

The Ontario Securities Commission

OSC Bulletin

December 17, 2004

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

The Ontario Securities Commission

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Table of Contents

<p>Chapter 1 Notices / News Releases9951</p> <p>1.1 Notices9951</p> <p>1.1.1 Current Proceedings Before The Ontario Securities Commission9951</p> <p>1.1.2 Notice – Request for Comments – Proposed National Instrument 45-106, Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5 and Companion Policy 45-106CP Prospectus and Registration Exemptions and Proposed Repeal and Replacement of Ontario Securities Commission Rule 45-501, Form 45-501F1 and Companion Policy 45-501CP Exempt Distributions and Proposed Consequential Amendments9952</p> <p>1.1.3 CSA Staff Notice 81-313, Status of Proposed National Instrument 81-106 Investment Fund Continuous Disclosure.....9953</p> <p>1.1.4 OSC Notice 45-706 OSC Small Business Advisory Committee9954</p> <p>1.2 Notices of Hearing.....9955</p> <p>1.2.1 Firestar Capital Management Corp. et al. - s. 1279955</p> <p>1.3 News Releases9956</p> <p>1.3.1 OSC to Consider Settlement Reached Between Staff and Sally Daub9956</p> <p>1.3.2 Ontario Court of Appeal Dismisses Application in the Brian Costello Matter9956</p> <p>1.3.3 CSA News Release - Canadian Securities Regulators Release First Report on Enforcement9957</p> <p>CSA Report on Enforcement Activities From April 1 to September 30, 20049959</p> <p>1.3.4 Is It Independent Research or Paid Promotion?9974</p> <p>1.3.5 OSC Approves Settlement Agreement Concerning Sally Daub.....9975</p> <p>1.3.6 OSC to Consider Settlement Agreement Reached in the Matter of Mark Edward Valentine9975</p> <p>1.3.7 OSC to Consider Settlement with AIC Limited Over Market Timing Activities9976</p> <p>1.3.8 OSC to Seek to Extend Directions and Freeze Orders in the Matter of Michael Ciavarella, Kamposse Financial Corp., Firestar Capital Management Corp., Firestar, Firestar Investment Management Group and Michael Mitton ..9976</p> <p>1.3.9 OSC Rules that Documents in Philip Services Corp. Hearing Be Disclosed9977</p> <p>1.4 Notices from the Office of the Secretary9977</p> <p>1.4.1 Philip Services Corp. et al.9977</p>	<p>Chapter 2 Decisions, Orders and Rulings..... 9979</p> <p>2.1 Decisions 9979</p> <p>2.1.1 McCoy Bros. Inc. - MRRS Decision 9979</p> <p>2.1.2 Alto Conservative Portfolio et al. - MRRS Decision 9981</p> <p>2.1.3 Fortis Investment Management USA, Inc. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502 9985</p> <p>2.1.4 Cambridge Financial Services Group Inc. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502 9986</p> <p>2.1.5 Maxim Group LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502 9988</p> <p>2.1.6 Innova Lifesciences Corporation - MRRS Decision 9989</p> <p>2.1.7 Citigroup Alternative Investments LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502 9991</p> <p>2.1.8 Starboard Capital Markets LLC - ss. 6.1 of MI 31-102 and s. 6.1 of OSC Rule 13-502 9992</p> <p>2.2 Orders 9994</p> <p>2.2.1 Sionna Investment Managers Inc. et al. - s. 147 9994</p> <p>2.2.2 Michael Mitton - s. 127 9995</p> <p>2.2.3 Michael Ciavarella - s. 127 9996</p> <p>2.2.4 Firestar Capital Management Corp. - s. 127 9996</p> <p>2.2.5 Firestar Investment Management Group - s. 127 9997</p> <p>2.2.6 Kamposse Financial Corp. - s. 127 9997</p> <p>2.3 Rulings..... 9998</p> <p>2.3.1 Montrusco Capital Management Inc. - ss. 74.1 9998</p> <p>Chapter 3 Reasons: Decisions, Orders and Rulings 10003</p> <p>3.1 Reasons for Decisions 10003</p> <p>3.1.1 Philip Services Corp. et al. 10003</p> <p>Chapter 4 Cease Trading Orders 10015</p> <p>4.1.1 Temporary, Extending & Rescinding Cease Trading Orders 10015</p> <p>4.2.1 Management & Insider Cease Trading Orders..... 10015</p> <p>4.3.1 Issuer CTO's Revoked..... 10015</p> <p>Chapter 5 Rules and Policies (nil)</p> <p>Chapter 6 Request for Comments (nil)</p> <p>Chapter 7 Insider Reporting 10017</p>
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Table of Contents

Chapter 8	Notice of Exempt Financings	10117
	Reports of Trades Submitted on Form 45-501F1	10117
Chapter 9	Legislation	(nil)
Chapter 11	IPOs, New Issues and Secondary Financings	10123
Chapter 12	Registrations	10133
12.1.1	Registrants	10133
Chapter 13	SRO Notices and Disciplinary Proceedings.....	10135
13.1.1	RS Notice to Public - CIBC World Markets Inc., Scott Mortimer and Carl Irizawa	10135
Chapter 25	Other Information	10137
25.1.1	Securities.....	10137
25.2	Approvals.....	10138
25.2.1	Horizon Funds Inc. - cl. 213(3)(b) of the LTCA	10138
25.3	Exemptions	10138
25.3.1	Sionna Investment Managers Inc. et al. - s. 147 of the Act and s. 6.1 of OSC Rule 31-502	10138
25.4	Consents	10140
25.4.1	ATI Technologies Inc. - ss. 4(b) of Ont. Reg. 289.....	10140
Index		10143

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

DECEMBER 17, 2004

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

TBA	Yama Abdullah Yaqeen	s. 8(2) J. Superina in attendance for Staff Panel: RLS/ST/DLK
December 17, 2004	10:00 a.m.	Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton
		s. 127 J. Cotte in attendance for Staff Panel: PMM/RWD/DLK
January 14, 2004	10:00 a.m.	Brian Peter Verbeek and Lloyd Hutchison Ebenezer Bruce*
		s. 127 K. Manarin in attendance for staff Panel: WSW/ST
		* Lloyd Bruce settled November 12, 2004
January 24 to March 4, 2005, except Tuesdays and April 11 to May 13, 2005, except Tuesdays	10:00 a.m.	Philip Services Corp. et al s. 127 K. Manarin in attendance for Staff Panel: PMM/RWD/ST
January 26, 27 31 and February 1, 2 and 3, 2005	10:00 a.m.	Cornwall et al s. 127 K. Manarin in attendance for Staff Panel: HLM/RWD/ST

March 29-31, 2005
April 1, 4, 6-8, 11-14, 18, 20-22, 25-29, 2005
May 2, 4, 12, 13, 16, 18-20, 30, 2005
June 1-3, 2005
10:00 a.m.

ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone, Mary de La Torre, Alan Rae and Sally Daub

s. 127
M. Britton in attendance for Staff
Panel: SWJ/HLM/MTM

May 30, June 1, 2, 3, 6, 7, 8, 9 and 10, 2005
10:00 a.m.

Buckingham Securities Corporation, David Bromberg*, Norman Frydrych, Lloyd Bruce* and Miller Bernstein & Partners LLP (formerly known as Miller Bernstein & Partners)

s. 127
J. Superina in attendance for Staff
Panel: TBA

* David Bromberg settled April 20, 2004
* Lloyd Bruce settled November 12, 2004

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

1.1.2 **Notice - Request for Comments - Proposed National Instrument 45-106, Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5 and Companion Policy 45-106CP Prospectus and Registration Exemptions and Proposed Repeal and Replacement of Ontario Securities Commission Rule 45-501, Form 45-501F1 and Companion Policy 45-501CP Exempt Distributions and Proposed Consequential Amendments**

NOTICE

REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 45-106, FORM 45-106F1, FORM 45-106F2, FORM 45-106F3, FORM 45-106F4, FORM 45-106F5 AND COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS

AND

PROPOSED REPEAL AND REPLACEMENT OF ONTARIO SECURITIES COMMISSION RULE 45-501, FORM 45-501F1 AND COMPANION POLICY 45-501CP EXEMPT DISTRIBUTIONS

AND

PROPOSED CONSEQUENTIAL AMENDMENTS

Request for Public Comment

The Commission is publishing for a 90-day comment period the following materials in today's Bulletin.

- proposed National Instrument 45-106 *Prospectus and Registration Exemptions*;
- proposed Forms 45-106F1 *Report of Exempt Distribution*, 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, 45-106F3 *Offering Memorandum for Qualifying Issuers*, 45-106F4 *Risk Acknowledgement* and 45-106F5 *Risk Acknowledgement (Saskatchewan)*;
- proposed Companion Policy 45-106CP *Prospectus and Registration Exemptions*;
- proposed amended and restated Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;
- proposed amended and restated Form 45-501F1;
- proposed amended and restated Companion Policy 45-501CP *Ontario Prospectus and Registration Exemptions*;

- proposed amendments to National Instrument 33-105 *Underwriting Conflicts*;
- proposed amendments to National Instrument 45-101 *Rights Offerings*;
- proposed amendments to National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*;
- proposed amendments to Multilateral Instrument 45-102 *Resale of Securities* and Companion Policy 45-102CP;
- proposed amendment instrument amending Ontario Securities Commission Rule 13-502 *Fees*;
- proposed amendment instrument amending Ontario Securities Commission Rule 31-503 *Limited Market Dealers*;
- proposed amendment instrument amending Ontario Securities Commission Rule 91-501 *Strip Bonds*;
- proposed amendment instrument amending Ontario Securities Commission Rule 91-502 *Trades in Recognized Options*;
- proposed revocations of National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*, Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* and National Instrument 62-101 *Control Block Distribution Issues*;
- proposed Ontario Securities Commission Rule 45-802 *Implementing National Instrument 45-106 Prospectus and Registration Exemptions and Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions*; and
- proposed Ontario Securities Commission Rule 32-504 (under the *Commodity Futures Act*) *Adviser Registration Exemption*.

We request comments on the proposed materials by **March 17, 2005**.

These materials, together with the accompanying request for comments notices, are being published as a supplement to this Bulletin.

1.1.3 CSA Staff Notice 81-313, Status of Proposed National Instrument 81-106 Investment Fund Continuous Disclosure

CSA STAFF NOTICE 81-313 STATUS OF PROPOSED NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE

Introduction

On May 28, 2004, the CSA published for comment a revised version of National Instrument 81-106 *Investment Fund Continuous Disclosure*, which will replace existing continuous disclosure obligations of investment funds, as well as introduce new obligations. The CSA are currently considering the public comments on NI 81-106 and incorporating changes as appropriate.

Expected application of NI 81-106

We are issuing this notice to assist investment funds in planning for the implementation of any necessary systems or changes in order to be able to comply with NI 81-106 when it comes into force. Subject to receiving all necessary commission and ministerial approvals, staff anticipate the NI 81-106 requirements for

- *annual financial statements and annual management reports of fund performance* will apply for financial years ending on or after June 30, 2005;
- *interim financial statements and interim management reports of fund performance* will apply for financial periods ending after the investment fund's first year end following June 30, 2005;
- *quarterly portfolio disclosure* will apply for periods that end on or after the date NI 81-106 comes into force;
- *annual information forms* will apply for financial years ending on or after June 30, 2005;
- *proxy voting records* will apply for the annual period beginning July 1, 2005; and
- *proxy solicitation and information circulars* will apply as of July 1, 2005.

All other requirements will apply as of the date NI 81-106 comes into force.

Questions

Please refer your questions to any of the following people:

British Columbia Securities Commission
Noreen Bent, Manager & Senior Legal Counsel (604) 899-6741

Christopher Birchall, Senior Securities Analyst (604) 899-6722

You may also call 1-800-373-6393 from B.C. and Alberta.

Alberta Securities Commission

Melinda Ando, Legal Counsel (403) 297-2079

Manitoba Securities Commission

Wayne Bridgeman, Senior Analyst (204) 945-4905

Ontario Securities Commission

Vera Nunes, Legal Counsel (416) 593-2311

Irene Tsatsos, Senior Accountant (416) 593-8223

Raymond Chan, Accountant, (416) 593-8128

Autorité des marchés financiers

Sylvie Ancil-Bavas, Spécialiste de la doctrine comptable
(514) 395-0558, poste 4373

December 17, 2004

**1.1.4 OSC Notice 45-706 OSC Small Business
Advisory Committee**

**ONTARIO SECURITIES COMMISSION NOTICE 45-706
OSC SMALL BUSINESS ADVISORY COMMITTEE**

The Ontario Securities Commission is inviting new applications for membership on its Small Business Advisory Committee (the "SBAC").

The Commission recognizes the critical importance of consulting with industry participants and other stakeholders in carrying out its mandate. The SBAC, established in 2002, provides ongoing advice to the Commission and Commission staff on the securities regulatory issues facing small and medium-sized businesses in Ontario and serves as a forum for continuing communication between the Commission and small business.

The SBAC is composed of approximately ten individual members. It meets approximately four times a year and members serve two-year terms. Members are expected to have extensive knowledge of small business issues and a strong interest in securities regulatory policy as it relates to small business financing. As such, familiarity with securities regulation would be helpful.

The SBAC is chaired by a Commission staff representative. The Chair for the next two years will be Erez Blumberger.

Representatives of small businesses, industry associations, law and accounting firms and other interested persons are invited to apply in writing for membership on the SBAC indicating their areas of practice and relevant experience. Interested parties should submit their applications by January 31, 2005. Applications and any queries regarding this Notice may be forwarded to:

Erez Blumberger
Assistant Manager, Corporate Finance Branch
Ontario Securities Commission
(416) 593-3662
eblumberger@osc.gov.on.ca

December 17, 2004.

1.2 Notices of Hearing

1.2.1 Firestar Capital Management Corp. 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
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario on December 17, 2004 at 10:00 a.m., or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to section 127 of the Act, it is in the public interest for the Commission:

- (a) pursuant to s. 127(7), to extend the temporary order made December 10, 2004 until the final disposition of this matter or until the Commission considers appropriate; and
- (b) to make such other order as the Commission considers appropriate.

BY REASON OF the allegations of Staff that the above named are trading in the shares of Pender International Inc. in a manner that may be artificially increasing the share price of Pender, and such additional reasons 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 the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

December 10, 2004.

“John Stevenson”

TO: DANSON, ZUCKER AND CONNELLY
Barristers and Solicitors
70 Bond Street, Suite 500
Toronto, Ontario
M5B 1X3

Symon Zucker
Phone: 416.863-9955 Ext:224
Fax: 416.863.4896

Solicitors for Kamposse Financial Corp.

AND TO: GOODMANS LLP
2400-250 Yonge Street
Toronto, Ontario
M5B 2M6

Howard M. Wise
Phone: 416.597.4281
Fax: 416.979.1234

Solicitors for Michael Ciavarella, Firestar Capital Management Corp., Firestar, and Firestar Investment Management Group

AND TO: MICHAEL MITTON

1.3 News Releases

1.3.1 OSC to Consider Settlement Reached Between Staff and Sally Daub

FOR IMMEDIATE RELEASE
December 9, 2004

**OSC TO CONSIDER SETTLEMENT REACHED
BETWEEN STAFF AND SALLY DAUB**

TORONTO – On Tuesday, December 14, 2004, the Ontario Securities Commission will convene a hearing at 9:30 a.m. to consider a settlement reached between Staff of the Commission and Sally Daub. The terms of the settlement agreement are confidential until approved by the Commission. Copies of the Notice of Hearing dated January 16, 2003 and the Statement of Allegations are available on the Commission website (www.osc.gov.on.ca).

For Media Inquiries: Eric Pelletier
Manager, Media Relations
416-595-8913

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.2 Ontario Court of Appeal Dismisses Application in the Brian Costello Matter

FOR IMMEDIATE RELEASE
December 10, 2004

**ONTARIO COURT OF APPEAL DISMISSES
APPLICATION IN THE BRIAN COSTELLO MATTER**

TORONTO – On Tuesday, December 7, 2004, the Ontario Court of Appeal dismissed the application by Brian Costello for leave to appeal the decision of the Divisional Court dated July 12, 2004. The Divisional Court had dismissed Mr. Costello's appeal of the Commission's decisions dated February 18, 2003 (on the merits) and April 29, 2003 (on sanctions), but for the issue of costs which was directed to be reconsidered by the Commission. The appeal routes available to Mr. Costello have now been exhausted.

In its decision on the merits, the Commission found that Mr. Costello had been acting as an "adviser" as defined in the *Securities Act* in that he was making recommendations on specific securities during his investment seminars. The Commission found that by acting as an adviser without being registered, Mr. Costello breached section 25(1)(c) of the Act. The Commission also found that Mr. Costello's "failure to make full, complete and conspicuous disclosure" of his many conflicts of interest was contrary to the public interest.

For Media Inquiries: Eric Pelletier
Manager, Media Relations
416-595-8913

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.3 CSA News Release - Canadian Securities Regulators Release First Report on Enforcement

**For Immediate Release
December 10, 2004**

CANADIAN SECURITIES REGULATORS RELEASE FIRST REPORT ON ENFORCEMENT

Calgary – The Canadian Securities Administrators (CSA) issued today its first report on enforcement activities by securities regulators, providing information about proceedings launched and sanctions issued during the six months ended September 30, 2004.

“Taken alone, our respective records in enforcement each provide a piece of the larger picture in Canada,” said Stephen Sibold, CSA Chair. “Put together, our records show a strong enforcement presence in our capital markets. Clearly, our accomplishments in this core CSA responsibility provide protection to investors across Canada.”

By identifying contraventions of securities laws or conduct that is contrary to the public interest and by imposing appropriate sanctions, CSA members deter wrongdoing, protect investors and foster fair and efficient capital markets in which investors have confidence. Enforcement personnel of CSA member authorities deal with potential violations of securities laws identified through internal CSA compliance and surveillance or as a result of complaints from market participants and the public.

“During the first six months of 2004, CSA members launched 77 enforcement proceedings that may result in hearings in court or at commission tribunals,” added Mr. Sibold. “During that same period, 59 cases resulted in sanctioning orders or settlements that frequently included several people or companies. This sends a strong message of deterrence to people who would consider violating our securities laws.”

Beyond providing greater transparency on CSA enforcement activities, compilation of the information will also provide additional benefits to the regulatory system, including:

- Increased ability to identify trends in enforcement;
- Identification of Commission and Court decisions in any jurisdiction which might have an impact on the regulatory regime; and
- Improved cross-jurisdictional processes and coordinated inter-jurisdictional investigations through improved accountability to industry and communications to the marketplace.

The [CSA Report on Enforcement Activities From April 1 to September 30, 2004](http://www.csa-acvm.ca) is available on the CSA web site (<http://www.csa-acvm.ca>) and several provincial and territorial securities regulators’ web sites. The report will be produced on a biannual basis.

The CSA is the council of the securities regulators of Canada's provinces and territories whose objectives are to improve, coordinate and harmonize regulation of the Canadian capital markets.

Media relations contacts:

British Columbia Securities Commission Andrew Poon 604-899-6880 1-800-373-6393 (B.C. & Alberta only) www.bcsc.bc.ca	Alberta Securities Commission Joni Delaurier 403-297-4481 www.albertasecurities.com
Manitoba Securities Commission Ainsley Cunningham 204-945-4733 1-800-655-5244 (Manitoba only) www.msc.gov.mb.ca	Ontario Securities Commission Eric Pelletier 416-595-8913 1-877-785-1555 (toll free in Canada) www.osc.gov.on.ca
Autorité des marchés financiers (AMF) Philippe Roy 514-940-2176 1-800-361-5072 (Québec only) www.lautorite.qc.ca	New Brunswick Securities Administration Branch Christina Taylor 506-658-3060 1-866-933-2222 (New Brunswick only) www.investor-info.ca

Nova Scotia Securities Commission Scott Peacock 902-424-6179 www.gov.ns.ca/nssc	Securities Commission of Newfoundland and Labrador Susan W. Powell 709-729-4875 www.gov.nl.ca/scon
Northwest Territories Registrar of Securities Tony Wong 867-873-7490 www.justice.gov.nt.ca	Prince Edward Island Office of the Attorney General Marc Gallant 902-368-4552 www.gov.pe.ca
Saskatchewan Financial Services Commission Patti Pacholek (306) 787-5871 www.sfsc.gov.sk.ca	Yukon Registrar of Securities Richard Roberts (867) 667-5225

CSA REPORT ON ENFORCEMENT ACTIVITIES FROM APRIL 1 TO SEPTEMBER 30, 2004

TABLE OF CONTENTS

TABLE OF CONTENTS	I
INTRODUCTION	1
ENFORCEMENT: A CORE CSA RESPONSIBILITY	1
COMPLEMENTARY ENFORCEMENT ROLES	1
KEY PLAYERS	1
Securities tribunals	1
SROs	1
Exchanges	2
Police	2
Courts	2
CSA ENFORCEMENT ACTIVITY IN THE FIRST HALF OF 2004	2
ILLEGAL DISTRIBUTION	3
COURT RULINGS	3
Québec	3
Manitoba	3
Alberta	3
CSA COMMISSION OR TRIBUNAL DECISIONS	4
Ontario	4
Manitoba	4
Alberta	4
British Columbia	5
SETTLEMENT AGREEMENTS	6
New Brunswick	6
Ontario	6
Alberta	7
British columbia	7
APPEALS	8
Manitoba	8
INSIDER TRADING	10
COURT RULINGS	10
Québec	10
CSA COMMISSION OR TRIBUNAL DECISIONS	10
Ontario	10
Alberta	10
SETTLEMENT AGREEMENTS	11
Ontario	11
Alberta	12
British columbia	12
MARKET MANIPULATION	13
CSA COMMISSION OR TRIBUNAL DECISIONS	13
Alberta	13
British Columbia	13
SETTLEMENT AGREEMENTS	13
Nova Scotia	13
DISCLOSURE VIOLATIONS	14
CSA COMMISSION OR TRIBUNAL DECISIONS	14
Ontario	14
Saskatchewan	15
Alberta	15
SETTLEMENT AGREEMENTS	15
Alberta	15
MISCONDUCT BY REGISTRANTS	16

CSA COMMISSION OR TRIBUNAL DECISIONS	16
Québec	16
Ontario	16
Alberta	16
SETTLEMENT AGREEMENTS	17
Nova Scotia	17
Ontario	17
Manitoba	18
Saskatchewan	18
Alberta	18
British Columbia	18
APPEALS	19
Ontario	19
British Columbia	19
MISCELLANEOUS	20
COURT RULINGS	20
Québec	20

INTRODUCTION

This report provides information about enforcement activity undertaken by members of the Canadian Securities Administrators (CSA) during the 6 months ended September 30, 2004. The CSA is the council of the securities regulators of Canada's provinces and territories whose objectives are to improve, coordinate and harmonize regulation of the Canadian capital markets. References in this report to the CSA include reference to its member regulators and associated tribunals.

ENFORCEMENT: A CORE CSA RESPONSIBILITY

Investigation and enforcement are core CSA activities. By identifying contraventions of securities laws or conduct in the capital markets that is contrary to the public interest, and by imposing appropriate sanctions, the CSA deter wrongdoing, protect investors, and foster fair and efficient capital markets in which investors have confidence. Enforcement personnel of CSA member authorities deal with potential securities laws violations identified through internal CSA compliance and surveillance or as a result of complaints from market participants and the public.

COMPLEMENTARY ENFORCEMENT ROLES

The CSA's enforcement activity complements that of other agencies, with whom we cooperate and share information on matters of mutual interest. This allows us to focus activity and resources where most appropriate.

KEY PLAYERS

SECURITIES TRIBUNALS

Enforcement personnel of CSA members can bring matters before a specialized administrative tribunal, which in most jurisdictions is the local securities commission. Such tribunals can impose sanctions including orders that trading in securities cease or that exemptions are unavailable, bans on individuals acting as corporate directors and officers, mandatory filing of specified disclosure, monetary administrative penalties and payment of costs. Enforcement personnel often negotiate settlement agreements under which those alleged to have contravened securities laws submit to agreed sanctions. In some jurisdictions settlement agreements are approved by staff; in other, cases they are presented for the approval of the local securities commission or tribunal.

SROS

Self-regulatory organizations (SROs) oversee regulated conduct of their members. For example, if the Investment Dealers Association of Canada (IDA) finds that a member has contravened its by-laws, it can impose monetary penalties and suspend or revoke IDA membership and registration under securities laws. The Mutual Fund Dealers Association of Canada (MFDA) assumes a similar role for members in its sector.

Market Regulation Services Inc. ("RS Inc.") oversees trading activity on Canadian equity markets. It imposes sanctions for contraventions of the Universal Market Integrity Rules ("UMIRs"), including fines and suspension or restriction of market access.

EXCHANGES

Exchanges monitor compliance, by listed companies, with the terms of Exchange listing agreements and policies. Where appropriate, they can deny pre-approval of certain transactions, require corrective disclosure, halt or suspend trading and, in egregious cases, terminate a listing.

POLICE

The RCMP and local and provincial police investigate commercial crimes, including market fraud. The federal government recently established IMET (Integrated Market Enforcement Teams, with combined RCMP and civilian membership) to target major economic crime.

COURTS

Provincial and territorial Attorneys-General or equivalents can bring contraventions of securities laws, as well as of criminal laws, before a court. In some provinces, enforcement personnel of CSA members can also bring securities law contraventions before a court. Fraud and other contraventions of the Criminal Code can attract stiff penalties including large fines and imprisonment. The sanctions available to courts for securities law violations are also more extensive than those available to securities regulatory authorities, including imprisonment.

CSA ENFORCEMENT ACTIVITY IN THE FIRST HALF OF 2004

During the first 6 months of 2004, CSA members pursued 77 enforcement matters. During the same period, 59 cases resulted in sanctioning orders or settlements that often included several persons or companies. This activity is summarized in the following table:

Proceedings Commenced ¹	Interim Order ²	Matters Concluded				Appeals	
		Findings Issued (Sanction Decision Pending)	Sanctions Ordered	Settlement Agreements	With-drawn	Decisions Appealed	Appeal Decision Rendered
77	29	19	32	27	4	6	3

A number of enforcement matters are explained in more detail in the sections that follow.

ILLEGAL DISTRIBUTION

COURT RULINGS

QUÉBEC

Forex Canada NTS Inc. and Dominic Longpré – On September 7, 2004, before the Court of Québec (Criminal and penal division) Dominic Longpré pleaded guilty to 42 counts of having contravened the Securities Act. Dominic Longpré was accused of having helped Forex Canada NTS Inc. distribute its shares without having obtained from the Autorité des marchés financiers (AMF) a receipt for a prospectus and having carried on the activities of a dealer without the proper registration and for having failed to fulfill an undertaking with the AMF. Dominic Longpré was ordered to pay a total fine of \$90,000 within a period of 2 years.

Coopérative de producteurs de bois précieux Québec Forestales et Michel Maheux – On August 6, 2004, the AMF obtained from the Superior Court of Québec a provisional injunction valid for 10 days ordering the Coopérative de producteurs de bois précieux Québec Forestales (“Forestales”) and Michel Maheux, president of Forestales, to cease and desist from illegally distributing securities of Forestales and respect the previously issued cease-trading order of the AMF. On August 13, 2004, the Québec Superior Court ordered that the provisional injunction be replaced by an interlocutory injunction to the same effect, valid until the end of proceedings.

