meet the purposes of the *Securities Act* as described in section 1.1, that is, to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

[19] In addition, the *Securities Act* recognizes the importance of inter-jurisdictional co-operation. Paragraph 5 of section 2.1 provides that "the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[20] Although there was no evidence tendered to show that Mr. Dhala solicited Ontario investors, Staff seeks an order to prevent or limit Mr. Dhala's participation in Ontario's capital markets. In a number of other decisions, the Commission has not required a nexus to Ontario when imposing an order of this nature. (See *Re Sundell* (2014), 37 O.S.C.B. 10755 at para. 37; *Re Bigfoot Recreation & Ski Area Ltd.* (2015), 38 O.S.C.B. 7370 at paras. 13 and 21; *Re Ferguson* (2015), 38 O.S.C.B 8849 at paras. 21 and 30.)

[21] Although an order that is based upon a hearing and sanctions in another jurisdiction is not made automatically, it is important to consider the need to be responsive to the interconnected cross-border securities industry and the realities of the mobility of funds, people and information.

[22] The conduct for which Mr. Dhala was sanctioned in British Columbia would have constituted a contravention of the *Securities Act* in Ontario, had it taken place here. The conduct is serious: it harmed investors, enriched Mr. Dhala and involved deceit. It is appropriate to make an order in the public interest to prevent such conduct in the capital markets in Ontario.

IV. ORDER

[23] Having found that it is in the public interest to do so, I make the following order against Mr. Dhala that:

i. Mr. Dhala permanently cease trading in any securities and derivatives pursuant to section 127(1), paragraph 2 of the *Securities Act*;

ii. Mr. Dhala is permanently prohibited from acquiring any securities pursuant to section 127(1), paragraph 2.1 of the *Securities Act*;

iii. Mr. Dhala shall resign any positions he holds as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 7 and 8.1 of the *Securities Act*;

iv. Mr. Dhala is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 8 and 8.2 of the *Securities Act*; and

v. Mr. Dhala is permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to section 127(1), paragraph 8.5 of the *Securities Act*.

Dated at Toronto this 2nd day of February 2016.

"Janet Leiper"

3.1.2 2241153 Ontario Inc. et al. – s. 127

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH,
DIPAK BANIK, STOYANKA GUERENSKA, SOPHIA NIKOLOV
and EVGUENI TODOROV

REASONS AND DECISION
(Section 127)

Hearing: January 11, 13, 14 and 15, 2016

Decision: February 3, 2016

Panel:

Alan J. Lenczner	–	Commissioner and Chair of the Panel
Judith N. Robertson	–	Commissioner
AnneMarie Ryan	–	Commissioner

Appearances:

Christie Johnson Christina Galbraith (student-at-law)	–	For Staff of the Commission

No one appeared on behalf of Setenterprice, Dipak Banik, Stoyanka Guerenska, Sophia Nikolov and Evgueni Todorov

TABLE OF CONTENTS

I. INTRODUCTION

II. THE RESPONDENTS

III. THE MERITS HEARING

IV. THE FRAUDULENT SCHEME

V. IS THE PROMISSORY NOTE A SECURITY?

VI. THE DECEIT

VII. FINDINGS AGAINST THE RESPONDENTS 6
- A. TODOROV
- B. BANIK
- C. GUERENSKA
- D. NIKOLOV
- E. SETENTERPRICE
- F. AMOUNTS OBTAINED BY BREACHES OF THE ACT

VIII. CONCLUSION

I. INTRODUCTION

[1] The mandate of the Ontario Securities Commission (the "**Commission**") is to protect investors and to foster fair and efficient markets. It does so by registering only those that are properly qualified and satisfy appropriate ethical standards, and by ensuring that investors have appropriate disclosure of information to assess the risks and make informed investment decisions.

[2] Unsuspecting members of the public are too often taken in by fraudsters and are unaware of the basic questions that they need to ask when anyone seeks money from them for investment purposes. Further, the temptation of abnormally high returns can motivate certain investors to override and ignore logic, prudence, common sense and scepticism.

[3] Unregistered charlatans understand this allure and use their cunning, guile, and charm as well as outright deceit to attract susceptible people to loan them large sums of money which, they represent, will be deployed in unique trading strategies to garner the investor outsize returns.

[4] The subject of this merits hearing was a classic example of fraud perpetrated on 12 investors through the means of illegal investment contracts and unregistered trading.

[5] Fraud in securities law occurs when an act of deceit, falsehood or other fraudulent means is accompanied by actual loss, or risk of deprivation, and where the perpetrator has both subjective knowledge of the deceit and that, as a consequence, the act would put the contributed monies at risk.

[6] In its Statement of Allegations, Staff alleged that:

a) Evgueni Todorov ("**Todorov**") engaged in fraudulent conduct by misleading investors regarding the use of the investment monies,

b) Todorov, Sophia Nikolov ("**Nikolov**"), Dipak Banik ("**Banik**"), Stoyanka Guerenska ("**Guerenska**") and Setenterprice engaged in unregistered trading and the illegal distribution of securities, and

c) Nikolov, as the actual director, and Todorov, as the de facto director of Setenterprice, authorized, permitted or acquiesced to the illegal activities of the company.

[7] All the necessary elements of fraud (*R. v. Theroux*, [1993] 2 S.C.R. 5 at 21) were firmly established as against the respondent Todorov by the evidence presented to the Panel.

[8] The Panel also finds that the evidence supports the finding that Setenterprice, Banik, Guerenska, and Todorov engaged in unregistered trading and an illegal distribution of securities. The respondents Todorov and Nikolov failed in their responsibilities as corporate directors and permitted Setenterprice to contravene Ontario securities law. The conduct of these respondents was contrary to the public interest.

II. THE RESPONDENTS

[9] Todorov is a resident of Toronto and has never been registered with the Commission in any capacity. He met his wife Nikolov, a Canadian citizen, in Bulgaria. They married in 1983 and Todorov immigrated to Canada in the mid-1980s. He worked for a period of time in a waste management firm, but since 2004, his main endeavour has been trading foreign currencies (forex trading).

[10] Nikolov has worked for some 25 years at the Toronto Tourism and Trade Board. She incorporated a company, Setenterprice, in 2008, which describes its business in the formal records as 'trading'.

[11] In the relevant period from November 2010 to June 2013, Setenterprice's director, officer and sole signing authority was Nikolov. From November 2010 to November 2012, Nikolov signed all the cheques issued from Setenterprice's bank account. From November 2012 onwards, Todorov also operated the account either by signing cheques or by transferring monies out by wire transfer. It is clear from the banking records and the compelled testimony of Nikolov that, at all material times, Todorov was the controlling mind behind Setenterprice and the *de facto* operator of its bank account.

[12] Banik makes his living by referring individuals to real estate agents and mortgage brokers in return for a referral fee. Banik met Todorov when he managed a coffee shop owned by Todorov and they had an on-going business relationship thereafter. Banik referred three investors to Todorov who invested the sum of $250,000.

[13] Guerenska earns her living from various ventures including real estate transactions and referrals. She met Todorov at the Bulgarian consulate years earlier and they became casual acquaintances. The evidence demonstrates that she referred eight investors to Todorov, who invested the sum of $925,000.

[14] The respondents, Sarbjeet Singh ("**Singh**") and 2241153 Ontario Inc. ("**224**"), entered into a Settlement Agreement prior to the commencement of the merits hearing and are therefore no longer respondents in this matter.

[15] None of the remaining Respondents (Todorov, Nikolov, Banik, Guerenska and Setenterprice) have ever been registered with the Commission in any capacity. As a result, none of them could legally trade or distribute securities.

III. THE MERITS HEARING

[16] Although Todorov attended pre-hearing conferences, was provided with full disclosure of documents by Staff and was provided the hearing brief, he did not attend the hearing. Nikolov and her company, Setenterprice, also did not attend the hearing. At the opening of the hearing, an agent appeared on behalf of Todorov and Nikolov, requesting a one-week adjournment. The only submission he made was that Todorov and Nikolov were in Vancouver. The Panel determined that it was in the public interest to maintain the scheduled hearing date, (which was scheduled in September 2015, in Todorov's presence and without objection and was reconfirmed on December 9, 2015, again in his presence and without objection) and provided oral reasons why the request did not meet any of the criteria set out in Rule 9 of the Commission's *Rules of Procedure*. The agent left after the adjournment was denied. The Panel was also satisfied that all Respondents in this matter were provided with adequate notice of the merits hearing.

[17] The respondent Banik submitted an Agreed Statement of Facts, but did not attend.

[18] The respondent Guerenska did not attend the hearing.

[19] Staff of the Commission adduced oral evidence from three investor witnesses and Singh who was both an investor and former respondent. Evidence was also provided by a Staff investigator, including notes of her interviews with investors, and a Staff forensic accountant, who provided evidence of sources and uses of investor funds. Passages from the compelled testimony of Todorov, Nikolov and Guerenska were also placed in evidence.

IV. THE FRAUDULENT SCHEME

[20] In total, twelve investors invested $1,277,500 in the forex trading scheme operated by Todorov. Over the relevant period, Todorov directed investors to deposit monies through wire transfers, bank drafts and certified cheques into multiple bank accounts, all under his effective control.

[21] Most of the investors were referred to Todorov by either Banik or Guerenska. Both Banik and Guerenska were offered and received referral fees for investors that made an investment with Todorov.

[22] Banik referred three investors to Todorov who invested the sum of $250,000. Banik received, at least $104,700 from the forex trading scheme, including $65,700 for these referrals.

[23] Guerenska referred eight investors to Todorov, who invested the sum of $925,000. She received $53,568 as referral fees.

[24] Banik and Guerenska preconditioned the investors to the opportunity and to Todorov by describing him as a person who had been trading forex for many years and who had been very successful. Guerenska told several investors that she had invested with Todorov for over a year and that he had a very low risk, highly profitable strategy for forex trading.

[25] Once the prospective investor exhibited an interest in investing, either Banik or Guerenska would accompany Todorov to meet the investor at a coffee shop, their place of business or their home. The investor was then "pitched" by Todorov, who would indicate that he had been successful in forex trading, making in excess of 100% return per annum on the capital invested. He stated that, because of his particular strategy, there was little risk. The investors were told that they would receive a high rate of interest (between 5 and 10% per month) on money that they provided to Todorov and that he would be compensated by retaining any excess return. The promise of a 'guaranteed' return of 60% - 120% per annum, encouraged the investor to believe Todorov's claims of success.

[26] Investors were told that there was a minimum investment amount ranging from $25,000 to $100,000 and were instructed by Todorov on how to submit the funds. Several investors were encouraged to use their line of credit or refinance their homes in order to raise the funds necessary to invest. Several investors did take on additional debt to invest with Todorov.

