The Ontario Securities Commission

OSC Bulletin

July 22, 2005

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

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JULY 22, 2005

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: TBA
TBA	**Cornwall *et al*** s. 127 K. Manarin in attendance for Staff Panel: TBA
TBA	**Philip Services Corp. *et al*** s. 127 K. Manarin in attendance for Staff Panel: TBA
TBA	**Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig** s. 127 J. Waechter in attendance for Staff Panel: TBA
July 26, 2005 2:30 p.m.	**Jose L. Castenada** s.127 T. Hodgson in attendance for Staff Panel: PMM

August 29, 2005 to September 16, 2005
10:00 a.m.

In the matter of Allan Eizenga, Richard Jules Fangeat*, Michael Hersey*, Luke John McGee* and Robert Louis Rizzutto* **and In the matter of Michael Tibollo**

s.127

September 12, 2005

T. Pratt in attendance for Staff

2:30 p.m.

Panel: WSW/PKB/ST

* Fangeat settled June 21, 2004
* Hersey settled May 26, 2004
* McGee settled November 11, 2004
* Rizzutto settled August 17, 2004

September 16, 2005
10:00 a.m.

Portus Alternative Asset Management Inc., and Portus Asset Management, Inc.

s. 127

M. MacKewn in attendance for Staff

Panel: TBA

September 28 and 29, 2005
10:00 a.m.

Francis Jason Biller

s.127

J. Cotte in attendance for Staff

Panel: TBA

October 4, 2005
2:30 p.m.

Momentas Corporation, Howard Rash, Alexander Funt, Suzanne Morrison and Malcolm Rogers

s. 127 and 127.1

P. Foy in attendance for Staff

Panel: TBA

October 11, 2005
9:00 a.m.

Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson

s.127

J. Superina in attendance for Staff

Panel: TBA

November 2005

Andrew Currah, Colin Halanen, Joseph Damm, Nicholas Weir, Penny Currah, Warren Hawkins

s.127

J. Waechter in attendance for Staff

Panel: TBA

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 of Commission Approval of Amendments to CP 55-102CP to NI 55-102 System for Electronic Disclosure by Insiders (SEDI)

NOTICE OF COMMISSION APPROVAL OF AMENDMENTS TO COMPANION POLICY 55-102CP TO NATIONAL INSTRUMENT 55-102 SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)

On July 12, 2005, the Commission adopted amendments to Companion Policy 55-102CP to National Instrument 55-102 *System for Electronic Disclosure by Insiders* (the Policy). The amendments to the Policy will come into force in Ontario on August 20, 2005.

The amendments to the Policy are published in Chapter 5 of the Bulletin along with an explanatory notice of the amendments.

1.1.3 Notice of Commission Approval - Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

APPLICATION TO VARY THE RECOGNITION AND DESIGNATION OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

NOTICE OF APPROVAL

On July 12, 2005, the Commission issued an order (the "Recognition Order") pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (the "Act") varying and restating the current recognition and designation order of The Canadian Depository for Securities Limited ("CDS") as a clearing agency.

The Recognition Order has three components:

1. **Recognition and Designation Order with Terms and Conditions –** The Commission issued an order varying the current recognition and designation order with an attached Schedule "A" containing terms and conditions based on recognition criteria for clearing agencies.

2. **Rule Protocol Regarding the Review and Approval of CDS Rules by the OSC** – The protocol sets out the procedures for the submission of a rule by CDS and the review and approval of the rule by the Commission. The protocol is attached as Appendix "A" to the terms and conditions of the Recognition Order.

3. **Reporting Obligations** – Attached as Appendix "B" to the terms and conditions of the Recognition Order are reporting obligations in addition to the reporting obligations set out in the terms and conditions of the Recognition Order.

A copy of the Recognition Order is published in Chapter 2 of this bulletin.

The Commission published the CDS application for variation on April 8, 2005 at (2005) 28 OSCB 3481. Three commenters responded to the request for comments. CDS' summary of comments and responses is published in Chapter 13 of this bulletin.

1.1.4 Request for Comments - CSA Discussion Paper 23-403 Market Structure Developments and Trade-Through Obligations

REQUEST FOR COMMENTS

CSA DISCUSSION PAPER 23-403

MARKET STRUCTURE DEVELOPMENTS AND TRADE-THROUGH OBLIGATIONS

Introduction

The Canadian Securities Administrators (CSA) are publishing for comment in Chapter 6 of this Bulletin CSA Discussion Paper 23-403 *Market Structure Developments and Trade-Through Obligations*. The purpose of the discussion paper is to discuss evolving market developments and the consequential implications for our market, in particular the obligation to avoid trade-throughs.

The comment period will end on October 20, 2005. We note that we will be holding a public forum on October 14, 2005. Parties that would like to participate in the forum are invited to indicate in their comment letter to Discussion Paper 23-403 that they wish to appear. These comment letters must be filed by September 19, 2005.

We will take the feedback received through the consultation process into account in our assessment of what, if any, steps are appropriate.

RS Request for Comments – UMIR Amendments Regarding Trade-Through Obligations

On June 3, 2005, the Recognizing Regulators[1] of Market Regulation Services Inc. (RS) published RS's proposed amendments to the Universal Market Integrity Rules regarding trade-throughs.[2] A notice by the Recognizing Regulators postponing the end of the RS comment period was published with the RS proposal. We note here that the comment period for both the RS proposal and Discussion Paper 23-403 ends on October 20, 2005.

[1] British Columbia Securities Commission, the Alberta Securities Commission, the Manitoba Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers.

[2] Published at (2005), 28 OSCB 5064.

1.2 Notices of Hearing

1.2.1 Momentas Corporation et al. - ss. 127, 127.1

June 24, 2005

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

- AND -

IN THE MATTER OF
MOMENTAS CORPORATION, HOWARD RASH, ALEXANDER FUNT, SUZANNE MORRISON AND MALCOLM ROGERS

NOTICE OF HEARING
(Sections 127 and 127.1)

WHEREAS on the 9th day of June, 2005, the Ontario Securities Commission (the "Commission") ordered, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, C.s.5, as amended (the "*Act*"), that all trading by Momentas Corporation and its officers, directors, employees and/or agents in securities of Momentas shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 2 of subsection 127(1) of the *Act*, all trading in any securities by Rash, Funt and Morrison shall cease;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Momentas, Rash, Funt and Morrison;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 6 of subsection 127(1) of the *Act* that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

AND WHEREAS Momentas, Rash, Funt and Morrison consent to an extension of the Temporary Order until July 8, 2005.

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the *Act* at its offices on the 17th Floor, 20 Queen Street West, Toronto, Ontario, in the Large Hearing Room, commencing on the 4th day of October, 2005 at 2:30 p.m. or as soon thereafter as the hearing can be held, to consider whether it is in the public interest to make an order:

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest for the Commission to make an order:

(a) pursuant to paragraph 2 of subsection 127(1) that the Respondents cease trading in securities, permanently or for such time as the Commission may direct;

(b) pursuant to paragraph 3 of subsection 127(1) that any exemptions contained in Ontario securities law do not apply to the Respondents or any of them permanently, or for such period as specified by the Commission;

(c) pursuant to paragraph 7 of subsection 127(1) that Rash, Funt, Morrison and Rogers resign any positions they may hold as an officer or director of any issuer;

(d) pursuant to paragraph 8 of subsection 127(1) that Rash, Funt, Morrison and Rogers be prohibited from becoming or acting as a director or officer of any issuer;

(e) pursuant to paragraph 10 of subsection 127(1) that the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;

(f) pursuant to paragraph 9 of subsection 127(1) that each of the Respondents or any of them pay an administrative penalty for failure to comply with Ontario securities law;

(g) pursuant to paragraph 6 of subsection 127(1) that the Respondents be reprimanded;

(h) pursuant to section 127.1 that the Respondents pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission; and

(i) to make such other order as the Commission may deem appropriate.

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

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

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

"Christos Grivos"

Per: John Stevenson
A/Secretary to the Commission

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

- AND -

IN THE MATTER OF
MOMENTAS CORPORATION, HOWARD RASH, ALEXANDER FUNT, SUZANNE MORRISON AND MALCOLM ROGERS

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

The Respondents

1. Momentas Corporation ("Momentas") is a corporation incorporated pursuant to the laws of Ontario with its head office in Toronto. Momentas holds itself out as a professional trader of equities, currencies and options, primarily on the NASDAQ and international foreign exchange markets. Momentas is not registered in any capacity with the Ontario Securities Commission (the "Commission") nor is it a reporting issuer in Ontario.

2. Howard Rash ("Rash") and Alexander Funt ("Funt") are co-founders and promoters of Momentas. Since its incorporation, Rash and Funt have acted in a capacity similar to that of officers and directors of Momentas. Rash and Funt are the directing minds of Momentas.

3. Suzanne Morrison ("Morrison") is the President, Chief Financial Officer and a Director of Momentas.

4. Malcolm Rogers ("Rogers") is the Chief Executive Officer and a Director of Momentas.

5. Rash, Funt, Rogers and Morrison are not registered with the Commission in any capacity.

Market Intermediaries

6. Since approximately August 2003, Momentas, through its officers, directors, employees and/or agents, has been selling Momentas "Series A Secured Convertible Debentures" (the "Convertible Debentures") to residents of Ontario and elsewhere.

7. In selling the Convertible Debentures to Ontario residents, Momentas has purportedly relied upon an exemption for selling securities to accredited investors contained in OSC Rule 45-501.

8. Momentas has stated in its promotional materials that it intends to raise $10 million from the sale of the Convertible Debentures for its business.

9. To date, Momentas has raised approximately $6 million through the sale of the Convertible Debentures. Of this amount, approximately $2.9 million has been raised from the sale of Convertible Debentures to Ontario residents.

10. Through Momentas' stated enterprise as a "professional trader of equities" and through the sale of the Convertible Debentures, Momentas has been holding itself out as and has been engaging in the business of trading securities in Ontario. Accordingly, it has been acting as a market intermediary and is required to be registered pursuant to section 25 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*").

11. Rash, Funt, Morrison and Rogers have engaged in conduct which constitutes "trading" in securities without being registered in accordance with section 25(1)(a) of the *Act* by carrying out acts directly or indirectly in furtherance of trades of the Convertible Debentures.

12. In addition, Rash and Funt, acting in a similar capacity to officers and directors of Momentas, and Morrison and Rogers, as officers and directors of Momentas, have authorized, permitted or acquiesced in Momentas' conduct as described above.

Conduct Contrary to the Public Interest

13. The conduct of the Respondents contravened Ontario securities law and was contrary to the public interest.

14. Staff reserve the right to make such further and other allegations as Staff may submit and the Commission may permit.

DATED AT TORONTO this 24th day of June 2005

1.3 News Releases

1.3.1 Rankin Found Guilty on 10 Counts of Illegal Tipping

FOR IMMEDIATE RELEASE
July 15, 2005

RANKIN FOUND GUILTY ON 10 COUNTS OF ILLEGAL TIPPING

TORONTO – In provincial court in Toronto today, Andrew Rankin was found guilty on 10 charges of tipping, contrary to section 76(2) of the Ontario *Securities Act*. He was found not guilty of 10 charges of illegal insider trading.

The trial will continue at 9 am, September 9, 2005, in courtroom 111 at Old City Hall, to be traversed to Judge Khawly's court for sentencing at 10 am.

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 Norshield Receivership of RSM Richter Inc. Continued

FOR IMMEDIATE RELEASE
July 14, 2005

NORSHIELD RECEIVERSHIP OF RSM RICHTER INC. CONTINUED

TORONTO – Today, the Ontario Superior Court of Justice granted a motion brought by the Ontario Securities Commission for the continuation of the appointment of RSM Richter Inc. as receiver for Norshield Asset Management (Canada) Ltd. and several related companies, including Olympus United Funds Corporation. The receivership is continued until such time as Richter has completed its administration of the estate and applied to the Court for its discharge.

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 OSC Issues Order against Momentas Corporation

FOR IMMEDIATE RELEASE
July 19 2005

OSC ISSUES ORDER AGAINST MOMENTAS CORPORATION

Toronto – The Ontario Securities Commission (OSC) issued an Order on July 14, 2005 that all trading by Momentas Corporation (Momentas) shall cease and that exemptions contained in Ontario securities law shall not apply to Momentas until the earlier of the conclusion of the Hearing in this matter or the date upon which Momentas becomes registered as a Limited Market Dealer and its officers, directors and/or employees involved in the sale of securities to the public become registered in accordance with Ontario securities law. The OSC issued the Order on the basis that Momentas has been acting as a Market Intermediary.

The Order provides Momentas with two exceptions from the trading ban: (1) Momentas may trade securities beneficially owned by it through a registered dealer for the purpose of continuing to test and develop its automated equity trading system on the condition that reports of all such trades are delivered to Staff of the OSC within 5 days of each trade; and (2) Momentas may offset or eliminate open positions in foreign currency exchange contracts on the condition that Momentas shall provide to Staff weekly account status reports.

There is a current cease trade and exemption removal order dated July 8, 2005 in effect against Suzanne Morrison, Howard Rash and Alexander Funt (Individual Respondents) until the conclusion of the Hearing in this matter, with the exception that the Individual Respondents may trade in their own accounts through a registered dealer.

As previously announced, Staff allege that Momentas and the Individual Respondents have been acting as Market Intermediaries without being registered under Ontario securities law. Between August 2003 and May 2005, Momentas raised approximately $6 million through the sale of its Convertible Debentures. Of this amount, approximately $2.9 million was raised from the sale of Convertible Debentures to 97 Ontario residents purportedly pursuant to an exemption for selling securities to Accredited Investors set out in OSC Rule 45-501. The alleged conduct is contrary to Ontario securities law and contrary to the public interest.

A Notice of Hearing and Statement of Allegations were issued on June 24, 2005. A Hearing in this matter is currently scheduled to be heard on October 4, 2005 at 2:30 p.m. or as soon thereafter as the Hearing can be held.

Copies of the Notice of Hearing, the Statement of Allegations and related Orders of the OSC are made available on the OSC's 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)

1.4 Notices from the Office of the Secretary

1.4.1 Momentas Corporation et al. - ss. 127 and 127.1

FOR IMMEDIATE RELEASE
June 28, 2005

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

- AND -

IN THE MATTER OF
MOMENTAS CORPORATION, HOWARD RASH,
ALEXANDER FUNT, SUZANNE MORRISON
AND MALCOLM ROGERS
(Sections 127 and 127.1)

TORONTO – The Commission issued a Notice of Hearing with attached Statement of Allegations, in the above named matter, scheduling a hearing on October 4, 2005 at 2:30 p.m. or as soon thereafter as the hearing can be held.

A copy of the Notice of Hearing with Statement of Allegations 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)

1.4.2 Momentas Corporation et al. - ss. 127 and 127.1

FOR IMMEDIATE RELEASE
July 19, 2005

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

AND

IN THE MATTER OF
MOMENTAS CORPORATION, HOWARD RASH,
ALEXANDER FUNT, SUZANNE MORRISON
AND MALCOLM ROGERS
(Sections 127 and 127.1)

TORONTO – The Commission issued an Order in the above named matter at a hearing held on July 14, 2005.

A copy of the Order 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. CI Canadian Small Cap Fund et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Extension of distribution beyond lapse date for certain funds until the effective date of the mergers of the funds.

Applicable Statutory Provisions

Securities Act, R.S.O 1990, c. S.5, as am., s. 147.

July 15, 2005

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

AND

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

AND

IN THE MATTER OF
CI CANADIAN SMALL CAP FUND,
CI ASIAN DYNASTY FUND, BPI GLOBAL EQUITY
CORPORATE CLASS,
BPI INTERNATIONAL EQUITY FUND, BPI
INTERNATIONAL EQUITY RSP FUND,
BPI INTERNATIONAL EQUITY CORPORATE CLASS
(collectively, the CI Funds),

CLARICA PREMIER BOND FUND,CLARICA SUMMIT
DIVIDEND GROWTH FUND,
CLARICA CANADIAN BLUE CHIP FUND, CLARICA
CANADIAN DIVERSIFIED FUND,
CLARICA SUMMIT CANADIAN EQUITY FUND,
CLARICA SUMMIT GROWTH AND INCOME FUND,
CLARICA SUMMIT FOREIGN EQUITY FUND,
CLARICA CANADIAN EQUITY FUND, CLARICA
PREMIER INTERNATIONAL FUND AND
CLARICA US SMALL CAP FUND (collectively, the
Clarica Funds)

(the CI Funds and Clarica Funds, collectively, the Funds)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from CI Mutual Funds Inc. (CI), the manager of the Funds for a decision under the securities legislation of the Jurisdictions (the Legislation) for

- an exemption that the time limits pertaining to the distribution of securities under the simplified prospectus and annual information form dated July 23, 2004 of CI Mutual Funds Inc., as amended from time to time, (collectively, the CI Prospectus), and the simplified prospectus and annual information form dated July 15, 2004 of the Clarica Funds, as amended from time to time, (collectively, the Clarica Prospectus) be extended to permit the continued distribution of securities of the Funds until the Effective Date of the Mergers, which date shall be no later than August 8, 2005 (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 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. Each CI Fund currently distributes its securities in each of the Jurisdictions pursuant to the CI Prospectus that was prepared and filed in accordance with Canadian securities regulatory requirements. The earliest lapse date of the CI Prospectus under the Legislation is July 23, 2005.

2. Each Clarica Fund currently distributes its securities in each of the Jurisdictions pursuant to

the Clarica Prospectus that was prepared and filed in accordance with Canadian securities regulatory requirements. The earliest lapse date of the Clarica Prospectus under the Legislation is July 15, 2005.

3. Each Fund is a reporting issuer as defined in the Legislation and is not in default of any of the requirements of such Legislation.

4. There have been no material changes in the affairs of any CI Fund since the filing of the CI Prospectus, other than those for which amendments have been filed. Accordingly, the CI Prospectus represents current information regarding each CI Fund.

5. There have been no material changes in the affairs of any Clarica Fund since the filing of the Clarica Prospectus, other than those for which amendments have been filed. Accordingly, the Clarica Prospectus represents current information regarding each Clarica Fund.

6. On or about July 30, 2005 (the "Effective Date"), CI intends to merge the 16 Funds into other mutual funds managed by CI in order to rationalize the line-up of funds managed by CI and thereby eliminate duplicative funds and reduce carrying costs. Such mergers are referred to as the "Mergers". CI issued a press release on May 30, 2005 and filed a material change report and amendments to the CI Prospectus and Clarica Prospectus announcing the proposed Mergers, as contemplated by sections 5.6(1)(g) and 5.10 of National Instrument 81-102 ("NI 81-102").

7. The Mergers will be effected in accordance with the requirements of NI 81-102 including, without limitation, obtaining the approval of securityholders of the Funds as contemplated by section 5.1(f) of NI 81-102 and the approval of the Decision Makers to the extent not already provided by section 5.6(1) of NI 81-102.

8. The requested lapse date extension will not affect the accuracy of the information in the CI Prospectus or the Clarica Prospectus and therefore will not be prejudicial to the public interest.

9. A renewal prospectus was filed by CI for the mutual funds distributing securities under the CI Prospectus and Clarica Prospectus not the subject matter of the Mergers. A final renewal prospectus for these mutual funds was receipted June 23, 2005.

10. If the Requested Relief in respect of the Funds is not granted, CI will be required to file a renewal prospectus for the Funds, notwithstanding that the Funds will be terminated on or about the Effective Date of the Mergers. The financial costs and time involved in producing, filing and printing a prospectus for the Funds would be unduly costly. It may also cause confusion among investors who may assume that the Funds continue to be available for purchase after the Effective Date of the Mergers.

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.

"Paul Moore"
Vice-Chair
Ontario Securities Commission

"Robert Davis"
Commissioner
Ontario Securities Commission

2.1.2 Health Care and Biotechnology Venture Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications. Issuer deemed to have ceased to be a reporting issuer. Issuer's trust units were delisted from the Toronto Stock Exchange in August 2004, and issuer holds no assets other than cash reserved for the costs of winding up. CCRA has issued final tax clearance certificate to the issuer. Final cash distribution was made to unitholders of the issuer on May 3, 2005. No securities of the issuer are traded on a marketplace, and the issuer does not intend to seek public financing by way of an offering of its securities.

Applicable Ontario Statutory Provision

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.

July 6, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND AND LABADOR,
ONTARIO, PRINCE EDWARD ISLAND
AND SASKATCHEWAN (the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM

AND

IN THE MATTER OF
THE HEALTH CARE AND
BIOTECHNOLOGY VENTURE FUND
(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 a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer or the equivalent under the Legislation (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 evidences the decision of each Decision Maker.

Interpretation

Defined terms in this MRRS Decision Document have the meanings given to them in National Instrument 14-101 *Definitions,* unless otherwise defined.

Representations

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

1. The Filer was established under the laws of the Province of Ontario pursuant to a Declaration of Trust on January 17, 1992, as a closed-end investment trust with a term ending February 28, 2004.

2. Upon application by the Filer, and in anticipation of its imminent wind-up, the Filer's trust units were delisted from the Toronto Stock Exchange on August 4, 2004.

3. The Filer is a reporting issuer or the equivalent in the Jurisdictions and is not in default of any of its reporting issuer or equivalent obligations under the Legislation.

4. The Filer holds no assets other than cash reserved for the costs of winding up.

5. In April 2004, the Canada Customs and Revenue Agency issued a final tax clearance certificate to the Filer, which indicated that the Filer had discharged all of its tax liabilities.

6. In April 2005, the Trustees of the Filer resolved that an application be made to all Jurisdictions to cease being a reporting issuer and that the Filer be deemed to have terminated upon the later of it ceasing to be a reporting issuer and the date of the final distribution (the Trustees' Resolution).

7. As of April 11, 2005, the Filer had approximately 2,000 outstanding unitholders. After the Requested Relief is granted, in accordance with the Trustees' Resolution, the Filer will be deemed to have terminated, and there will be no outstanding units or unitholders.

8. A final cash distribution to unitholders of the Filer was made on May 3, 2005.

8. No securities of the Filer are currently traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation.

9. The Filer does not intend to seek public financing by way of an offering of its securities.

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 under the Legislation.

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

"Wendell S. Wigle", Q.C."
Commissioner
Ontario Securities Commission

Suresh Thakrar" FICB
Commissioner
Ontario Securities Commission

2.1.3 Coreco Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - Issuer deemed to cease to be a reporting issuer under applicable securities laws.

Applicable Ontario Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.
National Instrument 51-102 Continuous Disclosure Obligations.

June 29, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ONTARIO, ALBERTA, SASKATCHEWAN, QUEBEC, NOVA SCOTIA,
NEW BRUNSWICK AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
CORECO INC.**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of Ontario, Alberta, Saskatchewan, Quebec, Nova Scotia, New Brunswick and Newfoundland and Labrador (the Jurisdictions) has received an application from Coreco Inc. (the Applicant) for a decision under the securities legislation of the Jurisdiction (the Legislation) that the Applicant be deemed to have ceased to be a reporting issuer or the equivalent under the Legislation.

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System), the Ontario Securities Commission is the principal regulator for this application and this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meanings in this MRRS Decision

Document unless they are defined in this MRRS Decision Document.

Representations

The Applicant has represented to the Decision Makers that:

1. The Applicant was incorporated under the *Canada Business Corporations Act* (the CBCA) by certificate of incorporation issued March 29, 1979 under the name Coreco Contract Research Company Limited. The articles of the Applicant were subsequently amended on several occasions. On November 13, 1990, the articles of the Applicant were amended to change the corporate name to Coreco Inc. On May 24, 1996, the articles were further amended to effect certain changes to the Applicant's authorized share capital and to remove the "private company" restrictions.

2. The head office of the Applicant is located at Suite 142, 7075 Place Robert-Joncas, Ville Saint-Laurent, Quebec, H4M 2Z2.

3. The authorized capital of the Applicant consists of an unlimited number of common shares without nominal or par value (the Common Shares) and an unlimited number of preferred shares without nominal or par value, of which 7,168,745 Common Shares and no preferred shares are issued and outstanding.

4. The Applicant has been a reporting issuer in the Jurisdictions since 1996.

5. The Common Shares commenced trading on the Toronto Stock Exchange (TSX) on June 7, 1996, and were quoted under the trading symbol "CRC".