Enviromondial Inc., Stevens Demers and Hyacinthe Auger – On April 26, 2004, before the Court of Québec (Criminal and penal division) Stevens Demers and Hyacinthe Auger pleaded guilty to 33 and 10 counts respectively of having helped Enviromondial Inc. distribute its shares without having obtained from the AMF a receipt for a prospectus and for having carried on the activities of a dealer without the proper registration. Stevens Demers was also charged with having contravened a decision of the Commission des valeurs mobilières du Québec prohibiting Enviromondial Inc. from trading in its securities, and having declared while effecting a transaction in a security that Enviromondial Inc.’s shares would be listed on an exchange. Stevens Demers was therefore ordered to pay a fine of \$77,000 within a period of 42 months while Hyacinthe Auger was ordered to pay a fine of \$42,000 within a period of 60 months.

MANITOBA

Charles Morrison – On August 24, 2004, Mr. Morrison was found guilty in the Court of Queen’s Bench of Manitoba for 3 counts of trading without registration concurrently with Criminal Code charges for fraud. He was sentenced to pay \$500,000 in mitigation monies as partial reparation for victims – 72% of which was designated to be paid out to those who were the victims of the securities offences. Mr. Morrison received a Suspended Sentence of 2 years less a day with a Supervised Probation Order for the securities offences, to be served concurrently with a Conditional Sentence for criminal fraud charges, of 2 years less a day, followed by a 3-year Illegal Distribution Supervised Probation Order. See www.msc.gov.mb.ca/investigation/reasons/morrison for details.

ALBERTA

Thomas Kim Seto - In September 2004, charges were laid in the Provincial Court of Alberta against Mr. Seto for allegedly breaching an earlier ASC order, which prohibits him from trading in securities until 2005. In 2000, the ASC ordered that Mr. Seto cease trading in securities, be denied the use of exemptions from securities laws, and not act as a director or officer for 5

¹ Proceedings before a CSA member Commission or associated tribunal may be commenced by a Notice of Hearing. Court proceedings may be commenced by way of “Information”.

² Includes freeze orders and interim cease trade orders.

years, for his part in unlawfully establishing an Internet stock exchange. Mr. Seto's first appearance has been set for October 27, 2004 in Provincial Court in Edmonton. See <http://www.albertasecurities.com/?currentPage=100&cmsSupressBody=1&newsID=5585> for details.

Phillip David Archer - In September 2004, charges were laid in the Provincial Court of Alberta against Mr. Archer for allegedly breaching an earlier ASC order prohibiting him from trading in securities. ASC staff alleges that Mr. Archer broke the conditions of the cease trade order when he traded in securities of Berkshire Real Estate Investment Trust Ltd. and Maple Mortgage Fund Inc. earlier this year, illegally raising over \$1 Million. In 1991, the ASC ordered that Mr. Archer cease trading in securities and be denied the use of exemptions from securities laws for 15 years. Mr. Archer's first appearance has been set for October 29, 2004 in Provincial Court in Calgary. See <http://www.albertasecurities.com/?currentPage=100&cmsSupressBody=1&newsID=5574> for details.

CSA COMMISSION OR TRIBUNAL DECISIONS

ONTARIO

Leslie Brown and Douglas Brown ("the Browns") – In July 2004, the OSC found that the Browns had not acted contrary to ss. 25 & 53 of the Act. The Browns had organized and invited attendees to a seminar at which Mr. Anderson presented an investment opportunity in what he described as "a new exchange" which was called "the Flat Electronic Data Exchange". The Commission found that the Browns were not acting on behalf of, or in furtherance of, Mr. Anderson's trading activities. There was no evidence to show that in arranging for the meeting and inviting their friends to attend, the Browns were doing so for the purpose of furthering or promoting the sale or disposition of securities by Mr. Anderson. The Browns did not receive any consideration, or other direct or indirect benefit. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040917_lbrown-dbrown.jsp for details.

MANITOBA

Barbara Caroline Joseph ("Joseph") (formerly Barbara Caroline Todd) – In April 2004, the MSC issued a denial of exemptions order denying Ms. Joseph the use of exemptions under the Securities Act for an indefinite period. Ms. Joseph along with Mr. Donald Werbeniuk were accused of malfeasance related to investments totalling \$47, 820.52. Ms. Joseph had paid \$20,412.40 towards restitution for the investors. See www.msc.gov.mb.ca/investigation/reasons/joseph for details.

**Note: In September 2003, Ms. Joseph pled guilty to 3 counts of trading without registration and without prospectus in Provincial Court concerning the same matters. She was placed on 4 months supervised probation with a number of conditions including a specified curfew. Mr. Werbeniuk was sentenced to 4 months jail in December, 2003 in Provincial Court for his involvement in the above matters and additional offences under the Securities Act.*

ALBERTA

HMS Financial et al. - On May 18, 2004, HMS Financial Inc., Robert Fyn, Harold Murray Stark, Garth S. Bailey, Garth S. Bailey Professional Corporation, Tamika Enterprises Inc., The Dakota Corporation, Gertrude Prete and Ruby Anne Leachman had an interim Cease Trade Order issued against them for selling securities without the appropriate registration and without filing a prospectus. On June 2, 2004, the Cease Trade Order was extended until the hearing in this matter is concluded and a decision is rendered.

See http://www.albertasecurities.com/dms/1404/8895/10896_HMS_Financial_Inc._et_al_-_NOH_-_2004-05-18_-_1506499v1.pdf and http://www.albertasecurities.com/dms/1404/8895/10970_HMS_Financial_Inc._-_CTO_Extention_Order_-_2004-06-02-1538135v2.pdf for details.

Skyward Management Inc. et al. - On June 23, 2004, Skyward Management Inc., Peter Leonard Sheridan, Blaine Arthur Cisna, Milton Teibe, DeFreitas & Associates, Paget Capital and 1079373 Alberta Ltd. had an interim Cease Trade Order issued against them for selling securities without the appropriate registration and without filing a prospectus. On July 8, 2004, the Cease Trade Order was extended until the hearing in the matter is concluded and a decision is rendered or until further order.

See http://www.albertasecurities.com/dms/1404/8895/11209_Skyward_Management_Inc._-_NOH_-_2004-06-24_-_1550462.pdf and http://www.albertasecurities.com/dms/1404/8895/11277_Skyward_Management_Inc._-_Order_-_2004-07-08_-_1564622_v1.pdf for details.

Kenneth Richardson - On July 14, 2004, the ASC panel found that Mr. Richardson breached specific provisions of the Act, including participating in an illegal distribution of Agau Resources Inc. shares, not filing the required insider reports, filing insider reports that were incomplete, inaccurate and misleading, and signing the information circular despite its incomplete disclosure regarding his control over Agau shares. The panel also found that Mr. Richardson's conduct was contrary to the public interest.

The panel ordered that Mr. Richardson cease trading in securities in which he is an insider or control person for 60 days, Mr. Richardson cannot apply for any exemptions for 60 days, that he be prohibited from acting or becoming a director for 1 year, and that he pay investigation costs of \$12,000. Mr. Richardson was also ordered to file the appropriate documents to correct the public record within 10 days. See http://www.albertasecurities.com/dms/1404/8895/11279_Richardson_Kenneth_-_Decision_-_2004-07-14_-_1569682.pdf for details.

BRITISH COLUMBIA

John Klippenstein – John Klippenstein, the former president, director and controlling shareholder of L.O.M. Medical International, Inc., breached securities laws when he raised over \$2 million through LOM from 352 BC investors without being registered, filing a prospectus, or using an exemption. In selling the securities, he misrepresented that they would be listed and posted for trading on a stock exchange and would then trade at higher prices and that a product would be manufactured by LOM for sale in the near future. Mr. Klippenstein did all this while he was under sanctions issued by the Saskatchewan Securities Commission for illegal distributions. On May 28, 2004, the BCSC ordered Klippenstein to (a) not trade (except for his personal account), act as a director or officer of any issuer (except one he and his family wholly own) or engage in investor relations for 10 years, (b) pay \$100,000 penalty and \$20,000 costs. See www.bcsc.bc.ca (then type Klippenstein or 2004 BCSECCOM 289 in the search box, then go to the decision) for details.

Richard John Smith and Synlan Securities Corp. – In December 1997, Richard John Smith pleaded guilty to 22 counts of theft over \$5,000 and 10 counts of fraud and was sentenced by Ontario provincial court to 2 years less a day in prison for a scheme involving sales of limited partnership units in a proposed downtown Toronto residential real estate development. Some 31 investors lost \$1.8 million. Smith also did not disclose the charges or convictions to the Ontario Securities Commission in 1997 and 1998, which subsequently permanently banned him and Synlan Securities Corp. from the Ontario capital markets. The BCSC permanently banned Smith and Synlan from the BC markets, ordered them to pay \$750,000 in penalties and the costs of the hearing.

Around the same time, Smith and Synlan formed partnerships to raise money for residential developments in Arizona and Florida and sold the partnership units to 14 BC residents. Smith held sales seminars and paid financial author and radio personality Brian Costello to promote the partnerships. Smith did not build the homes and did not return the investors' funds. They lost about \$600,000. Smith deceived investors by representing that their promissory notes up to \$135,000 would be paid off by the cash from the investment. See www.bcsc.bc.ca (then type Smith or 2004 BCSECCOM 441 in the search box, then go to the decision) for details.

SETTLEMENT AGREEMENTS

NEW BRUNSWICK

Jarislowsky Fraser Limited ("JFL") – On June 15, 2004 Jarislowsky Fraser Limited agreed to pay \$100,000 to Public Legal Education and Information Services in New Brunswick for use towards investor education programs. The settlement was a result of JFL having allowed 5 advisors to manage investment portfolios in New Brunswick over a 12-year period without registering the firm or the advisors. See information@nbosc-cvmnb.ca for details.

ONTARIO

David Sloan – In April 2004, OSC staff concluded a settlement agreement with Mr. Sloan regarding his conduct with respect to the illegal distribution of 'desks' of the Flat Electronic Data Interchange (the F.E.D.I.). The Commission approved the settlement agreement in September 2004, and ordered that Mr. Sloan cease trading in F.E.D.I. securities permanently; that any exemptions will not apply to Mr. Sloan for 24 months (except trades effected through a registered dealer in accordance with s. 35(1)(10)), that Mr. Sloan be prohibited from providing certain (sales) documents to any person or company; that he be reprimanded, and that he pay \$5,000 in costs. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040917_sloan.pdf for details.

Richard Jules Fangeat – In May 2004, OSC staff concluded a settlement agreement with Richard Jules Fangeat with respect to his participation in the illegal distribution of 'Saxton' and 'Sussex' securities. Mr. Fangeat participated in the illegal distributions of the Saxton and Sussex securities. He made various misrepresentations about the securities, and failed to adequately assess the suitability of his clients' investment in these securities. The Commission approved the Settlement Agreement in June 2004, and ordered that trading in any securities by Mr. Fangeat cease for 20 years (however, after 6 years he is permitted to trade certain securities for his RRSP account), that Mr. Fangeat be prohibited from becoming or acting as a director or officer of any issuer for 20 years, and that he be reprimanded. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040529_fangeat.jsp for details.

Michael Hersey – In May 2004, OSC staff concluded a settlement agreement with Mr. Hersey with respect to his participation in the illegal distribution of 'Saxton', 'Sussex', and 'SecurCorp' securities. Mr. Hersey participated in the illegal distributions, and engaged in unregistered trading, of the Saxton and Sussex securities. He also participated in the illegal distribution, and

engaged in unregistered trading, of the securities of SecurCorp Financial Inc., a company of which he was the sole officer and director. The Commission approved the settlement agreement and ordered that trading in any securities by Mr. Hersey cease for 20 years (with the exception of certain trading in Mr. Hersey's personal accounts after 5 years); that Mr. Hersey be prohibited from becoming or acting as a director or officer of any issuer for 20 years; and that he be reprimanded.

See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040528_hersey-final.jsp for details.

ALBERTA

Wilfred Richard - On September 7, 2004, Mr. Richard entered into a Settlement Agreement and Undertaking with Commission staff. Mr. Richard agreed that he participated in the illegal distribution of securities related to Galaxy Mortgage Corporation. The Commission had previously sanctioned Mr. Richard for his involvement in Renco Energy Corp et al. Mr. Richard entered into an undertaking that he will cease trading in all securities for a period of 10 years, that he will resign any position that he holds as a director or officer other than a numbered company, for a period of 10 years. Mr. Richard agreed to pay \$10,000 to the Commission to settle these allegations and to pay \$10,000 towards investigation costs.

See [http://www.albertasecurities.com/dms/1404/8895/11485_Richard, Wilfred - SA - 2004-09-07 - 1605775.pdf](http://www.albertasecurities.com/dms/1404/8895/11485_Richard,_Wilfred_-_SA_-_2004-09-07_-_1605775.pdf) for details.

The Institute for Financial Learning et al. - On September 21, 2004, a notice of hearing was issued naming the Institute for Financial Learning, Group of Companies Inc., Milowe Allen Brost (aka Milo Brost, aka Mylo Brost), Jorgen R. Nielsen, Vickie Rinehart, Ward Capstick, Jim Lavender (aka A.J. Stewart), Glenn Delwisch, Mary C. McLeod, Grant Carphin, Joanne Assen, Quatro Communications Corp., The Corporate Development Team Inc., Consumer Debt Recovery Trust/Heritage Financial S.A., Syndicated Gold Depository S.A., and Christopher Houston alleging the sale of securities without being appropriately registered and involvement in an illegal distribution. An interim Cease Trade Order was issued by the Commission on September 17, 2004 that ceased traded the securities of Quatro Communications Corp., Consumer Debt Recover Trust, Heritage Financial S.A., and Syndicated Gold Depository S.A. Trading in securities by Joanne Assen, except for personal trades through a registered dealer, must cease and any exemptions do not apply to Ms. Assen. On September 30, 2004, this Cease Trade Order was extended until a hearing was concluded and a decision rendered.

The Institute for Financial Learning, Group of Companies Inc., Milowe Allen Brost, Vickie Rinehart, Ward Capstick, Jim Lavender, Glenn Delwisch, Mary C. McLeod, Grant Carphin, The Corporate Development Team Inc., and Christopher Houston entered into an undertaking with the ASC on September 30, 2004, that they would not trade in the securities of the companies in question until approved by the ASC. See [http://www.albertasecurities.com/dms/1404/8895/11574_IFL - O ACCEPTING UNDERTAKINGS - 2004-09-30 - 1629174.pdf](http://www.albertasecurities.com/dms/1404/8895/11574_IFL_-_O_ACCEPTING_UNDERTAKINGS_-_2004-09-30_-_1629174.pdf) and

[http://www.albertasecurities.com/dms/1404/8895/11562_IFL - ORDER EXTENDING CTO - 2004-09-30 - 1629628.pdf](http://www.albertasecurities.com/dms/1404/8895/11562_IFL_-_ORDER_EXTENDING_CTO_-_2004-09-30_-_1629628.pdf) for details.

BRITISH COLUMBIA

Walter Leo Barnscher – In the spring of 2000, Walter Leo Barnscher, a former registrant, was a director, officer and controlling shareholder of 601949 B.C. Ltd. He illegally sold its shares to 10 BC investors for \$250,000 and did not fulfill his duty of care under company law. On May 28, 2004, Barnscher entered into a settlement with the BCSC. Barnscher agreed not to apply for registration for 3 years and to pay \$10,000. The BCSC ordered that Barnscher not trade (except for his personal account), act as a director or officer of any issuer (with a limited exception and conditions) or engage in investor relations for 3 years. See www.bcsc.bc.ca (then type Barnscher or 2004 BCSECCOM 217 in the search box, then go to the settlement) for details.

Michael Jerome Knight – In December 1999, Michael Jerome Knight, a former registrant, was a director, officer and controlling shareholder of 3644871 Canada Inc. He and others illegally sold its shares to 14 BC investors for \$150,000 and did not fulfill his duty of care under company law. On April 5, 2004, Knight entered into a settlement with the BCSC. Knight agreed not to apply for registration for 3 years and to pay \$15,000. The BCSC ordered that Knight not trade (except for his personal account), act as a director or officer of any issuer (with a limited exception and conditions) or engage in investor relations for 3 years. See www.bcsc.bc.ca (then type Knight or 2004 BCSECCOM 218 in the search box, then go to the settlement) for details.

Kenneth Kim Leiske, Aspen Capital Management Inc., Cambria Bancorp Ltd. and 3644871 Canada Inc. – In 1999, Kenneth Kim Leiske was a registrant and a director, officer and controlling shareholder of Aspen Capital Management Ltd. and Cambria Bancorp. Ltd. He and others illegally sold shares of Cambria and 3644871 Canada Inc. to 33 BC investors. Leiske sold the 3644871 shares based on misrepresentations. Aspen Capital had several registrations over the years. In the fall of 2000, it surrendered its registration. During the last few years, it did not meet its obligations under the Securities Act to segregate client funds, to send interest earned to mutual funds and to maintain its capital. Leiske did not fulfill his duty of care under company law. On April 15, 2004, Leiske, Aspen Capital, Cambria and 3644871 entered into a settlement with the BCSC. Leiske agreed not to apply for registration for 12 years. The BCSC cease traded Aspen Capital, Cambria and 3644871 and ordered Leiske for 12 years not to trade (except for his personal account), act as a director or officer of any issuer (with conditions) or engage in investor relations. See www.bcsc.bc.ca (then type Leiske or 2004 BCSECCOM 230 in the search box, then go to the settlement) for details.

Patrick Thomas Stojak – For over a year ending in 1999, Patrick Thomas Stojak, who was the BC sales manager for Corporate Express Club Inc., offered securities of several issuers for sale without registration and a prospectus contrary to securities laws. In offering convertible debentures of Great American Gold Ltd. for sale, he made misrepresentations contrary to securities laws when he told investors that the shares of Great American would be listed for trading on a stock exchange and that this would increase their value. On June 17, 2004, the BCSC entered into a settlement with Mr. Stojak. He undertook to pay \$5,000 and the BCSC ordered that he not trade (except for his personal account), act as a director or officer of any issuer (with an exception) or engage in investor relations for 3 years. Mr. Stojak was 1 of 7 respondents in a BCSC notice of hearing. The executive director alleges various breaches of the securities laws under a scheme in which investors paid a membership fee to purchase securities. The remaining respondents are Corporate Express Inc., Corporate Express Club, Fortress International Ltd., Great American Gold Ltd., John Thomas McCarthy and Cameron Willard McEwen. The BCSC hearing has commenced and is adjourned until January of 2005. See www.bcsc.bc.ca (then type Stojak or 2004 BCSECCOM 374 in the search box, then go to the settlement) for details.

APPEALS

MANITOBA

Gerald Blerot – In March of 2004, the Manitoba Court of Appeal, in Chambers, dismissed the motion of Mr. Blerot for leave to appeal an Order of the MSC. In a January 2004 decision, a panel of the MSC had ordered a denial of exemptions against Mr. Blerot for 2 years and costs of \$5,000, for his role in trading in securities of a Synergy Alliance company through an investment proposal whereby investors were to provide funds to a Synergy Alliance entity and receive shares in return. See www.msc.gov.mb.ca/investigation/reasons/blerot and www.msc.gov.mb.ca/orders/synergy_7 for details.

**Enforcement action against Synergy Alliance Two, LLC, Synergy Alliance Fourteen, LLC, Synergy Alliance Group, LLC, Synergy Equivest Group LLC, and Synergy Investment Corporation, LLC, and certain individuals not including Blerot, was concluded with a settlement agreement approved by a panel of the MSC in August of 2003.*

INSIDER TRADING

COURT RULINGS

QUÉBEC

Claude Vézeau – In April 2004, penal proceedings were instituted by the AMF before the Court of Québec (Criminal and penal division) against Mr. Vézeau for allegedly having contravened the insider trading prohibitions contained in section 189.1 of the Securities Act. In its statement of offence that has 1 count, the AMF alleges that on August 21, 2003, Mr. Vézeau, through 9099-3569 Québec Inc., a closed company, conducted a trade on shares of Conjuchem Inc. while he had privileged information relating to this issuer. If found guilty, Mr. Vézeau could be sentenced to pay a fine of no less than twice the profit he realized, subject to a minimum of \$5,000. In this instance, the AMF has estimated that minimum fine to be \$9,630 but has announced its intention to ask the court that a fine of \$20,000 be imposed.

Marie-José Girard – In September 2004, penal proceedings were instituted by the AMF before the Court of Québec (Criminal and penal division) against Mrs. Girard for allegedly having contravened the insider reporting obligations of the Securities Act. In its statement of offence that encompasses 34 counts, the AMF alleges that Ms. Girard, while being an insider of two reporting issuers, Exploration Dios Inc. and Ressources Sirios Inc., repeatedly failed to comply with section 97 of the Securities Act. This section requires that an insider file a report within 10 days of any change of his control on securities of any issuers for which he is considered an insider. If found guilty, Ms. Girard could be sentenced to pay a minimum fine of \$1,000 per count.

CSA COMMISSION OR TRIBUNAL DECISIONS

ONTARIO

Glen Harvey Harper – In April 2004, the OSC found that it was in the public interest to sanction Mr. Harper for trading in the securities of Golden Rule Resources Inc. with knowledge of undisclosed material facts contrary to s. 76(1) of the Act. Mr. Harper was charged and convicted in Provincial Court, under s. 122 of the Act, on 2 counts of insider trading. In July 2000, he was found guilty of both counts and sentenced to 1 year imprisonment for each offence, concurrent, and fined \$3,951,672. On appeal, his sentence was reduced to 6 months, concurrent, and his fine was reduced to \$2,400,000. The appeal court agreed with the trial judge's findings of fact. After a hearing in March 2004, the Commission found that, pursuant to s. 127 of the Act, it was in the public interest to order that Mr. Harper cease trading in any securities for 15 years (with the exception of certain specified trading in his personal accounts); and that he be prohibited from becoming or acting as a director or officer of any reporting issuer for 15 years. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040408_harper.jsp for details.

ALBERTA

Glen Harvey Harper - On April 8, 2004, the OSC found that Mr. Harper sold securities of Golden Rule Resources Inc., a reporting issuer with which he was in a special relationship, when he had access to material information that was not generally disclosed to the public. Consequently on June 10, 2004, an ASC panel affirmed in Alberta the sanctions imposed by the OSC and ordered that for 15 years Mr. Harper be prohibited from acting as a director or officer of any reporting issuer, cease trading in any securities, except in his own account, and that the exemptions do not apply to Mr. Harper.

See [http://www.albertasecurities.com/dms/1404/8895/11111_Harper, Glen Harvey - Decision - 2004-06-10 - 1545597.pdf](http://www.albertasecurities.com/dms/1404/8895/11111_Harper,_Glen_Harvey_-_Decision_-_2004-06-10_-_1545597.pdf) for details.

SETTLEMENT AGREEMENTS

ONTARIO

Donald Parker – In May 2004, OSC staff concluded a settlement agreement with Donald Parker with respect to his trading in the shares of Roman Corporation Ltd while in possession of undisclosed material information. The Commission approved the settlement agreement and ordered that Mr. Parker cease trading in securities for 6 months; that the exemptions in Ontario securities law not apply to him for 6 months; that he not act as a director of any issuer for 6 months; that he be reprimanded; that he make a settlement payment of \$1,800; and that he pay \$5,000 in costs.

See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040518_donaldparker.jsp for details.

James Anderson – In June 2004, OSC staff concluded a settlement agreement with James Anderson with respect to his short sales of Bioscrypt shares while in possession of a material fact, which had not been generally disclosed. The Commission approved the settlement agreement and ordered that Mr. Anderson's registration be suspended for 6 months; that he cease trading in securities for 6 months (except in his RRSP); that he be reprimanded; that he is prohibited from acting as a director or officer of an issuer for 6 months; and that he pay \$15,000 in costs. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040616_anderson.jsp for details.

Paradigm Capital Inc., Patrick Mr. McCarthy, and Eden Rahim – In June 2004, OSC staff concluded a settlement agreement with Paradigm Capital, Mr. McCarthy, and Mr. Rahim with respect to their 'overtrading' of Bioscrypt Inc. shares with knowledge of an undisclosed material fact.

In the settlement agreement, the Commission ordered that Paradigm implement a revised policy with respect to the receipt of confidential material information while acting as an agent on behalf of an issuer; that Paradigm be reprimanded; that they make a settlement payment of \$55,755; and that they pay \$30,000 in costs.

The Commission also ordered that Mr. McCarthy's registration as a salesperson be restricted to institutional sales for a period of 1 year; that he take the Canadian Securities Course on Securities Law and Regulations within 1 year; that he be reprimanded; and that he pay \$30,000 in costs. The Commission ordered that Mr. Rahim's registration as a portfolio manager be subject to the condition, for 1 year, that he not be permitted to participate in a private placement of securities on behalf of any fund that he may manage without the prior written consent of his supervisor; that he be reprimanded; and that he pay \$30,000 in costs.

See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040618_paradigm.jsp for details.

W. Jefferson T. Banfield – In August 2004, OSC staff concluded a settlement agreement with Mr. Banfield regarding his trading on behalf of the limited partnership, BCM Arbitrage Fund, while in possession of material undisclosed information with respect to a proposed special warrant financing by Burntsand Inc. The Commission approved the settlement agreement and ordered that Mr. Banfield cease trading in securities for 2 years; that he be reprimanded; that he make a settlement payment of \$150,000; and that he pay \$50,000 in costs. Mr. Banfield also provided the Commission with his written undertaking that he will not apply for registration for a period of 5 years; that if he does, he will consent to the imposition of terms and conditions on his registration for a period of 3 years requiring close supervision, including prohibiting him from participating in any private placement financing without his supervisor's consent, and that he will complete the CSC and CPH Course before applying for registration. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040713_banfield.jsp for details.

ALBERTA

John Herring - On June 16, 2004, Mr. Herring entered into a Settlement Agreement and Undertaking with the ASC in which he admitted that he acted on material information that was not available to the public, and as a result, avoided a loss of at least \$17,500. Mr. Herring agreed to pay \$17,500 to settle the allegations, to pay \$1,500 towards costs, and for 6 months to resign any positions as a director or officer and to not become or act a director or officer. See [http://www.albertasecurities.com/dms/1404/8895/11154_Herring, John - SA&U - 2004-06-16 - 1522043v1.pdf](http://www.albertasecurities.com/dms/1404/8895/11154_Herring,_John_-_SA&U_-_2004-06-16_-_1522043v1.pdf) for details.

BRITISH COLUMBIA

Glen Harvey Harper - In March 1999, Harper was charged under the Ontario Securities Act with illegal insider trading. In July 2000, following a trial, he was found guilty. Harper served 6 months in prison and paid a \$2 million fine. In April of this year, the OSC prohibited Harper for the next 15 years from buying and selling securities (with limited exceptions) and from acting as a director or officer of any public company. In June, the Alberta Securities Commission made substantially the same orders. Please see above under CSA Commission or Tribunal Decisions for Ontario and Alberta. On July 28, 2004, the BCSC entered into a settlement with Harper and under an order made him subject to the same market restrictions in BC as in Ontario and Alberta. See www.bcsc.bc.ca (then type Harper or 2004 BCSECCOM 451 in the search box, then go to the settlement) for details.