[27] As evidence of their investment, each investor received and signed a Promissory Note drafted and produced by Todorov.

[28] Todorov utilized two corporate vehicles to carry out his fraudulent scheme: Setenterprice, the company set up by his wife, Nikolov and 224, Singh's company.

[29] Beginning in November 2010 and continuing until June 2013, eleven of the twelve investors gave Todorov monies which totalled $1,077,500. Most of the funds were deposited into the Setenterprice bank account and $65,000 was deposited into his own personal account. None of the money from this group of investors was used in any forex trading.

[30] In November 2011, Todorov enlisted Singh (one of the eleven investors) and Singh's company 224 in his fraudulent trading scheme and gained access to 224. A new investor, P.D., invested $200,000, which was placed into the 224 bank account. Withdrawals from that bank account were made at the direction of Singh who, in turn, was instructed by Todorov. $170,000 was deposited into a trading account and used, for a brief period, for forex trading.

[31] During the course of the fraudulent trading scheme, Todorov showed the investors trading account statements indicating 400-500 forex trades per day. Although these account statements showed healthy daily profits, they were statements from fictitious trading accounts, 'demo' accounts with simulated positions or an actual trading account from another individual. All statements showed positive balances and trading results, which Todorov represented as his actual trading results, but none were a truthful representation of what happened to investor funds.

V. IS THE PROMISSORY NOTE A SECURITY?

[32] The Promissory Note was drafted as a loan from the investor and promised a high rate of interest of (5%, 6%, 7% and 10%) per month and the return of capital within one year. The borrower was either Setenterprice, or on one occasion, 224. The Setenterprice Promissory Note was signed by Todorov, who was neither an authorized signing officer nor a director of the company. The 224 Promissory Note was signed by Singh, but contemporaneously therewith and not within the presence of the investor, P.D., Todorov signed an acknowledgement that he was responsible for the repayment of monies loaned.

[33] In order to be considered an investment contract in securities law, there must be an investment of money with an intention or expectation of profit. In addition, the role of the investor is limited to supplying the capital and the fortunes of the investor are dependent entirely on the efforts and success of those who are seeking funds. (see *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 at paras. 47-48 and *Re 2196768 (cob Rare Investments)* (2014), 37 O.S.C.B. 6281 at paras. 95-96)

[34] Taking into account all the facts and the context of each Promissory Note, it is clear and established to the satisfaction of the Panel that each Promissory Note is an investment contract. The Promissory Note is but one element of an entire scheme of investment and the provision of the monies is not merely the advancement of a loan. Investors were told and relied on the promise that his/her monies would be invested in forex trading. Each investor expected a sizeable profit emanating from such trading. The entire trading strategy was to be managed by Todorov in a common endeavour whereby he would profit from the excess over the committed return. We find that each Promissory Note is an investment contract and therefore a security as defined in the Act (section 1(1) paragraph n). If one trades in a security without being registered, or distributes securities to the public without a prospectus, this constitutes a breach of section 25 and section 53 of the Act, respectively, unless the respondent can demonstrate that an exemption is available.

VI. THE DECEIT

[35] In spite of Todorov's representations, not one penny of the eleven investors' $1,077,500 raised through the Promissory Notes issued by Setenterprice was ever used for the stated purpose of forex trading.

[36] Todorov and Nikolov used the bulk of the monies from the Setenterprice bank account for purposes entirely extraneous to the purported forex trading scheme such as: personal expenses including car payments, condominium fees, credit card debt; payments to the Respondents; and, payments to third parties, some of whom had been investors in previous investment clubs and schemes managed by Todorov. A portion of the investor monies was paid to earlier investors in the scheme when they complained or threatened to call the Commission thus creating a Ponzi-like scheme where new investor funds were used to placate earlier investors.

[37] The evidence also shows a similar pattern in all the bank accounts controlled by Todorov. Each deposit of investor funds was quickly followed by payments of personal expenses, payments to the Respondents or payments to other investors and typically, the account balance was depleted within a matter of days or weeks.

[38] Of the $1,277,500 raised from investors, the only money that was used for forex trading was a portion of the funds ($170,000) deposited into the 224 account. On November 9, 2011, P.D. invested $200,000 by wire transfer to the 224 bank account. Todorov then transferred $170,000 of these monies to a trading account in the name of 224 at Forex Capital Markets Ltd. Over the next 21 days, $150,000 was withdrawn from the 224 trading account, and re-deposited into the 224 bank account and then distributed to Setenterprice (controlled by Todorov) ($69,000), Banik ($59,000) and to Singh ($49,000). PD only received one payment of the promised monthly returns.

[39] When investors began complaining that they were not receiving their promised monthly returns, Todorov used various techniques to prolong his fraudulent scheme and to avoid its collapse. He obtained monies from new investors by continuing to misrepresent his success in forex trading and distributed some of those monies to those earlier investors who complained persistently and loudly. He told all investors that he had suffered a temporary loss in the Setenterprice trading account and could not withdraw monies, but that the situation would rectify itself shortly. He followed this lie up with showing investors fictitious accounts on the letterhead of Easy Forex of Cyprus. The Cyprus Security Commission, with the cooperation of its registrant, Easy Forex, has confirmed that, at no time, was there ever an account with it for Todorov or Setenterprice and that the trading account statements were not from it or of its origination. Todorov also showed statements from "demo' accounts and trading accounts of another individual, (into which no investor funds were deposited), and passed off those accounts as the ones he was trading for the complaining investor.

[40] By June 2013, the complainants could no longer be calmed and the money to keep the Ponzi scheme rolling had dried up.

VII. FINDINGS AGAINST THE RESPONDENTS

A. TODOROV

[41] The evidence presented to the Panel established an ongoing fraud initiated and continued by Todorov from November 2010 to June 2013. That he was able to prolong the fraud for two and a half years results from Todorov's serial lies to investors, fictitious trading statements and the use of a Ponzi scheme to pay some monies to complaining investors from monies advanced to him by yet unsuspecting investors.

[42] All the necessary elements of fraud in relation to securities law were firmly established as against Todorov by the evidence submitted at the hearing. We find that he perpetrated fraud on persons or companies contrary to s. 126(1)(b) of the Act.

[43] We also find that Todorov traded, engaged in and held himself to be in the business of trading in securities while not registered, and engaged in a distribution of securities without a prospectus. He is in breach of s. 25(1) and s. 53(1) of the Act.

[44] We also find that, Todorov used Setenterprice as a key component in his fraudulent scheme of unregistered trading and illegal distribution. Although Todorov was not named as a director or officer of Setenterprice, which is a company registered as a sole proprietorship under Nikolov, we find that his conduct demonstrated that he acted as a de facto director and officer of Setenterprice. Todorov was the mind and management of the company. Specifically, he directed and controlled the operations and actions of Setenterprice. He had control and signing authority of the bank account of Setenterprice, he signed promissory notes and directed investors to deposit those funds in the Setenterprice account and directed payments from the account. Accordingly, we find that Todorov permitted, authorized or acquiesced in Setenterprice's non-compliance with the Act, and in doing so Todorov is deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

B. BANIK

[45] Banik signed an Agreed Statement of Facts in which he admitted that he traded in securities without being registered contrary to s. 25(1) of the Act and engaged in distributing securities without a prospectus contrary to s. 53(1) of the Act. On the admitted facts and on the corroborative evidence presented, the Panel finds that Banik's conduct in referring investors to Todorov and in being paid a promised referral fee for each person who invested, together with his attendance at the investor meetings at the time of Todorov's representations and the signing of the Promissory Notes constitute acts in furtherance of a trade as defined in paragraph (e) of the definition of a "trade" or "trading" in subsection 1(1) of the Act and in the case law *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 131, *Re Momentas Corp* (2006), 29 O.S.C.B. 7408 at para. 80 and *Re First Federal Capital (Canada) Corp* (2004), 27 O.S.C.B. 1603 at paras. 45-46.

C. GUERENSKA

[46] Guerenska preconditioned investors and introduced them to Todorov for the specific purpose that they should invest. Guerenska attended at meetings of investors when Todorov made his pitch thereby acquiescing in it and lending an air of credibility to Todorov, to the strategy and to the investment. She made the referral in anticipation of a fee and did receive a referral fee of approximately 6% of the amount invested through her. These facts are more than sufficient to constitute acts in furtherance of a trade.

[47] On the evidence presented, the Panel finds that Guerenska's conduct in referring investors to Todorov and in being paid a promised referral fee for each person who invested, together with her attendance at investor meetings at the

time of Todorov's representations constitute acts in furtherance of a trade. We find that she traded in securities without being registered contrary to s. 25(1) of the Act and distributed securities without a prospectus contrary to s. 53(1) of the Act.

D. NIKOLOV

[48] The allegations against Nikolov are that she, too, breached s. 25(1) and s. 53(1) of the Act in that she acted in furtherance of a trade. We do not agree with Staff's position in this regard.

[49] The definition of a trade in s. 1(1) of the Act must not be expanded beyond natural logic and common sense. The definition, although it encompasses an expansive catalogue of acts that can be considered furtherance of a trade, must not be used to capture any conduct, no matter how remotely related to a trade in securities.

[50] Nikolov never met an investor, never solicited an investor, never negotiated with an investor and was not present when others, including her husband, were touting an investment in forex trading.

[51] Nikolov did not set up a forex trading account either for Setenterprice or 224.

[52] Simply put, her conduct had no significant connection to either an investor or to a trade or to a distribution. We find that she did not breach s. 25(1) or s. 53(1) of the Act.

[53] Nikolov's conduct, however, is reprehensible and falls far short of her obligations as a company director. For two years in the relevant period, she signed cheques on the Setenterprice bank account at the direction and under the control of her husband. Some of these cheques were to four of the eleven investors, particularly those who complained persistently, some were to Banik, and some were to repay third parties or investors from earlier involvement in other investment schemes managed by Todorov. From December 2012 onwards, she allowed her husband to sign cheques and operate the account. Given that, in the relevant period, approximately $2,508,000 was withdrawn from the Setenterprice bank account, a sum far in excess of what she earned, and that some of these funds were used to pay for personal expenses, Nikolov should have questioned the source of these funds. If they were from legitimate trading profits, why did the account balance fluctuate wildly, why were cheques regularly written in excess of funds available, and why was there no proper accounting for the funds going in and coming out of the account? Why didn't her husband put his trading profits into his own bank account? And why, from December 2012, did she allow her husband, after several years, to operate her company's bank account at will? There are so many obvious significant suspicious circumstances that lead us to the conclusion that either Nikolov knew of her husband's fraudulent forex trading scheme, or was wilfully blind to it and facilitated its continued operation by assisting her husband through her company's bank account.