6. On February 16, 2005, the Applicant and DALSA announced that they had entered into an arrangement agreement whereby DALSA would acquire all of the issued and outstanding Common Shares, subject to certain conditions, including regulatory approvals, by means of the Plan of Arrangement. Pursuant to the Plan of Arrangement, shareholders of the Applicant would receive, for each Common Share, at their election (and subject to proration) either:

   (i) 0.5207 of a common share of DALSA;

   (ii) $10.00 in cash; or

   (iii) a combination of cash and common shares of DALSA, subject to a maximum of $35,000,000 in cash.

7. The Applicant called a special meeting of its shareholders (the Special Meeting), in accordance with an interim order of the Superior Court of Quebec (the Court) issued on March 21, 2005 (the Interim Order), to consider a special resolution (the Arrangement Resolution) approving the Plan of Arrangement under section 192 of the CBCA.

8. The Special Meeting was held at 10:00 a.m. on Friday, April 22, 2005 in the Mackenzie Room, Fairmont Queen Elizabeth Hotel, 900 Rene-Levesque Boulevard West, Montreal Quebec.

9. The requisite majority of the shareholders of the Applicant approved the Arrangement Resolution at the Special Meeting.

10. No shareholder of the Applicant exercised its right of dissent under section 190 of the CBCA.

11. A final order of the Court approving the Plan of Arrangement was obtained by the Applicant on April 25, 2005.

12. The Applicant filed articles of arrangement under subsection 192(6) of the CBCA on April 26, 2005 and a certificate of arrangement (the Certificate of Arrangement) in respect of the Applicant was issued under subsection 192(7) of the CBCA on April 26, 2005.

13. DALSA became the sole owner of all of the securities, including the Common Shares, of the Applicant upon the issuance of the Certificate of Arrangement. As a result, the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by one security holder, being DALSA.

14. The Common Shares were delisted from the TSX on May 2, 2005, and no securities, including debt securities, of the Applicant are listed or traded on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

15. The Applicant surrendered its status as a reporting issuer under the *Securities Act* (British Columbia) pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as of June 7, 2005.

16. The Applicant is in default of its obligation under National Instrument 51-102 *Continuous Disclosure Obligations* to file interim financial statements in respect of its interim three-month financial period ended March 31, 2005.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides that 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 Applicant be deemed to have ceased to be a reporting issuer in each of the Jurisdictions.

“Susan Wolburgh Jenah”

“Paul M. Moore”

2.1.4 First Asset Management Inc. et al. - MRRS Decision

Headnote

Approval granted for change of control of ten managers of mutual funds pursuant to sale of parent company of the managers and related transactions.

Rules Cited

National Instrument 81-102 Mutual Funds, s. 5.5(2).

July 13, 2005

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

AND

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

AND

IN THE MATTER OF
FIRST ASSET MANAGEMENT INC., COVINGTON CAPITAL CORPORATION, TRIAX YIELD TRUST MANAGEMENT INC., FIRST ASSET INVESTMENT MANAGEMENT INC., FIRST ASSET FUNDS INC., TRF GENERAL PARTNER INC., TRIAX RESOURCE (II) GENERAL PARTNER INC., TDK FUND MANAGEMENT INC., NEW MILLENNIUM VENTURE PARTNERS INC., COVINGTON GROUP OF FUNDS INC. AND NGB MANAGEMENT INC. (collectively, the "Filers")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (each, a "**Decision Maker**", and together, the "**Decision Makers**") in each of the Jurisdictions has received an application from the Filers dated April 29, 2004 and amended by letter dated May 10, 2005 (together, the "**Application**") for approval pursuant to Section 5.5(2) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") for a change of control of Covington Capital Corporation ("**Covington**"), Triax Yield Trust Management Inc., First Asset Investment Management Inc., First Asset Funds Inc., TRF General Partner Inc., Triax Resource (II) General Partner Inc., TDK Fund Management Inc., New Millennium Venture Partners Inc., Covington Group of Funds Inc. (collectively, the "**Triax Managers**") and NGB Management Inc. ("**NGB**") (NGB, Covington and the Triax Managers are, collectively, the "**Managers**" and each, a "**Manager**"), each of which is the manager of the funds set forth in Schedule A to this decision. The change of control will occur as a result of the Acquisitions (as defined below) described below.

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, as applicable.

Interpretation

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

Representations

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

Covington

1. Covington is a company based in Toronto, Ontario and was formed by amalgamation pursuant to the *Business Corporations Act* (Ontario). Covington is registered with the Ontario Securities Commission as investment counsel and portfolio manager and a limited market dealer. Covington's head office is located in Ontario.

2. As of the date hereof, First Asset Management Inc. ("**FAMI**") has a 60% ownership interest in Covington.

3. Covington manages and advises on a number of investment products and those mutual funds set forth in Schedule A (the "**Covington Funds**"). Each of the Covington Funds is a reporting issuer in Ontario and not in default of any requirements of the securities legislation of Ontario.

4. Each of the Covington Funds is a labour sponsored investment fund which is offered on a continuous basis.

5. Covington typically handles and oversees all day-to-day operations of the Covington Funds and in some circumstances also provides investment management and trustee services.

Triax and the Triax Managers

6. Except for New Millennium Venture Partners Inc., each of the Triax Managers is a wholly owned subsidiary of Triax Capital Corporation ("**Triax**"). New Millennium Venture Partners Inc. is owned by FAMI and Covington, with their ownership interests being 66.67% and 33.33%, respectively.

7. Triax is a company based in Toronto, Ontario and was formed by amalgamation pursuant to the *Business Corporations Act* (Ontario). Triax is a wholly owned subsidiary of FAMI.

8. The head office of each of the Triax Managers is located in Ontario.

9. The Triax Managers each manage and advise on a number of investment products and the mutual funds set forth in Schedule A (the "**Triax Funds**"). Each of the Triax Funds is a reporting issuer or the equivalent thereof in the jurisdictions noted in Schedule A and not in default of any requirements of the securities legislation of the Jurisdictions.

10. The Triax Managers typically handle and oversee all day-to-day operations of the Triax Funds and in some circumstances also provide investment management and trustee services.

11. The Triax Funds primarily consist of labour sponsored investment funds, all of which are offered on a continuous basis with the exception of those funds identified in Schedule A as not being offered on a continuous basis, and closed-end specialty trusts, which are listed on the Toronto Stock Exchange.

NGB

12. NGB is a company based in Toronto, Ontario and incorporated pursuant to the *Business Corporations Act* (Ontario). NGB's head office is located in Ontario.

13. The funds managed by NGB consist of 2 labour sponsored investment funds (the "**NGB Funds**"), one of which is offered on a continuous basis in the Province of Ontario as identified on Schedule A. Each NGB Fund is a reporting issuer in Ontario and not in default of any requirements of the securities legislation of Ontario.

14. NGB handles or oversees all day-to-day operations of the NGB Funds.

FAMI

15. FAMI is a company based in Toronto, Ontario and incorporated pursuant to the *Business Corporations Act* (Ontario). FAMI's head office is located in Ontario.

16. FAMI's business consists of acquiring interests in other entities which engage in the asset management business and related businesses.

17. FAMI has a controlling or significant interest in several entities registered with the various provincial and territorial securities regulators (collectively, the "**FAMI Registered Companies**"). In addition to Covington, the FAMI Registered Companies include Montrusco Bolton Investments Inc., Beutel Goodman & Company Ltd. (and its affiliated companies), Deans Knight Capital Management Ltd., First Asset Advisory Services Inc., First Asset Brokerage

Corporation, First Asset Investment Management Inc., Foyston, Gordon & Payne Inc., Gestion Aequilibrium Inc. and Louisbourg Investments Inc.

The Acquisitions

The shareholders of FAMI and FAMI entered into a securities purchase agreement dated April 19, 2005 with Affiliated Managers Group, Inc. ("**AMG**") pursuant to which AMG will acquire all of the issued and outstanding shares in the capital of FAMI (the "**FAMI Acquisition**").

In connection with the FAMI Acquisition, FAMI will acquire the remaining 40% of Covington and will also acquire 100% of the ownership of NGB (the "**NGB Acquisition**", and together with the FAMI Acquisition, the "**Acquisitions**").

AMG is a public U.S. asset management holding company based in Boston, Massachusetts and incorporated pursuant to the laws of Delaware. AMG's securities are listed and posted for trading on the New York Stock Exchange under the symbol "AMG".

The FAMI Acquisition will result in a direct change of control of FAMI, and accordingly, an indirect change of control of each of the Managers. The NGB Acquisition will result in a direct change of control of NGB.

Decision

Each of the Decision Makers is satisfied that, based on the information and representations contained in the Application and this decision, and for the purposes described in the Application, the Decision Makers, as applicable, hereby grant approval pursuant to Section 5.5(2) of NI 81-102 in respect of the change of control of each of the applicable Managers.

The approval provided herein is subject to compliance with all applicable provisions of NI 81-102.

"Rhonda Goldberg"
Acting Director, Investment Funds Branch

Schedule A

I. Covington Funds

No.	Name of Fund	Manager	Report Issuer Jurisdiction
1.	Covington Fund I Inc.	Covington Capital Corporation	Ontario
2.	Covington Fund II Inc.	Covington Capital Corporation	Ontario
3.	Covington Strategic Capital Fund Inc.	Covington Capital Corporation	Ontario

II. Triax Funds

No.	Name of Fund	Manager	Reporting Issuer Jurisdictions
1.	Triax Growth Fund Inc.	Covington Group of Funds Inc.	All provinces, except Saskatchewan
2.	E2 Venture Fund Inc.	Covington Group of Funds Inc.	Ontario
3.	Venture Partners Balanced Fund Inc.*	Covington Group of Funds Inc.	Ontario
4.	Venture Partners Equity Fund Inc.	Covington Group of Funds Inc.	Ontario
5.	Financial Industry Opportunities Fund Inc.	Covington Group of Funds Inc.	Ontario
6.	Capital First Venture Fund Inc.*	Covington Group of Funds Inc.	Ontario
7.	New Millennium Venture Fund Inc.*	New Millennium Venture Partners Inc.	Ontario
8.	Triax Diversified High-Yield Trust	Triax Yield Trust Management Inc.	All provinces
9.	New Millennium Technology Trust	First Asset Investment Management Inc.	All provinces
10.	Triax CaRTS Trust	First Asset Investment Management Inc.	All provinces
11.	Triax CaRTS Technology Trust	First Asset Investment Management Inc.	All provinces
12.	Triax CaRTS III Trust	First Asset Investment Management Inc.	All provinces
13.	TDK Resource Fund Inc.	TDK Fund Management Inc.	All provinces
14.	Triax Resource Limited Partnership	TRF General Partner Inc.	All provinces
15.	Triax Resource Limited Partnership II	Triax Resource (II) General Partner Inc.	All provinces
16.	Global 45 Split Corp.	First Asset Funds Inc.	All provinces

* Not offered on a continuous basis.

III. NGB Funds

No.	Name of Fund	Manager	Reporting Issuer Jurisdiction
1.	New Generation Biotech (Balanced) Fund Inc.*	NGB Management Inc.	Ontario
2.	New Generation Biotech (Equity) Fund Inc.	NGB Management Inc.	Ontario

* Not offered on a continuous basis.

2.1.5 Barnwell Industries, Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 83.

July 12, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ALBERTA AND ONTARIO (THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
BARNWELL INDUSTRIES, INC. (THE FILER)

MRRS Decision Document

Background

1. 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) that the Filer is deemed to have ceased to be a reporting issuer (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):

   2.1 the Alberta Securities Commission is the principal regulator for this application, and

   2.2 this MRRS decision document evidences the decision of each Decision Maker (the Decision).

Interpretation

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

Representations

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

   4.1 The Filer is a corporation incorporated under the laws of Delaware on December 5, 1956.

   4.2 The Filer's main office is located in Honolulu, Hawaii.

   4.3 The Filer is currently a reporting issuer in the Jurisdictions.

   4.4 The authorized capital of the Filer consists of 4,000,000 common shares, par value $0.50 and as of February 11, 2005 there were 2,723,020 shares of common stock, par value $0.50 outstanding, owned by approximately 1200 shareholders.

   4.5 The Filer anticipated completing a transaction that might have increased the number of Canadian shareholders but the transaction was never consummated.

   4.6 The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders total in Canada.

   4.7 The common shares of the Filer are listed and posted for trading on the American Stock Exchange. No securities of the Filer are traded in Canada on a marketplace as defined in National Instrument 21-101 Marketplace Operation

   4.8 The Filer is subject in the United States of America to the reporting obligations of the Securities Exchange Act of 1934, as amended. Canadian securityholders may access the information filed by the Filer on the United States electronic filing system (EDGAR).

   4.9 The Filer is applying for relief to cease to be a reporting issuer in all jurisdictions in Canada in which it is currently a reporting issuer.

   4.10 The Filer is not in default of any of its obligations under the Legislation.

Decision

5. 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.

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

"Blaine Young"
Director, Legal Services & Policy Development
Alberta Securities Commission

2.2. Orders

2.2.1 Momentas Corporation et al.- s. 127(7)

June 24, 2005

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

- AND -

IN THE MATTER OF MOMENTAS CORPORATION, HOWARD RASH, ALEXANDER FUNT, SUZANNE MORRISON AND MALCOLM ROGERS

TEMPORARY ORDER SECTION 127(7)

WHEREAS on the 9th day of June, 2005, the Ontario Securities Commission (the "Commission") ordered, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, C.s.5, as amended (the "*Act*"), that all trading by Momentas Corporation and its officers, directors, employees and/or agents in securities of Momentas shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 2 of subsection 127(1) of the *Act*, all trading in any securities by Rash, Funt and Morrison shall cease;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Momentas, Rash, Funt and Morrison;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 6 of subsection 127(1) of the *Act* that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

AND WHEREAS on the 23rd day of June, 2005, the Commission issued a Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the *Act* and an accompanying Statement of Allegations.

AND WHEREAS Momentas, Rash, Funt and Morrison consent to an extension of the Temporary Order until July 8, 2005.

IT IS ORDERED that:

1. the hearing to consider whether to extend the Temporary Order made by the Commission is adjourned until July 8, 2005 at 2:30 p.m.; and

2. the Temporary Order issued is continued until the hearing on July 8, 2005, or until further order of this Commission.

"Wendell S. Wigle"

"David L. Knight"

2.2.2 Momentas Corporation et al. - ss. 127(1), 127(5)

July 14, 2005

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

AND

IN THE MATTER OF MOMENTAS CORPORATION, HOWARD RASH, ALEXANDER FUNT AND SUZANNE MORRISON

ORDER SECTION 127(1) & 127(5)

WHEREAS on the 9th day of June, 2005, the Ontario Securities Commission (the "Commission") ordered, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, C.s.5, as amended (the "*Act*"), that all trading by Momentas Corporation and its officers, directors, employees and/or agents in securities of Momentas shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 2 of subsection 127(1) of the *Act*, all trading in any securities by Rash, Funt and Morrison shall cease;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Momentas, Rash, Funt and Morrison;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to paragraph 6 of subsection 127(1) of the *Act* that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

AND WHEREAS on the 24th day of June, 2005, the Commission issued a Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the *Act* and an accompanying Statement of Allegations;

AND WHEREAS on the 24th day of June, 2005, Momentas, Rash, Funt and Morrison consented to and the Commission ordered an extension of the Temporary Order until July 8, 2005;

AND WHEREAS it appears to the Commission that Momentas has certain open positions in foreign currency contracts and in equities in accounts held by Momentas which it seeks to eliminate in order to prevent losses of the funds in those accounts;

AND WHEREAS Momentas consents to an extension of the Temporary Order as set out herein until July 14, 2005;

AND WHEREAS Rash, Funt and Morrison consent to an extension of the Temporary Order as set out herein until the conclusion of the Hearing of this matter;

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

IT IS ORDERED that pursuant to paragraphs 2 and 3 of subsection 127(1) of the *Act* that all trading by Rash, Funt and Morrison shall cease, and all exemptions contained in Ontario securities law shall not apply to Rash, Funt and Morrison until the conclusion of the Hearing of this matter, with the following exceptions:

(a) each of Rash, Funt and Morrison shall be permitted to trade securities for his or her own account(s) through a registered dealer pursuant to paragraph 10 of subsection 35(1) of the *Act*;

(b) each of Rash, Funt and Morrison shall be permitted to trade in mutual fund units and securities described in paragraphs 1 and 2 of subsection 35(2) of the *Act*; and

(c) each of Rash, Funt and Morrison shall be permitted to trade in securities for their registered retirement savings plan or registered retirement income fund pursuant to section 2.11 of Rule 45-501.

IT IS FURTHER ORDERED that Momentas cease trading in any securities, including securities of Momentas, until July 14, 2005, subject to the following:

(a) Momentas shall be permitted to offset or eliminate any open positions in Forex currency contracts and in equities in accounts held by Momentas in order to prevent losses, on the condition that Momentas shall provide to Commission staff:

(i) particulars of all foreign currency trading accounts and brokerage accounts held by Momentas prior to the offsetting or elimination of any such open positions; and

(ii) daily reports on the status of and holdings in those accounts.

IT IS FURTHER ORDERED that the hearing to consider whether to further extend the Temporary Order and this Order as against Momentas is adjourned until July 14, 2005 at 10:00 a.m.

"Paul M. Moore"

"Robert Davis"

"Wendell Wigle"

2.2.3 The Canadian Depository for Securities Limited - ss. 21.2(1) and s. 144 of the Act and Part VI of the OBCA

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

AND

IN THE MATTER OF
THE *BUSINESS CORPORATIONS ACT*
R.S.O. 1990, CHAPTER B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

RECOGNITION AND DESIGNATION ORDER
(Subsection 21.2(1) and Section 144 of the Act and Part VI of the OBCA)

WHEREAS the Ontario Securities Commission (the "Commission") issued an order dated February 25, 1997, which became effective on March 1, 1997, recognizing The Canadian Depository for Securities Limited ("CDS") as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS as a recognized clearing agency pursuant to Part VI of the OBCA (the "1997 Recognition and Designation Order");

AND WHEREAS CDS has applied for an order pursuant to section 144 of the Act to vary the 1997 Recognition and Designation Order;

AND WHEREAS the Commission has received certain representations and undertakings from CDS in connection with its application to vary the 1997 Recognition and Designation Order;

AND WHEREAS the Commission considers it appropriate to set out in the order terms and conditions of CDS' recognition as a clearing agency under the Act which terms and conditions are set out in Schedule "A" attached;

AND WHEREAS CDS has agreed to the terms and conditions as set out in Schedule "A";

AND WHEREAS the terms and conditions set out in Schedule "A" may be varied or waived by the Commission;

AND UPON the Commission being of the opinion that it is not prejudicial to the public interest to vary the 1997 Recognition and Designation Order;

AND UPON the Commission being satisfied that it is in the public interest to continue to recognize CDS as a clearing agency pursuant to subsection 21.2(1) of the Act;

AND UPON the Commission wishing to continue to designate CDS as a recognized clearing agency for the purposes of Part VI of the OBCA;

IT IS ORDERED pursuant to section 144 of the Act that the 1997 Recognition and Designation Order be varied and restated in the form of this order;

THE COMMISSION HEREBY RECOGNIZES CDS as a clearing agency pursuant to subsection 21.2(1) of the Act, subject to the terms and conditions set out in Schedule "A";

AND THE COMMISSION HEREBY DESIGNATES CDS as a recognized clearing agency for the purposes of Part VI of the OBCA.

DATED February 25, 1997, as varied and restated on July 12, 2005.

"Paul M. Moore"

"Suresh Thakrar"

SCHEDULE "A"

TERMS AND CONDITIONS

GOVERNANCE

1. CDS' governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders and the users ("participants") of its depository, clearing and settlement services (collectively, "settlement services").

2. Without limiting the generality of the foregoing, CDS' governance structure shall provide for:

   (a) fair and meaningful representation on its board of directors and any committee of the board of directors;

   (b) appropriate representation of persons independent of the shareholders and participants on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:

      (i) an associate, partner, director, officer or employee of a shareholder of CDS,

      (ii) an associate, director, officer or employee of a participant of CDS or its affiliates or an associate of such director, officer or employee, or

      (iii) an officer or employee of CDS or its affiliates or an associate of such officer or employee; and

   (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS.

3. CDS shall complete the current review of its governance structure by six months from the date of this order and shall submit for the Commission's consideration a report containing recommendations to amend the governance structure. Specifically the report shall:

   (a) provide recommendations on alternative voting structures to ensure that the board is, in all cases, able to discharge its responsibilities;

   (b) provide recommendations on how to achieve fair and effective representation of all stakeholders on the board of directors, board committees or other

committees of CDS; and

(c) review the nomination process for directors and independent directors to include an assessment of the needs of the board and board committees.

4. CDS shall not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.

5. CDS shall not, without the Commission's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this Schedule "A".

FITNESS

6. CDS shall take reasonable steps to ensure that each officer or director of CDS is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that such person will perform his or her duties with integrity.

ACCESS

7. CDS shall provide any person or company reasonable access to its settlement services where that person or company satisfies the eligibility requirements established by CDS to access the settlement services.

8. Without limiting the generality of the foregoing, CDS shall:

(a) establish written standards for granting access to the settlement services;

(b) keep records of:

(i) each grant of access including, for each participant, the reasons for granting such access, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

FEES AND COSTS

9. CDS shall equitably allocate its fees and costs for settlement services. The fees shall not have the effect of unreasonably creating barriers to access such settlement services and shall be balanced with the criterion that CDS has sufficient revenues to satisfy its responsibilities.

10. CDS' process for setting fees and costs for settlement services shall be fair, appropriate and transparent. The fees, costs or expenses borne by participants in the settlement services shall not reflect any costs or expense incurred by CDS in connection with an activity carried on by CDS that is not related to the settlement services.

DUE PROCESS

11. CDS shall ensure that:

(a) participants affected by its decisions are given an opportunity to be heard or make representations; and

(b) it keeps a record, gives reasons and provides for appeals of its decisions to regulatory authorities.

RISK CONTROLS

12. CDS shall have clearly defined procedures for the management of risk which specify the respective responsibilities of CDS and its participants.

13. Without limiting the generality of the foregoing:

(a) Where a central counterparty service is offered by CDS, CDS shall rigorously control the risks it assumes.

(b) CDS shall reduce principal risk to the greatest extent possible by linking securities transfers to funds transfers in a way that achieves delivery-versus-payment.

(c) Final settlement shall occur no later than the end of the settlement day and intraday or real-time finality should be provided where necessary to reduce risks.

(d) Where CDS extends intraday credit to participants, including where it operates a net settlement system, it shall institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

(e) Assets accepted by CDS used to settle the ultimate payment obligations arising from securities transactions shall carry little or no credit or liquidity risk. If same-day, irrevocable final funds are not used, CDS shall take steps to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the payor or its paying agent.

(f) Where CDS establishes links to settle cross-border trades, it shall design and operate such links to reduce effectively

the risks associated with cross-border settlements.

(g) Where CDS engages in activities not related to the settlement services, it shall carry on such activities in a manner that prevents the spillover of risk arising from such activities where such risks might negatively impact CDS' financial viability.

(h) Where CDS materially outsources any of its settlement services or systems to a third party service provider, which shall include affiliates or associates of CDS, CDS shall proceed in accordance with best practices. Without limiting the generality of the foregoing, CDS shall:

(i) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such outsourcing arrangements;

(ii) in entering any such outsourcing arrangement,

A. assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by CDS, and

B. execute a contract with the third party service provider addressing all significant elements of such arrangement, including service levels and performance standards;

(iii) ensure that any contract implementing such outsourcing arrangement, that is likely to impact the settlement services, permits the Commission to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of CDS for the purposes of determining CDS' compliance with the terms and conditions of this Schedule "A" or securities legislation; and

(iv) monitor the performance of the third party service provider under any such outsourcing arrangement.

FINANCIAL VIABILITY

14. CDS shall maintain sufficient financial and staffing resources to ensure the proper performance of the settlement services.

15. CDS shall establish financial tests for the purpose of monitoring its financial viability. Specifically CDS shall maintain:

(a) a debt to cash flow ratio less than or equal to 4/1; and

(b) a financial leverage ratio less than or equal to 4/1.