Douglas Laurence Mason – On July 28, 2004, the BCSC entered into a settlement with Douglas Laurence Mason, the president of Clearly Canadian Beverage Corp. Mr. Mason failed to file insider trading reports, caused a misleading appearance of trading activity and failed to report the distribution of stock he held as a control person. He agreed to pay \$250,000 and the BCSC has ordered that he restrict his activities in the market for the next 12 months. Under the settlement agreement, for 12 months Mason can only engage in some limited financing activities and can trade within certain conditions. Mason cannot serve as an officer or director of any issuer nor can he engage in investor relations activities for 12 months, except for in some non-public companies and two public companies in which he is already currently involved: Clearly Canadian Beverage Corp. and Columbia Yukon Explorations Inc. See www.bcsc.bc.ca (then type Mason or 2004 BCSECCOM 507 in the search box, then go to the settlement) for details.

MARKET MANIPULATION

CSA COMMISSION OR TRIBUNAL DECISIONS

ALBERTA

Luciano John Podorieszach and Secondo Pietro (Peter) Podorieszach - On March 17, 2004, the ASC panel found that the respondents manipulated the market by creating an artificial price for shares in Anthony Clark Limited. On June 7, 2004, the panel ordered both John and Peter Podorieszach to cease trading all securities and that no exemptions were available to them for 6 years, except for their respective RRSPs. After 2 years the Podorieszachs may trade on behalf of clients, provided they are closely supervised for a period of 12 months. Both Podorieszachs were also ordered to pay an administrative penalty of \$20,000 and investigation costs of \$20,000. See [http://www.albertasecurities.com/dms/1404/8895/11018_Podorieszach, Luciano John - Decision - 2004-06-07 - 1542993v1.pdf](http://www.albertasecurities.com/dms/1404/8895/11018_Podorieszach,_Luciano_John_-_Decision_-_2004-06-07_-_1542993v1.pdf) for details.

BRITISH COLUMBIA

Gordon Howard Callies – In an agreed statement of facts filed with the BCSC, Gordon Howard Callies admitted that he illegally sold securities of Cambria Bancorp Corp. to 14 BC investors, defrauded an 86-year-old woman of \$30,000 and failed to fulfill his duty of care as a director of Cambria under company law. On July 28, 2004, the BCSC ordered that Callies not trade (except for his personal account), act as a director or officer of any issuer (except one he and his family wholly own) or engage in investor relations, for 25 years and pay \$125,000 as penalty and \$7,000 in costs. See www.bcsc.bc.ca (then type Callies or 2004 BCSECCOM 447 in the search box, then go to the decision) for details.

SETTLEMENT AGREEMENTS

NOVA SCOTIA

Bruce E. Clarke – Mr. Clarke entered into a Settlement Agreement in respect to allegations that while a registrant under the Securities Act at National Bank Financial Limited in Halifax he entered into an agreement with persons in a special relationship with Knowledge House Inc. ("KHI") to act jointly to maintain the price of KHI stock and to carry out transactions in the market to this effect and to provide liquidity for the stock. Mr. Clarke's registration was cancelled, exemptions denied, \$75,000 administration penalty, \$75,000 costs ordered. See: <http://www.gov.ns.ca/nssc/docs/clarkesettlement04jun28.pdf> for details.

River John Oceanfront Resorts LTD - River John Oceanfront Resorts Ltd. entered into a settlement agreement with Staff of the Nova Scotia Securities Commission in respect to allegations that it had contravened the Community Economic-Development Corporations Regulations, and thereby contravened provisions of the Securities Act. The respondent had made investments that varied materially from those described in the offering document without having provided notice and sufficient information to investors and having obtained the required approval of investors. An administrative penalty of \$2,500 was imposed together with costs in the amount of \$500.00. See www.gov.ns.ca/docs/fineriverjohn.pdf for details.

DISCLOSURE VIOLATIONS

CSA COMMISSION OR TRIBUNAL DECISIONS

ONTARIO

Nortel Networks Corporation and Nortel Networks Limited (certain Directors, Officers & Insiders of) – In May, 2004, the OSC ordered that all trading in the securities of Nortel Networks Corporation (“NNC”) and Nortel Networks Limited (“NNL”) by certain named individuals (directors, officers or insiders of NNC or NNL during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings NNC and NNL are required to make pursuant to Ontario securities law. NNC and NNL had announced in April that they would each have to restate the financial results reported in each of the quarterly periods of 2003 and for earlier periods including 2002 and 2001, and that they would be delayed in filing their annual financial statements for the year ended December 31, 2003, and their interim statements for the first quarter ended March 31, 2004 by the required filing date. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040517_nortel-networks.jsp for details.

Argus Corporation Limited (certain Directors, Officers & Insiders of) – In June 2004, the OSC ordered that all trading in Argus securities by certain named individuals (directors, officers or insiders of Argus during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings Argus is required to make pursuant to Ontario securities law. Argus had failed to file its interim financial statements and related documents. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040603_argus-corp.jsp for details.

Hollinger Canadian Newspapers, Limited Partnership (certain Directors, Officers and Insiders of) – In June 2004, the OSC ordered that all trading in the Partnership securities by certain named individuals (directors, officers or insiders of the Partnership during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings the Partnership is required to make pursuant to Ontario securities law. The Partnership had failed to file its interim and annual financial statements, and related documents. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-can-news.jsp for details.

Hollinger Inc. (certain Directors, Officers and Insiders of) – In June 2004, the OSC ordered that all trading in Hollinger securities by certain named individuals (directors, officers or insiders of Hollinger during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings Hollinger is required to make pursuant to Ontario securities law. Hollinger had failed to file its interim and annual financial statements, and related documents. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-inc.jsp for details.

Hollinger International Inc. (certain Directors, Officers and Insiders of) – In June 2004, the OSC ordered that all trading in Hollinger International Inc. (“HLR”) securities by certain named individuals (directors, officers or insiders of HLR during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings HLR is required to make pursuant to Ontario securities law. HLR had failed to file its interim and annual financial statements, and related documents. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-int-inc.jsp for details.

SASKATCHEWAN

Manitou Springs Venture Capital Corporation, New Era Venture Capital Corporation, Manitou Springs Hotel Inc., Manitou Beach Mineral Pool Inc. – On May 26, 2004, the SFSC ordered sanctions against Manitou Springs Venture Capital Corporation *et al* in respect to failure to file financial statements. Manitou Springs Venture Capital Corporation *et al* was ordered to each pay \$15,000 as an administrative penalty and \$11,720.09 as a collective cost of the hearing. Manitou Springs Venture Capital Corporation *et al* were the subject of a Cease Trade Order dated October 20, 2000, which stated that trading in their shares cease and that the companies be denied the use of exemptions, by reason of serious concerns about their financial disclosure. This decision has been appealed by counsel for Manitou Springs Venture Capital Corporation *et al*.
Alberta

Bruno Stephen Dobler and Thomas Vernon Hochhausen (the “respondents”)- On September 3, 2004, the ASC panel issued their decision regarding a private placement that occurred while a reporting issuer (Cenpro Technologies) was cease traded for failure to file financial statements. The panel found that the respondents contravened the CTO and therefore, Alberta securities laws, and acted contrary to the public interest; both respondents made misrepresentations to an investor and in doing so acted contrary to the public interest. Mr. Hochhausen's conduct in acting in multiple and conflicting roles in connection with the private placement and the use of the funds received from this private placement was found to be contrary to the public interest. The Panel is scheduled to hear arguments regarding sanction on October 25, 2004. See

[http://www.albertasecurities.com/dms/1404/8895/11487_DOBLER_AND_HOCHHAUSEN - DECISION - 2004-09-03 - 1614601.pdf](http://www.albertasecurities.com/dms/1404/8895/11487_DOBLER_AND_HOCHHAUSEN_-_DECISION_-_2004-09-03_-_1614601.pdf) for details.

SETTLEMENT AGREEMENTS

ALBERTA

Grant William Krucik - On May 19, 2004, Mr. Krucik admitted that the Offering Memorandum, for Babel Fish Corporation, signed by him as its president and a director, contained a misstatement that Mr. Krucik ought to have known was a misrepresentation, and thus contravened the Act and acted contrary to the public interest. Mr. Krucik agreed to pay an administrative penalty of \$1,000 to settle this allegation and \$500 towards investigation costs. See [http://www.albertasecurities.com/dms/1404/8895/10971_Krucik, Grant - SA - 2004-05-19 - 1484438v1.pdf](http://www.albertasecurities.com/dms/1404/8895/10971_Krucik,_Grant_-_SA_-_2004-05-19_-_1484438v1.pdf) for details.

Oscar A. Jofre, Jr. - On June 28, 2004, Mr. Jofre, who was the CEO and a director of Babel Fish Corporation, agreed that he did not disclose his bankruptcy in the corporation's Offering Memorandum signed by him and thus made a misrepresentation to its investors, contravened the Act and acted contrary to the public interest. Mr. Jofre agreed to pay an administrative penalty of \$2,500 to settle these allegations and \$1,000 towards investigation costs. See [http://www.albertasecurities.com/dms/1404/8895/11216_JOFRE - SA - 2004-06-28 - 1531074.pdf](http://www.albertasecurities.com/dms/1404/8895/11216_JOFRE_-_SA_-_2004-06-28_-_1531074.pdf) for details.

MISCONDUCT BY REGISTRANTS

CSA COMMISSION OR TRIBUNAL DECISIONS

QUEBEC

Conseillers de placements TIP Ltée et Paul Gagné – On April 21, 2004, the Bureau de décision et de révision en valeurs mobilières («BDRVM») suspended the rights granted by registration as advisers to Conseillers de placements TIP Ltée («TIP») for a period of 2 years and to Paul Gagné, TIP's president, for a period of 5 years. These sanctions follow a finding by the Commission des valeurs mobilières du Québec, the BDRVM's predecessor, that TIP and Paul Gagné had (since at least the year 2000) mismanaged funds that TIP's clients had left in their care, in particular in regards to the operation of Fonds TIP. In doing so, the BDRVM found that TIP and Paul Gagné had acted with professional negligence and, in some instance, misconduct.

Both TIP, Paul Gagné and the AMF, which considers that the sanctions imposed are not severe enough, have appealed this decision to the Court of Québec, civil division.

ONTARIO

John Craig Dunn – In June 2004, an OSC hearing panel found that Mr. Dunn had acted contrary to the public interest when he prepared and signed (and caused others to prepare and sign) 'Proof of Funds Letters' regarding accounts at Nesbitt Burns that contained misleading representations. The panel ordered that Mr. Dunn's registration be terminated for 10 years; that Mr. Dunn be prohibited permanently from having a supervisory or managerial role with a registrant; that Mr. Dunn be permanently prohibited from becoming or acting as a director or officer of a registrant; that Mr. Dunn be reprimanded; and that he pay \$126,938.50 in costs. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040615_dunn-johncraig.jsp for details.

Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, and Pierrepont Trading Inc. (the "respondents") – In June 2004, the OSC issued its reasons for sanctions ordered against Patrick Lett, Milehouse Investment, and Pierrepont Trading in connection with their trading in securities without registration. The respondents, none of whom were registered under the Act, had offered a 'high yield program' that was found to constitute an 'investment contract' (and therefore a 'security' as defined in the Act). The Commission ordered that Milehouse and Pierrepont cease trading in securities for 15 years, and that Mr. Lett cease trading in securities for 10 years (except that he may trade in certain specified securities for his own account or for the account of his RRSP or RRIF). It was further ordered that Mr. Lett be prohibited from becoming or acting as an officer or director of any reporting issuer or of any registrant (or issuer which has a direct or indirect interest in any registrant) for 15 years; and that he pay \$150,000 in costs. All three respondents were reprimanded. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040322_lett.jsp and http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040608_lett.jsp for details.

ALBERTA

Donald Stuart Wallace - On May 18, 2004, Mr. Wallace was found to have committed serious breaches of the Act and engaged in conduct contrary to the public interest and was ordered to cease trading in securities for 15 years, was not eligible to apply for

exemptions for 15 years, and was ordered to pay a \$30,000 administrative penalty as well as \$15,000 costs. Mr. Wallace admitted that he recommended unsuitable investments, resulting in aggregate client losses exceeding \$1,000,000, failed to discuss material risks of the unsuitable investments, inappropriately recommended that clients incur debt to purchase and maintain the unsuitable investments, conducted discretionary trades in clients' accounts without authorization and registration under the Act, failed to use "know-your-client" (KYC) forms, and requested clients sign blank forms such as trade authorizations. See [http://www.albertasecurities.com/dms/1404/8895/10899_Wallace, Donald Stuart - Decision - 2004-05-18 - 1518353v1.pdf](http://www.albertasecurities.com/dms/1404/8895/10899_Wallace,_Donald_Stuart_-_Decision_-_2004-05-18_-_1518353v1.pdf) for details.

Stewart Grant Showers - On September 8, 2004, the commission ordered that Mr. Showers cease trading permanently in securities (except for debt securities or securities with a market capitalization of over \$500 million), all of the exemptions contained in Alberta securities laws permanently do not apply to Mr. Showers, that he shall resign immediately from any position that he holds as a director or officer, and Mr. Showers is permanently prohibited from becoming or acting as a director or officer of any reporting issuer. Mr. Showers was also ordered to pay \$10,000 for costs of the investigation. Mr. Showers was a mutual fund representative who diverted funds from client accounts and then falsified documents to his clients to hide the missing funds. Mr. Showers misappropriated approximately \$36,000 for his own personal benefit from his clients and also benefited from this scheme by maintaining his asset retention bonus from his mutual fund dealer. Mr. Showers earlier pleaded guilty and was sentenced for fraud offences under the Criminal Code relating to this wrongdoing. See [http://www.albertasecurities.com/dms/1404/8895/11486_Showers, Stewart Grant - DECISION - 2004-09-08 - 1616176.pdf](http://www.albertasecurities.com/dms/1404/8895/11486_Showers,_Stewart_Grant_-_DECISION_-_2004-09-08_-_1616176.pdf) for details.

SETTLEMENT AGREEMENTS

NOVA SCOTIA

Christopher Bevis – Mr. Bevis entered into a Settlement Agreement in respect to misconduct while an approved person at Select Money Strategies in Halifax. Mr. Bevis failed to comply with the "Know Your Client" Rule, processed trade documentation without proper client signature or bearing signatures cut and pasted from other documents and failed to comply with MFDA by-laws and regulations. Mr. Bevis's registration was suspended for a period of 6 months; an administrative penalty in the amount of \$5,000 was imposed together with costs of \$2,500. See www.gov.ns.ca/nssc/docs/bevisettle.pdf for details.

ONTARIO

David Bromberg – In March 2004, OSC staff concluded a Settlement Agreement with Mr. Bromberg with respect to his conduct as a principal of Buckingham Securities Corporation. Buckingham failed to segregate its clients' securities held in omnibus accounts with other brokerage firms; failed to maintain adequate capital at all times; failed to keep required books and records; failed to file an audited Form 9; and made materially misleading statements in two Form 9 reports. The Commission approved the Settlement Agreement in April 2004, and ordered that Mr. Bromberg permanently cease trading in securities; that his registration be terminated; that any exemptions do not apply to him; that he be permanently prohibited from becoming or acting as an officer or director of any reporting issuer or of any registrant; and that he be reprimanded. Mr. Bromberg provided his undertaking never to apply for registration in any capacity under Ontario securities law, and never to own any interest in a registrant. See http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040420_bromberg.jsp for details.

MANITOBA

John Lawrence ("Larry") Reid – In April of 2004, staff concluded a Settlement Agreement with Mr. Reid, subsequently approved by the Commission, regarding his handling of a client's account. It was agreed that Mr. Reid had recommended investments and provided advice and recommendations, resulting in an unsuitable portfolio, and failed to follow the KYC Rule exposing his client to unnecessary risk, all resulting in a loss of approximately \$89,000 or 29% of the original amount invested. Under the terms of the Settlement Agreement, Mr. Reid agreed to a written reprimand, an administrative penalty of \$5,000, and continued supervision until June 30, 2004. See www.msc.gov.mb.ca/orders/reid for details.

SASKATCHEWAN

Sheldon Christopher Shymko – SFSC staff entered into a Settlement Agreement with Sheldon Christopher Shymko for trading in securities in Saskatchewan while not being registered. Under the Settlement Agreement, Mr. Shymko agreed to pay an administrative penalty of \$2,000, to pay the costs of the investigation of \$500 and to become registered in the province of Saskatchewan.
Alberta

Cardinal Capital Management Inc. - On September 29, 2004, Cardinal Capital Management Inc. acknowledged that it had operated as an advisor in Alberta when it was not registered to do so. It paid \$7,500 registration fees that were owed while it

operated unregistered, and paid an administrative penalty of \$10,000 to settle these allegations and \$1,000 towards investigative costs.

See http://www.albertasecurities.com/dms/1404/8895/11560_CARDINAL - SAU - 2004-09-29 - 1627881.pdf for details.

BRITISH COLUMBIA

Northern Securities Inc. – The BCSC entered into a settlement with Northern Securities Inc. under which Northern has agreed to pay \$10,000 for violating a cease trade order. The BCSC cease-traded the shares of Solucorp Industries Ltd. in October 2000. Since July 2002, Solucorp's shares have been quoted on the Pink Sheets Electronic Quotation Service in the United States. In March 2003, the BCSC varied its cease trade order to allow certain BC residents to sell Solucorp shares bought before October 2000. Northern Securities violated the orders when it traded Solucorp shares bought after that date. Northern executed these trades because of deficiencies in changes it made to its internal systems in April 2003. In March 2004, Northern corrected these deficiencies and gave the BCSC an undertaking to maintain its internal systems to prevent further cease trade order violations. See www.bcsc.bc.ca (then type Northern or 2004 BCSECCOM 272 in the search box, then go to the settlement) for details.

DPM Securities Inc./Valeurs Mobilières DPM Inc., The Height of Excellence Financial Planning Group Inc., John Wilson Howard and James Gordon Armit – On May 18, 2004, the BCSC entered into a settlement with DPM Securities Inc., an investment dealer, and The Height of Excellence Financial Planning Group Inc., a mutual fund dealer. They breached numerous securities laws in selling limited partnership units to their clients. DPM and Height of Excellence are no longer registered to sell securities in BC. DPM has agreed to pay the BCSC \$60,000. Height of Excellence has agreed to pay the BCSC \$35,000. These payments include the commissions earned by the dealers in selling the partnership units. See www.bcsc.bc.ca (then type DPM or 2004 BCSECCOM 276 in the search box, then go to the settlement) for details.

APPEALS

ONTARIO

Brian K. Costello – On July 12, 2004, the Ontario Divisional Court upheld a decision of the Ontario Securities Commission that ordered that Mr. Costello, a well-known author, speaker and investment commentator, be denied registration for 5 years and be reprimanded. The Commission found that Mr. Costello was acting as an “adviser”, as defined in the Act, without being registered and that he failed to disclose certain conflicts of interest contrary to the public interest. However, the Court allowed Mr. Costello's appeal of the Commission decision to award \$300,000 in costs and directed the Commission to reconsider that issue. See http://www.osc.gov.on.ca/About/NewsReleases/2004/nr_20040713_osc-costello.jsp for details.

BRITISH COLUMBIA

Robert Arthur Hartvikson and Blayne Barry Johnson - In June 2001, the BCSC banned two First Marathon Securities Ltd. stockbrokers – Robert Arthur Hartvikson and Blayne Barry Johnson – from the BC securities markets for a year and, considering general deterrence, ordered them to pay the maximum penalty of \$100,000 each. The two men appealed the Commission's decision to the BC Court of Appeal, which upheld the finding but reduced the penalties to \$10,000 each.

The BCSC appealed the decision to the Supreme Court of Canada. On April 22, 2004, that court restored the original penalties against both Mr. Hartvikson and Mr. Johnson. The court (a) held that the BCSC in making its public interest orders could consider general deterrence and was not bound by the settlements entered into by its staff and (b) set out the standard of review for BCSC decisions.

See: http://www.lexum.umontreal.ca/csc-scc/cgi-in/disp.pl/en/pub/2004/vol1/html/2004scr1_0672.html for details.

MISCELLANEOUS

COURT RULINGS

QUÉBEC

Johanne Goyette – On April 23, 2004 Mr. Justice Gilles Pigeon of the Court of Québec (Criminal and penal division) found Johanne Goyette guilty of having failed to appear before an AMF investigator after having been summoned to do so to testify in connection with an investigation being conducted by the AMF. This being Ms. Goyette's second conviction for the same offence to the Securities Act, Mr. Justice Pigeon ordered Ms. Goyette to pay a fine of \$3,000, three times the amount of the minimum fine of \$1,000.

Gérald Gaudreau, Jean Pierre Nadeau, Jacques Gagné and Louise Lessard – In May and September 2004, the AMF instituted penal proceedings before the Court of Québec (Criminal and penal division) against Mr. Gaudreau, Mr. Gagné and Ms. Lessard for having failed to appear (Mr. Gagné and Ms. Lessard) and refusing to testify (Mr. Gaudreau) before AMF investigators. If found guilty, Mr. Gagné, Mr. Gaudreau and Ms. Lessard could be liable to pay a fine of no less than \$1,000 to a maximum of \$20,000 per count. On July 6, 2004, the AMF obtained from the Québec Superior Court the issuance a special rule ordering Mr. Nadeau to appear before the court to answer a charge of contempt of court. Mr. Nadeau appeared before AMF investigators after having been duly summoned to do so, but he refused to answer any of the questions asked by the investigators and to provide the documents requested. If Mr. Nadeau is found guilty of contempt for having failed to comply with the AMF investigators' demands, he could be liable to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 1 year.

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1.3.4 Is It Independent Research or Paid Promotion?

**FOR IMMEDIATE RELEASE
December 14, 2004**

IS IT INDEPENDENT RESEARCH OR PAID PROMOTION?

Toronto – The Ontario Securities Commission (OSC) is encouraging the public to consider the difference between marketing publications and investment advice. Unsolicited investment newsletters are commonly sent out by fax and e-mail by firms that are paid to promote investments. Before you act on the material, consider that it may not give you a balanced picture.

Promotional Language:

- Headings such as “Hot tip” and “Special Alert” will attract your attention to information that seems authoritative and professional, but may not provide the whole story.
- Statements like “the potential to make our readers wealthier than they ever imagined”- potential is not a guarantee.
- Claims that other smart investors are already following this advice – in the hopes that you will follow the crowd.

What you should watch out for:

- Fine print that contradicts what's promised in the newsletter. Look for statements like “The reader assumes all risk as to the accuracy and the use of this document.”
- Free stock research that you didn't ask for. Chances are that someone who doesn't know anything about you or your investment objectives doesn't have your best interests in mind.
- Promotions for companies that are not listed on a stock exchange. These companies may be subject to less regulation and have fewer disclosure requirements - which means higher risk.
- References to current events like commodity shortages and global terrorism to create a sense of urgency. These are high-pressure sales tactics.

The following tips will help you protect your money:

- Recognize that unsolicited investment newsletters do not take the place of

advice from a registered industry professional.

- Past profits do not guarantee future results.
- Any person or company selling securities or offering investment advice in Ontario must be registered with the Ontario Securities Commission. Call the OSC at 1-877-785-1555 to confirm the registration of any such individual or company.

Base your investment decisions on the research you've gathered from credible, knowledgeable and diverse sources. Contact the Ontario Securities Commission toll free at 1-877-785-1555 for further information. You can learn more about investment topics on-line at www.InvestorED.ca.

For OSC Media Inquiries: Perry Quinton
Manager,
Investor Communications
416-593-2348

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

**1.3.5 OSC Approves Settlement Agreement
Concerning Sally Daub**

**FOR IMMEDIATE RELEASE
December 14, 2004**

**OSC APPROVES SETTLEMENT AGREEMENT
CONCERNING SALLY DAUB**

TORONTO – Today the Ontario Securities Commission approved a settlement agreement between Staff and Sally Daub. In this case, Staff had alleged that Daub had materially misled Staff of the Commission in a response to a written request made by Staff on August 1, 2000 for a detailed chronology of events leading up to an announcement on May 24, 2000, that ATI Technologies would experience a loss for Q3 2000. The letter included a request for the earliest date that ATI was aware of a loss for Q3 and a list of any subsequent conversations or meetings concerning the financial report for Q3.

On August 30, 2000, Daub, in her capacity as General Counsel for ATI, responded to Staff's request in a letter signed by her. In the letter, Daub identified May 16, 2000 as the earliest material meeting, communication, event or development leading up to the disclosure on May 24, 2000.

Evidence obtained since the Notice of Hearing and Statement of Allegations were issued revealed that Daub did not intentionally mislead Staff. This evidence also revealed that Daub reasonably relied in good faith on information provided to her by others in the preparation and forwarding of her letter of August 30, 2000 to Staff. Daub acknowledged, however, that in hindsight, she should have taken further steps to confirm the information contained in the letter to Commission Staff.

Given the substantial mitigating circumstances that existed in this case, Staff joined counsel for Daub in recommending a reprimand and a modest contribution toward costs in the amount of \$5,000.00. From Staff's perspective, the case is important in that it reminds issuers that information provided in response to a request from Staff for information, including a chronology, must be scrupulously accurate.

A panel of the Commission approved the settlement agreement and reprimanded Daub and ordered her to pay costs of \$5,000.00. Copies of the Settlement Agreement and Order are available on the OSC web site (www.osc.gov.on.ca).

For Media Inquiries: Eric Pelletier
Manager, Media Relations
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**1.3.6 OSC to Consider Settlement Agreement
Reached in the Matter of Mark Edward
Valentine**

**FOR IMMEDIATE RELEASE
December 14, 2004**

**OSC TO CONSIDER SETTLEMENT AGREEMENT
REACHED IN THE MATTER OF MARK EDWARD
VALENTINE**

TORONTO – The Ontario Securities Commission adjourned its hearing in the matter of Mark Edward Valentine until 11:00 am on December 23, 2004, when the Commission will consider a settlement agreement reached today between Staff of the Commission and Mr. Valentine.

On consent of all parties, the current temporary order concerning Mr. Valentine dated October 29, 2004 was extended until December 23, 2004.

The terms of the settlement agreement are confidential until approved by the Commission. Copies of the Amended Amended Statement of Allegations dated January 29, 2004 in this matter, as well as today's order are available on the Commission's website (www.osc.gov.on.ca).

For Media Inquiries: Wendy Dey
Director, Communications
416-593-8120

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

**1.3.7 OSC to Consider Settlement with AIC Limited
Over Market Timing Activities**

**FOR IMMEDIATE RELEASE
December 14, 2004**

**OSC TO CONSIDER SETTLEMENT WITH AIC LIMITED
OVER MARKET TIMING ACTIVITIES**

TORONTO – The Ontario Securities Commission (OSC) today announced that a settlement has been reached between staff of the Commission and AIC Limited concerning market timing activities. Staff allege that the conduct of AIC Limited in failing to protect fully the best interests of the relevant funds was contrary to the public interest.

The OSC will convene hearings on Thursday, December 16, 2004, starting at 10 am, to consider this settlement agreement in addition to settlement agreements reached with CI Mutual Funds Inc., AGF Funds Inc. and I.G. Investment Management, Ltd. The terms of the settlement agreements are confidential until approved by a panel of Commissioners.

Excerpts from the Statements of Allegations issued against CI Mutual Funds Inc., AGF Funds Inc. and I.G. Investment Management, Ltd. are repeated in the Statement of Allegations for AIC Limited.