[54] Absent any allegation of fraud against Nikolov, we find that Nikolov permitted, authorized or acquiesced in Setenterprice's non-compliance with the Act, and in doing so Nikolov is deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act

E. SETENTERPRICE

[55] Setenterprice was a central component of the fraudulent trading scheme operated by Todorov. We find that the role played by Setenterprice included engaging in the business of trading without registration and distributing securities when a prospectus had not been filed (illegal distribution) in breach of sections 25(1) and 53(1) of the Act.

F. AMOUNTS OBTAINED BY BREACHES OF THE ACT

[56] The amounts actually deposited by the investors to the bank accounts of Setenterprice, 224 and Todorov totalled $1,277,500. $371,909 was returned to some of the investors, including $12,500 to Singh. Thus $905,591 is the monetary amount taken from investors which has not been returned.

VIII. CONCLUSION

[57] This case has highlighted the need for investors to understand the heightened risks associated with dealing outside of the protections offered by the registration regime. Frank and basic print and media warnings should be issued by the Commission urging the public to verify that any person that seeks money for investing purposes is registered with the Commission, as required by law. In our view, a stark but simple warning may prevent many fraudulent schemes.

[58] We find that Todorov, Guerenska, Banik and Setenterprice breached sections 25(1) and 53(1) of the Act.

[59] We find that Todorov has engaged in fraud in breach of section 126.1(b) of the Act and that Todorov and Nikolov are deemed responsible for the breaches of Setenterprice pursuant to section 129.2 of the Act.

[60] We also find that the conduct of all Respondents was contrary to the public interest.

[61] A hearing on sanctions and costs shall be held in writing. We order the following:

(a) The Respondents have until February 12, 2016 to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;

(b) Failing notification by the Respondents, Staff shall serve and file their written submissions on sanctions and costs by February 23, 2016;

(c) The Respondents shall serve and file their written submissions on sanctions and costs by March 9, 2016; and

(d) Staff shall serve and file reply submissions on sanctions and costs, if any, by March 15, 2016.

Dated at Toronto this 3rd day of February, 2016.

"Alan Lenczner"
Alan J. Lenczner

"Judith Robertson"
Judith N. Robertson

"AnneMarie Ryan"
AnneMarie Ryan

3.1.3 Lawrence Zeiben et al.

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

AND

IN THE MATTER OF
LAWRENCE ZEIBEN, GRIT INTERNATIONAL INC.
and TEXAS PETROLEUM INC.

REASONS AND DECISION

Hearing:	In writing		
Decision:	February 4, 2016		
Panel:	Timothy Moseley	–	Commissioner
Submissions by:	Clare Devlin	–	For Staff of the Commission

TABLE OF CONTENTS

I. OVERVIEW

II. THE ASC PROCEEDING

III. PRELIMINARY MATTERS
- A. Notice to the Respondents
- B. Written Hearing

IV. ISSUES

V. ANALYSIS
- A. Were the Respondents subject to an order made by a securities regulatory authority in another jurisdiction?
- B. If so, what if any sanctions should the Commission order against the Respondents?
  1. Introduction
  2. Inter-jurisdictional co-operation
  3. Appropriate sanctions

VI. CONCLUSION

REASONS AND DECISION

I. OVERVIEW

[1] On May 5, 2014, the Alberta Securities Commission (the "**ASC**") issued a decision[1] in which it found that Lawrence Zeiben ("**Zeiben**"), Grit International Inc. ("**Grit**") and Texas Petroleum Inc. ("**Texas Petroleum**"; collectively, the "**Respondents**") had made material representations and had engaged in fraud, and that Grit had engaged in an illegal distribution of its shares.

[2] The ASC found that all of the above conduct was contrary to various provisions of Alberta's *Securities Act*[2] (the "**ASC Act**") and National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**").

[3] As a result, on October 21, 2014, the ASC issued an order imposing various sanctions against the Respondents (the "**ASC Order**").[3] The sanctions, more particularly described below, essentially removed the Respondents from Alberta's capital markets permanently, subject to certain exceptions for transactions effected by Zeiben for his own benefit. The ASC also ordered that Zeiben pay an administrative penalty and costs.

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1 *Re Zeiben*, 2014 ABASC 167 ("**ASC Merits Decision**").

2 RSA 2000, c S-4.

3 *Re Zeiben*, 2014 ABASC 412 ("**ASC Sanctions Decision**").

[4] Enforcement staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") seeks an order pursuant to subsection 127(1) of the Ontario Securities Act (the "**Act**")[4] that mirrors most of the terms of the ASC Order. Staff relies upon subsection 127(10) of the Act, which provides in paragraph 4 that this Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order made by a securities regulatory authority in another jurisdiction.

[5] For the reasons that follow, I find that it is in the public interest to issue the order requested by Staff.

II. THE ASC PROCEEDING

[6] The ASC found, among other things, that:

a. Zeiben was the controlling mind of Grit and of Texas Petroleum;

b. Zeiben was the sole director and officer of Texas Petroleum, and was a director, the controlling shareholder, and the CEO of Grit;

c. through its press releases and websites, Grit solicited purchases of its shares;

d. Grit issued press releases that materially misdescribed the activities in which it engaged;

e. Grit issued press releases containing false and unsupported claims of mineral reserves;

f. Grit engaged in an illegal distribution of its securities; and

g. Texas Petroleum caused to be published on the internet information that misrepresented the true facts concerning its assets and proposed acquisitions.[5]

[7] As a result, the ASC ordered that:

a. Zeiben pay an administrative penalty of $250,000;

b. Zeiben resign any position he held as a director or officer of an issuer, registrant or investment fund manager;

c. Zeiben be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

d. Zeiben be prohibited from trading in or purchasing any securities, except through a registrant in:

(i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the Income Tax Act (Canada) or locked-in retirement accounts for Zeiben's benefit;

(ii) one other account for Zeiben's benefit; or

(iii) both, provided that:

(a) 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; and

(b) Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

e. none of the exemptions contained in Alberta securities laws apply to Zeiben permanently;

f. Grit and Texas Petroleum be prohibited from trading in or purchasing securities, and none of the exemptions contained in Alberta securities laws apply to them, permanently; and

g. Zeiben pay costs of the ASC's investigation and hearing.[6]

---

[4] RSO 1990, c S.5.

[5] *ASC Merits Decision* at paras 69, 82, 88, 91, 95, 105-107, 113-114 and 127.

[6] *ASC Sanctions Decision* at paras 79-81.

III. PRELIMINARY MATTERS

A. Notice to the Respondents

[8] The Notice of Hearing commencing this proceeding specified that the hearing would take place on August 28, 2015.

[9] At the hearing before me on that date, none of the Respondents appeared. Staff tendered an affidavit of Lee Crann, sworn August 24, 2015,[7] that described steps taken to serve the Respondents with the Notice of Hearing, the Statement of Allegations, and disclosure.

[10] Subsection 7(1) of the *Statutory Powers Procedure Act*[8] (the "**SPPA**") and Rule 7.1 of the Commission's *Rules of Procedure*[9] (the "**OSC Rules**") provide that where notice of the hearing has been given to a party, but the party fails to appear, the tribunal may proceed in the absence of the party and the party is not entitled to further notice in the proceeding.

[11] I find that the Respondents were given proper notice of this proceeding and that I may proceed in their absence.

B. Written Hearing

[12] The Notice of Hearing also indicated that Staff would apply to continue this proceeding by way of written hearing, as provided for in section 5.1 of the SPPA and Rule 11.5 of the OSC Rules.

[13] At the August 28 hearing, I granted Staff's application to proceed in writing. I ordered that Staff serve and file its materials by September 8 and that the Respondents serve and file any responding materials by October 6.

[14] Staff served[10] and filed a hearing brief[11] containing the ASC Merits Decision and the ASC Sanctions Decision, along with written submissions and a brief of authorities. No materials were received from any of the Respondents.

IV. ISSUES

[15] As noted above, subsection 127(10) of the Act provides that the Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order, made by a securities regulatory authority in another jurisdiction, that imposes sanctions.

[16] Staff's application for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two principal issues:

1. Were the Respondents subject to an order made by a securities regulatory authority in another jurisdiction?

2. If so, what sanctions, if any, should the Commission order against the Respondents?

V. ANALYSIS

A. Were the Respondents subject to an order made by a securities regulatory authority in another jurisdiction?

[17] The ASC Order is an order of a securities regulatory authority in another jurisdiction. The order imposes sanctions, conditions, restrictions and requirements on the Respondents.

[18] The ASC Order therefore meets the test prescribed by subsection 127(10) of the Act, and the Commission may make an order under subsection 127(1) if it is in the public interest to do so.[12]

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[7] Marked as Exhibit 1 in this proceeding.

[8] RSO 1990, c S.22.

[9] (2014), 37 OSCB 4168.

[10] According to the affidavit of service of Lee Crann sworn September 17, 2015, marked as Exhibit 2 in this proceeding.

[11] Marked as Exhibit 3 in this proceeding.

[12] *Re Euston Capital Corp* (2009), 32 OSCB 6313 at para 46.

B. If so, what sanctions, if any, should the Commission order against the Respondents?

1. Introduction

[19] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). The Commission must still consider whether it is in the public interest, in the context of the Ontario capital markets, to make an order under subsection 127(1), and if so, what the order ought to be.[13]

2. Inter-jurisdictional co-operation

[20] In determining whether it would be in the public interest to make an order pursuant to section 127 of the Act, I am guided by section 2.1 of the Act, which provides:

> In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:
>
> […]
>
> 5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.

[21] By explicitly referring to orders made by securities regulatory authorities in other jurisdictions, subsection 127(10) of the Act clearly promotes this legislative objective. This goal is also well recognized in decisions of the Supreme Court of Canada[14] and of the Commission.[15]

[22] As the Commission has previously held, "[t]he decision of a foreign jurisdiction stands as a determination of fact for the purpose of the Commission's considerations under subsection 127(10) of the Act."[16]

[23] In this case, the findings of the ASC with respect to the Respondents' conduct are compelling reasons to conclude that it is in the public interest to restrict the Respondents' participation in Ontario's capital markets. Had the Respondents engaged in the same conduct in Ontario, it is almost certain that they would have contravened corresponding provisions of Ontario securities law.

[24] A nexus to Ontario is not a necessary pre-condition to the exercise of the Commission's jurisdiction under subsection 127(1), in reliance upon subsection 127(10).[17] However, Staff submits that in this case the Respondents' conduct warrants an order designed to protect Ontario investors from the Respondents by preventing or limiting the Respondents' participation in Ontario's capital markets. I agree with that submission.