For the purpose above:

(i) debt to cash flow ratio is the ratio of total debt to EBITDA (earnings before interest, taxes, depreciation and amortization) for the most recent 12 months, and

(ii) financial leverage ratio is the ratio of total assets to shareholder's equity.

16. CDS shall notify Commission staff as soon as practicable of any decision made to retain all or part of its transaction volatility premiums collected or to be collected.

17. If CDS fails to maintain, or anticipates it will fail to maintain, the debt to cash flow ratio or financial leverage ratio, it shall immediately notify the Commission staff. If CDS fails to maintain either of the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will deliver a letter advising the Commission staff of the continued ratio deficiencies and the steps being taken to address the situation.

18. On a quarterly basis (together with the financial statements required to be filed pursuant to item 19), CDS shall report to Commission staff that quarter's monthly calculation of the debt to cash flow ratio and financial leverage ratio.

19. CDS shall file with Commission staff unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, prepared in accordance with generally accepted accounting principles, together with any annual report to the shareholders, within 90 days of each year end. The quarterly and annual

financial statements of CDS shall be provided on an unconsolidated and consolidated basis.

OPERATIONAL RELIABILITY

20. CDS shall adopt procedures and processes that, on an ongoing basis, ensure the provision of accurate and reliable settlement services to participants.

21. CDS shall annually file with Commission staff the Report on Internal Controls and Safeguards including CDS' external auditor's opinion on the design and effectiveness of these control systems.

CAPACITY AND INTEGRITY OF SYSTEMS

22. For all of its core systems supporting the settlement services and related business operations (the "systems"), CDS will:

    (a) on a reasonably frequent basis, and in any event, at least annually;

        (i) make reasonable current and future capacity estimates,

        (ii) conduct capacity stress tests of the systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

        (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of the systems,

        (iv) review the vulnerability of the systems and data centre computer operations to internal and external threats including breaches of security, physical hazards and natural disasters, and

        (v) maintain adequate contingency and business continuity plans;

    (b) annually, cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of the systems, whether as part of the report described in item 21 or as a separate review; and

    (c) promptly notify Commission staff of material systems failures and changes.

PROTECTION OF CUSTOMERS' SECURITIES

23. CDS shall employ securities depository, account maintenance and accounting practices and safekeeping procedures that protect participants' securities.

RULES

24. CDS shall establish rules, operating procedures, user guides, manuals or similar instruments or documents (collectively, "rules") that are necessary or appropriate to govern, regulate, and set out all aspects of the settlement services offered by CDS.

25. The rules shall be consistent with the general goals of:

    (a) ensuring compliance with securities legislation;

    (b) fostering co-operation and co-ordination with self-regulatory organizations and persons or companies operating marketplaces, clearing and settlement systems and other systems that facilitate the processing of securities transactions and safeguarding of securities; and

    (c) controlling systemic risk.

26. The rules will not:

    (a) permit unreasonable discrimination among participants; or

    (b) impose any burden on competition that is not necessary or appropriate in furtherance of compliance with securities legislation or the objects and mandate of the clearing agency.

27. CDS' rules and the process for adopting new rules or amending existing rules shall be transparent to participants and the general public.

28. CDS shall file with the Commission all rules and amendments to the rules and comply with the rule protocol attached as Appendix "A", as amended from time to time.

ENFORCEMENT OF RULES AND DISCIPLINE

29. The rules of CDS shall set out appropriate sanctions in the event of non-compliance by participants.

30. CDS shall reasonably monitor participant activities and impose sanctions to ensure compliance by participants with its rules.

INFORMATION SHARING

31. CDS shall share information and otherwise cooperate with the Commission and its staff, other recognized clearing agencies, recognized exchanges, recognized quotation and trade reporting systems, registered alternative trading systems, recognized self-regulatory organizations, the Canadian Investor Protection Fund and any regulatory authority having jurisdiction over CDS, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information, and subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

32 CDS shall permit the Commission to have access to and inspect all data and information in its possession that is required to assess compliance with the terms and conditions of this Schedule "A" or securities legislation, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information, and subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

33. CDS shall comply with Appendix "B" setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

APPENDIX "A"

RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL OF CDS RULES BY THE OSC

1. Purpose of the Protocol

On July 12, 2005, the Commission issued a varied and restated recognition and designation order ("Recognition Order") with terms and conditions governing CDS' recognition as a clearing agency pursuant to subsection 21.2(1) of the *Securities Act* (Ontario). To comply with the Recognition Order, CDS must file, among other things, its rules with the Commission for approval. This protocol sets out the procedures for the submission of a rule by CDS and the review and approval of the rule by the Commission.

2. Definitions

In this protocol:

"rule" means a proposed new or amendment to or deletion of a participant rule, operating procedure, user guide, manual or similar instrument or document of CDS which contains any contractual term setting out the respective rights and obligations between CDS and participants or among participants.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in NI 14-101.

3. Classification of Rules

CDS will classify a rule as either "material" or "technical/housekeeping" for the purposes of the approval process set out in this protocol.

(a) Technical/Housekeeping Rules

For the purpose of this protocol, a rule will be classified as "technical/housekeeping" if the rule involves only:

(i) matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services;

(ii) consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;

(iii) amendments required to ensure consistency or compliance with an existing rule, securities legislation or

other regulatory requirement;

(iv) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; or

(v) stylistic formatting, including changes to headings or paragraph numbers;

(b) Material Rules

A rule that is not a technical/housekeeping rule, as defined above, would be classified as a "material" rule.

4. Procedures for Review and Approval of Material Rules

(a) Prior Notice of a Significant Material Rule

If CDS is developing a material rule that it anticipates will result in a significant change in its policy, will require amendments to a significant number of rules or may be the subject of significant public comment as a result of publication, then CDS will notify Commission staff in writing at least 30 calendar days prior to submitting such a significant material rule. The purpose of such prior notification is to enable the Commission to react in a timely manner to the material rule upon filing. Prior notification shall not be interpreted as an opportunity for Commission staff to participate in CDS policy development. Commission staff will not begin a formal review of the material rule until all relevant documents have been filed.

(b) Documents to be Filed

For a material rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by Commission staff and CDS from time to time:

(i) a cover letter that indicates the classification of the rule and the rationale for that classification and includes a statement that the rule is not contrary to the public interest;

(ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule;

(iii) a notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:

A. a description of the rule,

B. a concise statement, together with supporting analysis, of the nature and purpose of the rule,

C. a description and analysis of the possible effects of such rule on CDS, participants and other market participants and the securities and financial markets in general, including but not limited to any impact on competition, risks and the costs of compliance borne by any of the foregoing parties or within any market, and where applicable, a comparison of the rule to international standards promulgated by Committee on Payment and Settlement Systems of the Bank for International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty,

D. a description of the rule drafting process, including a description of the context in which the rule was developed, the process followed, the issues considered, consultation done, the alternative approaches considered, the reasons for rejecting the alternatives and a review of the implementation plan,

E. where the rule requires technological systems changes to be made by participants, other market participants or CDS, CDS shall provide a description of the implications of the rule on such systems and, where possible, an implementation plan, including a description of how the rule will be implemented and the timing of the implementation,

F. where CDS is aware that another clearing agency has a counterpart to the rule, CDS shall include a reference to the rules of the other clearing agency, including an indication as to whether that clearing agency has a comparable rule or has made or is contemplating making a comparable rule, and a comparison of the rule to same,

G. a statement that CDS has determined that the rule is not contrary to the public interest, and

H. an explanation that all comments should be sent to CDS with a copy to the Commission, and that CDS will make available to the public on request all comments received during the comment period.

(c) Confirmation of Receipt

Commission staff will within 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (b).

(d) Publication of a Material Rule by the Commission

As soon as practicable, Commission staff will publish in the OSC Bulletin the notice and rule filed by CDS under subsection (b) for a comment period of 30 calendar days (the "comment period"), commencing on the date on which the notice first appears in the OSC Bulletin or website.

(e) Review by Commission Staff

Commission staff will use their best efforts to conduct their initial review of the material rule and provide comments to CDS during the comment period. However, there will be no restriction on the amount of time necessary to complete the review of the material rule.

(f) CDS Responses to Commission Staff's Comments

(i) CDS will respond to any comments received to Commission staff in writing.

(ii) CDS will provide to Commission staff a summary of all public comments received and CDS' responses to the public comments, or confirmation of having received no public comments.

(iii) If CDS fails to respond to comments from Commission staff within 120 calendar days after receipt of their comment letter, CDS will be deemed to have withdrawn the material rule unless Commission staff otherwise agree.

(g) Approval by the Commission

Commission staff will use their best efforts to prepare the material rule for approval within 30 calendar days of the later of (a) receipt of written responses from CDS to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDS' response to the public comments, or confirmation from CDS that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from CDS in order to prepare the materials for Commission approval, the review period will be extended by an additional period of 30 calendar days commencing on the day that Commission staff receive responses to the comments or the information requested. Commission staff will notify CDS of the Commission's approval of the material rule within 5 business days.

(h) Publication of Notice of Approval

Commission staff will prepare and publish in the OSC Bulletin and on its website a short notice of approval of the material rule within 15 business days of delivery of the notification to CDS of the decision. CDS will provide the following information to accompany the publication of the notice of approval:

(i) a short summary of the material rule;

(ii) CDS' summary of public comments and responses received, if applicable; and

(iii) if changes were made to the version published for public comment, a blacklined copy of the revised material rule.

(i) Effective Date of a Material Rule

A material rule will be effective as of the date of the notification of approval by Commission staff in accordance with subsection (g) or on a date determined by CDS, if such date is later.

(j) Significant Revisions to a Material Rule

When a material rule is revised subsequent to its publication for comment in a way that Commission and CDS staff determine has a material effect on the substance of the rule or its effect, the revision will be published in the OSC Bulletin with a notice for a second 30 calendar day comment period. The request for comment shall include CDS' summary of comments and responses submitted in response to the previous request for comments, together with an explanation of the revision to the material rule and the supporting rationale for the amendment.

(k) Withdrawal of a Material Rule

If CDS withdraws or is deemed to have withdrawn a rule that was previously submitted, then it will provide a notice of withdrawal to be published by the Commission in the OSC Bulletin as soon as practicable.

5. Procedures for Review and Approval of a Technical/Housekeeping Rule

(a) Documents to be Filed

For a technical/housekeeping rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDS from time to time:

(i) a cover letter that indicates the classification of the rule and the rationale

for that classification;

(ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule; and

(iii) a short notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:

A. a brief description of the technical/ housekeeping rule,

B. the reasons for the technical/ housekeeping classification, and

C. the effective date of the technical/ housekeeping rule, or a statement that the technical/housekeeping rule will be effective on a date subsequently determined by CDS.

(b) Effective Date of Technical/Housekeeping Rules

The technical/housekeeping rule will be effective upon CDS filing the documents in accordance with subsection (a) or on a date determined by CDS. Where CDS does not receive any communication of disagreement with the classification from Commission staff in accordance with subsection (d) within 15 business days after filing the rule, CDS may assume that the Commission staff agree with the classification.

(c) Confirmation of Receipt

Commission staff will within 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (a).

(d) Disagreement with Classification

Where CDS has classified a rule as "technical/housekeeping" and Commission staff disagree with the classification:

(i) Commission staff will communicate to CDS, in writing, the reasons for disagreeing with the classification of the rule within 15 business days after receipt of CDS' filing.

(ii) After receipt of Commission staff's written communication, CDS will re-classify the rule as material and the Commission will review and approve the rule under the procedures set out in section 4.

(iii) Commission staff may require that CDS immediately repeal the technical/ housekeeping rule and inform its participants of the reason for the repeal of the rule.

(e) Publication of Technical/Housekeeping Rules

Commission staff will publish the notice filed by CDS under clause (a)(iii) as soon as practicable.

(f) Comments received on Technical/ Housekeeping Rules

If comments are raised in response to the publication of the notice or the implementation of the technical/housekeeping rule, Commission staff may review the rule in light of the comments received. Commission staff may determine that the rule was incorrectly classified and require that the rule be classified as a material rule and reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

6. Immediate Implementation of a Material Rule

(a) Criteria for Immediate Implementation

CDS may make a material rule effective immediately where CDS determines that there is an urgent need to implement the material rule because of a substantial and imminent risk of material harm to CDS, participants, other market participants, or the Canadian capital markets or due to a change in operation imposed by a third party supplying services to CDS and to its participants.

(b) Prior Notification

Where CDS determines that immediate implementation is necessary, CDS will advise Commission staff in writing as soon as possible but in any event at least 5 business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

(c) Disagreement on Need for Immediate Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

(i) Commission staff will notify CDS, in writing, of the disagreement, or request more time to consider the immediate implementation, within 3 business days of being advised by CDS under subsection (b).

(ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.

(iii) If no notice is received by CDS by the 3rd business day after Commission staff received CDS' notification, CDS may assume that Commission staff does not disagree with their assessment.

(d) Review of Material Rules Implemented Immediately

A material rule that has been implemented immediately will be published, reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

7. Miscellaneous Provisions

(a) Waiving Provisions of the protocol

Commission staff may waive any part of this protocol upon request from CDS. Such a waiver must be granted in writing by Commission staff.

(b) Amendments

This protocol and any provision hereof may be amended at any time or times with the agreement of the Commission and CDS.

8. Effective Date

This protocol comes into effect on July 12, 2005.

APPENDIX "B"

REPORTING OBLIGATIONS

In addition to the notification, reporting and filing obligations set out in Schedule "A" to the Recognition and Designation Order, CDS shall also comply with the reporting obligations set out below.

1. Prior Notification

1.1 CDS shall provide to Commission staff prior notification of:

(a) any proposed change to CDS' corporate governance structure other than significant changes to the governance structure or constating documents for which prior approval is required under item 4 of Schedule "A" to the Recognition and Designation Order;

(b) a decision to enter into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organisation, clearing agency, stock exchange, other marketplace or market; or

(c) a decision to, either directly or through an affiliate, engage in a new type of business activity or cease to engage in a business activity in which CDS is then engaged.

2. Immediate Notification

2.1 CDS shall provide to Commission staff immediate notice of:

(a) the appointment of any new director or officer, including a description of the individual's employment history; and

(b) the resignation or intended resignation of a director or officer or the auditors of CDS, including a statement of the reasons for the resignation or intended resignation.

2.2 CDS shall immediately notify Commission staff if it:

(a) becomes the subject of any order, directive or other similar

action of a governmental or regulatory authority;

(b) becomes aware that it is the subject of a criminal or regulatory investigation; or

(c) becomes, or is aware that it will become, the subject of a material lawsuit.

2.3 CDS shall immediately file with Commission staff copies of all notices, bulletins and similar forms of communication that CDS sends its participants.

2.4 CDS shall immediately file with the Commission staff any unanimous shareholder agreements to which it is a party.

3. Quarterly Reporting

3.1 CDS shall file quarterly with Commission staff a list of the internal audit reports and risk management reports issued in the previous quarter.

4. Annual Reporting

4.1 CDS shall provide to Commission staff annually:

(a) a list of the directors and officers of CDS;

(b) a list of the committees of the CDS board of directors, setting out the members, mandate and responsibilities of each of the committees; and

(c) a list of all participants in each settlement service operated by CDS.

5. General

5.1 CDS shall continue to comply with the reporting obligations set out in its tailored Automation Review Program document.

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Ron Carter Hew

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

AND

THE SETTLEMENT AGREEMENT WITH
RON CARTER HEW

REASONS FOR THE DECISION OF THE
ONTARIO SECURITIES COMMISSION

Hearing:	**Wednesday, July 6, 2005**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair (Chair of the Panel)**
	Robert W. Davis	**-**	**Commissioner**
	Carol S. Perry	**-**	**Commissioner**
Counsel:	**Melissa J. MacKewn**	**-**	**For Staff of the**
	George Gutierrez		**Ontario Securities Commission**
	Ron Carter Hew	**-**	**Self-represented**

The following statement has been prepared for purposes of publication in the Ontario Securities Commission (the "Commission") Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing on the settlement agreement between staff of the Commission and Ron Carter Hew (the "Settlement Agreement"), in the matter of Ron Carter Hew. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the decision. This extract should be read together with the Settlement Agreement and the order signed by the panel.

The hearing was conducted *in camera* until the oral decision and reasons were delivered by Vice-Chair Moore.

From the Transcript:

Vice-Chair Moore:

[1] This is a hearing under section 127 of the *Securities Act,* R.S.O 1990, c. S.5 as amended (the "Act"), for the Commission to consider whether it is in the public interest to approve the proposed Settlement Agreement between staff and Ron Carter Hew (the "respondent"), and to make an order approving the sanctions agreed to by staff and the respondent in relation to the respondent's conduct of advising without registration.

[2] We approve the Settlement Agreement as being in the public interest.

Facts

[3] The facts are set out in the Settlement Agreement, which forms part of this proceeding. This is a case of advising without registration. The respondent advised 17 persons over a period of 12 years up to 2004.

[4] He traded in high-risk securities through the Internet and used passwords to access the Internet for various persons. The securities were primarily U.S. high tech stocks and options.

[5] As a result of trading and advising, these persons incurred losses between $600,000 and $800,000.

[6] As part of the advising and trading, the respondent collected commissions, as high as 20% of profits, and, it is estimated, he received upwards of about $80,000 to $100,000 in payments. These funds were used by the respondent for daily living expenses and/or invested by him on his own behalf and ultimately were depleted.

[7] Some of the persons advised were mothers with children, RRSP accounts, and small investors. No suitability judgment was made as to whether these investments would have been suitable for the persons.

[8] There was no indication that the respondent was familiar with the products, that he knew his clients and their needs, or that he had the proficiency required in order to do the activities he undertook. He did not complete any Canadian Securities Course, and there is no evidence that he was knowledgeable in the area that he purported to advise.

[9] There were some disturbing aspects to this particular matter.

[10] In July of 2001, the respondent was warned by the Commission, acting on complaints. He was advised that he was not entitled to engage in the activities of advising or forming an investment club. Notwithstanding this, he continued to do what he had been doing, and he became involved with the start of an investment club in April of 2002.

[11] There has been very little restitution or disgorgement. The respondent is a bankrupt, and is now unemployed. He has no significant funds to disgorge, and he has no significant funds with which he could make restitution. However, he has been making payments to the trustee in bankruptcy and is doing what his financial resources enable him to do to achieve a discharge from bankruptcy anticipated in August.

[12] Another disturbing factor is that the respondent still believes that if some of the investors had invested additional funds with him, he could have recouped their losses.

[13] This is a classic attitude of persons who do not understand the nature of investing, where if only they could be given one more shot they could recoup their losses. This is not a criterion that advisors use; it is not a criterion that investment managers use to manage money for others.

[14] This, we believe, would become more apparent to the respondent had he undertaken the necessary courses and the training required in order to be licensed as a registrant.

[15] This is a classic case of why registration is necessary to allow persons to engage in the business of advising and trading in securities. Registration is meant to protect the public.

[16] A direct consequence of the respondent undertaking activities which he was not entitled to undertake because he had not been registered is the losses that have been suffered by others.

[17] The agreed statement of facts makes it clear that another aspect that a dealer, advisor and trader should undertake as part of their tasks was not done by the respondent.

[18] There was no adequate disclosure of performance. The various persons relying on the respondent to trade for them had no clear idea of their position with respect to gains and losses.

Acceptability of Agreed Sanctions

[19] We looked at the remedies agreed to, and note that 15 years may be a little on the light side. Counsel for staff referred us to various cases. Fifteen years is within acceptable parameters.

[20] While there is no evidence of maliciousness or deliberate dishonesty on the part of the respondent in this case, and no deliberate fraud, we are concerned that he did receive a warning from the Commission and continued to participate in the market.

[21] This may have been through lack of understanding, and based on the respondent's brief comments to us, that is a possibility. On the other hand, it may reflect a lack of concern of the consequences of what he was doing.

[22] Nevertheless, the purpose of sanctions under section 127 is to protect the public in the future and not to punish. So what the panel has to determine is that the 15 year cease trade order is sufficient and fair to all concerned so that the public will be protected.

[23] We are prepared to accept this, with reluctance, on the basis that 15 years is a long period of time and it will make an impression on the respondent. In particular, we ask - we are not ordering - but we do ask that staff arrange to check up on the

respondent after one year and after three years to ascertain whether or not he is abiding by the cease trade order that we will be approving.

[24] And of course, we put no restrictions on staff in checking up even further at other times, but we do not think that this is a case where the Commission should wait for complaints to come in.

[25] We are prepared to accept the 15 year period cease trade without a monetary payment because the respondent is a bankrupt and does not have funds. He is unemployed. We are concerned that there is no monetary payment, but accept the economic reality in the particular circumstances.

[26] We feel that as a general deterrence it would have been preferable had there been an amount agreed to on a voluntary basis as a settlement payment. We are satisfied that, on the evidence given, the respondent is making payments to his trustee in bankruptcy which will go towards his general creditors. Therefore, under the circumstances, all that conceivably should be done is being done.

[27] The reprimand is a very important aspect of this particular case. We want it on the record that what the respondent has done is totally unacceptable, and contrary to the very purpose of the Act, which is to keep persons who are not judged fit and proper to deal in securities out of the business.

[28] And so we will be reprimanding the respondent as part of the agreed sanctions, and this will go on the record and will be taken into account if in the future the respondent violates our order.

[29] I can predict that a future panel would take an extremely dim view of any subsequent infraction, and that the sanctions would be much more severe than those agreed to today. Commissioner Davis, would you like to add anything?

Commissioner Davis:

[30] No, I have nothing to add. Thank you.

Vice-Chair Moore:

[31] Commissioner Perry, would you like to add anything?

Commissioner Perry:

[32] No.

Vice-Chair Moore:

[33] Mr. Hew, would you please stand. You have heard what I have had to say. Do you understand the seriousness of what you have done?

Ron Carter Hew:

[34] Yes, I have.

Vice-Chair Moore:

[35] And you appreciate the fact that this cease trade order means that you cannot do what you have been doing in the past?

Ron Carter Hew:

[36] Yes, I understand that.

Vice-Chair Moore:

[37] And that will be for at least 15 years. And even then, after the 15 year period, you would have to be registered if in fact you wanted to get into the business of dealing in securities.

[38] In the meantime, you cannot even trade for your own account. You cannot buy and sell securities for your own account, except through an RRSP if you establish it in the future, but that would just be your own RRSP. Do you understand that?

Ron Carter Hew:

[39] Yes, I understand.

Vice-Chair Moore:

[40] Thank you. You have been reprimanded. You may sit down. We are prepared to sign the order.

Approved by the Chair of the Panel on July 18th, 2005.

"Paul M. Moore"
Vice-Chair

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
Foccini International Inc.	04 Jul 05	15 Jul 05	15 Jul 05	
*Golden Briar Mines Limited	08 Jul 05	20 Jul 05		20 Jul 05
How To Web TV Inc.	14 Jul 05	26 Jul 05		

***Not reported on the July 13, 2005 bulletin.**

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
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Brainhunter Inc.	18 May 05	31 May 05	31 May 05		
Cimatec Environmental Engineering	04 May 05	17 May 05	17 May 05		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
Hollinger Canadian Newspapers, Limited Partnership	21 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		
How To Web Tv Inc.	04 May 05	17 May 05	17 May 05		14 Jul 05
Kinross Gold Corporation	01 Apr 05	14 Apr 05	14 Apr 05		
Lucid Entertainment Inc.	03 May 05	16 May 05	16 May 05		
Mad Catz Interactive Inc.	30 Jun 05	13 Jul 05		14 Jul 05	
Mamma.Com Inc.	01 Apr 05	14 Apr 05	14 Apr 05		
Rex Diamond Mining Corporation	04 Jul 05	15 Jul 05	15 Jul 05		
Sargold Resources Corporation	04 May 05	17 May 05	17 May 05		
Thistle Mining Inc.	05 Apr 05	18 Apr 05	18 Apr 05		
Xplore Technologies Corp.	04 Jul 05	15 Jul 05	15 Jul 05		

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Chapter 5

Rules and Policies

5.1.1 Notice of Amendments to CP 55-102CP to NI 55-102 System for Electronic Disclosure by Insiders (SEDI)

NOTICE OF AMENDMENTS TO COMPANION POLICY 55-102CP
TO NATIONAL INSTRUMENT 55-102 SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)

Notice of Amendments

The Canadian Securities Administrators (CSA) are amending Companion Policy 55-102CP (the Policy) to National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*(NI 55-102), effective August 20, 2005. The amendments reflect changes to the SEDI system that will remove the conditional filing function for users who have not completed the registration process. The changes mean that users cannot access the system until they complete the registration process. The system changes are effective on August 20, 2005. All CSA jurisdictions that have insider reporting requirements have implemented or expect to implement the amendments to the Policy.