No evidence of ongoing market timing activity has been found since the review of the Canadian mutual fund industry began in November 2003. In the probe, OSC staff did not uncover any evidence of late trading.

Copies of the Notice of Hearing and the Statement of Allegations are available on the OSC's web site (www.osc.gov.on.ca).

For Media Inquiries: Wendy Dey
Director, Communications
416-593-8120

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

**1.3.8 OSC to Seek to Extend Directions and Freeze
Orders in the Matter of Michael Ciavarella,
Kamposse Financial Corp., Firestar Capital
Management Corp., Firestar, Firestar
Investment Management Group and Michael
Mitton**

**FOR IMMEDIATE RELEASE
December 15, 2004**

**OSC TO SEEK TO EXTEND DIRECTIONS AND
FREEZE ORDERS
IN THE MATTER OF
MICHAEL CIAVARELLA, KAMPOSSE FINANCIAL
CORP., FIRESTAR CAPITAL MANAGEMENT CORP.,
FIRESTAR, FIRESTAR INVESTMENT MANAGEMENT
GROUP AND MICHAEL MITTON**

Toronto – The Ontario Securities Commission (OSC) announced today that on December 9 and December 10, 2004, the Commission issued Directions pursuant to Section 126 of the *Securities Act* freezing sixteen bank accounts held at seven financial institutions. Pursuant to Section 126(5) of the Act, the Commission will appear before the Superior Court on December 15, 2004 at 10 a.m. to seek the continuation of those Directions.

The OSC also announced that on December 10, 2004, it obtained temporary Cease Trade Orders against Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella, and Michael Mitton, barring any trading by those parties in the shares of Pender International Inc. The hearing to consider whether those Temporary Cease Trade Orders should be continued is scheduled for Friday, December 17, 2004 at 10:00 a.m. at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario.

A copy of the Temporary Cease Trade Orders and the Notice of Hearing are available on the OSC's website (www.osc.gov.on.ca).

For Media Inquiries: Michael Watson
Director, Enforcement
416-593-8156

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.9 OSC Rules that Documents in Philip Services Corp. Hearing be Disclosed

**FOR IMMEDIATE RELEASE
December 15, 2004**

OSC RULES THAT DOCUMENTS IN PHILIP SERVICES CORP. HEARING BE DISCLOSED

TORONTO – The Ontario Securities Commission ("OSC") released a decision on December 7, 2004 in the motion brought by Staff for an order authorizing Staff to make disclosure of ten documents. Philip Services Corp. asserted a claim of privilege over the documents that were produced by Deloitte & Touche, Philip's auditor, and by Philip.

The documents can be described as follows: correspondence between Philip and its legal counsel on various issues including Philip's legal disclosure obligations in the United States or Ontario; handwritten notes of two audit committee meetings of Philip and a letter written by Philip's Canadian counsel enclosing a memorandum.

The OSC ruled that all the documents that were the subject of the motion are no longer privileged and may be disclosed to the respondents.

A copy of the Decision and Reasons is available on the OSC's web site (www.osc.gov.on.ca).

For Media Inquiries: Eric Pelletier
Manager, Media Relations
416-595-8913

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 Philip Services Corp. et al.

**FOR IMMEDIATE RELEASE
December 15, 2004**

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

and

**IN THE MATTER OF
PHILIP SERVICES CORP., ALLEN FRACASSI,
PHILIP FRACASSI, MARVIN BOUGHTON,
GRAHAM HOEY, COLIN SOULE,
ROBERT WAXMAN AND JOHN WOODCROFT**

TORONTO – The Commission issued its Decision and Reasons for Motion to Disclose Brought By Staff in the above named matter.

A copy of the Decision and Reasons is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 McCoy Bros. Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from the requirement to file certain interim financial statements of an acquired business in a business acquisition report – The business acquisition report will include audited financial statements of the acquired business for a period that includes the period covered by the subject interim financial statements

Rules Cited

National Instrument 51-102 – Continuous Disclosure Obligations, Part 8.
National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency.

December 8, 2004

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, ONTARIO AND SASKATCHEWAN**

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

and

**IN THE MATTER OF
McCOY BROS. INC. (the “Filer” or “McCoy”)**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for

- (a) an exemption from the requirement to include interim financial statements of Peerless Limited in the business acquisition report required to be filed by December 8, 2004 (the Business Acquisition Report); and

- (b) an exemption from the requirement to include a pro forma interim statement using an income statement of Peerless Limited for the interim period of January 1, 2004 to September 30, 2004 provided that McCoy includes in the Business Acquisition Report a pro forma income statement based on McCoy’s income statement for the interim period ending September 30, 2004 and the income statement of Peerless Limited included in the 2004 Financial Statements (collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Alberta Securities Commission is the principal regulator for this application; and
(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. McCoy is a corporation existing under the laws of the Province of Alberta and is a reporting issuer under the *Securities Act* (Ontario), the *Securities Act* (Saskatchewan), the *Securities Act* (Alberta) and the *Securities Act* (British Columbia).
2. The authorized share capital of McCoy consists of an unlimited number of common shares and an unlimited number of preferred shares, of which there are currently 17,603,800 common shares and no preferred shares outstanding. The common shares of McCoy are listed on the Toronto Stock Exchange.
3. McCoy’s businesses include truck service and sales as well as the manufacture of trailers and oil-field products out of its locations in Edmonton, Grand Prairie and Red Deer, Alberta.
4. McCoy has reached an agreement (the “Agreement”) with Peerless Corporation providing

- for the purchase by McCoy of all of the issued and outstanding shares of Peerless Limited. Peerless Limited and Peerless Corporation are presently wholly-owned indirect subsidiaries of Deere & Company ("Deere"), operating in its Construction and Forestry Division.
5. The closing date (the "Closing Date") of the acquisition of Peerless Limited is September 24, 2004.
6. None of the board of directors and officers of McCoy are related to Deere or its subsidiaries or affiliates.
7. Peerless Limited is a manufacturer of truck trailers for the forestry, oil and gas, mining and construction industries.
8. Peerless Corporation presently owns all of the shares of Peerless Limited and presently does not carry on any active business.
9. The financial year end of Peerless Limited is October 31.
10. As part of a larger transaction, Deere acquired Peerless Limited and Peerless Corporation in 2000. Since its acquisition by Deere, Peerless Limited has operated as part of Deere's Construction and Forestry Division and its operations and financial records have been overseen by Deere during that period.
11. Peerless Limited employs approximately 185 people throughout its operations located in Penticton and Prince George, British Columbia, Edmonton and Grand Prairie, Alberta.
12. The business of Peerless Limited is not seasonal.
13. Deere and its subsidiaries manufacture, distribute and finance a full line of agricultural equipment; a variety of commercial and consumer equipment; a broad range of equipment for construction and forestry; and other technological products and services. Deere also provides credit services and managed health care plans.
14. The shares of Deere are listed on the New York, Chicago and Frankfurt, Germany stock exchanges.
15. The auditors of Deere are Deloitte & Touche LLP in Chicago, Illinois.
16. Separate audited financial statements have not been prepared by Peerless Limited since the time of its acquisition by Deere, if ever. The assets and earnings of Peerless Limited have only been reported in the consolidated financial statements of Deere.
17. McCoy has undertaken, and continues to undertake, rigorous due diligence review of the operations and financial records of Peerless Limited and have retained the services of PricewaterhouseCoopers LLP for assistance in that regard. To date, McCoy is satisfied with its review of the operations and financial records of Peerless Limited.
18. Through its due diligence review of Peerless, McCoy and PricewaterhouseCoopers LLP have determined that Peerless Limited has not historically maintained financial records for a period in excess of seven years.
19. The proposed acquisition by McCoy of Peerless Limited will constitute a "significant acquisition" by McCoy as defined in section 8.3 of NI 51-102, as the significance tests provided in subsection 8.3(2)(a) and (b) are satisfied at a level of greater than 40%.
20. Absent an exemption, the Business Acquisition Report to be prepared and filed by McCoy under Part 8 of NI 51-102 in respect of its acquisition of Peerless Limited, may include the following financial information pursuant to sections 8.4 and 8.7 of NI 51-102:
- (a) audited balance sheets, statements of income, retained earnings and cash flows for Peerless Limited for:
 - (i) the financial year ended October 31, 2003 (the "2003 Financial Statements"); and
 - (ii) the financial period commencing November 1, 2003 and ending on the Closing Date (the "2004 Financial Statements");
 - (b) unaudited statements of income, retained earnings and cash flows for Peerless Limited for the most recently completed interim period that ended more than 60 days before the date of the Business Acquisition Report and the comparable period in the preceding financial year;
 - (c) unaudited balance sheet for Peerless Limited as at the end of the most recently completed interim period that ended more than 60 days before the date of the Business Acquisition Report; and
 - (d) the following:
 - (i) a pro forma income statement of McCoy to give effect to the acquisition of Peerless Limited for each of:

- A. the most recently completed financial year of McCoy, being the year ended December 31, 2003; and
- B. the most recently completed interim period of McCoy, being the period ended September 30, 2004;

in each case, as if the acquisition had taken place at the beginning of such financial period;

- (ii) pro forma earnings per share based on the foregoing pro forma financial statements; and
- (iii) a compilation report accompanying such pro forma financial statements.

21. As permitted by section 6.2(6) of National Instrument 52-107, the auditor's report accompanying the 2003 Financial Statements will contain qualifications relating to inventory as at November 1, 2002 and October 31, 2003 and the auditor's report accompanying the 2004 Financial Statements will contain a qualification relating to inventory as at November 1, 2003. The auditor's report accompanying the 2004 Financial Statements will not contain a qualification relating to inventory as at the Closing Date.

Decision

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.

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

"Mavis Legg"
Manager, Securities Analysis

2.1.2 Alto Conservative Portfolio et al. - MRRS Decision

Headnote

Investment by Top Funds in Bottom Fund (Investor Real Property Fund) under common management exempted from reporting requirements and self dealing prohibitions of clauses 112(2)(b), 111(3) and 117(1)(a) and 117(1)(d). Exemption under section 2.5(7) of National Instrument 81-102 Mutual funds not available.

Statutes cited

Securities Act (Ontario) R.S.O. 1990 c. S.5, as am., ss.112(2)(b), 111(3) and 117(1)(a) and 117(1)(d).

Rules cited

National Instrument 81-102 Mutual Funds s. 2.5(7).

December 10, 2004

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA,
ONTARIO AND SASKATCHEWAN
(THE JURISDICTIONS)**

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR
EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(IGIM)**

AND

**IN THE MATTER OF
ALTO CONSERVATIVE PORTFOLIO
ALTO MODERATE CONSERVATIVE PORTFOLIO
ALTO MODERATE PORTFOLIO
ALLEGRO CONSERVATIVE PORTFOLIO
ALLEGRO MODERATE CONSERVATIVE PORTFOLIO
ALLEGRO MODERATE PORTFOLIO
INVESTORS INCOME PLUS PORTFOLIO
INVESTORS GROWTH PLUS PORTFOLIO
INVESTORS RETIREMENT PLUS PORTFOLIO
(COLLECTIVELY, AND TOGETHER WITH IGIM, THE
FILERS)**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received

an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation shall not apply in respect of certain investments to be made by a Top Fund in IRPF (as hereinafter defined):

- A. the requirements contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; and
- B. the requirements contained in the Legislation requiring a management company, or in British Columbia, the mutual fund manager, to file a report of every transaction of purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies. (Paragraphs A and B are collectively the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications;

- (a) the Ontario Securities Commission is the principal regulator for this Application; and
- (b) this MRRS Decision Document (the Decision) evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

In this decision:

- (a) "Existing Top Funds" refers to any one or more of Alto Conservative Portfolio, Alto Moderate Conservative Portfolio, Alto Moderate Portfolio, Allegro Conservative Portfolio, Allegro Moderate Conservative Portfolio, Allegro Moderate Portfolio, Investors Income Plus Portfolio, Investors Growth Plus Portfolio and Investors Retirement Plus Portfolio;
- (b) "Existing Bottom Funds" refers to the mutual funds into which the Existing Top Funds invest, including IRPF;
- (c) "Conflict of Interest Investment Restrictions" means the provisions of the Legislation that

- (i) prohibit a mutual fund from knowingly making or holding an investment in any person or company which the mutual fund, alone or together with one or more mutual funds, is a substantial securityholder as defined by Legislation,
- (ii) prohibit a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company, has a significant interest, as defined in Legislation,
- (iii) prohibit a portfolio adviser from knowingly causing any investment portfolio managed by it to invest in, or prohibit a mutual fund from investing in, any issuer in which a responsible person or an associate of a responsible person, as defined in Legislation, is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, or
- (iv) prohibit the portfolio adviser from subscribing to or buying securities on behalf of a mutual fund, where his or her own interest might distort his or her judgement, unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the subscription or purchase;
- (d) "Conflict of Interest Reporting Requirements" means the provisions of the Legislation that require the filing of a report with the Decision Maker in prescribed form that discloses every transaction of purchase or sale of portfolio assets between the mutual fund and specified related persons or companies;
- (e) "Future Top Funds" refers to other mutual funds for which IGIM (or an affiliate of IGIM) is the Manager that will invest fixed percentages of their assets (other than

- cash and cash equivalents) in securities of other mutual funds, including IRPF;
- (f) "IRPF" means Investors Real Property Fund;
- (g) "Prior Existing Decisions" refers to decisions or orders previously issued by some or all of the Decision Makers to grant identical (or substantially similar) exemptive relief as the Requested Relief with respect to the investment by the Existing Top Funds in the Existing Bottom Funds, including IRPF, that will terminate on December 31, 2004;
- (h) "Top Funds" refers to any one or more of the Existing Top Funds and Future Top Funds; and
- (i) "Bottom Funds" refers to any one or more of the Existing Bottom Funds and to other mutual funds into which Top Funds may invest their assets (other than cash and cash equivalents).
5. Each of the Top Funds and the Bottom Funds is (or will be) a reporting issuer in each of the provinces and territories of Canada and is not in default of any of the requirements of the Legislation.
6. Securities of the Top Funds and the Bottom Funds are or will be qualified for distribution in all of the provinces and territories in Canada pursuant to a simplified prospectus and annual information form or, in the case of IRPF, a long form prospectus.
7. In order to achieve the investment objectives of the Top Funds, IGIM, using strategic asset allocation, will invest fixed percentages of the assets of the Top Funds (other than cash and cash equivalents) in securities of IRPF, provided that the investment by a Top Fund in IRPF shall not exceed 10% of the assets of the Top Fund, subject to a variation of 2.5% (the "Permitted Ranges"), to account for market fluctuations. Investments of each Top Fund will be made in accordance with its fundamental investment objectives.

Representations

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

1. IGIM is a corporation incorporated under the laws of Canada and it (or an affiliate of IGIM) will manage the Top Funds and the Existing Bottom Funds. The head office of IGIM is located in Manitoba. IGIM is registered in Ontario as an Investment Counsel and Portfolio Manager. The Top Funds and Existing Bottom Funds are distributed in Ontario and the other Jurisdictions.
2. The Existing Top Funds achieve their investment objectives by investing fixed percentages of their respective assets (other than cash) in specified Existing Bottom Funds, including IRPF. IGIM may in the future introduce Future Top Funds with investment objectives that include investing in other mutual funds, including IRPF. Future Top Funds will invest fixed percentages of their respective assets (other than cash and cash equivalents) in securities of other mutual funds, including IRPF. Investments of each Top Fund will be made in accordance with their fundamental investment objectives.
3. Each of the Existing Top Funds is an open-ended investment trust established under the laws of the Province of Manitoba.
4. Each of the Existing Bottom Funds, other than the Mackenzie Universal U.S. Growth Leaders Fund, is an open-ended investment trust established under the laws of the Province of Manitoba. The Mackenzie Universal U.S. Growth Leaders Fund is
8. The simplified prospectus of a Top Fund will disclose the specific risk factors and restrictions associated with investments in IRPF.
9. The Top Funds will not invest in a Bottom Fund with an investment objective which includes investing directly or indirectly in other mutual funds, except as permitted by National Instrument 81-102 Mutual Funds ("NI 81-102").
10. The investments by the Top Funds in securities of the Bottom Funds will represent the business judgement of responsible persons (as defined by the Legislation), uninfluenced by considerations other than the best interest of the Top Funds.
11. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to NI 81-102, the investments by the Top Funds in the Bottom Funds have been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.
12. Prior to distributing their mutual fund units to the public, each Existing Top Fund applied for and obtained the relief granted in the Prior Existing Decisions as well as relief from certain provisions in NI 81-102 (or National Policy Statement No. 39 ("NP 39")), necessary to permit them to meet their investment objectives by means of a fund-of-funds structure.
13. In general, the Prior Existing Decisions permit the Existing Top Funds to invest up to 10% of their assets in units of IRPF, and exempt IGIM from the

requirement to file reports of every purchase or sale by the Existing Top Funds in the Existing Bottom Funds, subject to certain terms and conditions.

14. The Prior Existing Decisions provide that each Prior Existing Decision will terminate one year after the publication in final form of any Legislation or Rule dealing with the matters in section 2.5 of NI 81-102 (or the similar fund-of-funds investment provisions in NP 39), referred to herein as the "Fund-of-Funds Rules".

15. In 2003, the Canadian Securities Administrators, including the securities regulatory authorities in each of the Jurisdictions, adopted amendments to the Fund-of-Funds Rules, which became effective December 31, 2003. Section 19.3(1) of NI 81-102 specifically provides that any mutual fund that has obtained an exemption or waiver from NI 81-102 (or NP 39) relating to the Fund-of-Funds Rules, may no longer rely on such exemption or waiver as of December 31, 2004. Section 16.3(2) of the Companion Policy to NI 81-102 specifically provides that the coming into force of Section 19.3(1) of NI 81-102 will cause any waivers and orders issued under Legislation to expire one year after coming into force. Accordingly, the Prior Existing Decisions will terminate on December 31, 2004.

16. The Fund-of-Funds Rules now permit mutual funds to invest in the securities of other mutual funds, subject to certain restrictions in Section 2.5 of NI 81-102. Pursuant to Section 2.5(7) of NI 81-102, a mutual fund that invests in other mutual funds in compliance with Section 2.5 is exempt from the Conflict of Interest Investment Restrictions and Conflict of Interest Reporting Requirements under Securities Legislation. The Existing Top Funds are in compliance with the provisions of the Fund-of-Funds Rules, except with respect to the requirement in Section 2.5(2)(a) that all Existing Bottom Funds be subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure ("NI 81-101"), because IRPF is not subject to the requirements of NI 81-101. Although IRPF is not directly subject to NI 81-101, the long-form prospectus of IRPF has been adapted to conform as much as possible with the disclosure mandated in NI 81-101.

17. In the absence of this Decision, pursuant to the Legislation, each Top Fund is prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder. As a result, in the absence of this Decision the Top Funds would be required to divest themselves of any such investments in IRPF.

18. In the absence of this Decision, the Legislation requires IGIM to file a report of every purchase or sale of securities of IRPF by a Top Fund.

Decision

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.

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

1. in all other respects, at the time a Top Fund makes or holds an investment in IRPF, the investment shall comply with the requirements of National Instrument 81-102 Mutual Funds;
2. the simplified prospectus of the Top Fund discloses the specific risk factors and restrictions associated with investing in IRPF; and
3. the investment by a Top Fund in IRPF shall not exceed 10% of the assets of the Top Fund, subject to variance within the Permitted Ranges.

"Paul Moore"
Vice Chair

"Robert Davis"
Commissioner
Ontario Securities Commission

**2.1.3 Fortis Investment Management USA, Inc.
- ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule
13-502**

Headnote

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 *Fees* (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

AND

**IN THE MATTER OF
FORTIS INVESTMENT MANAGEMENT USA, INC.**

**DECISION
(Subsection 6.1(1) of Multilateral Instrument 31-102
National Registration Database and section 6.1 of Rule
13-502 *Fees*)**

UPON the Director having received the application of Fortis Investment Management USA, Inc. (the **Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (**MI 31-102**) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**) in respect of this discretionary relief;

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is organized under the laws of the State of Massachusetts in the United States of America. The Applicant is not a reporting issuer. The Applicant is seeking registration under the Act as an International Adviser (Investment Counsel and Portfolio Manager). The head office of the Applicant is located in Boston, Massachusetts.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national

registration database (**NRD**) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the **EFT Requirement**).

3. The Applicant anticipates encountering difficulties in setting up its own Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it

becomes registered as an international dealer or international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

December 13, 2004.

“David M. Gilkes”

**2.1.4 Cambridge Financial Services Group Inc.
- ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule
13-502**

Headnote

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

AND

**IN THE MATTER OF
CAMBRIDGE FINANCIAL SERVICES GROUP INC.**

**DECISION
(Subsection 6.1(1) of Multilateral Instrument 31-102
National Registration Database and section 6.1 of Rule
13-502 Fees)**

UPON the Director having received the application of Cambridge Financial Services Group Inc. (the **Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (**MI 31-102**) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**) in respect of this discretionary relief;

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is incorporated in and carrying on business in Connecticut in the United States of America. The Applicant is not a reporting issuer. The Applicant is currently registered under the Act as an International Adviser (Investment Counsel and Portfolio Manager). The head office of the Applicant is located in Greenwich, Connecticut.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national

registration database (**NRD**) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the **EFT Requirement**).

3. The Applicant anticipates encountering difficulties in setting up its own Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it

becomes registered as an international dealer or international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

December 13, 2004.

“David M. Gilkes”

2.1.5 Maxim Group LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

Headnote

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

AND

**IN THE MATTER OF
MAXIM GROUP LLC**

DECISION

**(Subsection 6.1(1) of Multilateral Instrument 31-102
National Registration Database and section 6.1 of Rule
13-502 Fees)**

UPON the Director having received the application of Maxim Group LLC (the **Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database (MI 31-102)* granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees (Rule 13-502)* in respect of this discretionary relief;

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is organized under the laws of the State of New York in the United States of America. The Applicant is not a reporting issuer. The Applicant is seeking registration under the Act as an International Dealer. The head office of the Applicant is located in Woodbury, NY.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national registration database (**NRD**) to complete certain registration filings. As part of the enrolment process, registrants are required to open an

account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the **EFT Requirement**).

3. The Applicant anticipates encountering difficulties in setting up its own Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it does not intend to register in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is seeking registration.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the **Application Fee**).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

December 13, 2004.

“David M. Gilkes”

**2.1.6 Innova Lifesciences Corporation
- MRRS Decision**

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only three security holders - Issuer deemed to cease to be a reporting issuer under applicable securities laws and Issuer deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.
Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

December 9, 2004

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

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF
INNOVA LIFESCIENCES CORPORATION (the Filer)**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for (i) a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is deemed to have ceased to be a reporting issuer in the Jurisdictions (the Reporting Issuer Relief) and (ii) for a decision by the Decision Maker in Ontario that pursuant to subsection 1(6) of the *Business Corporations Act* (Ontario) (the OBCA) the Filer is deemed to have ceased to be issuing its securities to the public for the purposes of the OBCA (the Offering Corporation Relief);

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in the decision.

Representations

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

1. The Filer was continued into Ontario under the OBCA and its principal executive office is located at 525 University Avenue, Suite 777, Toronto, Ontario M5G 2L3.
2. The Filer's authorized capital consists of an unlimited number of common shares (the Common Shares).
3. An offer by way of take-over bid pursuant to Part XX of the *Securities Act* (Ontario) to purchase (the Offer) all of the Common Shares was made on September 8, 2004 by Sybron Canada Limited (the Offeror), an indirect wholly-owned subsidiary of Sybron Dental Specialties, Inc. Pursuant to the Offer, the Offeror offered to purchase all of the Common Shares, including any Common Shares which became outstanding after the date of such Offer upon exercise of outstanding options, warrants or other rights to purchase Common Shares, at a price of Cdn. \$1.4106 in cash per Common Share. The Offer expired at 12:01 a.m. (Toronto time) on October 15, 2004. At the expiry of the Offer more than 94% of the outstanding Common Shares had been deposited under the Offer.
4. On October 15, 2004, the Common Shares deposited under the Offer were taken up and paid for by the Offeror. Accordingly, the Offeror has since exercised its right under section 188 of the OBCA to acquire the remaining issued and outstanding Common Shares of the Filer not deposited under the Offer.
5. The compulsory acquisition of the Common Shares of the Filer not deposited under the Offer was completed on November 24, 2004. As a result, on November 24, 2004, the Offeror became the sole and direct beneficial owner of all of the Common Shares. The Offeror has access to all material information relating to the Filer without needing to rely upon the statutory disclosure requirements applicable to reporting issuers under the Legislation.
6. Other than the outstanding Common Shares, all of which are held by the Offeror, the only outstanding securities of the Filer, including debt securities, are 10,000 options to acquire Common Shares, which options are held by two option holders, each of whom holds 5,000 such options.

7. As of November 25, 2004, the Common Shares were delisted from the TSX and no securities are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operations.
8. The Filer has filed a notice under BC Instrument 11-502 to voluntarily surrender its reporting issuer status in British Columbia.
9. The Filer is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it currently is a reporting issuer.
10. The Filer does not intend to offer securities to the public.
11. The Filer did not file interim financial statements for the interim period ended September 30, 2004 (the Interim Financial Statements), as required under National Instrument 51-102 - *Continuous Disclosure Obligations*. Prior to the filing deadline for the Interim Financial Statements the Filer applied for a decision that the Filer be deemed to have ceased to be a reporting issuer in the Jurisdictions.
12. Other than as described in paragraph 11 above, the Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

Decision

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.

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

The further decision of the Decision Maker in Ontario under the OBCA is that the Offering Corporation Relief is granted.

"Paul M. Moore"

"Robert W. Davis"

**2.1.7 Citigroup Alternative Investments LLC
- ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule
13-502**

Headnote

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

AND

**IN THE MATTER OF
CITIGROUP ALTERNATIVE INVESTMENTS LLC**

DECISION

**(Subsection 6.1(1) of Multilateral Instrument 31-102
National Registration Database and section 6.1 of Rule
13-502 Fees)**

UPON the Director having received the application of Citigroup Alternative Investments LLC (the **Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database (MI 31-102)* granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees (Rule 13-502)* in respect of this discretionary relief;

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is a limited liability company carrying on business in New York, NY in the United States of America. The Applicant is not a reporting issuer. The Applicant is currently registered under the Act as an International Adviser (Investment Counsel and Portfolio Manager). The head office of the Applicant is located in New York, NY.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national

registration database (**NRD**) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the **EFT Requirement**).

3. The Applicant anticipates encountering difficulties in setting up its own Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it

becomes registered as an international dealer or international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

December 13, 2004.

“David M. Gilkes”

2.1.8 Starboard Capital Markets LLC - ss. 6.1 of MI 31-102 and s. 6.1 of OSC Rule 13-502

Headnote

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

AND

**IN THE MATTER OF
STARBOARD CAPITAL MARKETS LLC.**

**DECISION
(Subsection 6.1(1) of Multilateral Instrument 31-102
National Registration Database and section 6.1 of Rule
13-502 Fees)**

UPON the Director having received the application of Starboard Capital Markets LLC (the **Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database (MI 31-102)* granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees (Rule 13-502)* in respect of this discretionary relief;

AND UPON considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is a limited liability company organized under the laws of the State of Pennsylvania in the United States of America. The Applicant is not a reporting issuer. The Applicant is not currently registered under the Act but is seeking registration as an International Dealer. The head office of the Applicant is located in Philadelphia, Pennsylvania.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national registration database (**NRD**) to complete certain

registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the **EFT Requirement**).