[25] addition, as the Supreme Court of Canada has held, it is appropriate to consider general deterrence in making an order under subsection 127(1).[18] An order in this proceeding would have a deterrent effect upon those who might engage in similar conduct in Ontario.

[26] Accordingly, I find that it is in the public interest to make an order against the Respondents pursuant to section 127(1) of the Act.

3. Appropriate sanctions

[27] The purpose of section 127 of the Act, and the principles that "animate" its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*.[19] In that decision, the Court held[20] that "in considering an order in the public interest", the Commission shall have regard to both of the two purposes of the Act, as set out in section 1.1 of the Act:

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[13] *Re Elliott* (2009), 32 OSCB 6931 at para 27.

[14] *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 51; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21 at para 27.

[15] *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at para 21; *New Futures Trading International Corp. (Re)* (2013), 36 OSCB 5713 at para 27.

[16] *Re JV Raleigh Superior Holdings Inc.*, *supra* note 15 at para 16.

[17] *Re Cho (c.o.b. Chosen Media and Groops Media)* (2014), 37 OSCB 7285; *Re Lough* (2014), 37 OSCB 10744; *Re Sundell* (2014), 37 OSCB 10755).

[18] *Cartaway Resources Corp.*, 2004 SCC 26 at para 60.

[19] 2001 SCC 37 ("***Asbestos***").

[20] *Ibid* at para 41.

a. to provide protection to investors from unfair, improper or fraudulent practices; and

b. to foster fair and efficient capital markets and confidence in capital markets.

[28] The Court then described the purpose of the section 127 public interest jurisdiction as being "neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets".[21] Further, the Court held that section 127 orders are not punitive. Rather, their purpose 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.[22]

[29] In this case, Staff asks the Commission to order that Zeiben resign any positions he holds as director or officer of any issuer, registrant or investment fund manager, and that he be prohibited permanently from becoming or acting as officer or director of any issuer, registrant or investment fund manager. Staff also requests an order that any exemptions contained in Ontario securities law not apply to Zeiben permanently, and that Zeiben be permanently prohibited from trading in or acquiring any securities, subject to an exception that would allow Zeiben to trade in or purchase securities through a registrant who has first been given a copy of the ASC Order and a copy of the Order of the Commission in this proceeding, if granted, in:

(i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada) or locked-in retirement accounts for Zeiben's benefit;

(ii) one other account for Zeiben's benefit; or

(iii) both, provided that:

(a) 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; and

(b) Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.

[30] Staff also asks that Grit and Texas Petroleum be permanently prohibited from trading in or acquiring any securities, and that any exemptions contained in Ontario securities laws not apply to them permanently.

[31] The Respondents' misconduct was serious. The ASC found that the Respondents perpetrated a fraud and made materially misleading or untrue statements, and that Grit engaged in an illegal distribution of its shares. As the ASC noted, "Zeiben, Grit and Texas Petroleum engaged in the deliberate creation of a public façade to the detriment of shareholders" and "the inevitable happened. The façade attracted investors, pumped up the share price, increased share sales, and, when the façade came down, disappointed investors lost their investment."[23]

[32] The Respondents' conduct, had it occurred in Ontario, would likely have attracted consequences similar to those ordered by the ASC.

[33] Appropriately, Staff does not seek an order in Ontario that would require the payment of an additional administrative penalty. The order that Staff seeks would restrict the Respondents' access to and participation in Ontario's capital markets in the same way as was done in Alberta.

[34] In my view, the order requested by Staff is proportionate to the misconduct as found by the ASC, would serve to protect Ontario's investors and capital markets, would further the objective of inter-jurisdictional co-operation, and would have an appropriate general deterrence effect in Ontario.

VI. CONCLUSION

[35] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff.

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[21] *Ibid* at para 42, adopting the words of Laskin J.A. from the court below.

[22] *Ibid* at para 43, citing with approval *Mithras Management Ltd. (Re)* (1990), 13 OSCB 1600.

[23] *ASC Merits Decision*, supra at paras. 135-136.

[36] I will therefore issue an order to the following effect:

(a) against Zeiben that:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Zeiben shall cease permanently, except that Zeiben is not precluded from trading in, or purchasing, securities through a registrant (if, prior to such trade or acquisition, he gives the registrant a copy of the order resulting from this decision) in:

a. registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Zeiben's benefit;

b. one other account for Zeiben's benefit; or

c. both, provided that:

1. 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; and

2. Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Zeiben permanently;

iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Zeiben resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager; and

iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Zeiben be prohibited permanently from becoming or acting as an officer or director of any issuer, registrant or investment fund manager;

(b) against Grit that:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Grit shall cease permanently; and

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Grit permanently; and

(c) against Texas Petroleum that:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Texas Petroleum shall cease permanently; and

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Texas Petroleum permanently.

Dated at Toronto this 4th day of February, 2016.

"Timothy Moseley"

3.1.4 Fred Louis Sebastian – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
FRED LOUIS SEBASTIAN**

**REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)**

Hearing: In writing

Decision: February 5, 2016

Panel: Janet Leiper, C.S. – Commissioner

Appearances: Clare Devlin – For Staff of the Commission

No one appeared on behalf of Fred Louis Sebastian

REASONS AND DECISION

I. INTRODUCTION

[1] This was an uncontested written hearing before the Ontario Securities Commission (the “Commission”) to determine whether it is in the public interest to make an order imposing sanctions against Fred Louis Sebastian, pursuant to the authority found in subsections 127(1) and (10) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “*Securities Act*”).

[2] Mr. Sebastian was served with a Notice of Hearing issued on November 17, 2015 and a Statement of Allegations dated November 16, 2015. Mr. Sebastian communicated with Staff of the Commission by e-mail on December 15, 2015, acknowledging that he was aware of the December 16, 2016 appearance and he requested that he be provided with adequate time to prepare his written submissions for mid to late January 2016. Mr. Sebastian did not appear on the return date for the hearing, December 16, 2015.

[3] On December 16, 2015, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by Rule 11 of the Commission’s *Rules of Procedure* (2014), 37 O.S.C.B. 4168. The application was granted and a timeline was set for the exchange of materials between Staff and Mr. Sebastian. Mr. Sebastian was permitted to serve and file his materials by January 26, 2016.

[4] Mr. Sebastian did not file evidence or make submissions in accordance with the timelines set on December 16, 2015. As set out in the Affidavit of Service of Lee Crann dated January 4, 2016, Mr. Sebastian was served by courier and email with: (1) the Commission’s Order dated December 16, 2015 which set out the timeline for the exchange of materials, and (2) Staff’s written materials. Staff have requested that the matter proceed.

[5] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Subsection 7(2), *Statutory Powers Procedure Act*) R.S.O. 1990, c. S.22 (the “*SPPA*”)). The evidence of service and Mr. Sebastian’s acknowledgement of the proceedings to Staff, as well as the posting of the Notice of Hearing and Statement of Allegations on the Commission’s website, satisfy me that the matter may proceed in the absence of Mr. Sebastian in accordance with the *SPPA*.

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[6] Subsection 127(10)4 of the *Securities Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed “sanctions, conditions, restrictions or requirements on a person or a company.” On making a finding of fact that an order of this type has been made in relation to a respondent, the Commission must determine whether an order under subsection 127(1) of the *Securities Act* should be made.

[7] Subsection 127(1) empowers the Commission to make orders where in its opinion, it is in the public interest to make such orders. In making this determination, the Commission has regard to the purposes of the *Securities Act*, which are

to provide protection to investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[8] The purpose of orders under subsection 127(1) of the *Securities Act* is "protective and prospective" and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets. (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 cited in *Re JV Raleigh Superior Holdings Inc.* (2013), 36 O.S.C.B. 4639 para. 17).

III. ANALYSIS

A. The FCAA Findings and Order

[9] On July 23, 2015, the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA") found that Mr. Sebastian acted as a dealer and adviser without being registered to do so and made an undertaking to an investor as to the future value of a security. The FCAA also found that Mr. Sebastian had perpetrated a fraud. This conduct was contrary to the Saskatchewan *Securities Act*, 1988 (S.S. 1988-89 c. S-42.2), as amended (the "*Saskatchewan Act*").

[10] By order dated August 27, 2015, the FCAA imposed sanctions and costs upon Mr. Sebastian, including the following:

a. pursuant to clause 134(1)(a) of the *Saskatchewan Act*, all of the exemptions in Saskatchewan securities laws do not apply to Sebastian, permanently;

b. pursuant to clause 134(1)(d) of the *Saskatchewan Act*, Sebastian shall cease trading in any securities or exchange contracts in Saskatchewan, permanently;

c. pursuant to clause 134(1)(d.1) of the *Saskatchewan Act*, Sebastian shall cease acquiring securities for or on behalf of residents of Saskatchewan, permanently;

d. pursuant to clause 134(1)(e) of the *Saskatchewan Act*, Sebastian shall cease giving advice respecting securities, trades or exchange contracts in Saskatchewan;

e. pursuant to clause 134(1)(h)(i) of the *Saskatchewan Act*, Sebastian shall resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager;

f. pursuant to clause 134(1)(h)(ii) of the *Saskatchewan Act*, Sebastian is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, permanently;

g. pursuant to clause 134(1)(h)(iii) of the *Saskatchewan Act*, Sebastian shall not be employed by any issuer, registrant or investment fund manager in any capacity that would entitle him to trade or advise in securities;

h. pursuant to clause 134(1)(h.1) of the *Saskatchewan Act*, Sebastian is prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter, permanently;

i. pursuant to section 135.1 of the *Saskatchewan Act*, Sebastian shall pay an administrative penalty to the FCAA in the amount of $75,000; and

j. pursuant to section 161 of the *Saskatchewan Act*, Sebastian shall pay to the FCAA costs of and related to the FCAA hearing in the amount of $4513.48.

[11] The facts found by the FCAA in the reasons underlying this order, reveal that Mr. Sebastian met with an investor resident in Saskatchewan and advised the investor to invest money in a company known as E-Debit Global Corporation. He advised the investor that he would "double or triple" the investment in a very short time. Mr. Sebastian told the investor not to reveal the investment to family members so they could be surprised later with the money earned.

[12] Mr. Sebastian had been introduced to this investor through his mother, who lived in the same retirement residence as the investor. Mr. Sebastian befriended the investor, and played cards with her. Over time, Mr. Sebastian received a number of small loans from the investor and then eventually went on to present the E-Debit investment opportunity to her.