Background to the Amendments

SEDI

SEDI is an insider trade reporting system that allows insiders to file electronically their insider reports, and issuers to file certain information about the issuer electronically. All publicly available insider reporting information is easily accessible by the public.

User Registration

NI 55-102 requires a person who will use SEDI for insider filings to register as a SEDI user, following a specified process and form. In the current Policy, the CSA provided its view that, until a user has completed the registration process, a SEDI filing is not a valid filing for purposes of securities legislation.

Conditional Filing Function

SEDI originally included a conditional filing function that permitted an individual who submitted the online user registration form to prepare and submit an insider profile, as well as insider reports, prior to completing the registration process. SEDI assigned a conditional status to any insider profiles or insider reports filed by an individual who had not completed the registration process.

Part 4 of the Policy currently provides that conditional SEDI filings are not valid filings and are not publicly accessible. Part 4 of the Policy also says that when the individual making a conditional SEDI filing completes the registration process, by delivering to CDS for verification a signed paper copy of the registration form, any conditional SEDI filings automatically cease to be conditional filings and become publicly accessible.

Substance and Purpose of the Amendments

Since SEDI became operational, members of the CSA have noted repeated instances where individuals who made conditional filings did not subsequently complete the registration process. Their insider filings remain conditional and the insider is in default of their insider reporting obligations under applicable securities legislation. To address this issue, on August 20, 2005, we will remove the conditional filing function from the SEDI software application. As a result, an individual must complete the registration process before using SEDI to make any filings. The amendments to the Policy reflect this change to the SEDI software application.

The CSA is of the view that the amendments to the Policy are not material. Accordingly, the amendments are not being published for comment.

Related Staff Notice and SEDI User Guide

The CSA will publish a revised version of CSA Staff Notice 55-310 – *Questions and Answers on the System for Electronic Disclosure by Insiders (SEDI)* and a revised version of the SEDI User Guide available online at www.csa-acvm.ca by the effective date of the amendments.

Text of Amendments

The text of the amendments follows.

For questions, please refer to any of:

Agnes Lau
Deputy Director, Capital Markets
Alberta Securities Commission
Telephone: (403) 297-8049
E-mail: agnes.lau@seccom.ab.ca

April Penn
Supervisor, Financial and Insider Reporting
British Columbia Securities Commission
Telephone: (604) 899-6805 or (800) 373-6393 (in B.C. and Alberta)
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Wayne Bridgeman
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The Manitoba Securities Commission
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July 22, 2005

5.1.2 Amendments to CP 55-102CP to NI 55-102 System for Electronic Disclosure by Insiders (SEDI)

AMENDMENTS TO COMPANION POLICY 55-102CP
TO NATIONAL INSTRUMENT 55-102
SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS
(SEDI)

Part 1 – Amendments

1.1 Part 4 of Companion Policy 55-102CP to National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* is deleted and replaced with the following:

"PART 4 - DATE OF FILING AND USER REGISTRATION

4.1 The securities regulatory authority takes the view that information filed in SEDI format is, for purposes of securities legislation, filed on the day that the transmission of the information to the SEDI server is completed. Once SEDI receives that information, the system will allow the SEDI user to print a copy of the filed information showing the date and time SEDI received it.

4.2 Subsection 2.5(1) of the National Instrument permits an individual who is a SEDI filer, a filing agent, or an authorized representative of a SEDI filer or filing agent to use SEDI to make SEDI filings. Subsection 2.5(2) of the National Instrument requires such an individual to register before using SEDI to make a SEDI filing. To do so, the individual must complete, and submit, an online user registration form, and must deliver a signed paper copy of the completed user registration form to the SEDI operator, for verification. Until an individual has completed registration as a SEDI user in accordance with subsection 2.5(2) of the National Instrument, the individual cannot use SEDI to make filings.

The SEDI operator will promptly process the signed paper copies of the registration form that it receives for verification. If there is a problem with the verification process, the SEDI operator or the securities regulatory authority, depending on the problem, will work with the registering individual to try to resolve it."

Part 2 – Effective Date

2.1 These amendments come into effect on August 20, 2005.

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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 SecuritiesScource (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

Transaction Date	Purchaser	Security	Total Purchase Price ($)	No. of Securities
16-Jun-2005	Investor Co. ITF Clare E. Winterbottom Ivestor Company ITF Klaus P. Wipperman	AADCO Automotive Inc. - Common Shares	102,958.46	935,986.00
30-Jun-2005	5 Purchasers	ABC American -Value Fund - Units	950,000.00	105,438.00
30-Jun-2005	8 Purchasers	ABC Fully-Managed Fund - Units	1,362,997.00	127,040.00
30-Jun-2005	17 Purchasers	ABC Fundamental - Value Fund - Units	3,052,991.00	157,858.00
30-Jun-2005	4 Purchasers	Alternum Capital - North American Value Hedge Fund - Limited Partnership Units	274,559.00	318.00
29-Jun-2005	7 Purchasers	Augusta Resource Corporation - Units	3,490,000.00	1,396,000.00
28-Jun-2005	David L. Burn Charles P. Farrugia	BCS Global Networks Inc. - Convertible Debentures	50,000.00	50.00
08-Jul-2005	Greg Durand	BioLytical Laboratories Inc. - Common Shares	10,000.00	20,000.00
06-Jul-2005	NexGen Holdings Ltd.	Bluefield Financial Limited Partnership - Units	100,000.00	20,000,000.00
23-Jul-2005	Dundee Securities Corporation	Bourse de Montreal Inc. - Common Shares	1,707,000.00	100,000.00
30-Jun-2005	The Manufacturers Life Insurance Company	Bower Place Limited Partnership - Bonds	60,000,000.00	60,000,000.00
06-Jul-2005 to 12-Jul-2005	18 Purchasers	Canadian Superior Energy Inc. - Special Warrants	3,000,000.00	1,500,000.00
12-Jul-2005	Steve Pantalone Mont Blanc Investment Corp.	Canadian Voyager Energy Ltd. - Common Shares	120,000.00	200,000.00
05-Jul-2005	4 Purchasers	CareVest Blended Mortgage Investment Corporation - Preferred Shares	265,000.00	265,000.00
07-Jul-2005	5 Purchasers	CareVest First Mortgage Investment Corporation - Preferred Shares	289,190.00	289,190.00
11-Jul-2005	3 Purchasers	Cash Minerals Ltd. - Flow-Through Shares	1,534,999.90	4,385,714.00
29-Jul-2005	3 Purchasers	Chapparral Steel Company - Notes	9,829,600.00	8,000.00
11-Jul-2005	Philip J. Olsson G. Gayle Olsson	Connaught Energy Ltd. - Common Shares	195,000.00	3,900.00
05-Jul-2005	Cameron Dinning	Copper Fox Metals Inc. - Flow-Through Shares	1,000.00	50,000.00
05-Jul-2005	Robert K> Kostiuk	Copper Fox Metals Inc. - Units	10,000.00	50,000.00
28-Jun-2005	47 Purchasers	Cordero Energy Inc. - Common Shares	1,059,349.00	227,816.00
06-Jul-2005	3 Purchasers	Cornerstone Capital Resources Inc. - Units	257,500.00	745,000.00
30-Jun-2005	Credit Risk Advisors Bank of Montreal	Encore Acquisition Company - Notes	13,227,060.00	11,000,000.00
01-Jun-2005	22 Purchasers	FactorCorp. - Debentures	1,483,500.00	1,483,500.00
08-Jul-2005	Andrew Pringle	Fralex Therapeutics Inc. - Stock	100,000.00	104,998.00
27-Jun-2005	5 Purchasers	Gastar Explorations Ltd. - Common Shares	1,956,230.00	738,200.00
27-Jun-2005	Global (GMPC) Holdings Inc.	Global Development Resources Inc. - Units	150,000.00	500,000.00

27-Jun-2005	Global (GMPC) Holdings Inc.	Global Development Resources Inc. - Units	150,000.00	500,000.00
08-Jul-2005	Peter Tanko	Global Financial Group Inc. - Units	37,000.00	246,667.00
30-Jun-2005	51 Purchasers	Grand Petroleum Inc. - Common Shares	6,819,200.00	2,052,000.00
30-Jun-2005	Proctor Group, Health	HSBC Bank Canada - Units	300,000.00	1.00
30-Jun-2005	15 Purchasers	Huntingdon Real Estate Investment Trust - Trust Units	4,485,000.00	4,485.00
30-Jun-2005	73 Purchasers	Huntingdon Real Estate Investment Trust - Units	87,025,290.00	31,645,560.00
20-Jun-2005	Epic Limited Partnership Epic Limited Partnership II	Hy-drive Technologies Ltd. - Units	430,188.00	167,168.00
30-Jun-2005	Strategic Advisors Corp.	Interex Oilfield Services Ltd. - Special Warrants	11,765.00	18,100.00
30-Jun-2005	Strategic Advisors Corp.	Interex Oilfield Services Ltd. - Special Warrants	455.00	700.00
07-Jul-2005	9 Purchasers	International PBX Ventures Ltd. - Units	186,899.85	415,333.00
30-Jun-2005	Willis Earl Gordon	LoBenn Inc. - Common Shares	20,000.00	20,000.00
30-Jun-2005	AGF Management Ltd.	Lojas Renner S.A. - Common Shares	1,925,700.00	100,000.00
06-Jul-2005	Investeco Private Equity Fund L.P.	Lotek Wireless Inc. - Common Share Purchase Warrant	728,000.00	400,000.00
06-Jul-2005	Investeco Private Equity Fund L.P.	Lotek Wireless Inc. - Common Shares	1,000,000.00	219,780.00
04-Jul-2005 to 11-Jul-2005	7 Purchasers	Magenta II Mortgage Investment Corporation - Units	107,855.00	107,855.00
30-Jun-2005	Strategic Advisors Corp.	Magnifoam Technology International Inc. - Common Shares	3,240.00	1,500.00
06-Jul-2005	Laurentian University Retirement Plan	Maple Key + Limited Partnership - Limited Partnership Units	4,057,815.00	4,057,815.00
30-Jun-2005	Sun Life Assurance Company of Canada The Manufacturers Life Insurance Company	McCain Finance (Canada) Ltd. - Debentures	87,000,000.00	87,000,000.00
07-Jul-2005	15 Purchasers	McCall Lake Plaza L.P. - Limited Partnership Units	1,093,000.00	1,093.00
15-Jul-2005	Jack Serruya	MTY Food Group Inc. - Common Shares	3,500,000.00	1,000,000.00
30-Jun-2005	5 Purchasers	Newport Alternative Income Fund - Units	161,846.00	204.00
29-Jun-2005	22 Purchasers	NSP Pharma Corp. - Common Shares	5,000,001.45	1,886,793.00
29-Jun-2005	20 Purchasers	NSP Pharma Corp. - Common Shares	2,500,002.05	943,397.00
29-Jun-2005	Naturale Science Inc.	NSP Pharma Corp. - Common Shares	530,000.00	200,000.00
07-Jul-2005	136 Purchasers	NuLoch Resources Inc. - Units	3,510,000.00	3,510.00
30-Jun-2005	3 Purchasers	O'Donnell Emerging Companies Fund - Units	73,067.00	9,878.00
01-Jul-2005	Ontario Teachers' Pension Plan Board	Oak Hill CCF Offshore Fund Ltd. - Shares	12,432,000.00	10,000.00
29-Jun-2005	The Canadian Medical Protective Association	PEF 2005 (B) Limited Partnership - Limited Partnership Units	15,000,000.00	15,000.00
30-Jun-2005	5 Purchasers	Plazacorp Retail Properties Ltd. - Debentures	700,000.00	700.00
30-Jun-2005 to 06-Jul-2005	Pension Fund Society Fidelity Investments Canada Ltd.	Psychiatric Solutions Inc. - Subordinated Note	1,433,952.00	11,700.00
07-Jul-2005	The Royal Trust Company	Redbourne Realty Fund Inc. - Common Shares	802,902.00	803.00
14-Jul-2005	The Royal Trust Company	Redbourne Realty Fund Inc. - Common Shares	5,728,854.00	5,729.00
07-Jul-2005	1254115 Ontario Inc.	Redbourne Realty Fund I, L.P. - Units	160,580.00	161.00
14-Jul-2005	1254115 Ontario Inc.	Redbourne Realty Fund I, L.P. - Units	1,145,771.00	1,146.00

30-Jun-2005	Patti-Ann Marzocco	Regal Energy Corp. - Flow-Through Shares	10,080.00	42,000.00
28-Jun-2005	3 Purchasers	Richmont Mines Inc. - Common Shares	10,956,400.00	2,236,000.00
15-Jul-2005	Floyd Philip Owen S. Dean Tronsgard	Ruby Red Resources Inc. - Units	2,000.00	20,000.00
29-Jun-2005	6 Purchasers	Saxony Petroleum Inc, - Common Shares	1,850,000.00	925,000.00
29-Jun-2005	4 Purchasers	Saxony Petroleum Inc, - Warrants	7,750.00	775,000.00
04-Jul-2005	3 Purchasers	Sea NG Management Corporation - Shares	70,000.00	280,000.00
02-Jun-2005	Laurel Ross	Secured Life Ventures Inc. - Promissory note	70,000.00	1.00
08-Jun-2005	Greg Brown	Secured Life Ventures Inc. - Promissory note	20,000.00	1.00
10-Jun-2005	Jean Black	Secured Life Ventures Inc. - Promissory note	100,000.00	1.00
14-Jun-2005	Kenneth Quenneville	Secured Life Ventures Inc. - Promissory note	100,000.00	1.00
16-Jun-2005	James Inglis William O'Connor	Secured Life Ventures Inc. - Promissory note	200,000.00	2.00
17-Jun-2005	Patricia Westerhout	Secured Life Ventures Inc. - Promissory note	100,000.00	1.00
23-Jun-2005	Albert McDougall Linda Stevenson	Secured Life Ventures Inc. - Promissory note	30,000.00	2.00
02-Jun-2005	Laurel Ross	Secured Life Ventures Inc. - Shares	70,000.00	700.00
08-Jun-2005	Greg Brown	Secured Life Ventures Inc. - Shares	20,000.00	200.00
10-Jun-2005	Jean Black	Secured Life Ventures Inc. - Shares	100,000.00	1,000.00
14-Jun-2005	Kenneth Quenneville	Secured Life Ventures Inc. - Shares	100,000.00	1,000.00
16-Jun-2005	James Inglis William O'Connor	Secured Life Ventures Inc. - Shares	200,000.00	2,000.00
17-Jun-2005	Patricia Westerhout	Secured Life Ventures Inc. - Shares	100,000.00	1,000.00
23-Jun-2005	Albert McDougall Linda Stevenson	Secured Life Ventures Inc. - Shares	30,000.00	300.00
30-Mar-2005	Literary Partners GP Inc.	Spell Read P.A.T. Learning Systems Inc. - Units	376,000.00	125,333.00
30-Jun-2005	Literary Partners GP Inc.	Spell Read P.A.T. Learning Systems Inc. - Units	3,384,000.00	1,128,000.00
01-Jul-2005	Paul J. Schellenberg David G. Sandrock	Stacey Investment Limited Partnership - Limited Partnership Units	175,023.00	1,240.00
30-Jun-2005	Bart J. Mindszenthy	Stacey RSP Fund - Trust Units	150,000.00	14,512.00
28-Feb-2005	6 Purchasers	Standard Diversified Fund - Limited Partnership Units	1,145,925.00	1,145,925.00
30-Jun-2005	3 Purchasers	Standard Diversified Fund - Limited Partnership Units	650,000.00	650,000.00
12-Jul-2005	CI Mutual Funds Group	STATS ChipPAC Ltd. - Notes	3,607,200.00	3,000,000.00
11-Jul-2005	3 Purchasers	Symbium Corporation - Convertible Debentures	1,499,999.00	1,499,999.00
30-Jun-2005	12 Purchasers	Tahera Diamond Corporation - Flow-Through Shares	4,057,920.00	8,454,000.00
14-Jun-2005	3 Purchasers	Tenajon Resources Corp. - Common Shares	15,000.00	60,000.00
07-Jul-2005	Acker Finley Asset Management Inc. Canada Dominion Resources 2004 LP	Terraco Gold Corp. - Units	300,000.00	3,000,000.00
30-Jun-2005	Timothy Kingston Alberta Berry	The McElvaine Investment Trust - Trust Units	42,150.48	1,861.00
01-Jul-2005	18 Purchasers	Tower Hedge Fund L.P. - Units	200,241.00	16,070.00
29-Jun-2005	Quorum Secured Equity Trust	True North Corporation - Debentures	1,300,000.00	1.00
04-Jul-2005	York Uniforms Holdings Limited	Unisync Group Limited - Common Shares	2,374,049.00	2,374,049.00

12-Jul-2005	22 Purchasers	VRB Power Systems Inc. - Special Warrants	7,285,104.00	10,118,200.00
12-Jul-2005	4 Purchasers	War Eagle Mining Company Inc. - Units	62,650.00	179,000.00
07-Jul-2005	3 Purchasers	Winstar Resources Ltd. - Subscription Receipts	77,850.00	173,000.00
04-Jul-2005	3 Purchasers	York Uniforms Holdings Limited - Common Shares	2,374,049.00	2,374,049.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bradmer Pharmaceuticals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated July 12, 2005
Mutual Reliance Review System Receipt dated July 15, 2005
Offering Price and Description:
$500,000.00 - 2,500,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Canaccord Capital Corporation
Promoter(s):
Dr. Mark C. Rogers
Project #806183

Issuer Name:
Canadian Prodigy Capital Corporation
Principal Regulator - Quebec
Type and Date:
Preliminary CPC Prospectus dated July 14, 2005
Mutual Reliance Review System Receipt dated July 18, 2005
Offering Price and Description:
Minimum Offering: $600,000.00 or 3,000,000 Common Shares -Maximum Offering: $900,000.00 or 4,500,000 Common Shares - Price: $0.20 per Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
Bernard Mercier
Project #806578

Issuer Name:
Canexus Income Fund
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated July 18, 2005
Mutual Reliance Review System Receipt dated July 18, 2005
Offering Price and Description:
$*-* Trust Units - Price: $10.00 per Trust Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
First Associates Investments Inc.
Orion Securities Inc.
Peters & Co. Limited
Promoter(s):
Nexen Inc.
Project #803026

Issuer Name:
Enterra Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Shelf Prospectus dated July 14, 2005
Mutual Reliance Review System Receipt dated July 18, 2005
Offering Price and Description:
Trust Units; Purchase Contracts: Warrants: Units -U.S. $500,000,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #806792

Issuer Name:
Luca Capital Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated July 13, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
$300,000.00 - 2,000,000 Common Shares - Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
First Associates Investments Inc.
Promoter(s):
Danny Dalla-Longa
Al J. Kroontje
Project #806185

Issuer Name:
NovaGold Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 13, 2005
Mutual Reliance Review System Receipt dated July 13, 2005
Offering Price and Description:
$62,600,000.00 - 62,600,000 Common Shares and 3,130,000 Warrants to be issued upon exercises of 6,260,000 previously issued Special Warrants
Underwriter(s) or Distributor(s):
Salman Partners Inc.
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
Sprott Securities Inc.
Promoter(s):
-
Project #805858

Issuer Name:
OFI Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated July 14, 2005
Mutual Reliance Review System Receipt dated July 15, 2005
Offering Price and Description:
$*-* Units
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
OFI Holdings Ltd.
Project #806211

Issuer Name:
Primary Energy Recycling Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated July 14, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
Cdn $ * - * Enhanced Income Securities - Price: Cdn $10.00 per EIS
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Promoter(s):
Primary Energy Ventures LLC
Project #805912

Issuer Name:
Retrocom Mid-Market Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated July 13, 2005 to Preliminary Short Form Prospectus dated June 23, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
20,000,000 - * % Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Promoter(s):
Retrocom Investments Management Inc.
Project #800232

Issuer Name:
Sunrise Senior Living Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 18, 2005
Mutual Reliance Review System Receipt dated July 18, 2005
Offering Price and Description:
C $159,982,500.00 - 12,850,000 Units - Price: C $12.45 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
Sunrise Senior Living, Inc.
Project #806679

Issuer Name:
THESEUS CAPITAL INC.
Principal Regulator - Quebec
Type and Date:
Amendment #1 dated July 14, 2005 to Preliminary CPC Prospectus dated June 23, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Investpro Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
Richard Belanger
Jean-Yves Germain
Project #800452

Issuer Name:
Trimark Select Growth Class of AIM Global Fund Inc.
AIM Global Theme Class of AIM Global Fund Inc.
AIM International Growth Class of AIM Global Fund Inc.
AIM European Growth Fund
AIM Global Health Sciences Fund
AIM Global Technology Fund
Trimark RSP Global High Yield Bond Fund
Trimark RSP Global Balanced Fund
Trimark RSP U.S. Companies Fund
AIM RSP American Growth Fund
Trimark RSP Fund
Trimark RSP Select Growth Fund
AIM RSP Global Theme Fund
Trimark RSP Global Endeavour Fund
Trimark RSP International Companies Fund
AIM RSP International Growth Fund
Trimark RSP Europlus Fund
AIM RSP European Growth Fund
AIM RSP Indo-Pacific Fund
Trimark RSP Discovery Fund
AIM RSP Global Health Sciences Fund
AIM RSP Global Technology Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated July 8, 2005 to Final Simplified Prospectus and Annual Information Form dated August 13, 2004
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
-
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:
AIM Trimark Core Canadian Balanced Class of AIM Canada Fund Inc.
AIM Trimark Core Canadian Equity Class of AIM Canada Fund Inc.
AIM Trimark Core American Equity Class of AIM Global Fund Inc.
AIM Trimark Core Global Equity Class of AIM Global Fund Inc.
AIM Trimark RSP Core American Equity Fund
AIM Trimark RSP Core Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated July 8, 2005 to Final Simplified Prospectus and Annual Information Form dated August 13, 2004
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
Mutual Fund Units Net Asset Value
Underwriter(s) or Distributor(s):
AIM Funds Management Inc.
Promoter(s):
AIM Funds Management Inc.
Project #665003

Issuer Name:
Blue Fyre One Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated June 27, 2005 to Final Prospectus dated February 15, 2005
Mutual Reliance Review System Receipt dated July 13, 2005
Offering Price and Description:
$600,000.00 (2,400,000 Common Shares) - Price: $0.25 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Michael Gaffney
Project #712165

Issuer Name:
BPI American Equity RSP Fund
BPI Global Equity RSP Fund
BPI International Equity RSP Fund
CI American Managers® RSP Fund
CI American Small Companies RSP Fund
CI American Value RSP Fund
CI Emerging Markets RSP Fund
CI European RSP Fund
CI Global Biotechnology RSP Fund
CI Global Bond RSP Fund
CI Global Boomernomics® RSP Fund
CI Global Consumer Products RSP Fund
CI Global Energy RSP Fund
CI Global Financial Services RSP Fund
CI Global Health Sciences RSP Fund
CI Global Managers® RSP Fund
CI Global RSP Fund
CI Global Science & Technology RSP Fund
CI Global Small Companies RSP Fund
CI Global Value RSP Fund
CI International Balanced RSP Fund
CI International RSP Fund
CI International Value RSP Fund
CI Japanese RSP Fund
CI Pacific RSP Fund
CI Value Trust RSP Fund
Harbour Foreign Equity RSP Fund
Harbour Foreign Growth & Income RSP Fund
Synergy American RSP Fund
Synergy Extreme Global Equity RSP Fund
Synergy Global RSP Fund
Synergy Global Style Management RSP Fund
CI Global Balanced RSP Portfolio
CI Global Conservative RSP Portfolio
CI Global Growth RSP Portfolio
CI Global Maximum Growth RSP Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #8 dated July 5, 2005 to Final Simplified Prospectuses dated July 23, 2004 and Amendment #9 dated July 5, 2005 to the Annual Information Form dated July 23, 2004
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
Mutual Fund Units Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Funds Inc.
Project #665295