3. The Applicant anticipates encountering difficulties in setting up its own Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or

international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

December 13, 2004.

“David M. Gilkes”

2.2 Orders

2.2.1 Sionna Investment Managers Inc. et al. - s. 147

Headnote

Exemption for pooled funds from the requirement to file with the Commission interim financial statements under section 77(2) of the Act and comparative financial statements under section 78(1) of the Act, subject to conditions.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O. Reg. 1015, as am.

Rules Cited

National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), s. 2.1(1)1.

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

**AND
IN THE MATTER OF
SIONNA INVESTMENT MANAGERS INC.**

**AND
SIONNA CANADIAN EQUITY POOLED FUND
SIONNA BALANCED POOLED FUND
(together the "Existing Pooled Funds")**

**ORDER
(Section 147 of the Act)**

UPON the application (the "Application") of Sionna Investment Managers Inc. ("Sionna"), the manager of the Existing Pooled Funds and any other pooled fund established and managed by Sionna from time to time (collectively the "Pooled Funds") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 147 of the Act exempting the Pooled Funds from filing with the Commission the interim and comparative financial statements prescribed by subsections 77(2) and 78(1), respectively, of the Act;

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

AND UPON Sionna having represented to the Commission that:

1. Sionna is a corporation subsisting under the laws of Canada with its registered office in Toronto, Ontario. Sionna is, or will be the manager of the

Pooled Funds. Sionna is registered under the Act as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer.

2. The Pooled Funds will not be reporting issuers in any province or territory of Canada. Units of the Pooled Funds are, or will be, distributed in certain provinces of Canada without a prospectus pursuant to exemptions from the prospectus delivery requirements of applicable securities legislation.
3. Each Pooled Fund is, or will be, an open-ended mutual fund trust created under the laws of Ontario and a "mutual fund in Ontario" as defined in section 1(1) of the Act. The Pooled Funds are thus required to file with the Commission, interim financial statements under subsection 77(2) of the Act and comparative financial statements under subsection 78(1) of the Act (collectively, the "Financial Statements").
4. Unitholders of the Pooled Funds (the "Unitholders") receive the Financial Statements for the Pooled Funds they hold. The Financial Statements are prepared and delivered to Unitholders in the form and for the periods required under the Act and the Regulation and rules made thereunder (the "Regulation"). Sionna and the Pooled Funds will continue to rely on subsection 94(1) of the Regulation and will omit statements of portfolio transactions from the Financial Statements (such statements from which the statement of portfolio transactions have been omitted, the "Permitted Financial Statements").
5. As required by subsection 94(1) of the Regulation, the Permitted Financial Statements will contain a statement indicating that additional information as to portfolio transactions will be provided to a Unitholder without charge on request to a specified address and,
 - (a) the omitted information shall be sent promptly and without charge to each unitholder that requests it in compliance with the indication; and
 - (b) where a person or company requests that such omitted information be sent routinely to that Unitholder, the request will be carried out while the information continues to be omitted from the subsequent Financial Statements until the Unitholder requests, or agrees to, termination of the arrangement or is no longer a Unitholder.
6. Subsection 2.1(1)1 of National Instrument 13-101 - System for Electronic Document Analysis and Retrieval (SEDAR), requires that every issuer required to file a document under securities

legislation make its filing through SEDAR. The Financial Statements and statements of portfolio transactions filed with the Commission thus become publicly available.

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

IT IS ORDERED by the Commission pursuant to subsection 147 of the Act that the Pooled Funds be exempted from the requirements in subsections 77(2) and 78(1) of the Act to file the Financial Statements with the Commission, provided:

- (a) that in the absence of other regulatory relief, the Pooled Funds will prepare and deliver to the Unitholders of the Pooled Funds the Permitted Financial Statements, in the form and for the periods required under the Act and Regulations;
- (b) the Pooled Funds will retain the Financial Statements indefinitely;
- (c) the Pooled Funds will provide the Financial Statements to the Commission or any member, employee or agent of the Commission immediately upon request of the Commission or any member, employee or agent of the Commission;
- (d) Sionna will provide a list of the Pooled Funds relying on this Order to the Investment Funds Branch on an annual basis;
- (e) unitholders of the Pooled Funds will be notified that the Pooled Funds are exempted from the requirements in sections 77(2) and 78(1) of the Act to file the Financial Statements with the Commission;
- (f) in all other aspects, the Pooled Funds will comply with the requirements of Ontario securities law for financial statements; and
- (g) this decision, as it relates to the Commission, will terminate after the coming into force of any legislation or rule of the Commission dealing with the matters regulated by subsections 77(2) and 78(1) of the Act.

December 3, 2004.

“Paul Moore”

“Robert Davis”

2.2.2 Michael Mitton - s. 127

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

AND

**IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TEMPORARY ORDER
(Section 127)**

WHEREAS it appears to the Ontario Securities Commission that:

1. Michael Mitton is an individual residing in Ontario.
2. Staff of the Commission are investigating Mitton's involvement in the trading of shares of Pender International Inc. Based on the evidence collected to date, Mitton appears to be providing funds for and/or directing the trading of shares in Pender between related accounts in a way that appears to be artificially increasing the share price of Pender;
3. The Commission is of the opinion that it is in the public interest to make this Order; and
4. The Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest.

AND WHEREAS by Commission order made March 15, 2004, pursuant to ss.3.5(3) of the Act, anyone of David A. Brown, Paul Moore and Susan Wolburgh Jenah acting alone is authorized to make orders under s.127 of the Act;

IT IS THEREFORE ORDERED that, pursuant to clause 2 of section 127(1) of the Act, trading in securities of Pender by Mitton cease.

IT IS FURTHER ORDERED that, pursuant to section 127(6) of the Act, this order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

December 10, 2004.

“David Brown”

2.2.3 Michael Ciavarella - s. 127

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

AND

IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON

TEMPORARY ORDER
(Section 127)

WHEREAS it appears to the Ontario Securities Commission that:

1. Michael Ciavarella ("Ciavarella") is an individual residing in Ontario who has been trading shares in Pender International Inc. ("Pender") in accounts in his name at HSBC Securities (Canada) Inc., Desjardin Securities Inc. and TD Securities Inc.;
2. Staff of the Commission are conducting an investigation into Ciavarella's trading in the shares of Pender, and based on the information collected by Staff to date, it appears that Ciavarella is trading shares of Pender with related accounts in a way that may be artificially increasing the share price of Pender;
3. The Commission is of the opinion that it is in the public interest to make this Order; and
4. The Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest.

AND WHEREAS by Commission order made March 15, 2004, pursuant to ss.3.5(3) of the *Act*, anyone of David A. Brown, Paul Moore and Susan Wolburgh Jenah acting alone is authorized to make orders under s.127 of the *Act*;

IT IS THEREFORE ORDERED that, pursuant to clause 2 of section 127(1) of the *Act*, trading in securities of Pender by Ciavarella cease.

IT IS FURTHER ORDERED that, pursuant to section 127(6) of the *Act*, this order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

December 10, 2004.

"David Brown"

2.2.4 Firestar Capital Management Corp. - s. 127

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

AND

IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON

TEMPORARY ORDER
(Section 127)

WHEREAS it appears to the Ontario Securities Commission that:

1. Firestar Capital Management Corp. ("Firestar") is a corporation having accounts in Ontario at HSBC Securities (Canada) Inc., HSBC Bank Canada and CIBC World Markets in Ontario, in which there has been trading in shares of Pender International Inc. ("Pender");
2. Staff of the Commission are conducting an investigation into Firestar's trading activity in Pender, and based on the information collected by Staff to date, it appears that Firestar is trading shares of Pender with related accounts in a way that may be artificially increasing the share price of Pender;
3. The Commission is of the opinion that it is in the public interest to make this Order; and
4. The Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest.

AND WHEREAS by Commission order made March 15, 2004, pursuant to ss.3.5(3) of the *Act*, anyone of David A. Brown, Paul Moore and Susan Wolburgh Jenah acting alone is authorized to make orders under s.127 of the *Act*;

IT IS THEREFORE ORDERED that, pursuant to clause 2 of section 127(1) of the *Act*, trading in securities of Pender by Firestar cease.

IT IS FURTHER ORDERED that, pursuant to section 127(6) of the *Act*, this order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

December 10, 2004.

"David Brown"

**2.2.5 Firestar Investment Management Group
- s. 127**

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

AND

**IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TEMPORARY ORDER
(Section 127)**

WHEREAS it appears to the Ontario Securities Commission that:

1. Firestar Investment Management Group ("Firestar Investment") is a corporation having accounts in Ontario at HSBC Securities (Canada) Inc., HSBC Bank Canada and CIBC World Markets in Ontario, in which there has been trading in shares of Pender International Inc. ("Pender");
2. Staff of the Commission are conducting an investigation into Firestar Investment's trading activity in Pender, and based on the information collected by Staff to date, it appears that Firestar Investment is trading shares of Pender with related accounts in a way that may be artificially increasing the share price of Pender;
3. The Commission is of the opinion that it is in the public interest to make this Order; and
4. The Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest.

AND WHEREAS by Commission order made March 15, 2004, pursuant to ss.3.5(3) of the *Act*, anyone of David A. Brown, Paul Moore and Susan Wolburgh Jenah acting alone is authorized to make orders under s.127 of the *Act*;

IT IS THEREFORE ORDERED that, pursuant to clause 2 of section 127(1) of the *Act*, trading in securities of Pender by Firestar Investment cease.

IT IS FURTHER ORDERED that, pursuant to section 127(6) of the *Act*, this order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

December 10, 2004.

"David Brown"

2.2.6 Kamposse Financial Corp. - s. 127

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

AND

**IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TEMPORARY ORDER
(Section 127)**

WHEREAS it appears to the Ontario Securities Commission that:

1. Kamposse Financial Corp. ("Kamposse") is a corporation having accounts in Ontario at HSBC Bank Canada, RBC Dominion Securities Inc. and CIBC World Markets, in which there has been trading in the shares of Pender International Inc. ("Pender");
2. Staff of the Commission are conducting an investigation into Kamposse's trading of the shares of Pender, and based on the information collected by Staff to date, it appears that Kamposse is trading shares of Pender with related accounts in a way that may be artificially increasing the share price of Pender;
3. The Commission is of the opinion that it is in the public interest to make this Order; and
4. The Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest.

AND WHEREAS by Commission order made March 15, 2004, pursuant to ss.3.5(3) of the *Act*, anyone of David A. Brown, Paul Moore and Susan Wolburgh Jenah acting alone is authorized to make orders under s.127 of the *Act*;

IT IS THEREFORE ORDERED that, pursuant to clause 2 of section 127(1) of the *Act*, trading in securities of Pender by Kamposse cease.

IT IS FURTHER ORDERED that, pursuant to section 127(6) of the *Act*, this order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

December 10, 2004.

"David Brown"

2.3 Rulings

2.3.1 Monrusco Capital Management Inc. - ss. 74.1

Headnote

Subsection 74(1) – Exemption from sections 25 and 53 of the Act in connection with the writing of over-the-counter covered call options by the issuer and cash covered put options, subject to certain conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am. 25, 53 and 74(1)

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

AND

**IN THE MATTER OF
MONTRUSCO BOLTON INCOME & GROWTH FUND**

**RULING AND EXEMPTION
(Subsection 74(1) of the Act)**

UPON the application (the "Application") of Monrusco Capital Management Inc. ("Monrusco") to the Ontario Securities Commission (the "Commission") for a ruling, pursuant to subsection 74(1) of the Act, that the writing of certain over-the-counter covered call options and cash covered put options (collectively, the "OTC Options") by Monrusco Bolton Income & Growth Fund (the "Trust") hereto shall not be subject to sections 25 and 53 of the Act;

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

AND UPON Monrusco having represented to the Commission as follows:

1. The Trust is a closed-end investment trust that will be established under the laws of the Province of Ontario pursuant to a declaration of trust (the "Declaration of Trust") by Monrusco, in its capacity as trustee of the Trust.
2. The Trust will be authorized to issue an unlimited number of transferable, redeemable trust units (the "Units").
3. The Trust will be a reporting issuer under the Act or the equivalent thereof in each of the provinces and territories of Canada (the "Jurisdictions") and has filed a preliminary prospectus (the "Preliminary Prospectus") dated October 29, 2004 with the Commission and with the securities regulatory authority in the Jurisdictions with respect to a proposed offering of Units under SEDAR Project No. 00701698. The Trust is not in default of any requirements of the securities legislation of the Jurisdictions.

4. While the Trust will be considered a mutual fund within the meaning of the *Income Tax Act* (Canada), it will not be considered a "mutual fund" as defined in securities legislation applicable in certain provinces and does not operate in accordance with the requirements of Canadian securities regulation applicable to mutual funds.
5. Monrusco Bolton Investments Inc. (the "Portfolio Manager") will be the portfolio manager of the Trust. The Portfolio Manager will provide portfolio advisory and portfolio management services to the Trust with respect to the Portfolio. The Portfolio Manager is registered under the Act in the categories of limited market dealer, investment counsel, portfolio manager and commodity trading manager.
6. The Trust's investment objectives are to:
 - (i) provide holders of Units with high monthly cash distributions; and
 - (ii) preserve and enhance the value of the Portfolio.
7. The net cash proceeds of the Offering, together with borrowings under the Trust's loan facility, will be invested in an actively managed diversified portfolio of securities, consisting primarily of securities of Income Trusts and Common Shares.
8. To generate additional returns above the distributions and dividends received from the Portfolio, the Trust will, from time to time, write covered call options in respect of individual securities held in the Portfolio in a manner consistent with the Investment Objectives of the Trust. As call options will be written only in respect of equity securities that are in the Portfolio and the investment criteria of the Trust will prohibit the sale of equity securities subject to an outstanding option, the call options will be "covered" at all times.
9. The purchasers of OTC Options written by the Trust will generally be major Canadian financial institutions and all purchasers of such OTC Options will be persons or entities described in Schedule A to this ruling.
10. The Trust may, from time to time, hold a portion of the Portfolio in "cash equivalents" (as that term is defined in the Preliminary Prospectus). The Trust may also, from time to time, utilize such cash equivalents to provide cover in respect of the writing of cash covered put options, which is intended to generate additional returns and to reduce the net cost of acquiring the securities subject to the put options. Such cash covered put options will only be written in respect of securities in which the Trust is permitted to invest and where the Trust maintains cash equivalents in an amount

- at least equal to the aggregate strike price of all securities underlying the outstanding put options which it has written. In this regard, the put options will be "cash covered" at all times.
11. The Trust has disclosed in its prospectus that the Trust intends to write OTC Options.
12. The writing of OTC Options by the Trust will be managed by the Portfolio Manager in a manner consistent with the Investment Objectives of the Trust. The composition of the Portfolio, the securities which are subject to call options and put options and the terms of such options will vary, from time to time, based upon the Portfolio Manager's assessment of market conditions.
13. The writing of OTC Options by the Trust will only be used for the purpose of seeking to achieve the Trust's Investment Objectives and will not be done with the intent to raise new capital.
- (iii) underlying interest exceeds the strike price of the option, or
a combination of (i) and (ii) above.
- November 23, 2004.
- "Paul M. Moore" "David L. Knight"

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the writing of OTC Options by the Trust, as contemplated by this ruling, shall not be subject to sections 25 and 53 of the Act, provided that:

- (a) the portfolio adviser advising the Trust with respect to such activities is registered as an adviser under the Act and meets the proficiency requirements in Ontario for advising with respect to options,
- (b) each purchaser of an OTC Option written by the Trust is a person or entity described in Schedule A to this ruling;
- (c) a receipt for the Preliminary Prospectus has been issued by the Director under the Act; and
- (d) The Trust will only write an over-the-counter call option if the Trust holds:
 - (i) an equivalent quantity of the underlying interest of the option, or
 - (ii) a right or obligation, exercisable at any time that the option is exercisable, to acquire an equivalent quantity of the underlying interest of the option, and cash cover that, together with margin on account for the position, is not less than the amount, if any, by which the strike price of the right or obligation to acquire the

SCHEDULE A

QUALIFIED PARTIES

Interpretation

(1) The terms "subsidiary" and "holding body corporate" used in paragraphs (w), (x) and (y) of subsection (3) of this Appendix have the same meaning as they have in the *Business Corporations Act* (Ontario).

(2) All requirements contained in this Appendix that are based on the amounts shown on the balance sheet of an entity apply to the consolidated balance sheet of the entity.

Qualified Parties Acting as Principal

(3) The following are qualified parties for all OTC derivatives transactions, if acting as principal:

Banks

(a) A bank listed in Schedule I, II or III to the *Bank Act* (Canada).

(b) The Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada).

(c) A bank subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the bank has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency.

Credit Unions and Caisses Populaires

(d) A credit union central, federation of caisses populaires, credit union or regional caisse populaire, located, in each case, in Canada.

Loan and Trust Companies

(e) A loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other province or territory of Canada.

(f) A loan company or trust company subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking

and supervisory rules set out in the Basel Accord, if the loan company or trust company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency.

Insurance Companies

(g) An insurance company licensed to do business in Canada or a province or territory of Canada.

(h) An insurance company subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the insurance company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency.

Sophisticated Entities

(i) A person or company that, together with its affiliates

(i) has entered into one or more transactions involving OTC derivatives with counterparties that are not its affiliates, if

(A) the transactions had a total gross dollar value of or equivalent to at least \$1 billion in notional principal amount; and

(B) any of the contracts relating to one of these transactions was outstanding on any day during the previous 15-month period, or

(ii) had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more transactions involving OTC derivatives on any day during the previous 15-month period.

Individuals

(j) An individual who, either alone or jointly with the individual's spouse, has a

net worth of at least \$5 million, or its equivalent in another currency, excluding the value of his or her principal residence.

Governments/Agencies

(k) Her Majesty in right of Canada or any province or territory of Canada and each crown corporation, instrumentality and agency of a Canadian federal, provincial or territorial government.

(l) A national government of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules of the Basel Accord, and each instrumentality and agency of that government or corporation wholly-owned by that government.

Municipalities

(m) Any Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city.

Corporations and other Entities

(n) A company, partnership, unincorporated association or organization or trust, other than an entity referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h), with total revenue or assets, in excess of \$25 million or its equivalent in another currency, as shown on its last financial statement, to be audited only if otherwise required.

Pension Plan or Fund

(o) A pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission, if the pension fund has total net assets, as shown on its last audited balance sheet, in excess of \$25 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included.

Mutual Funds and Investment Funds

(p) A mutual fund or non-redeemable investment fund if each investor in the fund is a qualified party.

(q) A mutual fund that distributes securities in Ontario, if the portfolio manager of the fund is registered as an adviser, other than a securities adviser,

under the Act or securities legislation elsewhere in Canada.

(r) A non-redeemable investment fund that distributes its securities in Ontario if the portfolio manager is registered as an adviser, other than a securities adviser, under the Act or securities legislation elsewhere in Canada.

Brokers/Investment Dealers

(s) A person or company registered under the Act or securities legislation elsewhere in Canada as a broker or an investment dealer or both.

(t) A person or company registered under the Act as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency.

Futures Commission Merchants

(u) A person or company registered under the CFA as a dealer in the category of futures commission merchant, or in an equivalent capacity elsewhere in Canada.

Charities

(v) A registered charity under the *Income Tax Act* (Canada) with assets not used directly in charitable activities or administration, as shown on its last audited balance sheet, of at least \$5 million or its equivalent in another currency.

Affiliates

(w) A wholly-owned subsidiary of any of the organizations described in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (n), (o), (s), (t) or (u).

(x) A holding body corporate of which any of the organizations described in paragraph (w) is a wholly-owned subsidiary.

(y) A wholly-owned subsidiary of a holding body corporate described in paragraph (x).

(z) A firm, partnership, joint venture or other form of unincorporated association in which one or more of the organizations described in paragraph (w), (x) or (y)

have a direct or indirect controlling interest.

Guaranteed Party

(aa) A party whose obligations in respect of the OTC derivatives transaction for which the determination is made is fully guaranteed by another qualified party.

Qualified Party Not Acting as Principal

(4) The following are qualified parties, in respect of all OTC derivative transactions:

Managed Accounts

1. Accounts of a person, company, pension fund or pooled fund trust that are fully managed by a portfolio manager or financial intermediary referred to in paragraphs (a), (d), (e), (g), (s), (t), (u) or (w) of subsection (3) or a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust under section 148 of the Regulation.

Subsequent Failure to Qualify

(5) A party is a qualified party for the purpose of any OTC derivatives transaction if it, he or she is a qualified party at the time it, he or she enters into the transaction.

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Philip Services Corp. et al.

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

AND

IN THE MATTER OF
PHILIP SERVICES CORP., ALLEN FRACASSI,
PHILIP FRACASSI, MARVIN BOUGHTON,
GRAHAM HOEY, COLIN SOULE,
ROBERT WAXMAN AND JOHN WOODCROFT

DECISION AND REASONS
FOR
MOTION TO DISCLOSE BROUGHT BY STAFF

Hearing: November 10 and 11, 2004

Panel: Paul M. Moore, Q.C. Vice Chair of the Commission
(Chair of the Panel)
Robert W. Davis Commissioner
Suresh Thakrar Commissioner

Counsel: Karen Manarin For the Applicant,
Judy Cotte Counsel for Staff of the
Ontario Securities Commission

Bradley M. Davis For the Responder to the motion,
Erin Michael O'Toole Counsel for the Receiver of Philip
Services Corp.

I. The Proceeding

[1] This is a motion brought on consent, and in camera, by staff of the Commission for an order authorizing staff to make disclosure to the other respondents of certain documents for the hearing of the merits in this matter pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the Act). Philip Services Corp. by its receiver claims privilege over the documents and is the responder to the motion. The documents in question are:

Document 1: (DT901965 to DT901978) Letter from Brice Voran, Shearman & Sterling to John Warren, Borden & Elliot

Document 2: (DT901955 to DT901958) Borden & Elliot letter to Colin Soule, Senior Vice-President, General Counsel and Corporate Secretary, Philip Services Corp.

Document 3: (DT901960) Letter from Brice Voran, Shearman & Sterling, to John Warren, Borden & Elliot

Document 4: (DT901961 to DT901964) Internal Shearman & Sterling memorandum from Nancy Bertrand to Brice Voran and Richard Price re: disclosure requirements

Document 5: (DT901959) Letter from Paul Mingay, Borden & Elliot, to Colin Soule, Philip Services Corp.

Document 6: (DT300184 to DT300188) Colin Soule's handwritten notes from the audit committee meeting of Philip Services Corp. held on April 23, 1998

Document 7: (DT900559 to DT900564) Fax memorandum to Colin Soule, Philip Environmental Inc from Christopher Morgan of Skadden, Arps, Slate, Meagher and Flom LLP re: Letter to SEC relating to Pro Formas

Document 8: (DT900553 to DT900555) Fax memorandum to Marvin Boughton of Philip Environmental Inc from Christopher Morgan of Skadden, Arps, Slate, Meagher and Flom LLP re: financial statement for inclusion in forms F-4

Document 9: Connie Caisse's handwritten notes of audit committee meeting of Philip Services Corp held on January 19, 1998

Document 10: (DT901813 to DT901819) Letter to Colin Soule re: special matter from David R. Byers of Stikeman Elliott LLP

[2] During the course of submissions, documents 1 to 5 were referred to collectively as the "Legal Opinions". Documents 7 and 8 were referred to as the "Skadden Letters". All these documents constitute correspondence between Philip and its legal counsel on various issues including Philip's legal disclosure obligations in the United States or Ontario.

[3] Document 6 was referred to as the "Soule Notes" and document 9 was referred to as the "Caisse Notes". The Caisse Notes are the handwritten notes of Connie Caisse, a director and Vice President of Corporate Accounting and controller of Philip, who attended the January 19, 1998 meeting of Philip's audit committee. The Soule Notes are the handwritten notes of Colin Soule, Senior Vice President, General Counsel, and Corporate Secretary of Philip, who attended the April 23, 1998 meeting of Philip's audit committee.

[4] Document 10 was referred to as the "Stikeman Letter". This document consists of a cover letter dated March 3, 1998 from Philip's Canadian legal counsel at Stikeman Elliott, to Soule. It encloses a memorandum containing a series of potential questions from the press and analysts and suggested answers on various topics that were pertinent to Philip at that time.

[5] It is undisputed that all the documents in question are relevant to a determination of the merits of this matter.

[6] Philip asserts a claim of privilege over all the documents and staff concedes that a *prima facie* solicitor-client privilege attaches to all but the Stikeman Letter.

[7] On August 30, 2000 the notice of hearing under section 127 of the Act and staff's statement of allegations in this matter were issued. Staff quoted extensively from the Legal Opinions in the statement of allegations.

[8] Philip took issue with staff regarding disclosure to the other respondents of the documents in question on the basis of privilege. An order of the Commission was issued on June 27, 2003 mandating the bringing of this motion.

[9] Counsel for Philip requested that the decision and reason on the motion disguise the substance of the documents in question, if we found that privilege continued with respect to them. In view of our findings, we do not need to consider this request.

II. Background to the Proceeding

[10] Philip was a public company trading on the Toronto Stock Exchange. On November 6, 1997, Philip made a public offering of approximately 20 million common shares, 15 million of which were sold in the United States and 5 million of which were sold in Canada and internationally. The offering raised approximately US \$364 million. On November 6, 1997, Philip filed with the Commission a prospectus that included its audited financial statements for the years 1995 and 1996, and unaudited financial statements for the first nine months of 1997.

[11] Deloitte and Touche LLP was Philip's auditor from 1990 to December 1999. Deloitte consented to the inclusion of their unqualified audit opinions on the audited financial statements for 1995 and 1996 in the prospectus. Deloitte also provided a letter of comfort with respect to the unaudited interim financial statements of Philip contained in the prospectus.

[12] Throughout the relevant period, Stikeman Elliott was Canadian legal counsel to Philip with respect to this matter.

[13] In January 1998, two months after the public offering, Philip made the first of a series of announcements that negatively altered Philip's financial picture as disclosed in the prospectus filed with the Commission in November 1997. The matters disclosed significantly reduced Philip's earnings as set out in its 1995 and 1996 audited financial statements, and substantially altered its 1997 financial picture. Following these disclosures, the price of Philip shares dropped dramatically.

[14] In May 1998, staff commenced an investigation under section 11 of the Act into the adequacy of the disclosure on the part of Philip in relation to the public offering.

[15] Philip was subsequently de-listed on April 14, 2000.

[16] On April 17, 2000 Philip completed a financial reorganization under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36. As a result of the reorganization, Philip has been essentially rendered a non-operating entity with assets insufficient to satisfy its creditors. In connection with the reorganization, all the directors and officers of Philip resigned. Since then it has not had any officers or directors and acts through its receiver. A newly restructured company emerged from Chapter 11 of the U.S. Bankruptcy Code and the *Companies Creditors Arrangement Act* as a result of the reorganization. That new company is not a respondent in this proceeding.