[13] The investor wrote five cheques to Mr. Sebastian for investment purposes, totalling $47,000.00. Mr. Sebastian used the funds for personal loans and purchases and when he was confronted by the family of the investor, he provided four

promissory notes, due December 12, 2012. On January 7, 2013, Mr. Sebastian wrote to the investor and said "we will have your funds ($49,400.00) back to you shortly."

[14] The investor's funds were not recovered as of the date of the findings by the FCAA. This caused the investor significant economic hardship. The FCAA found no mitigating factors and concluded that this was a "deliberate attempt to gain the confidence of a trusting, elderly individual with limited investment experience for the purpose of personal enrichment."

[15] The FCAA found that Mr. Sebastian

a. acted as a dealer and adviser without being registered contrary to clauses 27(2)(a) and 27(2)(b), respectively, of the *Saskatchewan Act*;

b. gave an oral undertaking relating to the future value of a security, with the intention of effecting a trade in that security, contrary to subsection 44(2) of the *Saskatchewan Act*; and

c. perpetrated a fraud, contrary to clause 55.1(b) of the *Saskatchewan Act*.

[16] The FCAA findings and its sanctions, establish that Mr. Sebastian was subject to an order made by a securities regulatory authority that imposed sanctions upon him. This means that the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Securities Act* has been satisfied, such that it is appropriate to consider whether an order should be made in the public interest under subsection 127(1) of the *Securities Act*.

B. The Order Requested in the Public Interest

[17] Staff have requested that a public interest order be made to meet the purposes of the *Securities Act* as described in section 1.1, that is, to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

[18] The *Securities Act* recognizes the importance of inter-jurisdictional co-operation. Section 2.1 provides that "the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[19] Staff seeks an order to prevent or limit Mr. Sebastian's participation in Ontario's capital markets. The Commission need not find that there is a nexus to Ontario when imposing an order of this nature. (See *Re Sundell* (2014), 37 O.S.C.B. 10755 at para. 37; *Re Bigfoot Recreation & Ski Area Ltd.* (2015), 38 O.S.C.B. 7370 at paras. 13 and 21; *Re Ferguson* (2015), 38 O.S.C.B 8849 at paras. 21 and 30.)

[20] Although an order that is based upon a hearing and sanctions in another jurisdiction is not made automatically, it is important to consider the need to be responsive to the interconnected cross-border securities industry and the mobility of funds, people and information.

[21] The conduct for which Mr. Sebastian was sanctioned in Saskatchewan would have constituted a contravention of the *Securities Act* (subsections 25(a), 25(3), 38(2) and 126.1(1)(b)) had it taken place in Ontario. The conduct is serious: it harmed an investor, enriched Mr. Sebastian and involved deceit of a vulnerable person through an opportunistic personal relationship. The order requested can function to protect Ontario investors, should Mr. Sebastian attempt to participate in the capital markets in Ontario.

[22] I conclude that the terms of the order proposed by Staff align with the sanctions imposed in the FCAA order. It is appropriate to make an order in the public interest to prevent such conduct taking place in the capital markets in Ontario.

IV. ORDER

[23] Having found that it is in the public interest to do so, I order that:

a. Mr. Sebastian permanently cease trading in securities and derivatives, pursuant to subsection 127(1), paragraph 2 of the *Securities Act*;

b. Mr. Sebastian is permanently prohibited from acquiring any securities pursuant to subsection 127(1), paragraph 2.1 of the *Securities Act*;

c. any exemptions contained in Ontario securities laws shall not apply to Mr. Sebastian permanently pursuant to subsection 127(1), paragraph 3 of the *Securities Act*;

d. Mr. Sebastian shall resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 7, 8.1 and 8.3 of the *Securities Act*;

e. Mr. Sebastian shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 8, 8.2 and 8.4 of the *Securities Act*;

f. Mr. Sebastian shall be permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to subsection 127(1), paragraph 8.5 of the *Securities Act*.

Dated at Toronto this 5th day of February 2016.

“Janet Leiper”

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
FPS Pharma Inc.	9 December 2015	21 December 2015	21 December 2015	4 February 2016

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
AgriMinco Corp.	3 February 2016	
Brabeia Inc.	9 February 2016	
Cliffmont Resources Ltd.	9 February 2016	
EEStor Corporation	3 February 2016	4 February 2016
High North Resources Ltd.	5 February 2016	
SENSIO Technologies Inc.	3 February 2016	
ZipLocal Inc.	3 February 2016	

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
Cerro Grande Mining Corporation	4 February 2016	17 February 2016			

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
Almonty Industries Inc.	29 January 2016	10 February 2016			
Boomerang Oil, Inc.	29 January 2016	10 February 2016			
Cerro Grande Mining Corporation	4 February 2016	17 February 2016			
Enerdynamic Hybrid Technologies Corp.	4 November 2015	16 November 2015	16 November 2015		
Enerdynamic Hybrid Technologies Corp.	22 October 2015	4 November 2015	4 November 2015		
Enerdynamic Hybrid Technologies Corp.	15 October 2015	28 October 2015	28 October 2015		

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		
Tango Mining Limited	7 January 2016	20 January 2016	20 January 2016		
West Red Lake Gold Mines Inc.	24 December 2015	6 January 2016	6 January 2016		

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 11

IPOs, New Issues and Secondary Financings

Issuer Name:
DMP Power Global Growth Class
DMP Resource Class
DMP Value Balanced Class
Dynamic Advantage Bond Class
Dynamic Advantage Bond Fund
Dynamic Alternative Yield Class
Dynamic Alternative Yield Fund
Dynamic American Value Class
Dynamic American Value Fund
Dynamic Aurion Tactical Balanced Class
Dynamic Aurion Total Return Bond Class
Dynamic Aurion Total Return Bond Fund
Dynamic Blue Chip Balanced Fund (formerly Dynamic Focus+ Balanced Fund)
Dynamic Blue Chip Equity Fund (formerly Dynamic Focus+ Equity Fund)
Dynamic Blue Chip U.S. Balanced Class (formerly Dynamic Blue Chip Balanced Class)
Dynamic Canadian Bond Fund (formerly Dynamic Income Fund)
Dynamic Canadian Dividend Fund
Dynamic Canadian Value Class
Dynamic Corporate Bond Strategies Class
Dynamic Corporate Bond Strategies Fund
Dynamic Credit Spectrum Fund (formerly Dynamic High Yield Credit Fund)
Dynamic Diversified Real Asset Fund
Dynamic Dividend Advantage Class
Dynamic Dividend Advantage Fund (formerly Dynamic Dividend Value Fund)
Dynamic Dividend Fund
Dynamic Dividend Income Class
Dynamic Dividend Income Fund
Dynamic Dollar-Cost Averaging Fund
Dynamic EAFE Value Class
Dynamic Emerging Markets Class
Dynamic Energy Income Fund (formerly Dynamic Focus+ Energy Income Trust Fund)
Dynamic Equity Income Fund (formerly Dynamic Focus+ Diversified Income Fund)
Dynamic European Value Fund
Dynamic Far East Value Fund
Dynamic Financial Services Fund (formerly Dynamic Focus+ Wealth Management Fund)
Dynamic Global Asset Allocation Class
Dynamic Global Asset Allocation Fund (formerly Dynamic Global Value Balanced Fund)
Dynamic Global Balanced Fund
Dynamic Global Discovery Class
Dynamic Global Discovery Fund
Dynamic Global Dividend Class (formerly Dynamic Global Dividend Value Class)
Dynamic Global Dividend Fund (formerly Dynamic Global Dividend Value Fund)
Dynamic Global Equity Fund
Dynamic Global Infrastructure Fund
Dynamic Global Real Estate Fund (formerly Dynamic Focus+ Real Estate Fund)
Dynamic Global Value Class
Dynamic Global Value Fund (formerly Dynamic International Value Fund)
Dynamic High Yield Bond Fund
Dynamic Income Growth Opportunities Class (formerly Dynamic Canadian Dividend Class)
Dynamic Investment Grade Floating Rate Fund
Dynamic Money Market Class
Dynamic Money Market Fund
Dynamic Power American Currency Neutral Fund
Dynamic Power American Growth Class
Dynamic Power American Growth Fund
Dynamic Power Balanced Class
Dynamic Power Balanced Fund
Dynamic Power Canadian Growth Class
Dynamic Power Canadian Growth Fund
Dynamic Power Global Balanced Class
Dynamic Power Global Growth Class
Dynamic Power Global Growth Fund
Dynamic Power Global Navigator Class
Dynamic Power Managed Growth Class
Dynamic Power Small Cap Fund
Dynamic Precious Metals Fund
Dynamic Preferred Yield Class
Dynamic Premium Yield Fund
Dynamic Resource Fund (formerly Dynamic Focus+ Resource Fund)
Dynamic Short Term Bond Fund
Dynamic Small Business Fund (formerly Dynamic Focus+ Small Business Fund)
Dynamic Strategic Bond Fund (formerly Dynamic Strategic Global Bond Fund)
Dynamic Strategic Energy Class (formerly Dynamic Global Energy Class)
Dynamic Strategic Gold Class
Dynamic Strategic Growth Portfolio (formerly Dynamic Fund of Funds)
Dynamic Strategic Income Portfolio (formerly Dynamic Strategic All Income Portfolio)
Dynamic Strategic Resource Class
Dynamic Strategic Yield Class
Dynamic Strategic Yield Fund
Dynamic U.S. Dividend Advantage Fund (formerly Dynamic U.S. Dividend Advantage Class)
Dynamic U.S. Monthly Income Fund (formerly Dynamic U.S. Value Balanced Fund)
Dynamic U.S. Sector Focus Class
Dynamic Value Balanced Class
Dynamic Value Balanced Fund
Dynamic Value Fund of Canada
DynamicEdge Balanced Class Portfolio
DynamicEdge Balanced Growth Class Portfolio
DynamicEdge Balanced Growth Portfolio

DynamicEdge Balanced Portfolio
DynamicEdge Conservative Class Portfolio
DynamicEdge Defensive Portfolio
DynamicEdge Equity Class Portfolio
DynamicEdge Equity Portfolio
DynamicEdge Growth Class Portfolio
DynamicEdge Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 29, 2016 to Final Simplified Prospectus dated November 18, 2015
NP 11-202 Receipt dated February 3, 2016
Offering Price and Description:
Series FT Units @ Net Asset Value
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
1832 Asset Management L. P.
1832 AssetManagement L.P.
Promoter(s):
-
Project #2405037

Issuer Name:
Exemplar U.S. High Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 4, 2016
NP 11-202 Receipt dated February 5, 2016
Offering Price and Description:
Series A, AI, AN, U, F, FI, FN, G, I, L, LI and M Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Arrow Capital Management Inc.
Project #2441463