Issuer Name:
Capital Alliance Ventures Inc.
Type and Date:
Amendment #2 dated June 28, 2005 to Final Prospectus dated October 27, 2004
Receipted on July 14, 2005
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #692398

Issuer Name:
Capstone Canadian Equity Fund
Capstone Balanced Fund
Capstone Global Equity Fund
Capstone Cash Management Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 15, 2005
Mutual Reliance Review System Receipt dated July 19, 2005
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Capstone Consultants Limited
Capstone Consultants Limited
Promoter(s):
Morgan Meighen & Associates Limited
Project #798595

Issuer Name:
High River Gold Mines Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 19, 2005
Mutual Reliance Review System Receipt dated July 19, 2005
Offering Price and Description:
$20,000,000.00 - 16,000,000 Units -Price: $1.25 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #804690

Issuer Name:
INTERNATIONAL FINANCIAL INCOME AND GROWTH TRUST
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 15, 2005
Mutual Reliance Review System Receipt dated July 15, 2005
Offering Price and Description:
Maximum 8,000,000 Units @10 per Unit = $80,000,000.00
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc
Berkshire Securities Inc.
HSBC Securities (Canada) Inc,
Canaccord Capital Corporation
Desjardins Securities Inc.
Bieber Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
Richardson Partners Financial Limited
Wellington West Capital Inc.
Promoter(s):
AIC Limited
Project #789108

Issuer Name:
LOR CAPITAL INC.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated July 13, 2005
Mutual Reliance Review System Receipt dated July 19, 2005
Offering Price and Description:
MINIMUM OFFERING: $8,500,000.00 or 15,454,545 Units; MAXIMUM OFFERING: $11,500,000.00 or 20,909,091 Units Price: $0.55 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Wellington West Capital Inc.
Promoter(s):
Michael Weinberg
Project #787126

Issuer Name:
Mackenzie Universal Financial Services Capital Class
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated July 14, 2005 to Final Simplified Prospectus and Annual Information Form dated September 30, 2004
Mutual Reliance Review System Receipt dated July 19, 2005
Offering Price and Description:
Series A, F, I, O and R Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #689035

Issuer Name:
Manor Global Inc.
Type and Date:
Final Prospectus dated July 14, 2005
Receipted on July 19, 2005
Offering Price and Description:
MINIMUM OFFERING: $600,000.00 or 6,000,000 common shares - MAXIMUM OFFERING: $1,895,000.00 or 18,950,000 common shares - Price: $0.10 per common share
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
-
Project #777764

Issuer Name:
Merrill Lynch Financial Assets Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Base PREP Prospectus dated July 14, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
$443,252,000.00 (Approximate)
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Promoter(s):
-
Project #804251

Issuer Name:
R Balanced Distinction Portfolio
R Bold Distinction Portfolio
R Conservative Distinction Portfolio
R Dynamic Distinction Portfolio
R Prudent Distinction Portfolio
Principal Regulator - Quebec
Type and Date:
Amendment #2 dated July 12, 2005 to Final Simplified Prospectus and Annual Information Form dated October 7, 2004
Mutual Reliance Review System Receipt dated July 18, 2005
Offering Price and Description:
Mutual Fund Units Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Industrial Alliance Fund Management Inc.
Project #688624

Issuer Name:
Royster-Clark Ltd.
Royster-Clark ULC
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 13, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
C$325,000,000.00 - 32,500,000 Income Deposit Securities - Price: C$10.00 per IDS
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Promoter(s):
-
Project #798036/798035

Issuer Name:
Scorpio Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 8, 2005
Mutual Reliance Review System Receipt dated July 14, 2005
Offering Price and Description:
Minimum Offering: $500,000.00 or 3,333,333 Common Shares; Maximum Offering: $1,900,000.00 or 12,666,667 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Credifinance Securities Limited
Kingsdale Capital Markets Inc.
Promoter(s):
-
Project #787484

Issuer Name:
Sequence Income Portfolio
Sequence 2010 Conservative Portfolio
Sequence 2010 Moderate Portfolio
Sequence 2020 Conservative Portfolio
Sequence 2020 Moderate Portfolio
Sequence 2030 Conservative Portfolio
Sequence 2030 Moderate Portfolio
Sequence 2040 Conservative Portfolio
Sequence 2040 Moderate Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 12, 2005
Mutual Reliance Review System Receipt dated July 13, 2005
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #789083

Issuer Name:
Uranium City Resources Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 11, 2005
Mutual Reliance Review System Receipt dated July 13, 2005
Offering Price and Description:
(1) Minimum Offering: $2,000,000.00 of Flow-Through Units and/or Regular Units; Maximum Offering: $5,000,000.00 of Flow-Through Units and/or Regular Units - $0.70 Per Flow-Through Unit $0.60 Per Regular Unit;
(2) 2,580,000 Common Shares Issuable Upon Exercise of 2,580,000 Previously Issued First Special Warrants;
(3) 228,000 First Broker Warrants Issuable Upon Exercise of 228,000 Previously Issued Broker Special Warrants, each First Broker Warrant Entitling the Holder to Purchase one Common Share at $0.25;
(4) 2,340,300 Common Shares and 1,170,150 Common Share Purchase Warrants Issuable Upon Exercise of 2,100,000 Previously Issued Second Ordinary Special Warrants and 240,300 Previously Issued Second Flow-Through Special Warrants;
(5) 234,030 Second Broker Warrants Issuable Upon Exercise of 234,030 Previously Issued Broker Special Warrants, each Second Broker Warrant Entitling the Holder to Purchase 1 Unit Consisting of one Common Share and one-half of one Common Share Purchase Warrant at $0.50
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
GLR Resources Inc.
Project #777424

Issuer Name:
Yamana Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 18, 2005
Mutual Reliance Review System Receipt dated July 19, 2005
Offering Price and Description:
Issue of up to 1,444,209 Common Shares upon Early Exercise of Common Share Purchase Warrants
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
Santa Elina Mines Corporation
Project #798709

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Doheny Securities Limited	Mutual Fund Dealer	June 24, 2005
Change of Name	From: Sneddon Investment Counsel & Portfolio Management Inc. To: CASTLEMOORE INC.	Investment Counsel & Portfolio Manager	June 30, 2005
New Registration	Presima Inc.	Extra-Provincial Limited Market Dealer and Investment Counsel & Portfolio Manager	July 18, 2005

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 CSA Discussion Paper 23-403 - Market Structure Developments and Trade-Through Obligations

CSA DISCUSSION PAPER 23-403

MARKET STRUCTURE DEVELOPMENTS AND TRADE-THROUGH OBLIGATIONS

Table of Contents

I. INTRODUCTION

The purpose of this discussion paper is to discuss evolving market developments and the consequential implications for our market, in particular the obligation to avoid trade-throughs (trade-through obligation).

The review of market structure and the policy response began in the 1990's with the interest in allowing new types of marketplaces which were then known as proprietary electronic systems (now known as alternative trading systems) to operate in Canada. The public policy discussion considered the benefits and concerns brought on by having multiple marketplaces. The discussions also examined how new marketplaces brought competition and choice for investors regarding where to execute trades and how to execute them, while at the same time the development of multiple marketplaces can cause fragmentation of the price discovery process and market surveillance.

In December 2001, the Canadian Securities Administrators (CSA or we) introduced National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (together, the ATS Rules). The objectives of the ATS Rules were to: (1) facilitate competition and thereby investor choice; (2) identify and implement the requirements that maintain and improve market integrity when there are multiple marketplaces trading the same securities; and (3) minimize the impact of any fragmentation caused by competition through transparency and other requirements. The ATS Rules introduced a regulatory structure for the regulation of marketplaces[1], including the need for an ATS to contract with a regulation services provider. They imposed transparency requirements for orders and trades of exchange-traded securities and unlisted debt securities.[2] The purpose of the provisions on best execution, fair access, and prohibition against manipulation and fraud was to strengthen market integrity across all marketplaces.

Since 2001, new types of marketplaces with different types of trade execution methodologies have been introduced in Canada. These developments have raised issues regarding the application of current market conduct rules, treatment of non-dealer industry participants who have direct access to marketplaces, whether the same level of transparency is appropriate for different types of marketplaces, whether data consolidation is necessary in light of technology developments, and most recently the role of the trade-through obligation. This paper will focus on the trade-through obligation.

A "trade-through" occurs when a quote or "an order exposed on a marketplace" that is at a better price is by-passed and a trade is executed at an inferior price. Trade-throughs can occur intra-market (within one marketplace) or inter-market (between multiple marketplaces trading the same security). "Trade-through obligation" refers to an obligation to ensure that better-priced orders on any marketplace are executed prior to, simultaneously with or immediately after the execution of a trade. In other words, a full trade-through obligation requires that an entity ensure that its orders do not by-pass better-priced orders already in the book.[3]

Recent changes in the capital markets have led regulators and self-regulatory organizations (SROs) both in and outside of Canada to introduce proposals on this issue. On January 31, 2005, the Bourse de Montréal implemented a rule related to block trading. Market Regulation Services Inc. (RS) has published a proposal relating to block trading and trade-through obligations.[4] In the United States, the Securities and Exchange Commission (SEC) has just adopted Regulation NMS (Reg NMS), which introduced changes to the trade-through obligation (Order Protection Rule), access (Access Rule), decimalization and data fees.[5]

The CSA request comment on the issues and questions raised in this discussion paper regarding market structure developments and trade-throughs.

[1] A "marketplace" is an exchange, quotation and trade reporting system or an alternative trading system.
[2] The transparency requirements are in Parts 7 and 8 of NI 21-101.
[3] We note that costs, including access fees, would have to be taken into account when determining on which marketplace the better prices are located.
[4] These changes are discussed in detail in section II.C.2. below.
[5] Securities and Exchange Commission, Release No. 34-51808; File No. S7-10-04 *Regulation NMS*, issued June 16, 2005 (SEC Final Release).

The CSA believe it is time to initiate a discussion to consider how market structure should generally evolve, and specifically, the role of the trade-through obligation. As part of the discussion, we believe it is important to identify the objectives we are trying to achieve and any problems that we are trying to avoid or minimize. The CSA have identified the following objectives as the factors that should be considered in identifying the appropriate structure and requirements for Canada: (1) balancing regulation and competition among all types of marketplaces; (2) recognizing and supporting the role of retail participation in the market; (3) promoting greater order interaction and displayed depth; and (4) encouraging innovation.

1. *What factors or criteria should be considered in identifying the appropriate structure and requirements for the Canadian market?*

We encourage all types of participants in the market to participate in the discussion to ensure that all of the issues are explored, so that the results will properly balance investor protection and fair and efficient capital markets. Investor protection requires us to examine the position of all investors, large and small. Ensuring fair and efficient markets requires that we consider the implications of implementing a policy on all participants.

This paper will discuss the current structure of the Canadian market (Part II), role and scope of a trade-through obligation (Part III), exemptions from a trade-through obligation (Part IV), implications of a trade-through obligation (Part V), impact on markets (Part VI), and the conclusions (Part VII).

II. THE CURRENT STRUCTURE OF THE CANADIAN MARKET

A. Current Structure for Exchange-Traded Securities

Historically, in Canada, trading of listed equity securities could only occur on exchanges. Since 1999, each security has been traded on only one domestic marketplace.[6] The exchanges' technology systems have created trade-through protection within their own marketplaces (i.e. intra-market trade-through protection). We are discussing these issues mainly in the context of listed equity securities, although the same issues may be applicable to any securities trading on multiple marketplaces, for example, corporate debt trading on multiple alternative trading systems (ATSs).

We have seen that the introduction of the ATS Rules has facilitated competition and innovation in the Canadian market by accommodating new marketplaces that have diverse models of trading. New trading technologies are being established to enable dealers and non-dealers alike to trade directly on a marketplace. Marketplaces can now compete by trying to improve upon existing trading alternatives by differentiating on price, cost of execution, liquidity and speed of execution, among others. This competition benefits all investors in that they are provided with more choice, better services and potentially cheaper execution costs.

The Universal Market Integrity Rules (UMIRs) administered on behalf of the stock exchanges and for ATSs by RS were introduced to regulate trading on marketplaces. They were initially drafted based on the existing structure of the equity exchanges. However, with the introduction of new ATSs and innovative trading methodologies, RS has recently undertaken a strategic review of the UMIRs to ensure that the provisions are market-neutral and do not favour one structure over another.

2. *What market structure issues should be considered as part of the discussion on the trade-through obligation?*

3. *Should the discussion about trade-throughs consider trading of non-exchange traded securities on marketplaces other than exchanges (for example, fixed income securities trading on more than one ATS)? If so, please identify market structure issues that need to be reviewed.*

B. Current Rules in Canada Relating to Trading Through

The existing rules relating to trade-through are tied to best execution and best price obligations and are summarized below. These rules were developed as part of the codification of the fiduciary duty of a dealer to its client. They were not developed to facilitate a separate obligation on all participants to the market and to orders already in the book. Until recently, no issues arose under the rules because

- there haven't been multiple marketplaces trading the same securities in Canada,
- the technology systems of existing marketplaces enforced the best price obligation, and
- only dealers had direct access to the existing marketplaces.

[6] This does not include those that are inter-listed on foreign exchanges. In 1999, Canadian exchanges entered into an agreement whereby the Toronto Stock Exchange would trade senior equity securities, the Canadian Venture Exchange (now TSX Venture Exchange) would trade junior equity securities and the Bourse de Montréal would trade derivatives.

1. National Instrument 23-101 Trading Rules

In Part 4 of National Instrument 23-101 *Trading Rules (*NI 23-101), a dealer acting as agent for a client must make reasonable efforts to ensure that the client receives best execution.[7] Notwithstanding this requirement, the dealer must not execute a transaction on a marketplace that could be filled at a better price on another marketplace or with another dealer.[8] The obligations in NI 23-101 apply only to dealers "acting as agent for a client" and do not extend to any non-dealers or dealers acting as principal.

These requirements do not specifically impose a trade-through obligation. However, the implication of having a best price obligation is that there are constraints on how the dealer must execute the order, i.e. at the best price available, and the dealer must not trade through better-priced orders.[9]

2. Universal Market Integrity Rules – Part 5

The UMIRs also tie trade-through to best execution and best price obligations.

UMIR Rule 5.1 *Best Execution of Client Orders* requires a Participant[10] to "diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions." UMIR Rule 5.2 *Best Price Obligation* reads:

> (1) A Participant shall make reasonable efforts prior to the execution of a client order to ensure that:
>
> (a) in the case of an offer by the client, the order is executed at best bid price; and
>
> (b) in the case of a bid by the client, the order is executed at the best ask price.

Subsection 5.2(2) provides for exemptions from the "best price" obligation:

- where required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4[11] to be executed other than on a marketplace in order to maintain a fair and orderly market;
- for a Special Terms Order[12] unless:
  - (i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or
  - (ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display; and
- for Call Market Orders, Volume-Weighted Average Price Orders, Market-on-Close Orders, Basis Orders or Opening Orders where directed or consented to by the client to be entered on a marketplace.[13]

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[7] Subsection 4.2(1) of NI 23-101.

[8] Subsection 4.2(2) of NI 23-101.

[9] See section V.C.1 below for a discussion on best execution and the trade-through obligation. We acknowledge that current views differ on how to define best execution and how much it should focus on best price. Even if price is the main focus, many factors are considered in determining best execution, including volumes, direction of movement of prices, the size of the spread and overall liquidity. Institutional investors may seek speed of execution, or certainty, and may specify a particular exchange or facility (e.g. market-on-close), or want to trade in a particular way (e.g. anonymously). Concept Paper 23-402 *Best Execution and Soft Dollar Arrangements* was published on February 4, 2005 at (2005), 28 OSCB 1362. See page 1367 of Concept Paper 23-402 for additional discussion of best execution.

[10] "Participant" is defined in section 1.1 of the UMIRs as "a dealer registered in accordance with securities legislation of any jurisdiction and who is (a) a member of an Exchange, user of a QTRS, or a subscriber of an ATS; or (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker."

[11] UMIR Rule 6.4 requires trades by a Participant to be on a marketplace except in certain circumstances. Subsection (b) allows a trade in a security outside of a marketplace if required or permitted by a Market Regulator in order to maintain a fair and orderly market.

[12] "Special Terms Order means an order for the purchase or sale of a security:
(a) for less than a standard trading unit;
(b) the execution of which is subject to a condition other than as to price or date of settlement; or
(c) that on execution would be settled on a date other than:
(i) the third business day following the date of the trade, or
(ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or QTRS."

[13] These orders are defined in section 1.1 of the UMIRs as follows:

Part 2 of UMIR Policy 5.2 *Best Price Obligation* references the trade-through obligation as part of the "best price obligation" and states that "Participants may not intentionally trade-through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on a stock exchange or organized market. This Policy applies even if the client consents to the trade... at an inferior price. Participants may make the trade...if the better bids or offers...on marketplaces are filled first or coincidentally with the trade on the other stock exchange or organized market. The time of order entry is the time that is relevant for determining whether there is a better price on a marketplace." The Policy applies to "active orders" – such an order defined as "an order that may cause a trade-through by executing against an existing bid or offer on another stock exchange or organized market at a price that is inferior to the bid or ask price on a marketplace at the time."

As described above, the UMIRs imposing best execution and best price obligations apply only to agency activity by a dealer and do not apply to dealers acting as principal or to non-dealers. The trade-through obligation is in the UMIR Policy and is linked to best execution and best price obligations. However, Part 2 of Policy 5.2 *Trade-Through of Marketplaces* goes further, as it provides that "the Policy applies to trades for Canadian accounts and Participants' principal (inventory) accounts."

C. Recent Developments and Changes

There have been recent developments and proposed changes that have necessitated a review of the issue of trading-through and current requirements. These developments and changes are discussed below.

1. Introduction of ATSs in Canada that trade Canadian listed securities

Until 2005, ATSs that operated in Canada under the ATS Rules were foreign-based and they did not execute trades in Canadian exchange-traded securities. Trading in Canadian exchange-traded securities only occurred on the Toronto Stock Exchange (TSX), TSX Venture Exchange and, more recently, the Canadian Trading and Quotation System (CNQ). These exchanges only permit access through dealers (even when institutional clients are using "Direct Access Facilities").[14] Their systems enforce price priority, and this, in combination with best execution obligations, *de facto*, results in trading taking place at the best price at any given time.

An ATS that trades Canadian-listed securities has been registered to carry on business in a number of jurisdictions in Canada. Both institutional investors and dealers will have direct access to the trading system. The operation of this ATS has refocused attention on the current rules relating to trade-through protection – again, that dealers are subject to a trade-through obligation, whereas non-dealer marketplace participants[15] (institutions or other investors) are not. By virtue of this, some of the participants in this ATS, under the current rules, will not have a trade-through obligation.

The existence of multiple marketplaces without system-enforcement of the best price obligation (which is the current definition of best execution) opens the possibility for tension between best price obligations and preferred execution strategies. Realizing that different participants - dealers acting as agent, dealers acting as principal and non-dealers - have different trading objectives and fiduciary duties, the method used to meet the best price obligation and trading objectives may differ. At times, trading at what may be the best price could be in direct opposition to the desires of the client with respect to preferred execution, especially when considering all the factors that go into a trading decision.

"Call Market Order means an order for the purchase or sale of one or more particular securities that is entered on a marketplace on a trading day to trade at a particular time or times established by the marketplace during that trading day at a price established by the trading system of the marketplace."

"Volume-Weighted Average Price Order means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of executing trades at an average price of the security traded on that trading day on that marketplace or on any combination of marketplaces known at the time of the entry of the order."

"Market-on-Close Order means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of executing at the closing price of the security on that marketplace on that trading day."

"Basis Order means an order for the purchase or sale of listed securities or quoted securities:

(a) Where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;

(b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based upon the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and

(c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b)."

"Opening Order means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of calculating and executing at the opening price of the security on that marketplace on that trading day."

[14] "Direct Access Facilities" and "intermediated direct market access" refer to TSX Rule 2-501 and similar access. Throughout this paper, when we refer to "direct access", we are not including Rule 2-501-type access.

[15] "Marketplace participants" is used in this paper to apply to anyone directly accessing the markets, whether dealers or institutional or retail clients. This does not include TSX Rule 2-501 clients, as they access the markets through dealers who are responsible for the trading that occurs.

2. Proposed UMIR amendments

(a) Off-Marketplace Trades

In August 2004, RS proposed amendments to deal with the intentional by-passing of better-priced orders on a marketplace when executing a large block trade.[16] A revised proposal was refiled and published on April 29, 2005[17] without the trade-through portion (the trade-through proposal is discussed below). The amendments were introduced partially in response to a circumstance where a large block of shares was traded "off-marketplace" as a result of concerns around being able to properly assess the risks of trading the block in light of the existence of "iceberg" orders[18] (a portion of which are undisclosed orders).[19]

Included in the proposed amendments are:

- clarification that the "best price" obligation applies at the time of order execution, instead of at order entry;
- guidance on what will constitute "reasonable efforts" expected of a Participant under that obligation; and
- a mechanism to cap the obligation to fill better-priced orders to the disclosed volume in certain circumstances.[20]

The amendments are currently under review by the British Columbia Securities Commission, the Alberta Securities Commission, the Manitoba Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers (Recognizing Regulators).

(b) Trade-through Proposal

RS filed with the Recognizing Regulators a request for comment on amendments to the UMIRs relating to trade-throughs.[21] The purpose of the amendments is to provide an interim solution to address the issue of trade-throughs in multiple marketplaces. The current UMIR rule applies a best price obligation only on Participants.[22] Under the amendments, the trade-through obligation would be separated from best price and a stand alone trade-through obligation would be applied to non-dealers and dealers alike. The amendments would require a Participant, when trading a principal, non-client or client order, or an Access Person[23], when trading directly on a marketplace or regulated market, to make reasonable efforts to fill better-priced orders on marketplaces upon executing a trade at an inferior price on another marketplace. In determining whether a Participant or Access Person has undertaken "reasonable efforts" to execute better-priced orders, consideration would be given to whether:

- the Participant or Access Person has access to the marketplace with the better-priced order or orders and the additional costs that would be incurred in accessing such orders or orders; and
- the Participant or Access Person has met any applicable obligation under Part 2 of Policy 2.1[24] to move the market.

The Recognizing Regulators of RS published a Notice on June 3, 2005 stating that they will review the proposal in the context of this paper.[25]

It should be noted that the RS proposal would not eliminate trade-throughs. Under the proposed amendments, an Access Person is subject to the "reasonable efforts" test where they are only required to fill better-priced orders on marketplaces to which they have access. As a result, an Access Person that wants to trade on multiple marketplaces, but chooses to have direct access to only one ATS, can trade at any price on that ATS if it accesses other marketplaces (the TSX or other ATSs) only by placing orders with a dealer. This creates a gap, where an Access Person can determine when and if the trade-through obligation applies to their orders.

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[16] Published at (2004), 27 OSCB 7355.
[17] Republished at (2005), 28 OSCB 4091.
[18] For a discussion of "iceberg orders", see section IV.C below.
[19] Normally, when trading a block on the TSX, the dealer must "clear out the book", including the undisclosed portion of iceberg orders, making it very difficult to quantify the obligation.
[20] If the price of the pre-arranged trade or intentional cross is not less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments, and not more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments, then the order may be marked as a "designated trade" and needs only to execute against the disclosed volume on the marketplace prior to execution.
[21] Published at (2005), 28 OSCB 5064.
[22] See section B.2. above.
[23] Section 1.1 of the UMIRs defines Access Person as "a person other than a Participant who is:
(a) a subscriber; or
(b) a user.
[24] Policy 2.1 relates to just and equitable principles of trading.
[25] Published at (2005), 28 OSCB 5064.

Also, no analysis was provided about the cost of the proposal on Access Persons or the costs, generally, for RS to monitor and enforce such obligations on non-dealers. Placing the obligations on marketplace participants, including non-dealers, has practical implications for marketplace participants and for market structure, which have not been addressed.