[17] On July 15, 1998, staff served a summons on Deloitte, compelling it to produce copies of all correspondence with Philip between January 1, 1995 and June 1, 1998; audit working paper files for years ended 1995, 1996, 1997; and any interim draft and/or final reports and/or memos relating to the losses identified by Philip's 1997 financial statements and document briefs.

[18] In response to the summons, Deloitte assembled 324 files. It was agreed that rather than physically produce the files to staff, Deloitte would keep them in a separate secure location to which staff would have access. Staff attended at that location at various times, including on September 1 to 4, 1998 and August 30 to September 30, 1999, to review and copy documents. In addition, Deloitte also sent copies of numerous documents to staff on various occasions, including December 20, 1999.

[19] All of the documents in question, except the Caisse Notes, were received by staff from Deloitte in various tranches of disclosure.

[20] Staff also served a summons to produce documents on Philip on July 15, 1998. The Caisse Notes were received by staff from Philip on two separate occasions: August 28, 1998 and September 30, 1998.

Disclosure to Philip of Summons Served on Deloitte

[21] On November 25, 1998, counsel for Deloitte requested that staff obtain an order under section 17 of the Act to permit Deloitte to disclose to Philip that Deloitte was required to produce documents to staff.

[22] The Commission authorized Deloitte to disclose to Philip the existence of the summons in order to permit Philip to consider whether to assert privilege over certain documents in Deloitte's possession that were subject to the summons.

[23] Accordingly, counsel for Deloitte provided counsel for Philip with a list of documents over which Philip might want to claim privilege (the Deloitte Document List) that Deloitte intended to produce.

[24] Counsel for Philip reviewed all of the documents on the Deloitte Document List and advised Deloitte that Philip intended to claim privilege over the documents, save and except for one document which is irrelevant to this motion.

[25] Counsel for Philip provided staff with particulars of the documents listed on the Deloitte Document List.

Facts related to the Legal Opinions

[26] The Legal Opinions were created by Philip's legal advisors, Borden & Elliot in Ontario and Shearman & Sterling in the United States. Borden & Elliot and Shearman & Sterling prepared the Legal Opinions for the purposes of providing legal advice to Philip concerning Philip's disclosure obligations. The Legal Opinions were delivered to Philip prior to the issuance of the prospectus.

[27] On January 19, 1998 Philip invited members of Deloitte to attend a meeting of Philip's audit committee. At that meeting the issue of the alleged wrongdoings of Waxman, a former officer of Philip, was discussed. The discussion centered around whether the circumstances of Waxman's conduct amounted to a reportable incident that Philip was legally obligated to disclose. In the context of this discussion, Deloitte was subsequently provided with copies of the Legal Opinions.

[28] The Legal Opinions, together with other documents in questions, were produced to staff by Deloitte under a cover letter dated December 17, 1999 from Marshall King of Gibson, Dunn & Crutcher LLP, legal counsel to Deloitte in the United States, in which King stated that "we have determined that the documents produced herewith are not privileged. Thus, you should disregard the "Privileged & Confidential" stamp that appears on some of these documents."

[29] Deloitte did not request Philip's consent to release the Legal Opinions to staff. Deloitte did not disclose to counsel for Philip that it had produced the Legal Opinions or intended to produce them to staff. No officer or director of Philip produced copies of the Legal Opinions to staff.

Facts Related to the Soule Notes

[30] Relying on privilege, Philip produced the Soule Notes in a redacted form to staff on October 16, 2001. An identical redacted version was produced by Soule, himself, to staff on October 31, 2003. Philip only claims privilege with respect to the redacted portion of the notes.

[31] Staff obtained an unredacted copy of the Soule Notes when they attended Deloitte's secure location on two occasions: September 1 to 4, 1998 and August 30 to September 30, 1999.

[32] The Soule Notes were the only document of the documents in question that was listed on the Deloitte Document List. Deloitte did not disclose to Philip that it had the other documents in question in its possession or that it intended to disclose these documents to staff.

Facts Related to the Skadden Letters

[33] The Skadden Letters were produced to staff by Deloitte on April 6, 1999.

Facts Related to the Caisse Notes

[34] The Caisse Notes were produced to staff by Stikeman Elliott as part of the disclosure made by Philip on August 28, 1998 and September 30, 1998. They were the only document in question not provided by Deloitte to staff.

[35] The Caisse Notes memorialize Soule's overview given to Philip's audit committee regarding the Legal Opinions.

Facts Related to the Stikeman Letter

[36] The Stikeman Letter was produced to staff by Deloitte under a cover letter dated December 17, 1999 from Marshall King of Gibson, Dunn & Crutcher LLP, legal counsel to Deloitte in the United States.

III. The Position of the Parties

The Position of Staff

[37] Staff concedes that all of the documents in question, other than the Stikeman Letter, were *prima facie* privileged.

[38] Staff argues that Deloitte acted at all relevant times as auditors to Philip and not as agent for Philip with the purpose of communicating with and assisting Philip's legal counsel in providing legal advice to Philip or in assisting Philip in carrying out legal advice.

[39] Consequently, staff submits, when Philip made available to Deloitte the documents in question, other than the Caisse Notes, Philip waived any privilege over the documents.

[40] Staff argues that when Philip produced the Caisse Notes for staff, it waived any privilege over the Caisse Notes.

[41] Staff submits that when the Caisse Notes were provided to staff, an important element of the Legal Opinions was disclosed to staff and that as a result any privilege over the Legal Opinions was waived.

[42] Staff argues that Philip failed to take reasonable steps to protect and preserve any privilege in the documents in question and as a result the documents became available to others, including staff, and privilege over them was lost.

[43] Furthermore, staff argues, because of Philip's failure to take reasonable steps to protect the confidentiality of the Legal Opinions, knowledge of them had become widespread and, therefore, any privilege over them was lost.

[44] Staff submits that Philip and certain individual respondents have put the Legal Opinions in issue in the proceeding and, consequently, any privilege over them was waived.

[45] Finally, staff submits that the Stikeman Letter was not privileged. It conveyed business and public relations advice, but not legal advice.

The Position of Philip

[46] Philip argues that the Commission must determine whether the individual waiving privilege possessed the requisite authority to waive. Philip cites *Syncrude Canada Ltd. v. Canadian Bechtel Ltd.*, [1992] A.J. No. 1234 (Alta C.A.) for the authority

that only the possessor of the privilege, their legal counsel, or an agent acting with the express authority of the possessor of the privilege may validly waive.

[47] Philip argues that none of the individuals deposed in the investigation of Philip has given evidence that they relied on the Legal Opinions to justify a course of conduct prior to the issuance of the prospectus. In fact, Philip stresses, when asked about the substance of the Legal Opinions, they each refused to answer on the grounds of privilege.

[48] Philip argues that privilege in the documents in question was Philip's and not its officers' or directors' and only Philip could waive the privilege. If the Legal Opinions had been put in issue in the proceeding, this had been done by staff, or, without admission, by former officers and directors of Philip, but not by Philip or its receiver.

[49] Philip cites *Lloyds Bank Canada v. Canada Life Assurance Co.* (1991), 47 C.P.C. (2d) 157 (Ont. Gen. Div.) at page 168 for the authority that "certainly [privilege] will not be waived where it is the person who seeks the information that has raised the question of reliance."

[50] Philip argues that Deloitte acted in relation to the Legal Opinions as agent for Philip to communicate with and assist Philip's legal counsel in advising Philip as to its disclosure obligations. Therefore, the provision to Deloitte of the Legal Opinions and other documents in question, other than the Caisse Notes, did not waive privilege.

[51] Philip submits that it continually claimed privilege over the Legal Opinions and other documents and that such privilege was not lost when Deloitte improperly provided the documents to staff or when staff improperly incorporated portions of the Legal Opinions into the statement of allegations in this matter.

[52] Philip states that it is unfair for staff now to argue, based in part on its use of the Legal Opinions and other privileged documents, that it is too late for a claim of privilege to be recognized because the documents have had widespread disclosure.

[53] Philip cites Chapnik J. in *Tilley v. Hails* (1993), 12 O.R. (3d) 306 (Ont. Gen. Div.) at 310, for the authority that staff should not now be allowed to take unfair advantage of material that they had a hand in disseminating:

It is an established principle of law that a person who has obtained confidential information is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication: *Slavutych v. Barker*, [1976] 1 S.C.R. 254, 55 D.L.R. (3d) 224; *Schauenburg Industries Ltd. v. Borowski* (1979), 25 O.R. 737, 101 D.L.R. (3d) 701 (H.C.J.).

Furthermore, where such communications are disclosed either inadvertently or through improper conduct by a party, that party's solicitors are not entitled to make use of the documents in the litigation: *Guinness Peat Properties Ltd. v. Fitzroy Robinson Partnership*, [1987] 2 All E.R. 716, [1987] 1 W.L.R. 1027 (C.A.); *Bernardo v. Deathe*, [1991] O.J. No. 862 (Gen. Div.). The surreptitious delivery of confidential material cannot be sanctioned: *Ontario (Attorney General) v. Gowling & Henderson* (1984), 47 O.R.(2d) 449, 12 D.L.R. (4th) 623 (H.C.J.).

As noted in the *Royal Bank of Canada* case, *supra*, the ethical and proper course of action where lawyers come into possession of privileged documents which privilege may not have been waived, is to enquire whether the documents were intended to be disclosed and if necessary, to test the issue of privilege in court: see also *Amerace Ltd. v. Complin*, Ont. Gen. Div., unreported, released December 22, 1992.

It is clear that mere loss of physical custody does not terminate the privilege.

[54] Philip notes that all of the evidence relied upon by staff in support of the assertion that there has been an implied waiver of privilege was obtained by staff after Deloitte inappropriately disclosed the Legal Opinions to staff without Philip's consent.

[55] Philip maintains that there was no express waiver of privilege over the Legal Opinions because it took every measure to protect the privilege. Philip notes that in spite of the fact that Deloitte had requested staff obtain a section 17 order to permit Philip the opportunity to claim privilege over the documents in Deloitte's possession, Deloitte did not advise Philip it possessed and intended to disclose to staff the Legal Opinions, the Skadden Letters and the Stikeman Letter.

[56] Further, Philip maintains that staff cannot rely on the evidence it has obtained by compulsion pursuant to a summons and then assert that fairness dictates that they may rely on and disclose the Legal Opinions.

[57] Philip argues that as soon as the receiver for Philip realized that the Caisse Notes had been provided to staff by Philip's counsel, Philip asserted a claim for privilege.

[58] Philip argues that the Caisse Notes were provided to staff pursuant to the summons of July 15, 1998 and as such, disclosure was made by means of compulsion. Referring to the two prerequisites of voluntariness and knowledge for a valid waiver as set out in *S & K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (B.C.S.C.), Philip submits that since the notes were disclosed by means of compulsion, the requisite element of voluntariness is missing. As a result, Philip argues, there has been no waiver of the privilege that attached to the Caisse Notes.

[59] Philip concedes that several witnesses were deposed as to the content of the Caisse Notes and that counsel for Philip in attendance at the disposition permitted questions on the Caisse Notes. However, Philip maintains that such counsel constantly reaffirmed Philip's privilege claim.

[60] Philip denies that loss of privilege over the Caisse Notes would entail a loss of privilege over the Legal Opinions referred to therein. Philip argues that the reference to the Legal Opinions in the Caisse Notes cannot amount to a waiver of privilege with respect to the Legal Opinions because what is documented is only a reference to the Legal Opinions and nothing else. Philip argues that the mere reference to the fact that legal advice has been received does not waive the subject matter of the advice: *Lac La Ronge Indian Band v. Canada* [1996], 10 W.W.R. 625 (Sask. Q.B.) and *Talisman Energy Inc. v. Petro-Canada Inc.* (2000), 262 A.R. 344.

[61] In the case of the deposition of Connie Caisse, Philip argues that counsel for Philip permitted the Caisse Notes to be entered as an exhibit only because he was acting as Caisse's personal counsel and not on behalf of Philip in that instance. Philip reiterates that Caisse was never authorized to waive Philip's privilege.

[62] Philip maintains that the Skadden Letters constitute correspondence from Philip's American counsel relating to U.S. disclosure obligations along with attached draft documents. Philip asserts that it provided these documents to Deloitte with the express purpose of obtaining Deloitte's input in the context of discussions regarding their accuracy. Philip argues that the provision of these materials to the auditors with this specific intent does not constitute a waiver of privilege.

[63] Philip argues that the Stikeman Letter is privileged because even though it is presented as a series of possible questions and answers in plain English for dealing with the press, it draws upon the legal expertise of the counsel that composed the answers with the express purpose of avoiding further liability for the company. Philip maintains that the document was provided to Deloitte to ensure accuracy and to provide input. As such, Philip maintains that the provision of this document does not constitute waiver of privilege. Philip observes that Deloitte did not include this document on the Deloitte Document List and had no authority from Philip to disclose this document to staff. Philip submits that the Stikeman Letter was written by legal counsel in the continuum of the legal advice being provided by counsel relating to problems that the potential questions and answers dealt with. Therefore, the Stikeman Letter was privileged.

IV. Evidence

[64] The parties filed as exhibits six volumes of documents containing, among other things, the documents in question, minutes of the audit committee meeting of January 19, 1998, depositions of representatives of Deloitte and several of the officers and directors of Philip in 1997 and 1998, as well as an agreed statement of limited facts. No evidence was submitted as to how documents, other than the Legal Opinions, provided by Philip to Deloitte were provided.

[65] Counsel made certain admissions and concessions during the argument of the motion. We considered these and the evidence together in making our findings.

[66] We were provided with the transcripts of the depositions of numerous individuals that are involved in the complex matrix of facts in this matter. On February 24, 2000 Alan Kesler was deposed by the SEC. Kesler was one of the Deloitte representatives who was present at the January 19, 1998 audit committee meeting. He was specifically asked about the circumstances under which he came to learn about and receive the Legal Opinions from Philip:

Q. Did you have any discussions with anyone else at a later time about Philip disclosing or not these – that situation of Mr. Waxman back in September or earlier?

A. Yes.

Q. When did you have such a discussion?

A. On January the 19th at an audit committee meeting where Marvin Boughton was presenting to the audit committee and representatives of Deloitte & Touche were present. Marvin Boughton was presenting his understanding of the charge that was going to be required in the metals division, the issues that had been discovered in the process of conducting the book to physical and his understanding of what might have given rise to those matters.

In the course of that meeting we, being members of – representatives of – Deloitte & Touche, and I can't recall whether I raised it or Ron McNeill raised it, but we apprised the audit committee and members of management of what we believed their obligations, reporting obligations were relative to the discovery of a significant event, public disclosure of a significant event and our responsibilities when becoming aware of what we believed was a significant event in respect to how they reacted to the discovery of such circumstances. And we advised them that it was our – in our judgment, these matters indicated that they should immediately seek outside legal counsel, that they should consult with their SEC legal counsel as to what those reporting obligations were because we believed that was a legal interpretation as opposed to an accounting obligation, **but that we had specific responsibilities as auditors in regards to it** but that we wanted them to consult immediately with external legal counsel. [emphasis added]

In discussion which ensued from that advice we became aware that they had already sought legal counsel previously and it was made clear that that legal advice had been sought when the company first became aware of issues with Bob Waxman, again in that September time frame. Best of my recollection, that was the first knowledge I had of the existence of any such previous consultation with external legal counsel, and I requested copies of the consultation that had been made and the results of that consultation immediately and continued to press that I believed it was appropriate since there were now many new facts and circumstances which had come to the attention of management that at a minimum, that it was appropriate that they consult again. So following the meeting I was provided with copies of the responses which had been received from external legal counsel, which, I believe were dated September 30.

Q. I'd ask you to look at what has been previously marked as Exhibit No. 40 and ask you if this looks like copies of the correspondence with legal counsel you just discussed.

A. I believe these were the documents that I looked at. I can already see that my previous recollection as to dates was not correct, but I'm seeing I'm looking at documents that are dated October 24, October 23rd.

Q. 1997?

A. 1997 yes. October 21st – but I do believe these were the documents that I looked at at that time.

V. Findings and Analysis

Privilege and the Auditors

[67] Philip cites numerous cases for the proposition that solicitor-client privilege may be extended to communications by a client, or their solicitor, to the client's auditor or accountant, where the auditor or accountant is acting in an expert capacity for the purposes of seeking, receiving or implementing legal advice regarding the client's affairs. Philip notes that Canadian jurisprudence has recognized that the interplay between solicitors, their clients and the client's auditing or accounting advisors, in the context of examining ongoing legal issues, can be protected under the guise of solicitor-client privilege: *Re Sokolov* (1968), 70 D.L.R. (2d) 325 (Man. Q.B.); *Susan Hosery Ltd. v. Minister of National Revenue* [1969], 2 Ex.C.R. 27 at para 11 (Can. Ex. Ct.); *Long Tractor Inc. v. Canada (Deputy Attorney General)* (1998), 155 D.L.R. (4th) 747 at paras. 14 and 17 (Sask. Q.B.); *Belgravia Investments Ltd. v. R.* [2002], 3 C.T.C. 482 (Fed. T.D.) at para 40.; *R. v. Canadian Territorial Helicopters Inc.*, [2004] M.J. No. 241 (Q.B.)

[68] Where a party is claiming privilege and argues agency in the extension of that privilege, which is the claim of Philip in this case, that party bears the onus of proving agency, *General Accident Assurance Co. v. Chrusz* (1997), 34 O.R. (3d) 354 (Ont. Gen. Div.).

[69] We find as a fact that at the time that Deloitte learned of and requested the Legal Opinions, Deloitte was acting in their role as auditor and not in an expert capacity for the purposes of seeking, receiving or implementing legal advice for Philip. In fact, it is clear from the deposition of Kesler, that Kesler, acting in his role as auditor, believed it was in the company's best interests for Philip to continue to solicit legal advice. Kesler does not indicate that Deloitte was asked or offered to play any role whatsoever in furtherance of the solicitation of legal advice. Kesler makes it clear that it was Deloitte who asked for the Legal Opinions, not Philip who gave them with instructions to provide input for further solicitation.

[70] Deloitte was not consulted on the first round of legal advice. Deloitte only learned of the Legal Opinions well after the fact of non-disclosure in the prospectus. We do not accept Philip's position that Deloitte was involved in the "continuum" of the provision of legal advice since Deloitte only learned of the Legal Opinions after the issuance of the prospectus.

[71] Furthermore, we doubt that an auditor, in performing its audit review for the purpose of forming its own opinion on the financial statements of a company, could properly be expected to act as the agent of the company in respect of a matter under its review for the purposes of its audit opinion.

[72] In *Cineplex Odeon Corp. v. Canada (Minister of National Revenue, Taxation – M.N.R.)*, [1994] O.J. No. 628, (Ont. Gen. Div.), the tax division of the accounting firm in question was involved in the provision of information to the company's solicitors for the purpose of assisting the solicitors in rendering legal advice. At paragraphs 11 to 13, Haley J. explained:

[11] Peats as external auditor for the applicant corporation is governed by the guidelines set out in the handbook of the Canadian Institute of Chartered Accountants. The auditor is called upon to give an objective opinion of the fairness and accuracy of the financial statements prepared by the management of the corporation. Ms. Levine agreed that the auditor must maintain an independence from the management of the corporation in performing the audit. The auditor's report is prepared for the shareholders of the corporation as opposed to the management.

[12] If such an audit were conducted by another firm of chartered accountants there would be no question that they would be third parties in relation to the corporation and disclosures to those auditors would constitute waiver of privilege subject to certain limited exceptions which I will discuss later. Is the function of the audit by the same accounting firm sufficiently different from that of the tax team in the same firm, acting as agent for the client, that the audit team must be notionally treated as a third party for consideration of waiver of privilege?

[13] In my view the answer is yes. If the tax team provided advice to the client or to its solicitor that advice would not be privileged. It is only in the very limited situation where the tax team provides information to the solicitor for the purpose of the client's receiving legal advice that the privilege can be maintained. This is not the creation of an accountant-client privilege but the acknowledgement of an extension of solicitor-client privilege through the principles of agency. If advice given by the tax team, which cannot be protected by the agency because it is not given for the purpose of obtaining legal advice, turns up in the auditor's file it is clearly not privileged.

[73] In *U.S. v. Arthur Young & Co.* 84-1 USTC 83,670 (U.S.S.C.) at page 83,765, the U.S. Supreme Court stated:

Nor do we find persuasive the argument that a work-product immunity for accountant's tax accrual workpapers is a fitting analogue to the attorney work-product doctrine established in *Hickman v. Taylor*, 329 U.S. 495 (1947). The *Hickman* work-product doctrine was founded upon the private attorney's role as the client's confidential advisor and advocate, a loyal representative whose duty it is to present the client's case in the most favourable possible light. An independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. To insulate from disclosure a certified public accountant's interpretation of the client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations.

[74] It is evident from the minutes of the meeting that the purpose of Philip's audit committee meeting of January 19, 1998 was to deal with matters relating to the audit. The representatives of Deloitte invited to the meeting were from Deloitte's audit team. The role played by Deloitte, from giving comfort on the financial disclosure in the prospectus, including comfort on the unaudited financial statements, to the clarification of the Waxman situation and Philip's financial disclosure at and following the two audit committee meetings, and in reviewing the documents in question provided to Deloitte was in performance of its ongoing duties and obligations as auditors of Philip.

[75] We find that the representatives of Deloitte who attended the audit committee meetings of January 19, 1998 and April 23, 1998 were present in their capacity as part of the audit team of Deloitte and that Philip provided the documents in question, other than the Caisse Notes, to Deloitte in their capacity as auditors to assist Deloitte in performing their audit of the financial statements of Philip. Accordingly, Deloitte was a third party to Philip and not solely the agent of Philip with the sole purpose of communicating with and assisting Philip's legal representatives.

[76] Therefore, privilege did not attach to information shared or arising at the two audit committee meetings in the presence of Deloitte. The Caisse Notes and the Soule Notes memorialized what happened at the meetings. Such documents were never privileged.

[77] The legal opinions were furnished to Deloitte on the instruction of the chair of the audit committee. They were not furnished subject to any instruction not to use them for any purpose other than to assist the company's legal counsel in providing legal advice to the company. We find that Philip's decision to provide the Legal Opinions to Deloitte was informed and voluntary.

[78] We also find that the disclosure concerning the Legal Opinions at the audit committee meeting of January 19, 1998 at which Deloitte was present, and in the Caisse Notes constituted a waiver of privilege over the Legal Opinions. The disclosure went to the purported substance of the Legal Opinions. The Caisse Notes provide with reference to the Legal Opinions: "they have talked to AF + been told that legal advice had indicated not necessary to disclose." Therefore, in fact, privilege over the Legal Opinions was waived even before they were provided, physically, to Deloitte.

[79] Once the essence, or a significant portion, of a privileged document is disclosed, the privilege that would apply to the whole document is waived. If this were not the case, a party could engage in selective and self-serving disclosure with respect to a particular document. See *Leadbeater v. Ontario*, [2004] O.J. No. 1228 (O.S.C) at paragraphs 56 and 68.

Protecting Privilege

[80] The Legal Opinions were not conveyed to Deloitte with the accompanying caveat of privilege that one would expect from a party that asserts that privilege.

[81] If a party does not wish the provision of a document to a third party to result in a waiver of privilege over the document, it must take certain steps to protect the confidential nature of the document and strictly control its use.

[82] In *R. v. Dunbar and Logan* (1982), 68 C.C.C. (2d) 13 (Ont. C.A.) three co-accused were charged with murder. Notes were found in the jail cell of one of the co-accused, Bray, that had been prepared by his lawyer. When Bray took the stand, Dunbar, the co-accused who had found the notes in Bray's cell, petitioned to cross-examine Bray on the content of the notes. Counsel for Bray argued that the notes were privileged and the trial judge agreed. The Court of Appeal ruled otherwise and noted that even though the notes had been removed from the cell surreptitiously by Dunbar, the fact that Bray had not made every effort to protect the privilege resulted in a waiver of the privilege.

[83] In *Synchrude* there was evidence offered on the part of the plaintiff that the documents in question were handed over to a third party mediator, with strict guarantees that privilege would not be lost. This is a prerequisite to the protection of privilege.

[84] Unlike in *Synchrude*, we have no evidence that the documents in question that were provided to Deloitte were provided with an intention that privilege be retained. We do not know how documents, other than the Legal Opinions, that were provided to Deloitte were provided to Deloitte. In the absence of such evidence, we infer that Philip did not regard them as privileged, or if it did, it intended to waive privilege by allowing the documents to come into the possession of Deloitte to inform Deloitte of pertinent information, as was the case with the Legal Opinions, in performing its audit role.

[85] Philip was reorganized in April 2000 and since then has been without the benefit of instructions from corporate officers and directors. However, this did not relieve Philip of the task of properly protecting privilege.

[86] We conclude that Philip did not adequately protect its privilege, to the extent it had not otherwise been lost.

Widespread Knowledge

[87] Even if privilege with respect to the Legal Opinions had not otherwise been lost, Philip failed to take reasonable steps to preserve privilege and, as a consequence of Philip's action and inaction, knowledge of the Legal Opinions and their contents has become widespread. Therefore, any privilege not otherwise lost would have been lost as a consequence of the failure of Philip to take reasonable steps to prevent such knowledge from becoming widespread.

Production to Deloitte or Staff

[88] If privilege attached (and we find it did not with respect to the Caisse Notes and the Soule Notes) and had not been lost through disclosure to Deloitte at the meetings (which we find was the case with respect to the Legal Opinions), it would have been lost with respect to the documents in question, other than the Caisse Notes, when they were provided by Philip to Deloitte.

[89] Privilege, if any, with respect to the Caisse Notes (and other documents in question produced by Philip to staff in unredacted form) would also have been lost when they were produced by Philip to staff.

Compulsion

[90] There was no compulsion in the production of privileged documents. Section 13(2) of the Act allows for a scheme for the protection of the rights of those who are subject to a deposition or to the production of documents. Philip relied on section 13(2) on February 23, 1999 by providing staff with a list of documents that it had itemized and over which it claimed privilege. Staff has never challenged the claim of privilege over the reports of the independent advisors KPMG and Pricewaterhouse. The Caisse Notes were not listed in this letter and when they were provided to staff there was no listing or claim of privilege. Rather

the documents were simply handed over in their entirety with no indication that they were privileged communications. The belated claim for privilege by Philip's receiver could not undo any waiver.

[91] Further, several deponents were questioned on the contents of the Caisse Notes. Questions were asked and voluntarily answered on the contents of the Caisse Notes.

Stikeman Letter

[92] Philip bears the onus of proving privilege over the Stikeman Letter, on a balance of probabilities, as set out in *Solosky v. Canada* (1979), 50 C.C.C. (2d) 495 (S.C.C.).

[93] There are arguments for the position that the Stikeman Letter is not privileged. The memorandum accompanying the cover letter is not couched as a legal response or a legal opinion. Rather it sets out possible questions and answers on factual matters surrounding the discovery of the Waxman issue and is intended to assist Philip's staff in handling possible inquiries by the press or analysts. The document was not marked by Stikeman Elliott or Philip as privileged. The "Privileged and Confidential: Prepared at Request of Counsel" stamp on the face of the document was added by Deloitte, a fact which was admitted by counsel for Philip. The cover letter supplied by counsel contains the following suggestion which would imply that the contents were not intended to be privileged: "It would be a good idea to review the attached with your auditors and the forensic accountants if you decide to use any of the suggestions."