Issuer Name:
Kew Media Group Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated February 3, 2016
NP 11-202 Receipt dated February 3, 2016
Offering Price and Description:
$70,000,000.00 - 7,000,000 Class A Restricted Voting Units
Price: $10.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Cantor Fitzgerald Canada Corporation
National Bank Financial Inc.
Promoter(s):
KMG ENTERTAINMENT LP
Project #2412860

Issuer Name:
Oncolytics Biotech Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated February 5, 2016
NP 11-202 Receipt dated February 5, 2016
Offering Price and Description:
Cdn.$150,000,000.00
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2441653

Issuer Name:
Spectral Medical Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 3, 2016
NP 11-202 Receipt dated February 3, 2016
Offering Price and Description:
$10,010,000.00 - 14,300,000 Common Shares
Price: $0.70 Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
-
Project #2439152

Issuer Name:
Tuckamore Capital Management Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 1, 2016
NP 11-202 Receipt dated February 2, 2016
Offering Price and Description:
Offering of Rights to Subscribe for Up to $10,000,000 Aggregate Principal Amount of 10.00% Second Lien Secured Convertible Debentures due 2026
Price: $ * per $100 principal amount of Offered Debentures

Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2440572

Issuer Name:
Ur-Energy Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 2, 2016
NP 11-202 Receipt dated February 2, 2016
Offering Price and Description:
US$6,000,000.00 - 12,000,000 common shares
Price: US$0.50 per Offered Share
Underwriter(s) or Distributor(s):
Cantor Fitzgerald Canada Corporation
Raymond James Ltd.
Dundee Securities Ltd.
Promoter(s):
-
Project #2438697

Issuer Name:
Foundation Tactical Balanced Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 27, 2016 to Final Simplified Prospectus dated March 26, 2015
NP 11-202 Receipt dated February 3, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Portfolio Strategies Securities Inc.
Promoter(s):
Portfolio Strategies Securities Inc.
Project #2312876

Issuer Name:
Integra Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 4, 2016
NP 11-202 Receipt dated February 4, 2016
Offering Price and Description:
$15,000,000
30,000,000 Flow-Through Common Shares
$0.50 per Flow-Through Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Paradigm Capital Inc.
GMP Securities L.P
Macquarie Capitalmarkets Canada Ltd.
Beacon Securities Limited
Haywood Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
-
Project #2437945

Issuer Name:
Questrade Russell 1000 Equal Weight US Consumer Discretionary Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Health Care Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Industrials Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Technology Index ETF Hedged to CAD
Questrade Russell US Midcap Growth Index ETF Hedged to CAD
Questrade Russell US Midcap Value Index ETF Hedged to CAD
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 2, 2016
NP 11-202 Receipt dated February 3, 2016
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Questrade Wealth Management Inc.
Project #2436026

Issuer Name:
Russell Focused US Equity Pool
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated January 26, 2016 to Final Simplified Prospectuses dated June 30, 2015
NP 11-202 Receipt dated February 8, 2016
Offering Price and Description:
CDN Dollar Hedged Series A, CDN Dollar Hedged Series B, CDN Dollar Hedged Series E, CDN Dollar Hedged Series F and CDN Dollar Hedged Series O
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Russell Investments Canada Limited
-
Promoter(s):
Russell Investments Canada Limited
Project #2357197

Issuer Name:
SHAW COMMUNICATIONS INC.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated February 2, 2016
NP 11-202 Receipt dated February 2, 2016
Offering Price and Description:
$2,000,000,000.00 - Debt Securities, Class B Non-Voting Participating Shares, Class 1 Preferred Shares, Class 2 Preferred Shares, Warrants, Subscription Receipts, Share Purchase Contracts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2437380

Issuer Name:
Sun Life Granite Conservative Portfolio (Series A, T5, F, I and O securities)
Sun Life Granite Moderate Portfolio (Series A, T5, F, I and O securities)
Sun Life Granite Balanced Portfolio (Series A, T5, F, I and O securities)
Sun Life Granite Balanced Growth Portfolio (Series A, T5, T8, F, I and O securities)
Sun Life Granite Growth Portfolio (Series A, T5, T8, F, I and O securities)
Sun Life Granite Income Portfolio (Series A, F, I and O securities)
Sun Life Granite Enhanced Income Portfolio (Series A, F, I and O securities)
Sun Life Granite Tactical Completion Fund (Series I securities)
Sun Life Sentry Value Fund (Series A, F, I and O securities)
Sun Life Sentry Infrastructure Fund (Series A, T5, T8, F, I and O securities)
Sun Life Sentry Global Mid Cap Fund (Series A, T5, T8, F, I and O securities)
Sun Life Dynamic American Value Fund (Series A, T5, T8, F, I and O securities)
Sun Life Sentry Conservative Balanced Fund (Series A, T5, F, I and O securities)
Sun Life Templeton Global Bond Fund (Series A, F, I and O securities)
Sun Life Dynamic Equity Income Fund (Series A, F, I and O securities)
Sun Life Dynamic Strategic Yield Fund (Series A, F, I and O securities)
Sun Life NWQ Flexible Income Fund (Series A, F, I and O securities)
Sun Life BlackRock Canadian Equity Fund (Series A, T5, T8, F, I and O securities)
Sun Life BlackRock Canadian Balanced Fund (Series A, T5, F, I and O securities)
Sun Life MFS Canadian Bond Fund (Series A, D, F, I and O securities)
Sun Life MFS Balanced Growth Fund (Series A, D, F, I and O securities)
Sun Life MFS Balanced Value Fund (Series A, D, F, I and O securities)
Sun Life MFS Canadian Equity Growth Fund (Series A, D, F, I and O securities)
Sun Life MFS Canadian Equity Fund (Series A, D, F, I and O securities)
Sun Life MFS Canadian Equity Value Fund (Series A, D, F, I and O securities)
Sun Life MFS Dividend Income Fund (Series A, D, F, I and O securities)
Sun Life MFS U.S. Equity Fund (Series A, D, F, I and O securities)
Sun Life MFS Low Volatility International Equity Fund (Series A, T5, T8, I, F and O securities)
Sun Life MFS Low Volatility Global Equity Fund (Series A, T5, T8, I, F and O securities)
Sun Life Franklin Bissett Canadian Equity Class* (Series A, AT5, F, I and O securities)
Sun Life Trimark Canadian Class* (Series A, AT5, F, I and O securities)
Sun Life Sionna Canadian Small Cap Equity Class* (Series A, AT5, F, I and O securities)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated February 5, 2016
NP 11-202 Receipt dated February 8, 2016
Offering Price and Description:
Series A, Series AT5, Series T5, Series T8, Series D, Series F, Series I and Series O securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sun Life Global Investment (Canada) Inc.
Project #2421596

Issuer Name:
TD Canadian Blue Chip Dividend Fund (formerly TD Private Canadian Blue Chip Dividend Fund)
TD Canadian Large-Cap Equity Fund (formerly TD Private Canadian Blue Chip Equity Fund)
TD Canadian Corporate Bond Fund (formerly TD Private Canadian Corporate Bond Fund)
TD Canadian Diversified Yield Fund (formerly TD Private Canadian Diversified Yield Fund)
TD Core Canadian Value Fund (formerly TD Private Canadian Value Fund)
TD International Stock Fund (formerly TD Private International Stock Fund)
Epoch U.S. Blue Chip Equity Currency Neutral Fund (formerly TD Private U.S. Blue Chip Equity Currency Neutral Fund)
Epoch U.S. Blue Chip Equity Fund (formerly TD Private U.S. Blue Chip Equity Fund)
TD U.S. Corporate Bond Fund (TD Private U.S. Corporate Bond Fund)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated February 4, 2016
NP 11-202 Receipt dated February 5, 2016
Offering Price and Description:
Investor Series, Premium Series, Advisor Series, F-Series, Premium F-Series, D-Series, Private Series and O-Series units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #2428397

Issuer Name:
The Empire Life Insurance Company
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 5, 2016
NP 11-202 Receipt dated February 5, 2016
Offering Price and Description:
$130,000,000.00 - 5,200,000 Non-Cumulative Rate Reset Preferred Shares, Series 1
Price: $25.00 per Preferred Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Ltd.
Promoter(s):
-
Project #2438192

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Burgeonvest Bick Securities Limited	From: Investment Dealer and Investment Fund Manager To: Investment Dealer	February 2, 2016
Change in Registration Category	Value Partners Investments Inc.	From: Investment Fund Manager and Portfolio Manager To: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	February 5, 2016
New Registration	Further Capital Partners Ltd.	Exempt Market Dealer	February 8, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Amendment to "Short Marking Exempt Order" Definitions – Notice of Commission Approval

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AMENDMENT TO "SHORT MARKING EXEMPT ORDER" DEFINITION

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission has approved an amendment to the definition of "short marking exempt order" in IIROC Universal Market Integrity Rule 1.1. In addition, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission of New Brunswick, the Manitoba Securities Commission, the Nova Scotia Securities Commission, the Office of the Superintendent of Securities, Service Newfoundland and Labrador, and the Prince Edward Island Office of the Superintendent of Securities have approved or not objected to the amendments.

The amendment broadens the definition of "short-marking exempt order" to specifically include an order for an Exempt Exchange-traded Fund ("ETF") or one of its underlying securities for the principal account of a Participant that is related to the Participant's Marketplace Trading Obligations or where the Participant has entered into an agreement with an ETF issuer to maintain a continuous distribution of the ETF. The amendment will promote the uniform use of short-marking exempt orders for all ETF market makers engaging in similar activities.

The proposed amended definition was published for comment on July 16, 2015. 3 comments were received.

The amended definition will be effective on April 11, 2016. A copy of the IIROC Notice, including IIROC's responses to the comment letters, can be found on our website at http://www.osc.gov.on.ca.

13.2 Marketplaces

13.2.1 TSX – Housekeeping Amendments to the TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

**HOUSEKEEPING AMENDMENTS TO
THE TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL**

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "Protocol"), TSX has adopted, and the Ontario Securities Commission has approved, amendments (the "Amendments") to Appendix D – Toronto Stock Exchange Evidence of Security Ownership ("Appendix D") of the TSX Company Manual (the "Manual"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

TSX requirements regarding security certificates can be found in Appendix D. Appendix D contains two sets of customized security certificate requirements that apply to TSX issuers listed under the following categories: (i) Exempt Industrial Companies ("Exempt Certificate Requirements") and (ii) Mining, Oil & Gas and Non-Exempt Companies ("Non-Exempt Certificate Requirements"). The Amendments remove the Exempt Certificate Requirements from Appendix D.