The RS proposal would extend rules to marketplace participants who currently are not subject to them. The RS proposal starts at the point of deciding that all direct marketplace participants should be subject to trade-through obligations, without first asking the questions:

- who should be subject to trade-through obligations?
- to what extent?

4. *Please provide comments on the RS proposal regarding trade-through obligations. Which elements do you agree or disagree with and why?*

3. U.S. developments and international considerations

(a) U.S. developments

On April 6, 2005, the SEC approved Reg NMS which will significantly alter the current trade-through rules in the United States. Historically, trade-through rules were established in the U.S. on a marketplace-by-marketplace basis. The US exchanges, including the New York Stock Exchange (NYSE), adopted a rule for exchange-listed securities but NASDAQ did not follow suit. The U.S. exchanges used a specialist system where the quotes were not immediately accessible. This, at times, could result in delayed execution and reporting of trades. The ATSs trading NASDAQ securities complained that timing latencies in the quotation and trade data put them at a significant disadvantage if they were required to send orders to the U.S. exchanges to meet trade-through obligations.

In response to this and other issues, the SEC issued a release in February 2004, which received significant comments, and a second release in December 2004. Reg NMS, including the Order Protection Rule, was adopted on April 6, 2005. The Order Protection Rule requires trading centers[26] to "establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations[27] in NMS stock that do not fall within an exception..., and, if relying on one of the rule's exceptions, that are reasonably designed to assure compliance with the terms of the exception."[28] To be protected, a quotation must be immediately and automatically accessible. Trade-through protection will apply to the best bid and offer from every type of participant.

Given the fragmented structure of the United States equity market, placing the obligation on the marketplaces rather than marketplace participants has reduced the number of linkages needed and is a solution that places the measurement of the obligation on the marketplaces rather than the participants. In addition, the obligation applies equally to all orders – whether dealer, institution or retail, if applicable. The SEC release also clearly states that trade-through and best execution obligations are separate and the adoption of the order protection rule "in no way lessens a broker-dealer's duty of best execution."[29]

The Order Protection Rule includes a number of exceptions from "order protection" obligations[30], including:

(a) A "self-help" exception where the transaction that constituted a trade-through was effected when the trading center displaying the protected quotation that was traded-through was experiencing "a failure, material delay or malfunction in its systems or equipment".

(b) Where the transaction that constituted the trade-through was:

(i) a single-priced opening, reopening or closing transaction;

(ii) executed at a time when a protected bid was priced higher than a protected offer (i.e. crossed markets);

(iii) the execution of an order identified when routed to the trading center as an inter-market sweep order[31];

[26] "Trading Center" under Reg NMS "means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[27] A "protected quotation" is a "protected bid or protected offer" which is defined as a quotation displayed by an automated trading center, disseminated pursuant to an effective national market system plan and is the best bid or best offer of a national securities exchange... NASDAQ Stock Market... or another national securities association. See footnote 5, SEC Final Release, Rule 242.600(b)(57).

[28] See footnote 5, SEC Final Release, Rule 242.611(a).

[29] See footnote 5, SEC Final Release at page 159.

[30] See footnote 5, SEC Final Release, Rule 242.611(b).

(iv) a transaction effected by a trading center that simultaneously routed an inter-market sweep order to execute against the full displayed size of any protected quotation that was traded through[32];

(v) the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made (i.e. benchmark orders, such as VWAP orders); or

(vi) the execution by a trading center of an order for which, at the time of receipt of the order, the trading center had guaranteed an execution at no worse than a specified price (stopped order) where the stopped order was for the account of a customer, the customer agreed to the price on an order-by-order basis, and the price of the trade-through transaction was lower than the national best bid (for a buy order) or higher than the national best offer for a sell order at the time of execution (i.e. underwater stop order).

(c) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted a trade-through, a best bid or offer with a price that was equal or inferior to the price of the trade-through transaction (i.e. flickering quotation).

In contrast to the United States, Canada does not have as many marketplaces. As a result, if the regulators decide that trade-through rules are required, implementing inter-market trade-through protection may be less complex.

We note that the SEC Final Release also includes a dissenting opinion written by two Commissioners. The dissenting Commissioners questioned whether the policy changes were appropriate and necessary and whether it had been established that existing trade-through rates indicate a significant investor protection problem.[33] They expressed concern that the trade-through rule would limit competition and stifle innovation and that implementation would be costly. They argued that a "wiser and more practical approach to improve efficiency of U.S. markets for all investors would have been to improve access to quotations, enhance connectivity among markets, clarify the duty of best execution and reduce barriers to competition."[34]

5. If a trade-through obligation is imposed, what differences between Canadian and United States markets should be considered?

(b) International considerations

The CSA is also examining trade-through issues in international markets besides the United States (such as Europe and Australia). During the comment period, we will be gathering information on how these other markets deal with trade-throughs. We seek your comment on the treatment of trade-through obligations in marketplaces and regulatory regimes outside of North America and their applicability to Canadian markets.

4. Derivatives markets

A growing trend in derivatives marketplaces is the introduction of block trading facilities that enable block trades meeting a certain size threshold to trade through better-priced orders in the order book. Some of the derivatives marketplaces that allow large block trades to trade outside the spread include the Bourse de Montréal, Euronext, Globex, Eurex, Sydney Futures Exchange, Eurex US, Chicago Board of Options and the International Securities Exchange. The recent introduction of such facilities has sparked a trade-through debate similar to that concerning equity securities. In the United States, the Commodity Futures Trading Commission (CFTC) received many different comments from varying marketplace participants on the decision to allow block trading facilities for derivatives marketplaces.

In Canada, the recent rules adopted by the Bourse de Montréal (the Bourse) to introduce a block trading facility on some products did not attract the same level of attention that equity market trade-through is attracting. Effective January 31, 2005, the Bourse introduced new rules and procedures to allow block transactions on certain derivative products.[35] The amendments

[31] An "inter-market sweep order" is defined as "when routed to a trading center, the limit order is identified as an intermarket sweep order; and simultaneously, with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders are routed to execute against the full displayed size of any ...protected [quotation] for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders." This exception applies when the broker-dealer routes the order as an intermarket sweep order. See footnote 5, SEC Final Release, Rule 242.600(b)(30).

[32] This exception allows trading center itself to route intermarket sweep orders and thereby allow for immediate internal executions at the trading center. This exception will facilitate the immediate execution of block orders by dealers on behalf of their institutional clients (See footnote 5, SEC Final Release at page 153).

[33] Securities and Exchange Commission, *Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins to the Adoption of Regulation NMS*, dated June 9, 2005, at page 10 (SEC dissent).

[34] See footnote 33, SEC dissent at page 2.

[35] Bourse de Montréal Circular no. 014-2005 dated January 27, 2005.

exempt large block trades from having to satisfy best price obligations and allow block trades meeting a substantial size threshold to trade through better-priced orders on fixed income derivatives.

To date, the impact of block trading facilities on the derivatives marketplace is largely unknown due to the infrequency of and lack of historical data regarding such large trades. However, the approval of the Bourse's rules by the Autorité des marchés financiers (AMF) was subject to conditions.[36] One of these conditions required the Bourse to conduct a study on the market impact of block trades for the first six months of operations and file monthly statistical reports with the AMF on block trades carried out in its markets. Also, the CFTC is currently conducting a study using market data to determine the impact of block transactions on marketplaces they regulate, before and after execution.

6. Should trade-throughs be treated differently on derivatives markets than equity markets? Why or why not?

III. ROLE AND SCOPE OF A TRADE-THROUGH OBLIGATION

A. Nature of any Trade-Through Obligation

1. Balancing investor confidence and competition and innovation

Many market participants believe that some form of trade-through obligation is important to maintain investor confidence in the market, especially in markets such as ours where there is a high degree of retail participation and an expectation of trade-through protection. Without it, they argue, there is no incentive to contribute to the price discovery process, because investors who disclose their intentions will not be assured the benefit of having their better-priced orders filled while others will be able to use that information to help in determining the prices at which they transact. They also argue that trade-through obligations create an incentive for investors to put their limit orders into a marketplace's book because they have the confidence that if their order is at the best price, it will be protected and their order will be filled before orders at inferior prices. This fosters confidence and encourages more liquidity in the market. This view is consistent with the newly adopted Order Protection Rule in the US, and while we must consider how our markets differ in determining the appropriate rules, we cannot ignore the impact of having different rules in this area.[37]

However, others say that a full trade-through obligation is not appropriate. They argue that certain investors, specifically institutions, are sophisticated enough to determine for themselves whether they want to trade against orders at the best price available. Many factors can go into a decision to execute a trade including price, speed of execution, certainty of getting the execution, opportunity costs, commissions and other transaction costs, and the most important factor to such investors in trade execution may not be price.

In addition, some believe that if new marketplaces are designed to allow institutions to trade with each other directly, they should not have to "take out" better-priced orders on the traditional marketplace, especially if it has monopolistic position, because such a requirement would affect their ability to execute their trade on the marketplace of their choice. They argue that (a) any duty to the market should only be placed on the dealers, and (b) institutional investors that trade for themselves should have no such duty, especially due to the average size of their trades and their need to act in the best interests of those whose money they invest. In addition, imposing the obligation on marketplaces or marketplace participants could interfere with the ability to execute large blocks efficiently.

Further, some argue that enforcing trade-through protection may stifle competition and innovation. By implementing a trade-through obligation on all marketplaces, new marketplaces may be forced to adopt the same business model as the existing exchanges, functionally eliminating innovation.[38] They argue that these new marketplaces are providing a niche for certain participants and it is wrong to force them to adopt an existing model. Innovative ideas and different business models are the way to attract participants and market share and a trade-through obligation may not enable these models to flourish.[39] By imposing a predetermined architecture on the structure of the market by forcing technological linkages and rules on participants to eliminate the occurrence of trade-throughs, such measures may be successful initially at eliminating them but may serve as a deterrent to further innovation and new marketplace competition. Some argue that this lack of competition and innovation may lead to a decrease in investor confidence in the market as a whole. In addition, the fact that to date in Canada ATS activities have been limited must be considered.

There is a need to maintain a balance between competition among marketplaces, so that efficient trading services are promoted, and integrating competition among orders which promotes more efficient pricing of individual securities. Therefore, the regulatory structure should seek to avoid the extremes of isolated marketplaces trading the same security without regard to

[36] Decision No. 2004-SMV-0191, published in the AMF Bulletin, 2005-01-28, Volume 2 no. 04.
[37] Reg NMS is discussed above in section II.C.3.
[38] Peterffy and Battan, "Why Some Dealers and Exchanges Have Been Slow to Automate", *Financial Analysts Journal*, Volume 60, Number 4 at page 16.
[39] Lee, Ruben, *Capital Markets that Benefit Investors - A Survey of the Evidence on Fragmentation, Internalisation and Market Transparency*, September 30, 2002.

trading in other marketplaces and a totally centralized system that loses the benefits of competition and innovation among marketplaces.[40]

7. *Should trade-through protection be imposed where there are multiple marketplaces trading the same securities? Why? Why not? What are the advantages and disadvantages?*

8. *Will the trade-through obligation impact innovation and competition in the Canadian market? How?*

2. Trade-through as an obligation to the client

UMIR Policy 5.2 directly links trade-through to the best price obligation owed to clients and was seen as part of the fiduciary duty owed by an intermediary to its clients. This characterization of the trade-through obligation has implications on whom the obligation should be placed as well as the scope of the obligation. If it is part of the duty to act in the best interests of clients, then it is limited to those intermediaries who have such obligations either under statute, common law, the Quebec civil code or the rules of a self-regulatory organization. It could also mean that a client should have full discretion on whether the client's trading objective is best price or some other factor such as immediacy.

3. Trade-through as an obligation to the market

As described above, trade-through obligations have been limited to dealers as part of their obligations to their clients and were not imposed on investors as a general duty. However, if one accepts the view that trade-through protection is essential to the market as a whole, then it should be an obligation that either all direct participants (whether they are dealers or not) or marketplaces have to the market. Imposing this duty ensures fairness to all market participants and allows price to be the key determinant as to whether an order gets executed or not. Part B below discusses the implications of placing the obligation on the participants versus the marketplace.

9. *Should the trade-through obligation remain an obligation owed by dealers to their clients or should all marketplace participants owe a general duty to the market?*

B. On Whom Should a Trade-Through Obligation be Imposed?

If the trade-through obligation is no longer characterized as resulting from a duty to the client and is seen more as an obligation to the market, then to whom should the obligation be extended and how?

1. Should the obligation be on the marketplace participant?

As described above, Part 2 of UMIR Policy 5.2 *Best Price Obligation* currently places responsibility on the Participant and states that "Participants may not intentionally trade through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on a stock exchange or organized market." Historically, only dealers could access the equity markets and trade-through protection wasn't an issue because the TSX platform enforced best price allocation. The recent proliferation of intermediated direct market access coupled with ATSs interested in providing direct access to institutional investors requires us to examine the issue.

If the general duty and thus a trade-through obligation is imposed on all marketplace participants, it may be difficult to implement for a variety of reasons. First, investors and dealers have different resources and capabilities. One of the primary business functions of a dealer is trading securities and they have professional traders whose job is to execute trades in certain securities and who have developed various tools to facilitate this, including tools for monitoring marketplaces for the best price available. Institutional investors, on the other hand, may also have professional traders but trading is not the institutions' primary business. They may not have the tools or the ability to monitor all marketplaces for the best available price. It is even less likely that a retail investor would have these tools.

Currently, there is no "standard" of proficiency needed to gain access to marketplaces. The requirements necessary for the access to one marketplace may differ significantly from those of another. If a trade-through obligation is placed upon marketplace participants, they must have the ability to monitor, measure and execute trades to ensure compliance with the trade-through obligation. It is likely that most non-dealers currently do not have this ability and, to the extent parallel obligations are placed on different marketplace participants, consideration should be given to whether consistent proficiency requirements should be applied.

In addition, the regulator would have to take steps to monitor and ensure compliance with trade-through obligations for a much larger group. Dealers and non-dealers alike would have to institute policies and procedures that would have to be reviewed. This

[40] See footnote 5, SEC Final Release at pp. 12-13.

could also necessitate reviews of institutions or retail investors for compliance with trading rules, something that has not been traditionally performed.

RS's proposal published on June 3, 2005 recommends placing the obligation on the marketplace participants, both dealer and non-dealer, to "make reasonable efforts to fill all orders displayed in a consolidated market display".

2. Should the obligation be on the marketplace?

An alternative to placing the obligation on the marketplace participants, as the UMIRs currently do, is to place the obligation on the marketplaces.

Requiring the marketplaces to establish procedures to satisfy the trade-through obligation eliminates the concern over different participants' ability to identify, measure, and execute in accordance with the obligation. Placing an obligation on the marketplace, rather than the participant, also allows more freedom to adapt quickly to market innovations and new technology, as marketplaces are in a better position to respond quickly to new developments in the market than marketplace participants.

In contrast to the RS proposal, in the United States, the SEC has imposed the obligation on the trading center to "establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs, and, if relying on one of the rule's exceptions, which are reasonably, designed to assure compliance with the exception."

Although the Canadian equity market is not as complex as that in the U.S., if a trade-through obligation is adopted to help protect investors or the integrity of Canadian equity markets, then imposing the trade-through obligation on marketplaces appears to be the better alternative. Differences in proficiency requirements, access, and ability to measure and determine trade-through obligations among participants in the market could lead to an inconsistent approach to trade-through protection if the obligation is imposed on the marketplace participant instead of the marketplace. A marketplace solution could largely be instituted through technological linkages, either directly between marketplaces or indirectly through use of smart order-routers, and could provide an objective means of routing orders to the best price.

Another advantage of placing the obligation on the marketplace is that it would be easier to monitor and enforce. In addition, it appears that imposing the obligation on the marketplace participant would be more costly. Specifically, having every marketplace participant connect to every marketplace, directly or indirectly, in order to comply with a trade-through obligation would cost more overall than if a smaller number of marketplaces were required to create such connections to each other.

Placing the obligation on the marketplace allows the marketplace to determine the best means for achieving its trade-through obligation. The marketplace could address the issues through the design of its trade execution algorithms (e.g. all orders must be within the bid/ask spread of the orders being shown), direct linkages, or the use of indirect means. However, there are some disadvantages to this approach. First, there is a question of whether requiring a marketplace to route orders to another marketplace would affect innovation and the ability of marketplaces to design creative models of execution or limit their access to particular participants. Second, there may be a large cost to the marketplace to establish the systems necessary to enforce trade-through protection.

10. If a trade-through obligation is imposed, should the obligation be imposed on the marketplace participant or the marketplace? Why?

C. Meeting a Trade-Through Obligation

Under the current UMIR provisions, a dealer is expected to take out better-priced orders before executing an order at an inferior price. However, internal and intentional crosses[41] on the TSX have been dealt with differently. TSX Rule 4-802 describes when certain trades entered for trade execution will be subject to interference from orders in the book. This suggests that those orders have been matched and the obligation to take out better-priced orders arises after the matching.[42] Thus different trade allocation methodologies pose different challenges for when and how the trade-through obligation is met.

We note that, in the United States, the SEC states that the Order Protection Rule takes a substantially different approach than that which was taken by The Intermarket Trading System plan (ITS) applicable to exchange-listed securities. The ITS provisions provided for an after-the-fact complaint procedure pursuant to which the aggrieved market would seek satisfaction from the

[41] An "intentional cross means a trade resulting from the entry by a Participant of both the order to purchase and the order to sell a security, but does not include a trade in which the Participant has entered one of the orders as a jitney order." An "internal cross means an intentional cross between two client accounts of a Participant which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the clients and includes a trade where the Participant is acting as a portfolio manager in authorizing the trade between the two client accounts." UMIR section 1.1.

[42] It is not clear whether it is technically before the actual execution in that it is before the cross is printed.

market traded through. In contrast, the Order Protection Rule is designed to "prevent" trade-throughs, or if a marketplace is relying on an exception, to assure compliance with the exception.[43]

This section discusses the issues related to when and how to meet a trade-through obligation. We note that these solutions are not mutually exclusive.

1. Satisfying the trade-through obligation before or simultaneously with execution

Implementing a trade-through obligation could require an entity to fill all better-priced orders, including those on other marketplaces before the trade occurs, or simultaneously if an exception for sweep orders is included. This approach is similar to the market model that the Canadian equity markets currently use where all better-priced orders are filled before an execution occurs at a lower price.[44] However, this model may not be effective for all marketplace structures, especially in circumstances where there is no pre-trade price or volume transparency.

Implementation issues relating to this approach are not as complex as the post-matching approach (see below). The issues that arise in implementing the preventative approach depend on whether the obligation is imposed on the marketplace or the marketplace participant and relate to how the obligation is determined, the level of execution and whether participants must have access to all marketplaces.

(a) How the obligation is determined

To implement the "preventative" trade-through obligation, an entity needs to determine which marketplaces have the best-priced orders and the volume that needs to be executed.

Technology solutions may be required to monitor other marketplaces to determine where the better-priced orders are located so they can be executed first in a timely manner. In addition, there would need to be an easily discernable audit trail to evaluate how the obligation is being met. The SEC, in its final release of Reg NMS, stated that it has instructed its staff to develop a rule proposal that would require trading centers to publicly disclose standardized and comparable statistics on the incidence of trade-through transactions that do not fall within an exception to the rule.[45]

In our view, the solution regarding how to monitor and satisfy a trade-through obligation that applies to all marketplace participants is a much more difficult task than that which applies to a marketplace. Marketplace participants with different skills may have difficulty in determining if there are better-priced orders available and the size of those orders, especially if the quote information from multiple marketplaces is not consolidated. The cost of meeting the obligation may be higher than if the obligation was on the marketplace.

11. What technology solutions exist or need to be developed if a trade-through obligation is imposed on marketplaces? What solutions exist if the obligation is imposed, instead, on marketplace participants?

12. Does the absence of a data consolidator affect whether and how the trade-through obligation should be imposed?

(b) Impact on access requirements

NI 21-101 acknowledges the importance of access to marketplaces. Sections 5.1 and 6.13 of NI 21-101 provide that recognized exchanges and ATSs shall establish written standards for granting access to trading and shall not unreasonably prohibit, condition or limit access to services provided by it. Consideration needs to be given to the impact of extending the trade-through obligation for marketplaces or market participants on access requirements.

The RS proposal limits the trade-through obligation on marketplace participants to only those marketplaces to which they have direct access. As mentioned earlier, a marketplace participant could avoid the trade-through obligation simply by obtaining direct access to only one marketplace, and indirectly accessing the other marketplaces through a dealer. By doing so, it would be able to take advantage of the dealer's obligation to trade at the best price available when it chooses to do so, creating a gap that could be exploited to a marketplace participant's advantage.

On the other hand, there are issues with placing the obligation on marketplace participants and requiring them to have direct access to *all* marketplaces. Forcing participants in the market to access all marketplaces means greater cost and complexity for the marketplace participants because they would have to access multiple marketplaces including marketplaces where they may seldom trade and which may employ execution methodologies they prefer not to use. In addition, requiring all marketplace

[43] See footnote 5, SEC Final Release at pp. 22-24.
[44] For example, in the upstairs market if participants agree to a price on a block trade at an inferior level to the bid or offer, all better-priced orders on the TSX must be filled before the trade can occur.
[45] See footnote 5, SEC Final Release at page 150.

participants to have access to all marketplaces could affect each marketplace's ability to design its own business model, particularly where a marketplace is structured to allow for access by only one type of marketplace participant (for example, institutional investors) or where marketplace participants have to meet strict criteria in order to obtain access.

As stated above, the SEC's Order Protection Rule requires trading centers to establish, maintain and enforce written policies that are reasonably designed to prevent trade-throughs. It also addresses the issue of access to marketplaces through the Access Rule[46]. The SEC describes the intended effect of the Access Rule as follows:

> "First, it enables the use of private linkages offered by a variety of connectivity providers, rather than mandating a collective linkage facility such as ITS, to facilitate the necessary access to quotations. The lower cost and increased flexibility of connectivity in recent years has made private linkages a feasible alternative to hard linkages, absent barriers to access. Using private linkages, market participants may obtain indirect access to quotations displayed by a particular trading center through members, subscribers, or customers of that trading center. To promote this type of indirect access, Rule 610 prohibits a trading center from imposing unfairly discriminatory terms that would prevent or inhibit the access of any person through members, subscribers, or customers of such trading center."[47]

Placing the obligation on marketplaces helps to avoid creating additional access issues for the participants. However, it remains possible for a marketplace to meets its trade-through obligation by transferring it to its participants.

13. Does a regime imposing a trade-through obligation need to address access fees?[48]

14. If a trade-through obligation is placed on marketplace participants, what other access issues need to be addressed?

(c) Depth-of-book or best bid/ask

Historically, equity marketplaces in Canada have enforced best price obligations and, by implication, trade-through protection, for all orders at a better price. The ability to offer protection to all orders in the order book was, until recently, simplified by the fact that securities were each traded on only one marketplace and equity marketplaces in Canada were fully automated.

In contrast, in an environment like the United States with securities trading on multiple marketplaces and fragmentation of order flow, applying protection to depth-of-book is much more complicated. Not all marketplaces in the United States are automated and some exchanges had adopted a specialist system where orders could be filled manually. This led to a difference in the timing of execution of orders that were entered onto a manual market versus an electronic market. As a result, in the United States, trade-through protection has focused on an approach that only requires the execution of the level of the national best bid and offer (NBBO), or "top-of-book", and not full depth-of-book.

The Canadian equity market does not have the same structure and related issues with manual versus automated markets. In particular, all marketplaces in Canada are currently fully automated electronic trading systems and there are only a handful of marketplaces. As a result, implementing the U.S. top-of-book approach lends itself to less trade-through protection than has historically existed in Canada.

15. If a trade-through obligation is imposed, should the obligation use a full depth-of-book approach or only a top-of-book approach?

(d) Sweep orders

One way to facilitate the implementation of a trade-through obligation is to allow for "sweep orders." Under the Order Protection Rule, a trading center is exempt from the trade-through obligations if it receives an inter-market sweep order or routes an order as an inter-market sweep order. Sweep orders would allow a marketplace participant to route orders to multiple marketplaces simultaneously in order to execute both the better and inferior prices at the same time. A sweep order would require systems changes at the marketplace level to allow for a "sweep marker" so that the system could recognize that orders were simultaneously sent to execute both the better-priced and inferior priced orders.