[94] However, the letter was written by Philip's outside legal counsel and it is directed to its in-house legal counsel.

[95] While the memorandum is framed as a series of questions and answers, the possible answers to some questions reveal that counsel was aware of Philip's exposure to liability on issues to which Philip was attempting to respond at that time. There was a question about when the company first discovered the inventory problem. The answer to this question could bear on the timing of regulatory disclosure in the United States and Canada. There is a question about the employment status of Waxman and other individuals in the company. The answer to these questions could impact on the consideration of employment law issues, especially with respect to Waxman. There are questions that use the term "fraud". The suggested answers to these questions suggest a tailored response with regards to potential criminal liability on the part of the company.

[96] Philip indicates it had retained Stikeman Elliott to assist it in dealing with numerous legal issues relating to the discovery of Waxman's conduct. The issues included disclosure obligations, the restatement of financial results, on-going regulatory investigations and potential civil litigation. Accordingly, Stikeman Elliott was engaged with Philip at the time in the "continuum of communication in which the solicitor tenders advice." *Samson Indian Nation and Band v. Canada*, [1995] 2 F.C. 762 (Fed. C.A.) at p. 769. The Stikeman Letter was provided in that continuum.

[97] With some lingering doubt, we conclude that the Stikeman Letter is *prima facie* privileged.

[98] The Stikeman Letter was found in the possession of Deloitte. There is no evidence surrounding the circumstances under which this document came into the possession of Deloitte. We conclude that Philip did not intend to preserve privilege (or if it did it took no steps to protect privilege) when it provided the Stikeman Letter to Deloitte and that privilege was waived voluntarily.

Putting the Legal Opinions in issue

[99] Privilege can be lost over a document where the one entitled to the privilege puts the document in issue. It is not enough for the one challenging the privilege to put the document in issue.

[100] With respect to the Legal Opinions, if Deloitte had been acting solely as agent of Philip to communicate with or assist Philip's legal counsel, and if privilege had not otherwise been lost when Philip disclosed the Legal Opinions to Deloitte, it would have been lost when the officers and directors of Philip at the relevant time (i.e. 1997 and 1998) put the Legal Opinions in issue in this proceeding.

[101] The Legal Opinions were put in issue by Philip when key officers and directors of Philip at the relevant time (i.e. 1997 and 1998) referred to and disputed the import of the Legal Opinions and when and by whom they were read and relied upon by Philip. (For example, on February 2, 2000, Hoey deposed: "Colin had indicated that whoever he was seeking legal counsel from, which as I indicated, was Stikeman Elliott and probably Skadden Arps as well from a U.S. perspective, that Skadden and Stikeman concurred with Deloitte's view as to reporting obligations.") These persons were the officers and directors who formed a significant part of the corporate mind of Philip at the time. The depositions putting the Legal Opinions in issue occurred when officers and directors were deposed by the SEC or by staff in connection with investigations into the conduct at issue in the section 127 hearing under the Act.

[102] The evidence revealed by various depositions goes well beyond a mere mention of the Legal Opinions. In fact, the collective state of mind of the directors of Philip with respect to the existence and content of the Legal Opinions will be a central issue for the hearing of the merits of this matter.

[103] Case law recognizes that when a party to a proceeding places its state of mind in issue and connects its state of mind with legal advice, privilege will be deemed to be waived with respect to that advice: *R. v. Shirose* (1999), 133 C.C.C. (3d) 257 (S.C.C.); *Rogers v. Bank of Montreal*, [1985] B.C.J. No. 2116 (B.C.C.A.); *Lloyds; Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)* (1997), 32 O.R. (3d) 575 (Ont. Gen. Div.).

[104] In *Bank Leu Ag v. Gaming Lottery Corp.*, [1999] O.J. No. 3949 (O.S.C.) Ground J. at paragraph 5 said:

[5] Privilege may be waived expressly or impliedly. In the case at bar it is not disputed that there was no express waiver of privilege by GLC. When determining whether privilege should be deemed to have been waived, the court must balance the interests of full disclosure for purposes of a fair trial against the preservation of solicitor client and litigation privilege. Fairness to a party facing a trial has become a guiding principle in Canadian law. Privilege will be deemed to have been waived where the interests of fairness and consistency so dictate or when a communication between a solicitor and client is legitimately brought into issue in an action. When a party places its state of mind in issue and has received legal advice to help form that state of mind, privilege will be deemed to be waived with respect to such legal advice.

Who can waive privilege

[105] The fact that some of the depositions in question were taken after Philip was reorganized and ceased to have officers or directors does not mean that Philip has not put the Legal Opinions in issue. The corporate mind of Philip, and the agents through whom it acted at the relevant time, and who obtained, and stated they relied on, the Legal Opinions, is in issue in this proceeding.

[106] A section 127 proceeding is not a civil action with pleadings. Staff and this panel do not know for certain what defence the respondents will make in the hearing on the merits. In determining whether the Legal Opinions have been put in issue by Philip in this proceeding, it is legitimate for us to look at the depositions of officers and directors at the relevant time that were made before staff and other regulators, such as the SEC, in connection with investigations of the conduct at issue in this matter, notwithstanding that the notice of hearing and statement of allegations were not issued until August 30, 2000.

VI. The Decision

[107] This panel rules that the documents in question are no longer privileged and may be disclosed to the respondents.

December 7, 2004.

“Paul M. Moore”

“Robert W. Davis”

“Suresh Thakrar”

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Revoke
Ampal-American Israel Corporation	15 Dec 04	24 Dec 04		
Bakbone Software Incorporated	08 Dec 04	20 Dec 04		
Doman Industries Limited	10 Dec 04	22 Dec 04		
DXStorm.com Inc.	24 Nov 04	06 Dec 04		08 Dec 04
Tengtu International Corp.	23 Nov 04	03 Dec 04	03 Dec 04	09 Dec 04
The Loyalist Insurance Group Limited	07 Dec 04	17 Dec 04		

4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
MDC Partners Inc.	19 Nov 04	02 Dec 04	02 Dec 04		
Straight Forward Marketing Corporation	18 Nov 04	01 Dec 04	01 Dec 04		
Star Navigation Systems Group Ltd.	18 Nov 04	01 Dec 04	01 Dec 04		
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Hollinger Canadian Newspapers, Limited Partnership	18 May 04	01 Jun 04	01 Jun 04		
Hollinger Inc.	18 May 04	01 Jun 04	01 Jun 04		
Hollinger International Inc.	18 May 04	01 Jun 04	01 Jun 04		
Nortel Networks Corporation	17 May 04	31 May 04	31 May 04		
Nortel Networks Limited	17 May 04	31 May 04	31 May 04		

4.3.1 Issuer CTO's Revoked

Company Name	Date of Revocation
Tengtu International Corporation	09 Dec 04

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

<u>Transaction Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Total Purchase Price (\$)</u>	<u>Number of Securities</u>
25-Nov-2004	Catherine Demeter	Acuity Pooled Canadian Equity Fund - Trust Units	150,000.00	6,469.00
29-Nov-2004	OneFund Diversified Plus Fund	Acuity Pooled Canadian Small Cap Fund - Trust Units	150,000.00	6,856.00
23-Nov-2004 to 29-Nov-2004	Beverley Baxter Kim W. Scrimgeour	Acuity Pooled Fixed Income Fund - Trust Units	173,000.00	11,908.00
26-Nov-2004	Denis Arsenault Jeanette Arsenault	Acuity Pooled Growth and Income Fund - Trust Units	130,112.90	11,510.00
23-Nov-2004 to 30-Nov-2004	38 Purchasers	Acuity Pooled High Income Fund - Trust Units	5,357,200.36	275,152.00
25-Nov-2004 to 30-Nov-2004	11 Purchasers	Acuity Pooled Income Trust Fund - Trust Units	1,457,670.97	818,072.00
23-Nov-2004	23 Purchasers	ACE/SECURITY Laminates Corporation - Common Share Purchase Warrant	1,260,376.00	2,908,558.00
30-Nov-2004	3 Purchasers	Alternum Capital - North American Value Hedge Fund - Limited Partnership Units	5,744.19	7.00
19-Nov-2004	20 Purchasers	Ascalade Communications Inc. - Units	10,216,000.00	10,216.00
06-Dec-2004	7 Purchasers	Ashton Mining of Canada Inc. - Common Shares	1,776,750.00	1,545,000.00
04-Nov-2004 to 17-Nov-2004	12 Purchasers	Au Martinique Inc. - Common Shares	88,500.00	590,000.00
30-Nov-2004	4 Purchasers	Bariview Investment Corporation - Common Shares	420,000.00	4,200.00
30-Nov-2004	Antonietta Quinto Kar Wil Holdings Inc.	Bariview Investment Corporation - Notes	306,000.00	2.00
19-Nov-2004	5 Purchasers	Beaufield Consolidated Resources Inc. - Units	200,000.00	1,000,000.00
30-Nov-2004	CWT Investments Limited	Calloway Real Estate Investment Trust - Rights	0.00	345,000.00

Notice of Exempt Financings

25-Nov-2004	11 Purchasers	CanAlaska Ventures Ltd. - Units	657,800.00	2,192,667.00
23-Nov-2004 to 26-Nov-2004	Centaur Bond Fund	Centaur Bond Fund - Units	47,224.61	4,653.00
23-Nov-2004 to 26-Nov-2004	Centaur International	Centaur International Fund - Units	726.69	92.00
23-Nov-2004 to 26-Nov-2004	Centaur Money Market	Centaur Money Market - Units	368,876.16	36,888.00
22-Nov-2004	Asda Holdings Ltd. Doug Forrester	Century Mining Corporation - Units	58,500.00	130,000.00
22-Nov-2004	Dennis Wing	Century Mining Corporation - Warrants	0.00	22,221.00
26-Nov-2004	Mindfirst Inc. Mossco Capital Inc.	Cervus Financial Group Inc. - Common Shares	250,000.00	250,000.00
30-Nov-2004	16 Purchasers	CGO&V Balanced Fund - Trust Units	333,866.27	26,288.00
03-Nov-2004 to 30-Nov-2004	3 Purchasers	CGO&V Cumberland Fund - Trust Units	112,544.69	8,463.00
30-Nov-2004	Bracebridge Investment Inc. Kim Merrill	CGO&V Enhanced Yield Fund - Trust Units	1,025,040.00	104,531.00
30-Nov-2004	6 Purchasers	CGO&V Hazelton Fund - Trust Units	542,679.72	41,781.00
24-Nov-2004	BNY Trust Company of Canada	CNH Capital Canada Receivables Trust - Notes	103,040,000.00	1.00
26-Nov-2004 to 29-Nov-2004	15 Purchasers	Connacher Oil and Gas Limited - Common Shares	9,700,745.85	20,422,623.00
26-Nov-2004 to 29-Nov-2004	12 Purchasers	Connacher Oil and Gas Limited - Flow-Through Shares	3,706,999.20	6,178,332.00
26-Nov-2004	13 Purchasers	Consolidated Spire Ventures Ltd. - Units	99,000.00	990,000.00
02-Dec-2004	10 Purchasers	Crew Energy Inc. - Common Shares	7,755,000.00	705,000.00
26-Nov-2004	James G. Clark	Crosshair Exploration & Mining Corp. - Units	5,000.00	20,000.00
19-Nov-2004	DALSA Inc	DALSA Digital Cinema Inc. - Common Shares	14,129,992.80	9,065,000.00
29-Nov-2004	22 Purchasers	Deer Creek Energy Limited - Common Shares	9,621,562.50	945,250.00
23-Nov-2004	43 Purchasers	Delphi Energy Corp. - Subscription Receipts	14,797,002.00	6,725,910.00

Notice of Exempt Financings

24-Nov-2004	140 Purchasers	Denison Mines Inc. - Units	7,067,792.00	764,086.00
24-Nov-2004	Lawrence Partners Fund	Denison Mines Inc. - Units	1,070,000.00	100,000.00
24-Nov-2004	Lawrence Partners Fund	Denison Mines Inc. - Units	80,250.00	7,500.00
24-Nov-2004	Lawrence Partners Fund JMM Trading LP	Denison Mines Inc. - Units	535,000.00	50,000.00
24-Nov-2004	Lawrence Partners Fund	Denison Mines Inc. - Units	160,500.00	15,000.00
24-Nov-2004	Royal Bank of Canada	Eden Energy Corp. - Common Shares	84,000.00	140,000.00
30-Nov-2004	Ontario Teacher's Pension Plan Luba Financial Inc.	Efficient Capital Corporation - Common Shares	2,064,871.79	223,267.00
01-Dec-2004	Kai Chi Lam	Esperanza Silver Corporation - Units	25,000.00	62,500.00
30-Nov-2004	19 Purchasers	Everton Resources Inc. - Units	1,738,450.00	4,967,000.00
30-Nov-2004	19 Purchasers	Everton Resources Inc. - Warrants	1,738,450.00	2,483,500.00
24-Nov-2004	Graham E. Saunders Annalee Swiak	Executive Development Corporation - Units	48,437.40	103,058.00
23-Nov-2004	National Bank Financial Inc.	Fuel Cell Technologies Corporation - Common Shares	92,000.00	200,000.00
04-Oct-2004	Polar Securities Inc.	General Mills, Inc. - Stock Option	678,000.00	15,000.00
29-Nov-2004	3 Purchasers	Genesis Worldwide Inc. - Convertible Preferred Shares	11,500,000.00	2,669,638.00
30-Nov-2004	3 Purchasers	Geocan Energy Inc. - Units	238,000.00	170,000.00
29-Nov-2004	Mavrix Resource Fund 2004 LP Dio Innamorato	Goldeye Explorations Limited - Common Share Purchase Warrant	160,000.00	1,600,000.00
03-Dec-2004	Banvil Limited	Goldnev Resources Inc. - Units	100,000.00	625,000.00
07-Dec-2004	15 Purchasers	Greencastle Resources Ltd. - Units	300,000.00	2,000,000.00
18-Nov-2004	22 Purchasers	Greystar Resources Ltd. - Units	8,156,701.40	2,631,194.00
23-Nov-2004	Ontario Teacher's Pension Plan Board	IIG Trade Finance Partners Ltd. - Subscription Receipts	150,000,000.00	150,000,000.00
30-Nov-2004	John Dunn	Internet Identity Presence Co. - Common Shares	10,000.00	1,000,000.00
19-Nov-2004	Derek Amell	Journey Unlimited Omni Brand Corporation - Units	3,500.00	17,500.00
06-Dec-2004	Dolly Varden Resources Inc.	Jumbo Development Corporation - Units	350,000.00	350,000.00
23-Nov-2004	Peter Bojtos	Kalimantan Gold Corporation Limited - Units	5,250.00	15,000.00

Notice of Exempt Financings

26-Nov-2004	26 Purchasers	Klondex Mines Ltd. - Units	4,818,548.20	2,536,078.00
30-Nov-2004	Gypsy Holdings Corp.	ListenUp Hearing Healthcare Canada Inc. - Common Shares	835,000.00	835,000.00
02-Dec-2004	3 Purchasers	Lumina Copper Corp. - Flow-Through Shares	1,543,300.00	253,000.00
30-Jun-2004	7 Purchasers	McElvaine Limited Partnership, The - Units	1,065,000.00	28,124.00
22-Nov-2004	Steve Brunelle Carol Brunelle	Messina Minerals Inc. - Units	127,500.00	850,000.00
21-Oct-2004 to 25-Nov-2004	43 Purchasers	New Hudson Television Corp. - Shares	92,100.00	30,700.00
26-Nov-2004 to 01-Dec-2004	14 Purchasers	Noront Resources Ltd. - Flow-Through Shares	774,926.10	1,408,957.00
26-Nov-2004 to 01-Dec-2004	7 Purchasers	Noront Resources Ltd. - Units	1,534,999.40	2,790,908.00
22-Nov-2004	3 Purchasers	NovaDag Technologies Inc. - Common Shares	338,920.46	1,122,539.00
22-Nov-2004	3 Purchasers	NovaDag Technologies Inc. - Preferred Shares	1,416,667.42	935,094.00
02-Dec-2004	19 Purchasers	Nuvo Network Management Inc. - Common Shares	5,532,820.00	32,546,000.00
02-Dec-2004	19 Purchasers	Nuvo Network Management Inc. - Warrants	5,532,820.00	23,295,500.00
03-Dec-2004	Ted Piekarz	O'Donnell Emerging Companies Fund - Units	25,000.00	3,335.00
26-Nov-2004	3 Purchasers	O'Donnell Emerging Companies Fund - Units	125,000.00	17,048.00
30-Nov-2004	14 Purchasers	OntZinc Corporation - Units	362,520.00	4,028,000.00
01-Dec-2004	Commonwealth Managed Invests	Owens- Brockway Glass Containers Inc. - Notes	750,000.00	750,000.00
26-Nov-2004	12 Purchasers	Petrolifera Petroleum Limited - Units	925,000.00	308,333.00
30-Nov-2004	5 Purchasers	Pinnacle Mines Ltd. - Units	622,200.00	1,037,000.00
13-Dec-2004	4 Purchasers	PortalPlayer, Inc - Shares	317,050.00	18,650.00
25-Nov-2004	6 Purchasers	Raydan Manufacturing Inc. - Common Shares	2,000,000.34	2,150,538.00
03-Dec-2004	6 Purchasers	Rupert Resources Ltd. - Flow-Through Shares	887,500.00	710,000.00

Notice of Exempt Financings

23-Nov-2004	9 Purchasers	Sawtooth International Resources Inc. - Common Shares	656,403.48	607,781.00
23-Nov-2004	24 Purchasers	Sawtooth International Resources Inc. - Flow-Through Shares	1,019,793.00	829,100.00
26-Nov-2004	Westwind Partners Inc.	Saxon Energy Services Inc. - Common Share Purchase Warrant	0.00	50,000.00
30-Jun-2004	1 Purchaser	Saxon Energy Services Inc. - Common Shares	793,566.14	393,253.00
13-Jul-2004	1 Purchaser	Saxon Energy Services Inc. - Units	384,061.25	167,712.00
29-Nov-2004	Mavrix Resource Fund 2004 II LP (214)	Slam Exploration Ltd. - Flow-Through Shares	500,000.00	1,000,000.00
19-Nov-2004	5 Purchasers	Southern Arc Minerals Inc. - Common Shares	293,499.97	3,913,333.00
26-Nov-2004	3 Purchasers	St Andrew Goldfields Ltd - Debentures	0.00	3,500,000.00
01-Dec-2004	OMBA Warranty Program	Stacey Investment Limited Partnership - Limited Partnership Units	25,030.46	805.00
30-Nov-2004	John B. O'Sullivan	Stacey RSP Fund - Trust Units	176,811.13	17,543.00
22-Nov-2004	7 Purchasers	Standard Energy Inc. - Common Shares	2,616,499.50	1,744,333.00
24-Nov-2004	Tanya Heintzman	Stonestreet Limited Partnership - Limited Partnership Units	40,783.04	38,618.00
15-Nov-2004 to 24-Nov-2004	13 Purchasers	Strikezone Minerals (Canada) Ltd. - Units	87,000.10	1,633,335.00
23-Nov-2004 to 30-Nov-2004	8 Purchasers	TimberRock Energy Corp. - Common Shares	3,175,000.00	3,175,000.00
24-Nov-2004	28 Purchasers	Triex Minerals Corporation - Flow-Through Shares	1,277,775.00	9,465,000.00
24-Nov-2004	9 Purchasers	Triex Minerals Corporation - Units	713,750.00	571,000.00
17-Nov-2004	Ian McKeller	Trivello Ventures Inc. - Units	12,000.00	100,000.00
24-Nov-2004	8 Purchasers	USA Video Interactive Corp. - Units	99,000.00	550,000.00
31-Oct-2004	Peter Hodson Fred Karp	Waterfall Vanilla L.P. - Limited Partnership Units	325,000.00	325.00
30-Nov-2004	5 Purchasers	Waterfall Vanilla L.P. - Limited Partnership Units	1,565,000.00	1,565.00
30-Sep-2004	Lynne Carole Barclay Mary A. Ambrose	Watertowne International Inc. - Units	50,000.00	250,000.00

Notice of Exempt Financings

22-Nov-2004	Sprott Securities	Whiting Petroleum Corporation - Shares	1,031,138.64	30,000.00
25-Nov-2004	5 Purchasers	Zymeta Corporation - Common Shares	88,000.00	880,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Acuity Focused Total Return Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 14, 2004

Offering Price and Description:

Maximum \$ * - * Units - Price: \$10.00 per Unit (Minimum Purchase: 100 Units)

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
First Associates Investments Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Raymond James Ltd.
Wellington West Capital Inc.
Richardson Partners Financial Limited

Promoter(s):

Acuity Funds Ltd.
Project #721495

Issuer Name:

Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

\$24,700,000.00 - 1,900,000 Units Price: \$13.00 per Unit

Underwriter(s) or Distributor(s):

Scotia Capital Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
TD Securities Inc.

Promoter(s):

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Project #720980

Issuer Name:

BONAVISTA ENERGY TRUST
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$281,765,000.00 - 10,900,000.00 - Subscription Receipts, each representing the right to receive one trust unit and \$135,000.00 - 6.75% Convertible Extendible Unsecured Subordinated Debentures Subscription Receipts

Underwriter(s) or Distributor(s):

TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Peters & Co. Limited
Raymond James Ltd.

Promoter(s):

-

Project #721523

Issuer Name:

Citadel Stable S-1 Income Fund
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated December 14, 2004
Mutual Reliance Review System Receipt dated December 14, 2004

Offering Price and Description:

Maximum \$ * - * Units Price: \$10.00 per Unit (Minimum Purchase: 100 Units)

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
First Associates Investments Inc.
McFarlane Gordon Inc.
Raymond James Ltd.
Wellington West Capital Inc.
Bieber Securities Inc.

Promoter(s):

Canadian Income Fund Group Inc.
Stable Yield Management Inc.

Project #721705

Issuer Name:

Covington Fund I Inc.

Type and Date:

Preliminary Prospectus dated December 7, 2004
Received on December 10, 2004

Offering Price and Description:

Class A Shares Continuous Offering Price: Net Asset Value per Class A Share Minimum Initial Subscription: \$500
Minimum Subsequent Subscription: \$25 For Pre Authorized Chequing Plan, Minimum Subscription: \$25

Underwriter(s) or Distributor(s):

-

Promoter(s):

COVINGTON CAPITAL CORPORATION,
Project #720862

Issuer Name:

Crystallex International Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 8, 2004
Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

US\$ * - * Units Price: US\$1000.00 per Unit

Underwriter(s) or Distributor(s):

Orion Securities Inc.
Sprott Securities Inc.
McFarlane Gordon Inc.
Haywood Securities Inc.
Loewen, Ondaatje McCutcheon Limited
Maison Placements Canada Inc.

Promoter(s):

-

Project #720251

Issuer Name:

Emera Incorporated
Principal Regulator - Nova Scotia

Type and Date:

Preliminary Short Form Shelf Prospectus dated November 29, 2004
Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

\$300,000,000.00 - Debt Securities (Unsecured)

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.

Promoter(s):

-

Project #717743

Issuer Name:

Fortune Minerals Limited.
Principal Regulator - Ontario

Type and Date:

Amended and Restated Preliminary Short Form Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

\$ * - * Common Shares Price: \$ * per Common Share

Underwriter(s) or Distributor(s):

Desjardins Securities Inc.
RBC Dominion Securities Inc.
Sprott Securities Inc.
Octagon Capital Corporation

Promoter(s):

-

Project #718278

Issuer Name:

K-Bro Linen Income Fund
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$* - * Units Price: \$10.00 per Unit

Underwriter(s) or Distributor(s):

TD Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation

Promoter(s):

K-Bro Holdings, L.P.

Project #721400

Issuer Name:

Northern Property Real Estate Investment Trust
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$35,017,500.00 - 2,175,000 Units Price: \$16.10 per Unit

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Capital Corporation

Promoter(s):

-

Project #721472

Issuer Name:

Nova Scotia Power Incorporated
Principal Regulator - Nova Scotia

Type and Date:

Preliminary Short Form Shelf Prospectus dated November 29, 2004
Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

\$400,000,000.00 - Debt Securities (Unsecured)

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.

Promoter(s):

-

Project #717157

Issuer Name:

Patheon Inc.
Principal Regulator - Ontario

Type and Date:

Amended and Restated Preliminary Short Form Prospectus dated December 8, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

\$* - * Common Shares Price: * per Common Share

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.

Paradigm Capital Inc.

Promoter(s):

-

Project #719818

Issuer Name:

Pengrowth Energy Trust
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$200,090,000.00 - 10,700,000 Class B Trust Units Price: \$18.70 per Class B Trust Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Dundee Securities Corporation
First Associates Investments Inc.
FirstEnergy Capital Corp.
Peters & Co. Limited

Promoter(s):

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Project #721461

Issuer Name:

Pine Cliff Energy Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

37,991,234 Rights to Subscribe for up to an aggregate of 37,991,234 Common Shares
Subscription Price: \$0.15 per Common Share (on the exercise of Rights) and 4,335,000 Common Shares at \$0.15 per Common Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

Novitas Energy Ltd.
Project #721029

Issuer Name:

Premier Value Income Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 14, 2004

Offering Price and Description:

Maximum: \$ * - * Units Price: \$10.00 per Unit Minimum
Purchase: 200 Units

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Berkshire Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Desjardins Securities Inc.
Richareson Partners Financial Limited
Wellington West Capital Inc.

Promoter(s):

Sentry Select Capital Corp.
Project #721667

Issuer Name:

RIOCAN REAL ESTATE INVESTMENT TRUST
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$130,875,000.00 - 7,500,000 Units Price: \$17.45 per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.

Promoter(s):

-

Project #721368

Issuer Name:

Spinrite Income Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

\$ * - * Units Price: \$10.00 per Unit

Underwriter(s) or Distributor(s):

Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
TD Securities Inc.

Promoter(s):

Spinrite GP Inc.
Project #720873

Issuer Name:

Summit Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$75,006,000.00 - 4,167,000 Units Price: \$18.00 per Unit

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Trilon Securities Corporation
Desjardins Securities Inc.

Promoter(s):

-

Project #721309

Issuer Name:

UTS Energy Corporation
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

\$35,150,000.00 - 37,000,000 Common Shares Price: \$0.95 per Common Share

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
Raymond James Ltd.
Sprott Securities Inc.

Promoter(s):

-

Project #720744

Issuer Name:

Versacold Income Fund
Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

\$30,000,000.00 - 6.25% Convertible Unsecured Subordinated Debentures Price: \$1,000.00 per Debentures

Underwriter(s) or Distributor(s):

TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Raymond James Ltd.

Promoter(s):

-

Project #720983

Issuer Name:

VisionSky Corporation
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

MINIMUM OFFERING: \$1,500,000 (3,333,334 Units);
MAXIMUM OFFERING: \$2,250,000 (5,000,000 Units)
PRICE: \$0.45 PER UNIT

Underwriter(s) or Distributor(s):

First Associates Investments Inc.

Promoter(s):

Benoit Cote
Ringo Chan
Project #721084

Issuer Name:

AIM Canada Income Class of AIM Canada Fund Inc.
Principal Regulator - Ontario

Type and Date:

Amendment #2 dated December 7, 2004 to Final Simplified Prospectuses and Annual Information Forms dated August 13, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

Mutual Fund Shares at Net Asset Value

Underwriter(s) or Distributor(s):

AIM Funds Management Inc.
AIM Funds Group Canada Inc.
AIM Funds Management Inc.