Exempt Certificate Requirements have additional security features compared with Non-Exempt Certificate Requirements. Most notably, Exempt Industrial Companies are required to have customized security certificates with the following security features, in addition to the Non-Exempt Certificate Requirements:

- a vignette, which shall: i) be at least 3.1 square inches (20 square centimeters) in area, and shall display a wide range of tonal quality from very light to very heavy lines, with ample content of middle tones and graduating shades; ii) consist of lines of differing vertical dimensions, some of which shall measure 25 microns perpendicular to the normal plane of paper; and iii) not consist of a monogram, trade mark or other company symbol only, but shall include some plainly discernible features of at least a part of the human form;

- a printed underlay in colour other than black in the area of the general or promissory text;

- an intaglio printing in black made of the vignette, the general or promissory text and the corporate name;

- an intaglio printing made of wording or an abridgement of words in micro lettering of a size below normal readable limits, and in repetition; and

- the general or promissory text produced from line engravings in "script" style lettering.

TSX notes that generic certificates are supported by the Securities Transfer Association of Canada and are accepted by TSX. Generic certificates are not required to have the security features specific to the Exempt Certificate Requirements, including intaglio printing, outlined above. Additionally, CDS has committed to eliminating physical security certificates for both existing issues with CDS's vaults and the issuance of new securities to improve the efficiency and cost effectiveness of the Canadian capital markets.

Summary of the Amendments

On May 21, 2015, TSX published a public consultation seeking feedback on whether it should apply the Non-Exempt Certificate Requirements to all listed issuers and eliminate the Exempt Certificate Requirements (the "Public Consultation"). TSX received three (3) comment letters from two commenters in response to the Public Consultation. A summary of the comments submitted, together with TSX's response, is attached as **Appendix A**. TSX appreciates the value public input provides and thanks the commenters for their submissions.

Based on comments received from the Public Consultation, TSX understands that applying the Non-Exempt Certificate Requirements to all listed issuers will reduce the costs of producing customized security certificates for Exempt Industrial Companies. The primary difference between the Exempt Certificate Requirements and the Non-Exempt Certificate Requirements is the amount of intaglio printing that is required. While the Exempt Certificate Requirements require more square inches of intaglio content by requiring intaglio printing of the vignette, general promissory text and open throat area, the Non-

Exempt Certificate Requirements require intaglio printing of the border or panel portions of the certificate and the denomination counter. TSX understands that the additional intaglio printing results in higher printing costs for issuers.

Additionally, TSX understands that the rules of the New York Stock Exchange do not require security certificates to have security features comparable to the Exempt Certificate Requirements[1] and that NASDAQ does not have requirements regarding the form of security certificates. Similarly, TSX understands that other Canadian stock exchanges do not have requirements for security certificates equivalent to the Exempt Certificate Requirements.

Therefore, based on comments received, TSX is amending Appendix D by removing the Exempt Certificate Requirements.

TSX will monitor Canadian and international industry initiatives in this space, including the possible introduction of a shortened settlement cycle (T+2), and if necessary, review TSX's security certificate requirements in light of any such developments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix B**. For ease of reference, a clean version of the Amendments to the Manual is set out at **Appendix C**.

Timing and Transition

The Amendments become effective today, **February 11, 2016**.

[1] See Section 5 – Certificates of the New York Stock Exchange Listed Company Manual.

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

Securities Transfer Association of Canada (STAC)
Canadian Bank Note Company, Limited (CBN)

Capitalized terms used and not otherwise defined in the Notice of Housekeeping Rule Amendments shall have the meaning in the Public Consultation.

Summarized Comments Received	TSX Response
STAC will undertake an update of its "Policy and Procedures Regarding Generic Certificates" to align with the Public Consultation and TSX's Notice of Housekeeping Rule Amendments dated May 21, 2015 (the "May Notice") and will confirm when this has been completed (STAC).	TSX thanks this commenter for updating its policies and procedures.
One commenter submitted that the Direct Registration System ("DRS") should be a mandatory listing requirement. There has been a continual and accelerating trend towards the dematerialization of security ownership, both locally and globally. The current process used by all STAC members allows for the availability of DRS, but also a certificate upon request, thereby aligning with certain corporate statutes under which holders may require a certificate to evidence their security ownership. DRS offers advantages to issuers and security holders, such as increased timeliness of share transfers, reduced administrative costs and the elimination of certain risk and insurance costs. There are also benefits for the Canadian marketplace from mandated DRS, including paving the way for dematerialization (STAC).	TSX thanks this commenter for its input. Mandating DRS eligibility is outside the scope of the Public Consultation. TSX notes that the amendments to the Manual published in the May Notice confirm that TSX will accept DRS as a form of evidence of security ownership. TSX believes listed issuers should have the choice of the form of evidence of security ownership set out in Appendix D that is appropriate for their circumstances. At this time, TSX will not require that listed issuers make DRS available to their security holders.
One commenter noted that both the Non-Exempt Certificate Requirements and the Exempt Certificate Requirements require extensive intaglio steel engraving, with the difference being that the Exempt Certificate Requirements require additional intaglio printing of the vignette, open throat area and general promissory text. The requirement for intaglio printing of a vignette in the Exempt Certificate Requirements puts CNB at a competitive disadvantage because of the increased production costs to add a vignette. This commenter also provided a comparison of the other security features in the Non-Exempt Certificate Requirements and the Exempt Certificate Requirements that indicated that the Non-Exempt Certificate Requirements require security features that prevent fraud (CBN).	TSX thanks this commenter for its input. TSX acknowledges that the additional intaglio printing required in the Exempt Certificate Requirements results in higher printing costs for issuers. TSX acknowledges that the Non-Exempt Certificate Requirements contain a number of security features, including extensive intaglio printing. TSX has determined to remove the Exempt Certificate Requirements from Appendix D.

APPENDIX B

BLACKLINES OF NON-PUBLIC INTEREST AMENDMENTS

III. Customized Security Certificates

~~Exempt Issuers — Industrial Category~~

General

1. All certificates representing listed securities of ~~Industrial~~ issuers ~~listed on an exempt basis~~ shall be printed in a manner acceptable to TSX by a recognized bank note company (or its affiliates) which has been approved by TSX for this purpose.

2. All security certificates shall be 12" × 8" (30.48 cm. × 20.32 cm.) in size.

3. All dies, rolls, plates and other engravings used in the manufacture of certificates shall, at all times, be and remain in the possession of the producing bank note company.

4. The design of security certificates shall include:

   ~~a) a vignette;~~

   a) ~~b)~~ a "title" or legal name of the listed issuer;

   b) ~~c)~~ a general or promissory text;

   c) ~~d)~~ a colour panel or panels, or a colour border in lathe pattern, of not less than 10 square inches in total area;

   d) ~~e)~~ a space to indicate ownership and denomination, generally referred to as the "open throat" area;

   e) ~~f)~~ a printed underlay in black or in colour in the area of the "open throat";

   ~~g) a printed underlay in colour other than black in the area of the general or promissory text;~~

   f) ~~h)~~ a CUSIP number (as provided in Section 350 of the Manual);

   g) ~~i)~~ a prominent indication of the class of securities to which the certificate refers;

   h) ~~j)~~ a denomination "counter" separate and distinct from the "open throat" area;

   i) ~~k)~~ a transferability clause, indicating where certificates are transferable;

   j) ~~l)~~ the names of the transfer agent(s) and registrar(s), if other than the issuing company;

   k) ~~m)~~ original or facsimile signatures of one or more officers of the listed issuer;

   l) ~~n)~~ a document control or serial number; and

   m) ~~o)~~ the name of the bank note company producing the certificate.

5. Certificates shall provide for transfer and registration in the principal office of, one or more, of the cities of Vancouver, British Columbia; Calgary, Alberta; Toronto, Ontario; Montréal, Québec; or Halifax, Nova Scotia. When securities are transferable in more than one city, the certificates shall be identical in colour and design, except as to the names of the transfer agent and registrar, as the case may be, and shall bear a legend naming all cities where transferable.

6. Where a single denomination certificate is issued, it shall be completed in accordance with the above requirements using a penetrating ink ribbon.

7. The denomination of a security certificate shall be indicated:

   a) in the upper right-hand quadrant of the certificate in an area bearing an underlay of fine intaglio lines;

i) in the case of a board lot certificate by printing in numerical form; or

ii) in the case of a certificate for less than 100 securities by computer printing or typewriting using a penetrating ink ribbon or by a process of paper maceration in numerical form.

b) in the "open throat" area:

i) by computer printing or typewriting using a penetrating ink ribbon in alphabetized form; or

ii) by a process of paper maceration in numerical form.

Where a single denomination security certificate is issued, the denomination shall be indicated by using a penetrating ink ribbon to express the denomination numerically in the "open throat" area using the matrix concept in which the number is inscribed in successively staggered positions on five consecutive lines or, alternatively, using a process of paper maceration in which the number is inscribed in a single line.

8. Security certificates shall be printed on paper produced exclusively for use by a bank note company, containing a multi-toned and multi-directional watermark design acceptable to TSX.

Intaglio Content

9. Security certificates shall be so printed that~~:~~

~~a)~~ an intaglio printing in colour other than black is made of the border or panel portions of the design, and of an underlying tint in the denomination "counter"~~;~~

~~b) an intaglio printing in black is made of the vignette, the general or promissory text and the legal name of the listed issuer;~~

~~c) an intaglio printing is made of wording or an abridgement of words in micro lettering of a size below normal readable limits, and in repetition~~.

For the purpose of these regulations, intaglio printing is defined as that process commonly used in bank note production in which ink is transferred to the paper from line engravings.

10. Where a listed issuer has two or more classes of securities listed, the certificates representing the different classes shall be substantially different in colour, as produced by the intaglio printing.

~~11. The general or promissory text shall be produced from line engravings in "script" style lettering.~~

~~**Vignettes**~~

~~12. Vignettes shall be at least 3.1 square inches (20 square centimeters) in area, and shall display a wide range of tonal quality from very light to very heavy lines, with ample content of middle tones and graduating shades. They shall consist of lines of differing vertical dimensions, some of which shall measure 25 microns perpendicular to the normal plane of paper.~~

~~13. Vignette designs shall not consist of a monogram, trade mark or other listed issuer symbol only, but shall include some plainly discernible features of at least a part of the human form.~~

Miscellaneous

11) ~~14.~~ A form of assignment shall be printed legibly on the back of each certificate in a colour other than black.

12) ~~15.~~ No impression shall be made on the face of a security certificate by means of a hand stamp, except to inscribe a date or the name of the registered holder.