If a trade-through obligation is imposed on the marketplaces, they would need to establish policies and procedures for an order to be routed to another marketplace with a better price. An order marked "sweep" would tell the receiving marketplace not to reroute the order because the participant had also sent simultaneous multiple orders to meet the trade-through obligation.

[46] See footnote 5, SEC Final Release, Rule 242.610.
[47] See footnote 5, SEC Final Release at page 27.
[48] The Access Rule includes a portion that limits the access fees that can be charged for access to protected quotations and manual quotations at the best bid and offer.

16. Should the solution developed to deal with trade-throughs include the ability to route sweep orders?

2. Trade-through obligation for marketplaces with limited pre-trade transparency or other unusual execution characteristics

In some marketplaces, a participant may have submitted an order with a set price and volume but may not know if there will be a match until the match actually occurs because the quotes on the marketplace are not transparent. Other marketplaces may allow participants to negotiate directly by communicating orders to each other until there is a match. Because of their structures, these systems may not enable an entity to meet the trade-through obligation before or simultaneously with, an execution at an inferior price.

One potential solution would be to implement a post-matching approach, similar to a cross-interference mechanism, which imposes a duty on an entity to satisfy the "better-priced" orders after trade matching occurs. This approach can be used whether the obligation is on the marketplace or the marketplace participant. Using the post-matching approach may be necessary for marketplace models that do not have pre-trade transparency. In these models, it is impossible to fulfill the trade-through obligation prior to the match because marketplace participants do not know if there are orders in the book that will match with theirs nor do they know the price at which the match will occur. Only once the matching occurs is there certainty as to whether the price is inferior to the prices available on other marketplaces and only AFTER the execution could the better-priced orders on other marketplaces be filled.

As discussed below, implementation of the post-matching obligation approach is more complicated than a preventative approach and raises a number of issues that depend on both the particular market model and the regulatory model we choose.

17. Where marketplace participants are trading on a marketplace where they do not know if their orders will match and the order book is not transparent, upon execution of an order outside the bid/ask spread of another marketplace, should the participant have to satisfy better-priced orders available on other marketplaces? If so, how? Should this be restricted to visible orders?

(a) Depth-of-book or best bid/ask?

The post-matching approach requires that the person with the trade-through obligation determine the amount of the displacement that must occur after a trade is executed at an inferior price. This, along with the issues identified below, make the post-matching approach more complicated than the pre-execution approach.

To implement the post-matching approach, the volume of the orders that must be displaced and a method of executing those orders must be determined. The determination of the amount of the post-matching obligation may be difficult to ascertain because the market for the particular security may be moving quickly and it may be difficult to measure the actual amount of the obligation at a particular moment in time.

There are a number of different methods of establishing the amount of the post-matching obligation and we discuss several here. One option is to limit the amount of the post-matching obligation to the volume of the original trade. This approach would not necessarily clear out all the better-priced orders and could allow for trade-throughs. However, it would also allow for the determination of the liability associated with a particular trade.

Another option is to require the marketplace participant to fill all orders at better prices, regardless of the volume immediately after the trade. This approach would ensure that better-priced orders on all marketplaces are filled at the time the inferior-priced trade is executed. However, this approach leads to unlimited liability for those executing inferior-priced trades and may inhibit less sophisticated marketplace participants from entering the market because the risk associated with unlimited liability may outweigh the benefits of trading.

Finally, the model may allow for a snapshot of the marketplaces to be taken at a particular point in time, such that the volume of all better-priced orders is fixed at that moment. Any orders entered after the snapshot is taken would not be filled. This approach would fix the liability of a particular marketplace participant and ensure that all better-priced orders that existed at the time of execution of the inferior-priced order are filled. This approach would also eliminate the ability of speculators to benefit from the expected entry of post-execution orders. The questions that arise when considering the use of a snapshot are who would take it, how it would be taken and what technological changes would be necessary to implement it.

18. If a trade-through obligation is imposed, should it occur at, simultaneously to or immediately after execution of the inferior- priced trade? Should the model accommodate all three solutions?

19. If a trade-through obligation is imposed, should it apply to all better-priced orders existing when the obligation is discharged, all better-priced pre-existing orders (at the time of execution) or should it be limited to amount of the trade at the inferior price?

IV. EXEMPTIONS FROM A TRADE-THROUGH OBLIGATION

Regulators that have imposed a trade-though obligation have also allowed for certain exemptions from the obligation. This section discusses those exemptions.

A. Exemptions Related to the Determination of Price or Special Terms

As described above in section II.B.2, the UMIRs set out a number of exemptions from the existing best price obligation. The basis for an exemption for some of these types of orders is that the price of execution is not known with certainty at the time of order entry because the trading system uses a predetermined algorithm to calculate the execution price of such orders and the price is therefore not known by the marketplace participant at the time of order entry (order types that are calculated by an algorithm, e.g. VWAP orders) or is not based on the quotes currently displayed in the marketplace. In these circumstances, marketplace participants cannot determine if there will be a trade-through obligation before deciding to enter the order on a marketplace. There are also exemptions granted to Special Terms Orders[49] that exclude them from executing as a normal order because the counterparty to the trade may only be inclined to accept the terms if the execution is done at a discount to the best available price. As a result, the price of execution of Special Terms Orders may occur outside the best available bid and ask price.

20. If a trade-through obligation is imposed, should exemptions be provided for special terms orders? Which ones and why?

21. If a trade-through obligation is imposed, should an exemption be provided for orders for which the price or other material terms cannot be determined on order entry?

B. Block Trade Exemptions

One of the developments that has focused attention on the trade-through debate has been the difficulty and uncertainty created when handling large orders. When marketplace participants are considering trading a large block of a particular security they want to know the exact volume that may be executed in any venue and a reasonable estimate of the price of the trade. With a trade-through obligation in place, marketplace participants may not be able to readily discern this information. There is additional complexity when iceberg orders are allowed on the marketplace because it becomes impossible for participants to know the volume available at a particular price.[50]

In addition, the presence of a large order often results in increased price volatility, as other participants, not involved in the block transaction, may see indications of buying or selling pressure and may place additional orders at better prices that need to be filled before the execution price of the block is reached causing further interference in the execution of the block. Participants that engage in large block transactions are concerned with uncertainty relating to prices and volumes. They believe that such uncertainty discourages trading activity and reduces the amount of liquidity provided for certain securities. In response to these concerns, realizing that large block trading represents a significant amount of volume and business, marketplaces have been creating facilities or providing exemptions to facilitate large volume block transactions.[51]

However, the ability of large block transactions to trade through better-priced orders that have been previously entered onto a marketplace may dissuade or prevent smaller participants from participating in the marketplace. In addition, some argue that if the size of a block transaction is very large, it should not be a problem to displace those smaller orders already in the book.

The SEC, in its final release of Reg NMS, did not provide for an exemption for block trades. Instead, they indicated that "the use of the inter-market sweep order will facilitate the immediate execution of block orders by dealers on behalf of their institutional clients."[52]

Another exemption from the trade-through obligation is provided to a "wide distribution" in certain circumstances.[53] This exemption is granted on a similar basis to the exemption granted for large block transactions on the derivatives markets – i.e., that such a large order will create unwanted price volatility and discourage participants from placing orders.

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[49] See footnote 12 for definition of "Special Terms Order".

[50] See section C below for a discussion of iceberg orders.

[51] Some examples include the Bourse de Montréal block trading facility and the TSX's iceberg order type. In the Bourse block trading example, these trades are permitted to be executed outside of the bid-ask spread (i.e. not subject to trade-through obligations). The existence of iceberg orders has implications for any trade-through obligation, as discussed below.

[52] See footnote 5, SEC Final Release at page 153.

[53] In an effort to facilitate the distribution of listed securities to a large number of investors, the Toronto Stock Exchange allows participants to distribute large blocks off exchange to investors at a fixed price. TSX Rule 4-103 defines a "wide distribution as a series of distribution principal trades to not less than 25 separate and unrelated client accounts, no one of which participates to the extent of more than 50% of the total value of the distribution." A "wide distribution" is an exception to the rule that listed securities must be traded on exchange. Participants are required to set aside up to 20% of the amount of the distribution to satisfy any additional orders to purchase the security in the book on the

If some accommodations for large block transactions are appropriate, the key will be determining the appropriate size threshold. The threshold must strike a balance between excluding trades that would have minimum price impact on the book and being large enough that it applies to trades that could be potentially disruptive to the marketplace. At present, the marketplaces that offer facilities or exemptions from trade-through obligations determine the amount for the size threshold. As competition between marketplaces grows, there may an incentive to facilitate block trades, by lowering the amount of the size threshold to capture business.

22. If a trade-through obligation is imposed, should it include an exemption for large block trades?

23. Should the size threshold for a block trade exemption for the same security traded on multiple marketplaces be the same across marketplaces? If not, what would the impact be?

24. If a trade-through obligation is imposed, will sweep orders facilitate the execution of block orders? How?

C. Exemption for Non-Visible Parts of an Order

One issue that arises when developing a trade-through obligation is whether the obligation should apply to any undisclosed portions of orders in the book. An "iceberg order" is a type of order that allows a large single order entered onto the marketplace to be divided into smaller visible amounts for the purpose of hiding the actual size. This allows other market participants to see only the small disclosed portion of the order. Once the small disclosed amount has been displaced another small portion of the order immediately appears; this process repeats until the total amount of the order has been filled. By hiding the large size of the order, iceberg orders reduce the information leakage and minimize the price impact of disclosing such a large order.

A marketplace that has permitted iceberg orders may require that within that market, the undisclosed portion of the iceberg must be filled to meet a trade-through obligation. However, between markets, it is questionable whether the non-visible portion should be protected by a trade-through obligation. The existence of iceberg orders causes difficulties with determining the volume that would need to be displaced to comply with a trade-through obligation. If an iceberg order is entered onto a marketplace, marketplace participants cannot determine the exact volume of better-priced orders that would have to be displaced in meeting their trade-through obligation.

Visible orders in the book help provide liquidity and help in the price discovery process. The introduction of iceberg orders is one type of facilitation for trading large orders and should not result in uncertainty for marketplace participants that wish to execute orders on other marketplaces. Therefore, it is harder to argue that the undisclosed portion of iceberg orders should be given trade-through protection. Further, the lack of trade-through protection for iceberg orders is consistent with not extending such protection to orders in marketplaces with no pre-trade transparency.

A practical result of not protecting non-visible portions of an order is that a technology change would be required that permits a type of "tagged order" or "sweep order" that would facilitate the displacement of a better-priced order on another marketplace and enable the order to by-pass iceberg orders.

We note that in its "Off-Marketplace Trades" proposal, RS indicates that certain orders that are within a specific band are required to execute against only the visible orders in the book.[54]

25. If a trade-through obligation is imposed, should it apply to any non-visible portions of a trading book?

D. Issues Considered By the SEC

1. Fast markets vs. slow markets

As discussed in Section II.C.3, in the United States, issues arose because of the fact that certain marketplaces were electronic or "fast" and others were manual markets or so-called "slow" markets. In response to complaints about the length of time execution took on manual markets and how it placed electronic markets at a disadvantage, the original amendments proposed in Reg NMS provided an "opt-out" feature that allowed clients to waive their trade-through protection if the better-priced order was on a manual marketplace. The rationale behind the opt-out was that the risks caused by uncertainty when executing on a slow market and the speed it took to receive an execution on a fast market may for some clients outweigh the benefits of potentially achieving that "better-priced" order on the manual market. However, the SEC adopted the Order Protection Rule without this "opt-out" but with the clarification that order protection applies only to those quotations that are immediately and automatically accessible. In other words, order protection is not available to manual quotes.

exchange and the Market Maker on the security is entitled to up to ten times the minimum guaranteed fill for the security as long as the 20% maximum has not been violated.

[54] See discussion of "Off-Marketplace Trades" above in section II.C.2(a).

The introduction of multiple marketplaces in Canada allows for the possibility of the introduction of a slow marketplace, where orders are not immediate executable. Currently, all marketplaces provide electronic, immediately executable quotes. If we adopt trade-through protection we will need to consider whether we should provide the ability to trade-through a slow market.

26. Should we provide the ability to opt out of routing orders to marketplaces where the better-priced order is on a manual marketplace or should the rule be drafted to apply to protect only those orders that are immediate and automatically accessible?

2. General ability to opt out

One possible exception is to provide marketplace participants with the ability to opt out of trade-through protection if they have provided informed consent. The intention of this exemption would be to provide investors with the opportunity to opt out in a variety of circumstances, including executing block transactions without moving the market. The SEC had considered including an opt-out in Reg NMS. However, the SEC, in its final release, adopted the Order Protection Rule without an opt-out because in their view, "such an exception could severely detract from the benefits of inter-market order protection."[55]

V. IMPLICATIONS OF A TRADE-THROUGH OBLIGATION

The imposition of a trade-through obligation will likely have operational and technological costs for marketplace participants and marketplaces and may require consequential amendments to current rules.

A. Operational Issues

If the obligation is placed on marketplace participants, both dealers and non-dealers will have to develop policies and procedures to ensure that the obligation is met. There also could be pressure to connect to each marketplace in order to ensure that they have access to the best price available on all marketplaces in order to meaningfully meet the obligation. In addition, regulators will have to develop compliance programs and will have to conduct reviews of all marketplace participants to ensure compliance with the requirement. This includes reviews of participants that have not historically been reviewed – specifically, institutions and, potentially, retail investors.

If the obligation is on marketplaces, the marketplaces will have to determine how to ensure that the obligation is met. This may be done by creating linkages to other marketplaces or other technology solutions or by placing obligations on their participants. They will also have to implement policies and procedures to ensure compliance with the requirements.

27. What is the impact of imposing a trade-through obligation on non-dealers?

B. Trading Increments

With the introduction of trade-through protection, there is a possibility that marketplace participants may "front" a large order (identify a large order and place better-priced orders of a smaller size ahead of the large order). This is especially true when a price can be improved by one penny. One potential consideration when imposing a trade-through obligation is whether trading increments should be greater than a penny to balance the interests of block trades and limit order protection.

C. Consequential Issues Related to Multiple Marketplaces Trading the Same Securities

The existence of multiple marketplaces that are trading the same securities causes some additional technical issues not specifically addressed by the implementation of a trade-through rule. For example, there are additional concerns raised by locked and crossed markets, the difference between price priority and price-time priority, and the determination of the last sale price. In May 2005, RS proposed amendments to UMIR to accommodate the introduction of multiple and competitive marketplaces.[56] The amendments address some of the issues discussed in the following section, including amendments to the definition of last sale price.

1. Best Execution

The assurance that the best-priced orders on a Canadian exchange would trade first led, historically, to two practical outcomes:

- Marketplace participants were encouraged to use limit orders and they could be certain that price alone was the basis for execution of orders.

[55] "Instead, Rule 611 addresses the concerns of those who otherwise may have felt that they needed to opt-out of protected quotations in a more targeted manner. In particular, the Rule incorporates an approach that seeks to serve the interests of both marketable orders and limit orders by appropriately balancing these interests..." See footnote 5, SEC Final Release at page 119.

[56] Published at (2005), 28 OSCB 5297.

- One of the primary fiduciary obligations owed to clients, to obtain the best price, was guaranteed by simply placing an order on the system.

With the automation of best price execution, dealers were left to focus on factors other than price in achieving best execution for their clients' orders. This combination of automated best price execution once an order was directed to a particular exchange, and the dealer determining which other variables were important for execution, allowed dealers to meet all of their execution objectives at the same time.

Recent improvements in technology and the introduction of new marketplaces have provided institutional investors with direct access to certain marketplaces without the need for an intermediary, and have raised issues about the role of best price obligation in best execution. In addition, a recent review of the meaning of best execution prepared by some of the CSA jurisdictions, and renewed interest in the United States and the United Kingdom as part of their review of appropriate use of commissions, have complicated the issue.

Concept Paper 23-402 *Best Execution and Soft Dollar Arrangements* suggested as a description that best execution means the best net result for the client, considering relevant elements (including price, speed of execution, certainty of execution, and total transaction cost) in light of the client's stated investment objectives.[57] The CSA is considering this description in light of comments received.

In this context, the introduction of multiple marketplaces will likely complicate the dealer's ability to ensure that both best price and best execution obligations (if different from best price) are met. For example, when a dealer is handling a client order it will have to determine which marketplace is providing the best available price. Historically, the dealer knew that by placing an order on the equity marketplace it was guaranteed the best price because of system enforcement of the obligation. With the introduction of multiple marketplaces, the dealer cannot be assured without taking additional steps that the best price is obtained. In addition, it is possible that trading at what may be the best price may conflict with achieving best execution, if best execution is defined to include other relevant factors that may go into a trading decision (including the speed of execution, opportunity cost, and risk of missing the trade).[58]

While dealers are subject to best execution, client priority and best price obligations, most institutional investors are not. Some institutional investors may have a responsibility to their members, beneficiaries or clients to act in good faith (registered advisers[59]) or with prudence and care (for example, pension funds, trustees of other trust funds); however, that standard is not applied to all institutional investors. Many institutional investors trade for themselves and as a result, are not subject to the existing best price and client priority rules and, consequently, historically, trade-through obligations have not applied to them. However, the focus of a trade-through obligation is broader, and encompasses a general duty of all marketplace participants to the market as a whole.[60]

The SEC in the final release of Reg NMS emphasizes that the adoption of the Order Protection Rule does not lessen a dealer's duty of best execution. The SEC states:

> "The Commission has not viewed the duty of best execution as inconsistent with the automated routing of orders or required automated routing on an order-by-order basis to the market with the best quoted price at the time. Rather, the duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders. Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices....The protection against trade-throughs... undergirds the broker-dealer's duty of best execution, by helping to ensure that customer orders are not executed at prices inferior to the best protected quotations. Nonetheless, the Order Protection Rule does not supplant or diminish the broker-dealer's responsibility for achieving best execution, including its duty to evaluate the execution quality of markets to which it routes customer orders, regardless of the exceptions set forth in the Rule."

28. Does the introduction of multiple marketplaces trading the same security cause a conflict between what is needed to meet best price obligations and what is needed to meet best execution obligations if the latter is defined as something different from best price only? How can this conflict be resolved? Is one obligation, best price or best execution more important than the other? Why? Why not?

[57] Published at (2005), 28 OSCB 1367.
[58] Letter to SEC regarding Reg NMS from Citadel Investment Group L.L.C. dated July 9, 2004, p.6-7.
[59] Institutions that are registered advisers have duties to act in good faith (OSC Rule 31-505).
[60] See footnote 5, SEC Final Release at pp. 160-161.

2. Locked or crossed markets

A "locked market" occurs when there are multiple marketplaces trading the same security where a bid (offer) on one marketplace is at an identical price level to an offer (bid) on another marketplace. Had both orders been entered onto the same marketplace the bid and the offer would have matched and a trade would have been executed. In a locked market situation, there are two ways to unlock the markets:

- typically, more buyers and sellers appear resulting in subsequent trades and immediate correction; or
- one of the participants involved in the lock removes their order and places the order on another marketplace to immediately execute the trade.

A "crossed market" occurs when one participant's bid (offer) on one marketplace is higher (lower) than another participant's offer (bid) on a different marketplace. A crossed market condition between marketplaces usually does not last for a long period of time as someone will usually take advantage of the arbitrage opportunity.

The ability of participants to be aware of better prices and to place orders on other marketplaces varies greatly. If the order is subject to best execution, e.g. an order a dealer is working as agent, the dealer should place the order on the marketplace where it is likely to get executed immediately. However, other orders are not subject to best execution, e.g. institutional or market maker orders, and those participants may not want to place their orders on another exchange, i.e. they may be trying to have the other participant move their order. To prevent the occurrence of locked or crossed markets and to facilitate trading, rules could be established to prevent these situations from occurring. In large part, the frequency of locked or crossed markets occurring will depend on whom the trade-through obligation is imposed (the marketplace or the participants). If the trade-through obligation is imposed upon the marketplaces they will need to establish procedures to eliminate the trading-through of better-priced orders. Whichever solution is decided upon could also be used to facilitate the unlocking of securities. If the obligation is placed upon the marketplace participant, the marketplace participant may not be obligated or have the desire to unlock the markets if trading as principal or for non-client accounts.

29. How should locked or crossed markets be treated? Should procedures be set up to limit the occurrence of locked or crossed markets? If so, upon whom should the obligation be placed?

3. Method of trade allocation: difference between price priority and price-time priority

As noted above, the current UMIR provision applying a price priority obligation on participants, UMIR Rule 5.2 – Best Price Obligation, states that:

> A Participant shall make reasonable efforts prior to the execution of a client order to ensure that:
>
> (a) in the case of an offer by the client, the order is executed at the best bid price; and
>
> (b) in the case of a bid by the client, the order is executed at the best ask price.

The Participant is prohibited from trading at an inferior price given the prevailing best bid and offer. Price priority ensures that the last executed trade occurs at the best price.

For example, the current trading system of TSX and TSX Venture allocates trades based on a price-time priority allocation. That is, if multiple orders are received all with the same price the order that is received first is given priority over orders received later. This is to encourage the placement of orders in the book. One exception to this rule is when there are two orders that would result in a matched trade from the same participant; such an "in house" cross occurs regardless of the orders' time priority.

The existence of multiple marketplaces trading the same security creates the possibility of older orders entered on one marketplace being by-passed by newer orders of the same price that are placed on another marketplace. In addition, marketplaces may create new innovative ways to allocate trades that are different from the existing price priority or price-time priority allocations.

30. Should the method of trade allocation (price priority or price-time priority or some entirely different method) be the same for all marketplaces or should the marketplace be allowed to determine its own procedures for allocation of trades? Why or why not?

4. Last sale price

The definition of "last sale price" is defined in the UMIR as "the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that

is a Call Market Order." With the introduction of multiple marketplaces, the definition of the last sale price in a security, as this price is used as a limit for a number of trading rules, including short selling, may have to be reviewed.

31. Should the last sale price reflect trading on all marketplaces or should each marketplace have a separate last sale price? Why or why not?

VI. EVALUATING THE IMPACT ON MARKETS

A. SEC Study on Rates and Impact of Trade-Through

In the United States, the central issue of the trade-through debate was whether inter-market protection of displayed quotes was needed to promote the fairest and most efficient markets for investors.[61] The comments received were divided on the issue; some believed full protection was necessary across markets while others felt that no protection was needed as competition among markets, the economic self-interest of the participants, and dealers' existing best execution duties would ensure that better-priced orders were traded first.[62] In an effort to address the comments and determine the rates and impact of trade-throughs on the American markets, the SEC conducted several studies by comparing trade data from inter-listed securities on the ITS (NYSE and the regional exchanges) and the NASDAQ. The SEC studies examined the trade data looking at the following criteria:

- Rates on trade-through on ITS/NASDAQ as a percentage of number of trades,
- Size of quotes traded through as a percentage of total share volume,
- Type of orders that trade-through. Block trades larger than 10,000 shares represent 50% of total trade-through volume,
- Percentage of share volume of trades less than 10,000 shares,
- Percentage of total share volume of traded-through quotations,
- Overall percentage of trades that get executed at an inferior price,
- Examination of fill rates on large orders as a proxy for the efficiency of trading on ITS and NASDAQ.[63]

The SEC's task of determining the rates and impact of trade-throughs was made easier by the existing market structure in the United States in two areas:

- Multiple marketplaces have existed for many years and the SEC could use trade data from a period before its announcement to examine the trade-through issue to ensure there was no bias in the data.
- The market structure provided two samples of marketplaces: the ITS system where there existed a limited trade-through rule and the NASDAQ where there was no trade-through protection. This allowed for the comparison of not only the different approaches but also allowed the SEC to examine the impact on securities listed in both types of marketplaces.

B. Status of Trade-Through Data in Canada

In Canada, since 1999, the same securities have not traded on multiple marketplaces[64]; as a result, there is no prior trade data to examine. The effect or impact of trade-throughs will largely be determined by the extent of trade-throughs that occur on Canadian marketplaces. This can only be monitored once another marketplace trading the same securities as the existing exchanges begins to operate. During the comment period of this discussion paper and the transition if and when a rule is being considered, the CSA and RS will monitor the rates of trade-throughs, if any, on Canadian marketplaces and their impact on the Canadian market.