Promoter(s):

AIM Funds Management Inc.

Project #665039

Issuer Name:

Apollo Gold Corporation

Type and Date:

Final Short Form Prospectus dated December 8, 2004
Received on December 9, 2004

Offering Price and Description:

US\$10,500,999.50 - Up to 2,559,331 Common Shares and 1,535,600 Common Share Purchase Warrants to be issued on the exercise of 2,326,666 Special Warrants
US\$8,756,000 principal amount of Convertible Debentures and up to 5,778,860 Common Share Purchase Warrants to be issued on the conversion of US\$8,756,000 principal amount of Special Notes

Underwriter(s) or Distributor(s):

Regent Mercantile Bancorp Inc.

Promoter(s):

-

Project #711888

Issuer Name:

Arriscraft International Income Fund
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 7, 2004
Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Canaccord Capital Corporation

Promoter(s):

Emilyharper Corporation
Project #704052

Issuer Name:

Axis Investment Fund Inc.

Type and Date:

Final Prospectus dated December 13, 2004
Received on December 14, 2004

Offering Price and Description:

Class A Shares, Series 1
Class A Shares, Series 2

Underwriter(s) or Distributor(s):

-

Promoter(s):

Axis Capital Corporation
Project #703112

Issuer Name:

Baytex Energy Trust
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$42,240,000.00 - 3,300,000 Trust Units Price: \$12.80 per Trust Unit

Underwriter(s) or Distributor(s):

TD Securities Inc.
RBC Dominion Securities Inc.
Raymond James Ltd.
Canaccord Capital Corporation
National Bank Financial Inc.
Peters & Co. Limited

Promoter(s):

-

Project #719712

Issuer Name:

Borealis Retail Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

\$40,565,000.00 - 3,050,000 Units Price: \$13.30 per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
TD Securities Inc.
National Bank Financial Inc.

Promoter(s):

Scotia Capital Inc.
Desjardins Securities Inc.
Raymond James Ltd.

Promoter(s):

Borealis Real Estate Management Inc.
Project #718327

Issuer Name:

CI Explorer Fund
CI Explorer Sector Fund
Signature Canadian Small Cap Class
Synergy Canadian Style Management Class
Synergy Extreme Canadian Equity Fund
Synergy Tactical Asset Allocation Fund
Principal Regulator - Ontario

Type and Date:

Amendment #4 dated December 1, 2004 to Final Simplified Prospectuses and Annual Information Forms dated July 23, 2004

Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

Mutual Fund Units and Mutual Fund Shares at Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

CI Mutual Funds Inc.
Project #665295

Issuer Name:

Canada Mortgage Acceptance Corporation
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated December 8, 2004
Mutual Reliance Review System Receipt dated December 8, 2004

Offering Price and Description:

\$297,806,000.00 - (Approximate) Canada Mortgage Acceptance Corporation (Issuer) Mortgage Pass-Through Certi/Ecates, Series 2004-C2

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
TD Securities Inc.
CIBC World Markets Inc.

Promoter(s):

GMAC Residential Funding of Canada, Limited
Project #713955

Issuer Name:

Fortune Minerals Limited.
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 14, 2004

Offering Price and Description:

\$20,000,500.00 - 4,706,000 Common Shares Price: \$4.25 per Share

Underwriter(s) or Distributor(s):

Desjardins Securities Inc.
RBC Dominion Securities Inc.
Sprott Securities Inc.
Octagon Capital Corporation

Promoter(s):

-

Project #718278

Issuer Name:

Granby Industries Income Fund
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

\$73,756,440.00 - 7,375,644 Units - Price: \$10.00 per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.

Promoter(s):

Torquest Partners Value Fund, L.P.
Project #705040

Issuer Name:

Hubble Capital Inc.
Principal Regulator - Quebec

Type and Date:

Final CPC Prospectus dated December 7, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

Minimum Offering: \$800,000 / 2,000,000 common shares;
Maximum Offering: \$1,400,000 / 3,500,000 common shares
Price: \$0.40 per common share

Underwriter(s) or Distributor(s):

CTI Capital Inc.

Promoter(s):

-

Project #700764

Issuer Name:

ING Canada Inc.
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

\$ * - 34,880,000 Common Shares Price: \$ _ per Common Share

Underwriter(s) or Distributor(s):

Merrill Lynch Canada Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
UBS Securities Canada Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.

Promoter(s):

-

Project #701712

Issuer Name:

InterOil Corporation

Type and Date:

Final Short Form Shelf Prospectus dated December 13, 2004
Received on December 14, 2004

Offering Price and Description:

C\$165,000,000.00 - 4,500,000 Common Shares Price @\$36.60

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #706942

Issuer Name:

Manicouagan Minerals Inc.
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 10, 2004

**Mutual Reliance Review System Receipt dated
December 10, 2004**

Offering Price and Description:

(1) Flow-Through Common Share Offering - \$1,600,000.00
Minimum 6,400,000 Flow Through Common Shares
\$4,500,000.00 - Maximum 18,000,000 Flow Through
Common Shares \$0.25 Per Flow-Through Common Share;
(2) Unit Offering \$1,400,000.00 Minimum - 7,000,000 Units;
\$5,500,000.00 Maximum 27,500,000 Units \$0.20 Per Unit

Underwriter(s) or Distributor(s):

First Associates Investments Inc.
Desjardins Securities Inc.
Paradigm Capital Inc.

Promoter(s):

Jacques Beauregard
Vahan Kololian
Constantine Salamis
W. Peter Sears

Project #705990

Issuer Name:

NAV Energy Trust
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December
9, 2004

Offering Price and Description:

\$75,245,000.00 - 7,450,000 Subscription Receipts, each
representing the right to receive one trust unit

Underwriter(s) or Distributor(s):

National Bank Financial Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
FirstEnergy Capital Corp.

Promoter(s):

-

Project #718917

Issuer Name:

OccuLogix, Inc.
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 8, 2004
Mutual Reliance Review System Receipt dated December
9, 2004

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

Citigroup Global Markets Canada Inc.
Clarus Securities Inc.
Orion Securities Inc.
Octagon Capital Corporation

Promoter(s):

-

Project #685325

Issuer Name:

Railpower Technologies Corp.
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December
14, 2004

Offering Price and Description:

\$31,200,000.00 - 6,000,000 Common Shares Price: \$5.20
per Common Share

Underwriter(s) or Distributor(s):

National Bank Financial Inc.
Paradigm Capital Inc.

Promoter(s):

-

Project #719632

Issuer Name:

RBC Private EAFE Equity Pool
Principal Regulator - Ontario

Type and Date:

Amendment #2 dated December 3, 2004 to Final Simplified
Prospectus and Annual Information Form dated August 18,
2004

Mutual Reliance Review System Receipt dated December
9, 2004

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

RBC Asset Management Inc.
RBC Asset Management Inc.
The Royal Trust Company

Promoter(s):

RBC Asset Management Inc.

Project #667509

Issuer Name:

Ripple Lake Diamonds Inc.
Principal Regulator - British Columbia

Type and Date:

Amendment #2 dated December 8, 2004 to Final Prospectus dated September 24, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

Maximum Offering: \$1,600,000 - 4,000,000 Common Shares
Minimum Offering: \$1,200,000- 3,000,000 Common Shares
Price: \$0.40 per Common Share

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation

Promoter(s):

-

Project #682946

Issuer Name:

Scorpio Capital Corp.

Type and Date:

Final CPC Prospectus dated December 8, 2004
Received on December 10, 2004

Offering Price and Description:

(1) Minimum Offering: \$750,000 or 5,000,000 Common Shares; (2) Maximum Offering: \$1,900,000 or 12,666,667 Common Shares - Price: \$0.15 per Common Share

Underwriter(s) or Distributor(s):

Credifinance Securities Ltd.

Promoter(s):

-

Project #699006

Issuer Name:

Student Transportation of America Ltd.
Student Transportation of America ULC
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 13, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

C\$116,041,400.00 - 11,604,140 Income Participating SecuritiesTM - Price: C\$10.00 per IPS

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
GMP Securities Ltd.
Scotia Capital Inc.

Promoter(s):

Student Transportation of America, Inc.

Project #706129 & 706138

Issuer Name:

TD S&P/TSX Composite Index Fund
TD S&P/TSX Capped Composite Index Fund
TD Select Canadian Growth Index Fund
TD Select Canadian Value Index Fund
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 10, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

Trust Units

Underwriter(s) or Distributor(s):

TD Asset Management Inc.

Promoter(s):

-

Project #704336

Issuer Name:

TerraVest Income Fund
Principal Regulator - Alberta

Type and Date:

Final Prospectus dated December 9, 2004
Mutual Reliance Review System Receipt dated December 13, 2004

Offering Price and Description:

\$30,210,000.00 - 2,850,000 Units Price: \$10.60 Per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Clarus Securities Inc.
First Associates Investments Inc.
Harris Partners Limited

Promoter(s):

-

Project #711172

Issuer Name:

UBS Total Return Trust
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated December 7, 2004
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank of Financial Inc.
Dundee Securities Corporation
Canaccord Capital Corporation
Desjardins Securities Inc.
First Associates Investments Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Research Capital Corporation
Wellington West Capital

Promoter(s):

UBS Global Asset Management (Canada) Co.

Project #700226

Issuer Name:

Vigil Locating Systems Corporation
Principal Regulator - Quebec

Type and Date:

Final Prospectus dated December 7, 2004
Mutual Reliance Review System Receipt dated December 10, 2004

Offering Price and Description:

Minimum Offering: \$600,000.00 (600 Units); Maximum Offering: \$3,000,000.00 (3,000 Units) - Price: \$1,000 per Unit - Minimum initial subscription of two Units Units containing subordinated secured convertible debentures bearing interest at 10% for the two (2) first years and 12% for the third year, maturing three (3) years following their issuance as well as share purchase warrants

Underwriter(s) or Distributor(s):

iForum Securities Inc.

Promoter(s):

Michel Lesage

Project #707028

Issuer Name:

Wells Fargo Financial Canada Corporation
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated December 1, 2004 to Final Short Form Shelf Prospectus dated November 24, 2003
Mutual Reliance Review System Receipt dated December 9, 2004

Offering Price and Description:

The aggregated principal amount of Notes increased from \$1,500,000 to \$4,000,000

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.

Promoter(s):

-

Project #584833

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Fortress Capital Corp.	Limited Market Dealer	December 2, 2004
Change of Name	From: Delaware International Advisers Limited To: Mondrian Investment Partners Limited	International Adviser	September 27, 2004
Change of Name	From: Cantor Fitzgerald Partners To: BGC Securities	International Dealer	August 24, 2004

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Notice to Public - CIBC World Markets Inc., Scott Mortimer and Carl Irizawa

December 15, 2004

2004-

NOTICE TO PUBLIC

Subject: Market Regulation Services Inc. sets hearing date *In the Matter of CIBC World Markets Inc., Scott Mortimer and Carl Irizawa* to consider a Settlement Agreement.

Market Regulation Services Inc. ("RS") will hold a Hearing before a Panel of the Hearing Committee (the "Hearing Panel") of RS on December 21, 2004, commencing at 11:00 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

The purpose of the hearing is to consider a Settlement Agreement entered into between RS and CIBC World Markets Inc., Scott Mortimer and Carl Irizawa.

The settlement with CIBC World Markets Inc. relates to TSX Rule 2-401(5) and Rule 7.1(1) and Policy 7.1 of the Universal Market Integrity Rules ("UMIR"). These rules impose trading supervision obligations upon a firm. The settlement with Scott Mortimer and Carl Irizawa relates to Rule 7-106(1)(b) of the Rules of the TSX and UMIR Rule 2.1(1), conduct contrary to just and equitable principles of trade.

No details of the Settlement Agreement will be released prior to the December 21, 2004 hearing.

The Hearing Panel may accept or reject a Settlement Agreement pursuant to Part 3.4 of Policy 10.8 of the Universal Market Integrity Rules governing the practice and procedure of hearings. In the event the Settlement Agreement is accepted, the matter becomes final and there can be no appeal of the matter. In the event the Settlement Agreement is rejected, RS may proceed with a hearing of the matter before a differently constituted Hearing Panel.

The terms of the settlement, if accepted and approved by the Hearing Panel, and the disposition of this matter by the Hearing Panel will be published by RS as a Disciplinary Notice and in a news release.

Reference: Jane P. Ratchford
Chief Counsel, Eastern Region
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

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Chapter 25

Other Information

25.1.1 Securities

RELEASE FROM ESCROW

<u>COMPANY NAME</u>	<u>DATE</u>	<u>NO. AND TYPE OF SHARES</u>	<u>ADDITIONAL INFORMATION</u>
Brazilian Resources, Inc.	02/12/2004	3,860,000 common shares	Released to: Dow Titcomb Family Trust

25.2 Approvals

25.2.1 Horizon Funds Inc. - cl. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act. - application for approval to act as trustee.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., clause 213(3)(b).

Rules Cited

Ontario Securities Commission Approval 81-901, Approval of Trustees of Mutual Fund Trusts (1997), 20 OSCB 200.

December 10, 2004

Lang Michener LLP

Attention: Ted Bence

Dear Sirs/Mesdames:

Re: Horizons Funds Inc. (the "Applicant") for approval to act as trustee of Horizons Mondiale Enhanced Fund and Horizons Diversified Fund (collectively, the "Funds")

Further to the application dated July 27, 2004 (the "Application") filed on behalf of the Applicant and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the "Commission") in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Funds.

"Paul Moore"

"Susan Wolburgh Jenah"

25.3 Exemptions

25.3.1 Sionna Investment Managers Inc. et al. - s. 147 of the Act and s. 6.1 of OSC Rule 31-502

Headnote

Item F(1) of Appendix C of OSC Rule 13-502 Fees – exemption for pooled funds from paying an activity fee of \$5,500 in connection with an application brought under subsection 147 of the Act, provided an activity fee be paid on the basis that the application be treated as an application for other regulatory relief under item F(3) of Appendix C of the Rule.

Rules Cited

Ontario Securities Commission Rule 13-502, Fees, (2003) 26 OSCB 4339 and 27 OSCB 7747.

Securities Act, R.S.O. 1990, c. S.5 as am., ss.77(2) and ss.78(1).

National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), s.2.1(1)1.

BY FACSIMILE

December 3, 2004

McCarthy Tetrault LLP

Box 48, Suite 4700
Toronto Dominion Bank Tower
Toronto, Ontario
M5K 1E6

Attention: Sean D. Sadler

Dear Sirs and Mesdames:

**Re: Sionna Investment Managers Inc.
Sionna Canadian Equity Pooled Fund and
Sionna Balanced Pooled Fund
Application under Section 147 of the *Securities Act* (Ontario) and Section 6.1 of OSC Rule 13-502 - Fees ("Rule 13-502")
Application # 943/04**

By letter dated November 1, 2004 (the "Application"), you applied on behalf of Sionna Investment Managers Inc. ("Sionna"), the manager of Sionna Canadian Equity Pooled Fund and Sionna Balanced Pooled Fund (collectively, the "Existing Pooled Funds") and other pooled funds established and managed by Sionna from time to time (collectively with the Existing Pooled Funds, the "Pooled Funds"), to the Ontario Securities Commission (the "Commission") under section 147 of the *Securities Act* (Ontario) (the "Act") for relief from subsections 77(2) and 78(1) of the Act, which require every mutual fund in Ontario to file interim and comparative annual financial statements (the "Financial Statements") with the Commission.

By same date and cover, you additionally applied to the securities regulatory authority in Ontario (the "Decision Maker") on behalf of Sionna for an exemption, pursuant to

Other Information

subsection 6.1 of Rule 13-502, from the requirement to pay an activity fee of \$5,500 in connection with the Application in accordance with item F(1) of Appendix C of the Rule, on the condition that fees be paid on the basis that the Application be treated as an application for other regulatory relief under item F(3) of Appendix C of Rule 13-502, and from the requirement to pay an activity fee of \$1,500 in connection with the latter relief (the "Fee Exemption").

Item F of Appendix C of Rule 13-502 specifies the activity fee applicable for applications for discretionary relief. Item F(1) specifies that applications under section 147 of the Act pay an activity fee of \$5,500, whereas item F(3) specifies that applications for other regulatory relief pay an activity fee of \$1,500.

From our view of the Application and other information communicated to staff, we understand the relevant facts and representations to be as follows:

1. Sionna is a corporation existing under the laws of Canada and its registered office is in Toronto, Ontario. Sionna is, or will be, the manager of the Pooled Funds.
2. Sionna is registered under the Act as an advisor in the categories of investment counsel and portfolio manager, and as dealer in the category of limited market dealer.
3. The trustee of the Existing Pooled Funds is The Royal Trust Company.
4. The Pooled Funds are, or will be, open-ended mutual fund trusts created under the laws of Ontario and as such each Pooled Fund is, or will be, "a mutual fund in Ontario" as defined in section 1(1) of the Act.
5. Sections 77(2) and 78(1) of the Act require every mutual fund in Ontario to file interim and annual financial statements with the Commission.
6. Sections 89 and 92 of the Regulation to the Act (the "Regulation") require that the Financial Statements filed pursuant to subsections 77(2) and 78(1) of the Act include the statement of portfolio transactions (the "Statement"). A mutual fund may omit the Statement required by section 89 and 92 of the Regulation from its Financial Statements, if, among other conditions, a copy of the Statement is filed with the Commission prior to or concurrently with the filing of the Financial Statements. The Existing Pooled Funds and Sionna currently rely on section 94 of the Regulation.
7. Sionna manages the Existing Pooled Funds units of which are offered pursuant to statutory exemptive relief and as such are not reporting issuers in any of the provinces or territories in Canada.
8. Unitholders of the Existing Pooled Funds receive interim and annual financial statements for the Existing Pooled Funds they hold.
9. Pursuant to section 2.1(1) of National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), every issuer required to file Financial Statements with the Commission must make this filing through SEDAR, whereupon the filing will be made available to the general public through the SEDAR internet website.
10. In the Application, Sionna and the Existing Pooled Funds have requested under section 147 of the Act relief from filing the Financial Statements with the Commission. The activity fee associated with the Application is \$5,500 in accordance with item F(1) of Appendix C of Rule 13-502.
11. If Sionna and the Existing Pooled Funds had, as an alternative to the Application, sought an exemption from the requirement to file the Financial Statements via SEDAR, the activity fee for that application would be \$1,500 in accordance with item F(3) of Appendix C of Rule 13-502.
12. If the Existing Pooled Funds were reporting issuers seeking the same relief as requested in the Application, such relief could be sought under section 80 of the Act, rather than under section 147 of the Act, and the activity fee for that application would be \$1,500 in accordance with item F(3) of Appendix C of Rule 13-502.

Decision

This letter confirms that, based on the information provided in the Application, and the facts and representations above, and for the purposes described in the Application, the Decision Maker hereby exempts Sionna and the Pooled Funds from:

- i) paying an activity fee of \$5,500 in connection with the Application, provided that Sionna and the Pooled Funds pay an activity fee on the basis that the Application be treated as an application for other regulatory relief under item F(3) of Appendix C to Rule 13-502; and
- ii) paying an activity fee of \$1,500 in connection with the Fees Exemption application under item F(3) of Appendix C to Rule 13-502.

"R. Goldberg"

25.4 Consents

25.4.1 ATI Technologies Inc. - ss. 4(b) of Ont. Reg. 289

Headnote

Consent given to OBCA Corporation to continue under the CBCA Corporation's issued and outstanding common shares are currently listed for trading on the Toronto Stock Exchange and the NASDAQ National Market.

Statute Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., ss. 181, 185.

Regulation Cited

Ont. Regulation 289/00, made under the Business Corporations Act (Ontario), as am., s. 4(b).

**IN THE MATTER OF
ONT. REG. 289/00 (the Regulation) MADE UNDER THE
BUSINESS CORPORATIONS ACT,
R.S.O. 1990, c. B. 16, AS AMENDED (the OBCA)**

AND

**IN THE MATTER OF
ATI TECHNOLOGIES INC.**

**CONSENT
(Subsection 4(b) of the Regulation)**

UPON the application (the Application) of ATI Technologies Inc. (the Filer) to the Ontario Securities Commission (the Commission) requesting the consent of the Commission for the Filer to continue into another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Filer having represented to the Commission that:

1. The Filer was incorporated under the OBCA on August 20, 1985. Its head office is located in Markham, Ontario.
2. The Filer is an offering corporation under the provisions of the OBCA and a reporting issuer within the meaning of the *Securities Act* (Ontario) (the Act). The Filer is also a reporting issuer or the equivalent in each of the other provinces of Canada.
3. The Filer proposes to make an application (the Application for Continuance) to the Director under the OBCA, under section 181 of the OBCA, for authorization to continue under the *Canada Business Corporations Act* (the CBCA).

4. Under clause 4(b) of the Regulation, where a corporation is an offering corporation, an Application for Continuance must be accompanied by the consent of the Commission.

5. The authorized capital of the Filer consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series, of which, as of November 4, 2004, 250,525,973 common shares and no preferred shares were outstanding.

6. The Filer's issued and outstanding common shares are currently listed for trading on the Toronto Stock Exchange and the NASDAQ National Market.

7. The Filer is not in default of any requirements of the Act or the regulations or rules promulgated thereunder.

8. Other than the proceeding pending as a result of the Notice of Hearing and Statement of Allegations filed by staff of the Commission in January, 2003, in relation to the Filer and others, the Filer is not a party to any proceeding or, to the best of its knowledge, information or belief, any pending proceeding under the Act.

9. The Filer currently intends to continue to be a reporting issuer under the Act.

10. The Filer's continuance under the provisions of the CBCA is to be approved at an annual and special meeting of shareholders of the Filer to be held on January 25, 2005 (the Meeting).

11. Under section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights with respect to the Application for Continuance (the Dissent Rights).

12. The management information circular to be mailed to all shareholders in connection with the Meeting will advise the shareholders of the Filer of their Dissent Rights.

13. The continuance is proposed to be made in order for the Filer to conduct its business affairs in accordance with the provisions of the CBCA.

14. The material rights, duties and obligations of a corporation existing under the CBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Filer as a corporation under the CBCA.

November 30, 2004.

Other Information

“Paul M. Moore”

“Wendell S. Wigle”

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Index

Alto Conservative Portfolio			
MRRS Decision.....	9981		
Ampal-American Israel Corporation			
Cease Trading Orders	10015		
Argus Corporation Limited			
Cease Trading Orders	10015		
ATI Technologies Inc.			
Consent - ss. 4(b) of Ont. Reg. 289	10140		
Bakbone Software Incorporated			
Cease Trading Orders	10015		
BGC Securities			
Change of Name	10133		
Brazilian Resources, Inc.			
Release from Escrow	10137		
Cambridge Financial Services Group Inc.			
Decision - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502.....	9986		
Cantor Fitzgerald Partners			
Change of Name	10133		
Ciavarella, Michael			
Order - s. 127	9996		
CIBC World Markets Inc.			
SRO Notices and Disciplinary Proceedings	10135		
Citigroup Alternative Investments LLC			
Decision - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502.....	9991		
Companion Policy 45-106CP Prospectus and Registration Exemptions			
Notice.....	9952		
Request for Comments	Supp 2004-3		
Companion Policy 45-501CP Exempt Distributions			
Notice.....	9952		
Request for Comments	Supp 2004-3		
CSA News Release - Canadian Securities Regulators Release First Report on Enforcement			
News Release.....	9957		
CSA Report on Enforcement Activities From April 1 to September 30, 2004			
News Release.....	9959		
CSA Staff Notice 81-313, Status of Proposed National Instrument 81-106 Investment Fund Continuous Disclosure			
Notice	9953		
Current Proceedings Before The Ontario Securities Commission			
Notice	9951		
Delaware International Advisers Limited			
Change of Name	10133		
Doman Industries Limited			
Cease Trading Orders	10015		
DXStorm.com Inc.			
Cease Trading Orders	10015		
Firestar Capital Management Corp.			
Notice of Hearing.....	9955		
Order - s. 127	9996		
Firestar Investment Management Group			
Order - s. 127	9997		
Fortis Investment Management USA, Inc.			
Decision - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502	9985		
Fortress Capital Corp.			
New Registration	10133		
Hollinger Canadian Newspapers, Limited Partnership			
Cease Trading Orders.....	10015		
Hollinger Inc.			
Cease Trading Orders.....	10015		
Hollinger International Inc.			
Cease Trading Orders.....	10015		
Horizon Funds Inc.			
Approval - cl. 213(3)(b) of the LTCA.....	10138		
I.G. Investment Management, Ltd.			
MRRS Decision	9981		
Innova Lifesciences Corporation			
MRRS Decision	9989		
Irizawa, Carl			
SRO Notices and Disciplinary Proceedings.....	10135		
Is It Independent Research or Paid Promotion?			
News Release	9974		
Kamposse Financial Corp.			
Order - s. 127	9997		

Maxim Group LLC		OSC to Consider Settlement with AIC Limited Over Market Timing Activities	
Decision - ss. 6.1(1) of MI 31-102 and s. 6.1 of Rule 13-502	9988	News Release	9976
McCoy Bros. Inc.		OSC to Seek to Extend Directions and Freeze Orders in the Matter of Michael Ciavarella, Kamposse Financial Corp., Firestar Capital Management Corp. Firestar, Firestar Investment Management Group and Michael Mitton	
MRRS Decision	9979	News Release	9976
MDC Partners Inc.		Philip Services Corp.	
Cease Trading Orders	10015	Notice from the Office of the Secretary	9977
Mitton, Michael		Reasons for Decisions	10003
Order - s. 127	9995	Sionna Investment Managers Inc.	
Mondrian Investment Partners Limited		Order - s. 147	9994
Change of Name	10133	Exemption - s. 147 of the Act and s. 6.1 of OSC Rule 31-502	10138
Montrusco Capital Management Inc.		Star Navigation Systems Group Ltd.	
Ruling - ss. 74.1	9998	Cease Trading Orders	10015
Mortimer, Scott		Starboard Capital Markets LLC	
SRO Notices and Disciplinary Proceedings	10135	Decision - ss. 6.1 of MI 31-102 and s. 6.1 of OSC Rule 13-502	9992
National Instrument 45-106, Proposed, Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5		Straight Forward Marketing Corporation	
Notice	9952	Cease Trading Orders	10015
Request for Comments	Supp 2004-3	Tengtu International Corporation	
Nortel Networks Corporation		Cease Trading Orders	10015
Cease Trading Orders	10015	The Loyalist Insurance Group Limited	
Nortel Networks Limited		Cease Trading Orders	10015
Cease Trading Orders	10015		
Ontario Court of Appeal Dismisses Application in the Brian Costello Matter			
News Release	9956		
OSC Approves Settlement Agreement Concerning Sally Daub			
News Release	9975		
OSC Notice 45-706 OSC Small Business Advisory Committee			
Notice	9954		
OSC Rule 45-501, Form 45-501F1			
Notice	9952		
Request for Comments	Supp 2004-3		
OSC Rules that Documents in Philip Services Corp. Hearing Be Disclosed			
News Release	9977		
OSC to Consider Settlement Agreement Reached in the Matter of Mark Edward Valentine			
News Release	9975		
OSC to Consider Settlement Reached Between Staff and Sally Daub			
News Release	9956		