13) ~~16.~~ Temporary or interim security certificates may be used for an emergency only and for a period not exceeding four months, subject to prior approval of TSX. In such circumstances, the promissory text and legal name of the listed issuer may be printed by other than the intaglio process and a vignette maybe omitted, so long as the certificates comply with all other technical requirements for security certificates. All temporary or interim security certificates shall be imprinted with the words "interim" or "temporary" in prominent colour and size at the top of the face.

14) ~~17.~~ Any listed issuer changing its name or revising or changing its share capital by redesignating its securities may overprint the security certificates to give effect to such change, preferably by the silvering-over process, subject to prior approval of TSX.

15) ~~18.~~ Security certificates containing any additional security features not mentioned above, such as a vignette or latent image, are acceptable to TSX provided the minimum requirements as set out herein are met.

~~**Issuers in the Mining and Oil and Gas Category and Non-Exempt Issuers**~~

~~19. All certificates representing listed securities of issuers listed on a non-exempt basis, shall be printed in a manner acceptable to TSX by a recognized bank note company (or its affiliates) which has been approved by TSX for this purpose.~~

~~20. Security certificates shall comply with requirements 2 to 18 inclusive respecting security certificates for exempt issuers in the Industrial category, with the exception that requirements 4(a), 4(g), 9(b), 9(c) and 11 to 13 shall not apply.~~

Requirements Respecting Certificates for Rights and Security Purchase Warrants

16) ~~21.~~ Certificates for rights and security purchase warrants shall be printed in a manner acceptable to TSX by a recognized bank note company (or its affiliates) which has been approved by TSX for this purpose.

17. ~~22.~~ Certificates for rights and security purchase warrants must be of the same size as security certificates and shall meet the same requirements for intaglio printing in colour of the border or panels, including CUSIP numbers. However, under certain circumstances, such as when timing is critical, listed issuers will be permitted to use a true continuous form of lithographed certificate for rights or security purchase warrants only, subject to prior approval of TSX.

APPENDIX C

NON-PUBLIC INTEREST AMENDMENTS

III. Customized Security Certificates

General

1. All certificates representing listed securities of issuers shall be printed in a manner acceptable to TSX by a recognized bank note company (or its affiliates) which has been approved by TSX for this purpose.

2. All security certificates shall be 12” × 8” (30.48 cm. × 20.32 cm.) in size.

3. All dies, rolls, plates and other engravings used in the manufacture of certificates shall, at all times, be and remain in the possession of the producing bank note company.

4. The design of security certificates shall include:

   a) a “title” or legal name of the listed issuer;

   b) a general or promissory text;

   c) a colour panel or panels, or a colour border in lathe pattern, of not less than 10 square inches in total area;

   d) a space to indicate ownership and denomination, generally referred to as the “open throat” area;

   e) a printed underlay in black or in colour in the area of the “open throat”;

   f) a CUSIP number (as provided in Section 350 of the Manual);

   g) a prominent indication of the class of securities to which the certificate refers;

   h) a denomination “counter” separate and distinct from the “open throat” area;

   i) a transferability clause, indicating where certificates are transferable;

   j) the names of the transfer agent(s) and registrar(s), if other than the issuing company;

   k) original or facsimile signatures of one or more officers of the listed issuer;

   l) a document control or serial number; and

   m) the name of the bank note company producing the certificate.

5. Certificates shall provide for transfer and registration in the principal office of, one or more, of the cities of Vancouver, British Columbia; Calgary, Alberta; Toronto, Ontario; Montréal, Québec; or Halifax, Nova Scotia. When securities are transferable in more than one city, the certificates shall be identical in colour and design, except as to the names of the transfer agent and registrar, as the case may be, and shall bear a legend naming all cities where transferable.

6. Where a single denomination certificate is issued, it shall be completed in accordance with the above requirements using a penetrating ink ribbon.

7. The denomination of a security certificate shall be indicated:

   a) in the upper right-hand quadrant of the certificate in an area bearing an underlay of fine intaglio lines;

      i) in the case of a board lot certificate by printing in numerical form; or

      ii) in the case of a certificate for less than 100 securities by computer printing or typewriting using a penetrating ink ribbon or by a process of paper maceration in numerical form.

b) in the “open throat” area:

i) by computer printing or typewriting using a penetrating ink ribbon in alphabetized form; or

ii) by a process of paper maceration in numerical form.

Where a single denomination security certificate is issued, the denomination shall be indicated by using a penetrating ink ribbon to express the denomination numerically in the “open throat” area using the matrix concept in which the number is inscribed in successively staggered positions on five consecutive lines or, alternatively, using a process of paper maceration in which the number is inscribed in a single line.

8. Security certificates shall be printed on paper produced exclusively for use by a bank note company, containing a multi-toned and multi-directional watermark design acceptable to TSX.

Intaglio Content

9. Security certificates shall be so printed that an intaglio printing in colour other than black is made of the border or panel portions of the design, and of an underlying tint in the denomination “counter”.

For the purpose of these regulations, intaglio printing is defined as that process commonly used in bank note production in which ink is transferred to the paper from line engravings.

10. Where a listed issuer has two or more classes of securities listed, the certificates representing the different classes shall be substantially different in colour, as produced by the intaglio printing.

Miscellaneous

11. A form of assignment shall be printed legibly on the back of each certificate in a colour other than black.

12. No impression shall be made on the face of a security certificate by means of a hand stamp, except to inscribe a date or the name of the registered holder.

13. Temporary or interim security certificates may be used for an emergency only and for a period not exceeding four months, subject to prior approval of TSX. In such circumstances, the promissory text and legal name of the listed issuer may be printed by other than the intaglio process and a vignette maybe omitted, so long as the certificates comply with all other technical requirements for security certificates. All temporary or interim security certificates shall be imprinted with the words “interim” or “temporary” in prominent colour and size at the top of the face.

14. Any listed issuer changing its name or revising or changing its share capital by redesignating its securities may overprint the security certificates to give effect to such change, preferably by the silvering-over process, subject to prior approval of TSX.

15. Security certificates containing any additional security features not mentioned above, such as a vignette or latent image, are acceptable to TSX provided the minimum requirements as set out herein are met.

Requirements Respecting Certificates for Rights and Security Purchase Warrants

16. Certificates for rights and security purchase warrants shall be printed in a manner acceptable to TSX by a recognized bank note company (or its affiliates) which has been approved by TSX for this purpose.

17. Certificates for rights and security purchase warrants must be of the same size as security certificates and shall meet the same requirements for intaglio printing in colour of the border or panels, including CUSIP numbers. However, under certain circumstances, such as when timing is critical, listed issuers will be permitted to use a true continuous form of lithographed certificate for rights or security purchase warrants only, subject to prior approval of TSX.

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Index

2241153 Ontario Inc.
Notice from the Office of the Secretary 1260
OSC Reasons: Reasons and Decision – s. 127........ 1292

AgriMinco Corp.
Cease Trading Order 1309

Almonty Industries Inc.
Cease Trading Order 1309

Associated Foreign Exchange, ULC
Decision 1277

Banik, Dipak
Notice from the Office of the Secretary 1260
OSC Reasons: Reasons and Decision – s. 127........ 1292

Boomerang Oil, Inc.
Cease Trading Order 1309

Brabeia Inc.
Cease Trading Order 1309

Burgeonvest Bick Securities Limited
Change in Registration Category 1445

Canaccord Genuity Corp.
Decision 1269

Canadian Convertibles Plus Fund
Decision 1274

Capital Power L.P.
Decision – s. 1(10)(a)(ii).. 1267

Cerro Grande Mining Corporation
Cease Trading Order 1309

CI Investments Inc.
Notice of Hearing with Related Statement of
Allegations – ss. 127(1), 127(2), 127.1 1257
Notice from the Office of the Secretary 1261

Cliffmont Resources Ltd.
Cease Trading Order 1309

Dhala, Hussain
Notice from the Office of the Secretary 1260
Order – ss. 127(1), 127(10)....................................... 1283
OSC Reasons: Reasons and Decision –
ss. 127(1), 127(10).. 1289

EEStor Corporation
Cease Trading Order 1309

Enerdynamic Hybrid Technologies Corp.
Cease Trading Order 1309

Fiera Capital Corporation
Decision 1274

FPS Pharma Inc.
Order – s. 144... 1284
Cease Trading Order 1309

Further Capital Partners Ltd.
New Registration 1445

Grit International Inc.
Notice from the Office of the Secretary..................... 1261
Order – s. 127(1) 1285
OSC Reasons: Reasons and Decision..................... 1299

Guerenska, Stoyanka
Notice from the Office of the Secretary..................... 1260
OSC Reasons: Reasons and Decision – s. 127 1292

High North Resources Ltd.
Cease Trading Order 1309

IA Clarington Canadian Mid Cap Dividend Fund
Decision – s. 1(10)(a)(ii) 1268

IIROC
SROs – Amendment to “Short Marking Exempt
Order” Definitions – Notice of Commission
Approval 1447

Nikolov, Sophia
Notice from the Office of the Secretary..................... 1260
OSC Reasons: Reasons and Decision – s. 127 1292

Perk.com Inc.
Decision 1263

Sebastian, Fred Louis
Notice from the Office of the Secretary..................... 1262
Order – ss. 127(1), 127(10) 1287
OSC Reasons: Reasons and Decision –
ss. 127(1), 127(10) 1305

SENSIO Technologies Inc.
Cease Trading Order 1309

Setenterprice
Notice from the Office of the Secretary..................... 1260
OSC Reasons: Reasons and Decision – s. 127 1292

Singh, Sarbjeet
Notice from the Office of the Secretary..................... 1260
OSC Reasons: Reasons and Decision – s. 127 1292

Starrex International Ltd.
Cease Trading Order 1309

Tango Mining Limited
Cease Trading Order 1309

TD Split Inc.
Decision – s. 1(10)(a)(ii).. 1273

Texas Petroleum Inc.
Notice from the Office of the Secretary 1261
Order – s. 127(1).. 1285
OSC Reasons: Reasons and Decision 1299

Todorov, Evgueni
Notice from the Office of the Secretary 1260
OSC Reasons: Reasons and Decision – s. 127........ 1292

TSX
Marketplaces – Housekeeping Amendments to the TSX Company Manual – Notice of Housekeeping Rule Amendments............................. 1448

Value Partners Investments Inc.
Change in Registration Category 1445

West Red Lake Gold Mines Inc.
Cease Trading Order 1309

Zeiben, Lawrence
Notice from the Office of the Secretary 1261
Order – s. 127(1).. 1285
OSC Reasons: Reasons and Decision 1299

ZipLocal Inc.
Cease Trading Order 1309