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[61] See footnote 5, SEC Final Release at page 38.

[62] See footnote 5, SEC Final Release at page 40.

[63] As discussed in Section II.C.3 above, there was a dissent to the SEC Final Release and the dissenters published a companion decision to the majority decision. In it, the dissenters make points that may be relevant in the Canadian public debate about trade-through. The dissenters
- were not convinced that the data collected supported the conclusion that trade-through represents a full 8% of all trades and concluded that trade-through represents only 2.5% of all trades,
- concluded that 2.5% is not significant enough volume to warrant regulatory intervention,
- noted that when institutional clients trade through, retail investors whose orders are left on the book are usually affected by margins of one penny or less.

[64] See footnote 6.

VII. CONCLUSIONS

The introduction of new marketplaces in Canada, the proliferation of direct market access to new types of trading participants, new facilities to accommodate block trading and rapidly changing technology all have led to the current trade-through debate. The regulation of the capital markets must strike a balance between encouraging innovation and creating a capital market that is fair and unbiased.

We encourage comment from all participants in the capital markets on this important issue. The outcome of this debate will shape the future of Canada's capital markets, and as a result, we feel the debate should be transparent and that all interested parties should have a chance to voice their opinions. We look forward to working with marketplace participants, marketplaces and other regulators in implementing a solution that provides flexibility and fairness for all market participants.

VIII. COMMENT PROCESS

A. Specific Comment Requested

The CSA specifically asks for comment on the following questions that appear throughout the paper:

1. What factors or criteria should be considered in identifying the appropriate structure and requirements for the Canadian market?

2. What market structure issues should be considered as part of the discussion on the trade-through obligation?

3. Should the discussion about trade-throughs consider trading of non-exchange traded securities on marketplaces other than exchanges (for example, fixed income securities trading on more than one ATS)? If so, please identify market structure issues that need to be reviewed.

4. Please provide comments on the RS proposal regarding trade-through obligations. Which elements do you agree or disagree with and why?

5. If a trade-through obligation is imposed, what differences between Canadian and United States markets should be considered?

6. Should trade-throughs be treated differently on derivatives markets than equity markets? Why or why not?

7. Should trade-through protection be imposed where there are multiple marketplaces trading the same securities? Why? Why not? What are the advantages and disadvantages?

8. Will the trade-through obligation impact innovation and competition in the Canadian market? How?

9. Should the trade-through obligation remain an obligation owed by dealers to their clients or should all marketplace participants owe a general duty to the market?

10. If a trade-through obligation is imposed, should the obligation be imposed on the marketplace participant or the marketplace? Why?

11. What technology solutions exist or need to be developed if a trade-through obligation is imposed on marketplaces? What solutions exist if the obligation is imposed, instead, on marketplace participants?

12. Does the absence of a data consolidator affect whether and how the trade-through obligation should be imposed?

13. Does a regime imposing a trade-through obligation need to address access fees?

14. If a trade-through obligation is placed on the marketplace participants, what other access issues need to be addressed?

15. If a trade-through obligation is imposed, should the obligation use a full depth-of-book approach or only a top-of-book approach?

16. Should the solution developed to deal with trade-throughs include the ability to route sweep orders?

17. Where marketplace participants are trading on a marketplace where they do not know if their orders will match and the order book is not transparent, upon execution of an order outside the bid/ask spread of another marketplace, should

the participant have to satisfy better-priced orders available on other marketplaces? If so, how? Should this be restricted to visible orders?

18. If a trade-through obligation is imposed, should it occur at, simultaneously to or immediately after execution of the inferior- priced trade? Should the model accommodate all three solutions?

19. If a trade-through obligation is imposed, should it apply to all better-priced orders existing when the obligation is discharged, all better-priced pre-existing orders (at the time of execution) or should it be limited to amount of the trade at the inferior price?

20. If a trade-through obligation is imposed, should exemptions be provided for special terms orders? Which ones and why?

21. If a trade-through obligation is imposed, should an exemption be provided for orders for which the price or other material terms cannot be determined on order entry?

22. If a trade-through obligation is imposed, should it include an exemption for large block trades?

23. Should the size threshold for a block trade exemption for the same security traded on multiple marketplaces be the same across marketplaces? If not, what would the impact be?

24. If a trade-through obligation is imposed, will sweep orders facilitate the execution of block orders? How?

25. If a trade-through obligation is imposed, should it apply to any non-visible portions of a trading book?

26. Should we provide the ability to opt out of routing orders to marketplaces where the better-priced order is on a manual marketplace or should the rule be drafted to apply to protect only those orders that are immediate and automatically accessible?

27. What is the impact of imposing a trade-through obligation on non-dealers?

28. Does the introduction of multiple marketplaces trading the same security cause a conflict between what is needed to meet best price obligations and what is needed to meet best execution obligations if the latter is defined as something different from best price only? How can this conflict be resolved? Is one obligation, best price or best execution more important than the other? Why? Why not?

29. How should locked or crossed markets be treated? Should procedures be set up to limit the occurrence of locked or crossed markets? If so, upon whom should the obligation be placed?

30. Should the method of trade allocation (price priority or price-time priority or some entirely different method) be the same for all marketplaces or should the marketplace be allowed to determine its own procedures for allocation of trades? Why or why not?

31. Should the last sale price reflect trading on all marketplaces or should each marketplace have a separate last sale price? Why or why not?

B. Comments

Interested parties are invited to make written submissions on the discussion paper. Please provide comments in writing on or before **Thursday, October 20, 2005** to the CSA listed below in care of the OSC, in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory

Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: jstevenson@osc.gov.on.ca

Please also send your submission to the Autorité des marchés financiers as follows:

Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

C. Public Forum

Because of the importance of the issues relating to the trade-through obligation and their impact on the Canadian capital markets, the CSA have scheduled a public forum on **Friday, October 14, 2005** at 10:00 am to permit all interested parties to participate in the discussions relating to trade-through protection. Interested parties who wish to participate at the public forum are invited to indicate in their comment letter to this discussion paper that they wish to appear. These comment letters must be received by **Monday, September 19, 2005.**

It is anticipated that Commissioners will preside over the forum. Staff will not make submissions, but will participate as observers.

The public forum will be informal. Presentations may be made by counsel, experts and employees of all market participants. Only Commissioners will be allowed to question those who give oral presentations. However, other may provide contrary evidence as rebuttal. Presentations will be limited to one-half hour, unless otherwise justified. A transcript of the proceedings will be made. The final decision regarding the details of the process will be announced after CSA staff have reviewed the submissions and discussed the process with interested parties.

The issues should be focused on those raised in the discussion paper and the question asked.

D. Questions

Please refer your questions to any of the following people:

Randee Pavalow
Ontario Securities Commission
(416) 593-8257
rpavalow@osc.gov.on.ca

Cindy Petlock
Ontario Securities Commission
(416) 593-2351
cpetlock@osc.gov.on.ca

Tracey Stern
Ontario Securities Commission
(416) 593-8167
tstern@osc.gov.on.ca

Darren Sumarah
Ontario Securities Commission
(416) 593-2307
dsumarah@osc.gov.on.ca

Susan Toews
British Columbia Securities Commission
(604) 899-6764
stoews@bcsc.bc.ca

Blaine Young
Alberta Securities Commission
(403) 297- 4220
blaine.young@seccom.ab.ca

Serge Boisvert
Autorité des marchés financiers
(514) 395-0558 x4358
serge.boisvert@lautorite.qc.ca

Doug Brown
Manitoba Securities Commission
(204) 945-0605
doubrown@gov.mb.ca

July 22, 2005

13.1.2 Notice of Commission Approval - Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

APPLICATION TO VARY THE RECOGNITION AND DESIGNATION OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

NOTICE OF APPROVAL

On July 12, 2005, the Commission issued an order (the "Recognition Order") pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (the "Act") varying and restating the current recognition and designation order of The Canadian Depository for Securities Limited ("CDS") as a clearing agency.

The Commission published the CDS application for a variation on April 8, 2005 at (2005) 28 OSCB 3481. Three commenters responded to the request for comments. CDS' summary of the comments and its responses is attached as Appendix "A" to this notice.

In response to the comments received, the Commission and CDS have agreed to amend the Rule Protocol Regarding the Review and Approval of CDS Rules by the Commission as follows:

Section 3 Classification of Rules

Section 3 relating to classification of rules is amended by inserting a new clause (a)(ii) as follows:

(a) Technical/Housekeeping Rules
For the purpose of this protocol, a rule will be classified as "technical/housekeeping" if the rule involves only:

(ii) consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;

Section 6 Immediate Implementation of a Material Rule

The process for immediate implementation of a material rule has been amended by shortening the notice period from 7 to 5 business days. Clause 6(b) and (c) have been amended as follows:

(b) Prior Notification
Where CDS determines that immediate implementation is necessary, CDS will advise Commission staff in writing as soon as possible but in any event at least ~~7~~ 5 business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

(c) Disagreement on Need for Immediate Implementation
If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

(i) Commission staff will notify CDS, in writing, of the disagreement, or request more time to consider the immediate implementation, within 3~~5~~ business days of being advised by CDS under subsection (b).

(ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.

(iii) If no notice is received by CDS by the 3rd~~5th~~ business day after Commission staff received CDS' notification, CDS may assume that Commission staff does not disagree with their assessment.

The prior notification period has been shortened from 7 to 5 business days in order to expedite the notification and disagreement process. Commission staff have three business days to respond to the notice and indicate any disagreement with the need for immediate implementation. However, in situations requiring implementation in less than 5 business days, staff may waive the requirement for a 5 business day notice period to ensure that implementation will proceed as the circumstances require.

No other revisions have been made to the CDS Recognition Order.

APPENDIX "A"

CDS' Summary of Comments Received

The public comment period in respect of the CDS application to vary the current recognition and designation order expired on May 9, 2005. Three comment letters were received during the public comment period:

1. Computershare Trust Company of Canada ("Computershare") (April 21, 2005);
2. Pacific Corporate Trust Company ("Pacific") (April 22, 2005);
3. Canadian Bankers Association ("CBA") (May 5, 2005).

The following is a summary of the material comments received during the comment period and CDS' response to those comments.

1. Recognition and Designation Order

Comment
Computershare and Pacific noted that the recognition order makes some reference to financial matters and specific reference to "Protection of Customer Securities", but no reference at all to the rights, entitlements and obligations of CDS as a registered holder. Computershare and Pacific are concerned about the integrity of voting, specifically, the so-called "over-voting" issue.

CDS' Response
We acknowledge that the "over-voting" issue is of importance to issuers, transfer agents and, indeed, the whole securities industry. However, CDS does not have the power nor authority to resolve this. CDS has participated actively in the initiatives of the Canadian Securities Administrators relating to communications with beneficial shareholders, in particular, the committee involved with National Instrument 54-101, and will continue to do so. Accordingly, CDS is of the view that the recognition order is not the appropriate regulatory forum to deal with this.

2. Rule Protocol Regarding the Review and Approval of CDS Rules by the OSC (the "Rule Protocol")

Comment
The CBA noted that the Rule Protocol states that CDS must provide no less than 7 days business notice to the OSC in urgent situations. The CBA is concerned that in some circumstances the delay caused by a seven business days notice period could be too long.

CDS' Response
CDS and Commission staff have agreed to amend subsections 6 (b) and (c) of the Rule Protocol by shortening the notification period from 7 to 5 business days for rule amendments in urgent situations.

Comment
The definition of rule includes "a proposed new or amendment to or deletion of a participant rule, operating procedure, user guide, manual or similar instrument or document of CDS which contains any contractual term setting out the respective rights and obligations between CDS and participants or among participants." The CBA noted that in some cases rules that are material will be accompanied by related changes to operating procedures or other documentation that reflect the same changes and, accordingly, raise the same material issues, and it would significantly assist CDS and its participants if the related procedures and documentation accompanying a package of material rule amendments could be treated as "technical/housekeeping" rules.

CDS' Response
CDS and Commission staff have agreed to amend the definition of "technical/housekeeping" to include consequential amendments intended to implement a material rule that has been published for public comment pursuant to the Rule Protocol and which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule.

Comment
The CBA is concerned that the cost of compliance with documentation requirements for material CDS Rules under the Rule Protocol could be high, in some cases, in relation to the benefits to be gained. Specifically, sections 4 (b)(iii) (D) requires CDS to provide a description of the issues considered, consultation done, alternative approaches considered, and reasons for rejecting alternatives. Section 4(b)(iii)(F) requires CDS to refer to rules of other clearing agencies where other agencies have a counterpart to the rule etc. The CBA is of the view that section 4(b)(iii)(F), in particular, imposes onerous documentation requirements on CDS that would likely not be productive.

CDS' Response
In order to improve transparency in the rule making process, CDS has been advised that sufficient information and background must be published in order for the Commission and any member of the public to understand the proposal and impact of a proposed rule. The information requirements in section 4 of the Rule Protocol are intended to set out what information is relevant. CDS understands that similar disclosure requirements apply to clearing corporations and depositories in other jurisdictions, notably in the United States. Further, these requirements have been applied to other entities regulated by the Commission in Ontario. No change is proposed to the Rule Protocol.

Comment
The CBA suggested that the Rule Protocol should be reviewed within six months or one year following its adoption, to assess its effectiveness, including its impact on systems implementations.

CDS' Response
The Board of Directors of CDS shares the concerns of the CBA and has requested management to report back to the Board on the costs and experience in relation to compliance with the rule making process within a year after the issuance of the Recognition Order. CDS and Commission staff will consider reviewing the effectiveness of the Rule Protocol on a periodic basis.

13.1.3 RS Disciplinary Notice - Glen Grossmith

July 18, 2005

Person Disciplined

On July 18, 2005, a Hearing Panel of the Hearing Committee of Market Regulation Services Inc. ("RS") approved a settlement agreement (the "Settlement Agreement") concerning Glen Grossmith ("Grossmith").

Requirements Contravened

Under the terms of the Settlement Agreement, Grossmith admits that the following Requirements were contravened:

(a) In the period February 4-9, 2005, Grossmith engaged in conduct inconsistent with just and equitable principles of trade, contrary to Universal Market Integrity Rule ("UMIR") 2.1(1)(a), for which he is liable pursuant to UMIR 10.4(1)(a).

(b) On February 4, 2005, Grossmith engaged in conduct which resulted in UBS Securities Canada Inc. ("UBS Securities Canada") contravening UMIR 10.11(1), for which he is liable pursuant to UMIR 10.3(4).

Sanctions Approved

The following sanctions were approved:

(a) A fine of $75,000.00 payable by Grossmith to RS;

(b) Suspension of access to marketplaces regulated by RS for 3 months commencing upon the execution of the Settlement Agreement:

(c) Strict supervision for 6 months after completion of the suspension referred to in (b) above; and,

(d) Costs of $25,000.00 payable to RS.

Summary of Facts

On February 4, 2005, Mark Webb ("Webb"), a trader employed with UBS Securities LLC ("UBS LLC") received an order to buy 120,000 Phelps Dodge Corporation ("PD.N") from a U.S. client. After filling 6,000 shares of the order, the client cancelled the outstanding order and moved it to another dealer for completion. Webb became angry and bought 10,000 shares of PD.N as principal. When the client complained to UBS LLC, he lied and stated that the 10,000 shares were purchased for a Canadian client. Webb then contacted Zoltan Horcsok ("Horcsok") of UBS Securities Canada and without disclosing all of the details of his conduct, asked for Horcsok's assistance in finding a Canadian trade ticket time stamped around the time of Webb's purchase of the 10,000 PD.N and a Canadian buyer for the 10,000 shares. Horcsok related Webb's requests to Grossmith who found a Canadian purchaser for the shares.

With Horcsok's knowledge, Grossmith altered an existing trade ticket for another Canadian client's purchase of a TSX listed security time stamped at 9:43 am that morning. He crossed out the symbol of the TSX listed security and added in "PD" for PD.N and changed the client information. Grossmith prepared an electronic ticket for the purchase by the Canadian client of the 10,000 shares of PD.N, stating the purchase was unsolicited, when it was solicited. He also entered, and later edited, a "Trader Note" in electronic trading system UBS Securites Canada which perpetuated the false story that Webb had been provided a Canadian client order to purchase 10,000 shares of PD.N earlier that morning. Such conduct resulted in UBS Securities Canada contravening its audit trail requirements under UMIR, for which Grossmith is personally liable.

Grossmith also created a false and misleading "Chat" communication to Webb and made false statements to a UBS LLC employee, to continue the charade that the Canadian client order had been provided to Webb that morning. Grossmith was not forthcoming with all of these circumstances when questioned by compliance personnel for UBS Securities Canada and UBS LLC on February 7 and 8, 2005. On February 9, 2005, Horcsok finally provided the complete details to compliance concerning the events of February 4, 2005. Such conduct by Grossmith is inconsistent with just and equitable principles of trade under UMIR.

As a result of these events, Grossmith was dismissed from UBS Securities Canada on February 22, 2005.

RS has concluded that there are no grounds for any disciplinary action against UBS Securities Canada relating to Grossmith's conduct.

Further Information

Participants who require additional information should direct questions to Maureen Jensen, Vice President, Market Regulation, Eastern Region, Market Regulation Services Inc. at 416-646-7216.

About Market Regulation Services Inc.
Market Regulation Services Inc. ("RS") is the regulation services provider for Canadian equity markets including the TSX, TSX Venture Exchange, Canadian Trading and Quotation System, Bloomberg Tradebook Canada Company and Liquidnet Canada Inc., RS is recognized by the *Autorité des marchés financiers* in Québec and the securities commissions of Ontario, Manitoba, Alberta and British Columbia to regulate the trading of securities on these marketplaces by participant firms and their trading and sales staff. RS is mandated to conduct its regulatory activities in a neutral, cost-effective, service-oriented and responsive manner.

13.1.4 RS Disciplinary Notice - Zoltan Horcsok

July 18, 2005

Person Disciplined

On July 18, 2005, a Hearing Panel of the Hearing Committee of Market Regulation Services Inc. ("RS") approved a settlement agreement (the "Settlement Agreement") concerning Zoltan Horcsok ("Horcsok").

Requirements Contravened

Under the terms of the Settlement Agreement, Horcsok admits that the following Requirements were contravened:

(a) In the period February 4-9, 2005, Horcsok failed to fulfill his supervisory responsibilities contrary to Universal **Market Integrity Rule ("UMIR") 7.1(4).**

(b) On February 4, 2005, Horcsok engaged in conduct which resulted in UBS Securities Canada Inc. ("UBS Securities Canada") contravening UMIR 10.11(1) and 10.12(1), for which he is liable pursuant to UMIR 10.3(4).

Sanctions Approved

The following sanctions were approved:

(e) A fine of $100,000.00 payable by Horcsok to RS;

(f) Suspension of access to marketplaces regulated by RS for 3 months commencing upon the execution of this Settlement Agreement by Horcsok:

(g) Strict supervision for 6 months after completion of the suspension referred to in (b) above;

(h) Prohibition against acting as supervisor for 1 year after completion of the suspension referred to in (b) above; and,

(i) Costs of $25,000.00 payable to RS.

Summary of Facts

On February 4, 2005, Mark Webb ("Webb"), a trader employed with UBS Securities LLC ("UBS LLC") received an order to buy 120,000 Phelps Dodge Corporation ("PD.N") from a U.S. client. After filling 6,000 shares of the order, the client cancelled the outstanding order and moved it to another dealer for completion. Webb became angry and bought 10,000 shares of PD.N as principal. When the client complained to UBS LLC, he lied and stated that the 10,000 shares were purchased for a Canadian client. Webb then contacted Horcsok of UBS Securities Canada, and without disclosing all of the details of his conduct, asked for Horcsok's assistance in finding a Canadian trade ticket time stamped around the time of Webb's purchase of the 10,000 PD.N and a Canadian buyer for the 10,000 shares. Horcsok related Webb's requests to Glen Grossmith ("Grossmith"), another employee at UBS Securities Canada, who found a Canadian purchaser for the shares. Horcsok was Grossmith's direct supervisor.

At Webb's request, some of his and Horcsok's communications were deliberately conducted on untaped telephone lines at UBS Securities Canada. With Horcsok's knowledge, Grossmith altered an existing trade ticket for another Canadian client to reflect an order to purchase 10,000 PD.N at 9:43 am that morning by the Canadian client solicited by Grossmith just prior to 3:00 pm. The trade ticket that was altered by Grossmith was obtained by Horcsok from another trader on the desk, whom Horcsok also supervised. Grossmith created a false and misleading "Chat" communication to Webb and made false statements to a UBS LLC employee, which continued the charade that Webb had been provided with an order to purchase 10,000 PD.N for a Canadian client that morning. Grossmith also entered, and later edited, a Trader Note in the electronic trading system at UBS Securities Canada which perpetuated the false story that Webb had been provided a Canadian client order for 10,000 PD.N earlier that morning. Horcsok was not forthcoming about all of the circumstances of his and Grossmith's involvement in this matter when he spoke with the President of UBS Securities Canada on the evening of February 4, 2005 nor when he was questioned by compliance personnel from UBS Securities Canada and UBS LLC on February 7 and 8, 2005. On February 9, 2005, Horcsok disclosed of the circumstances relating to his and Grossmith's involvement in this matter to all the compliance personnel involved. By engaging in this conduct, Horcsok contravened his trading supervision obligations under UMIR.

As stated above, Horcsok was aware that Grossmith altered a Canadian trade ticket. Subsequently, Horcsok destroyed the altered trade ticket. This conduct resulted in UBS Securities Canada contravening its audit trail requirements under UMIR, for which Horcsok is personally liable.

As a result of these events, Horcsok was dismissed from UBS Securities Canada on February 22, 2005.

RS has concluded that there are no grounds for any disciplinary action against UBS Securities Canada relating to Horcsok's conduct.

Further Information

Participants who require additional information should direct questions to Maureen Jensen, Vice President, Market Regulation, Eastern Region, Market Regulation Services Inc. at 416-646-7216.

About Market Regulation Services Inc.

Market Regulation Services Inc. ("RS") is the regulation services provider for Canadian equity markets including the TSX, TSX Venture Exchange, Canadian Trading and Quotation System, Bloomberg Tradebook Canada Company and Liquidnet Canada Inc., RS is recognized by the *Autorité des marchés financiers* in Québec and the securities commissions of Ontario, Manitoba, Alberta and British Columbia to regulate the trading of securities on these marketplaces by participant firms and their trading and sales staff. RS is mandated to conduct its regulatory activities in a neutral, cost-effective, service-oriented and responsive manner.

13.1.5 RS Disciplicary Notice - W. Scott Leckie

July 19, 2005

Person Disciplined

On July 19, 2005, a Hearing Panel of the Hearing Committee of Market Regulation Services Inc. ("RS") approved a settlement agreement (the "Settlement Agreement") concerning W. Scott Leckie ("Leckie").

Requirement Contravened

Under the terms of the Settlement Agreement, Leckie admits that the following Requirement was contravened:

> On June 13, 17, 19, 20, 24, 26 and 30, 2003 he effected trades in Air Canada which involved no change of beneficial or economic ownership, which constitutes a manipulative and deceptive method of trading, contrary to UMIR Rule 2.2(2)(b), for which he is liable pursuant to UMIR 10.4(1)(a).

Sanctions Approved

The following sanctions were approved:

(j) A fine of $100,000 payable by Leckie to RS; and,

(k) Costs of $20,000 payable to RS.

Summary of Facts

In April 2003 Leckie sought to implement a short selling strategy on behalf of a client (Company A) with respect to shares in Air Canada. Company A had a trading account with Dealer X, opened for that purpose by Leckie on the client's behalf.

Prior to April 3, 2003, Company A's account at Dealer X did not hold a position in Air Canada. On April 3, 2003, Leckie commenced short selling shares of Air Canada in this account for Company A.

In the period April 3, 2003 to June 13, 2003, Leckie continued to short sell shares of Air Canada for Company A's account. During this period, Dealer X was unable to borrow Air Canada shares to cover Company's A short position. As a result, the account was continually being bought in by Dealer X, at a premium, to cover this short position.

In order to preserve the short positions, Leckie opened another account for Company A at Dealer Y because he was told by Dealer Y that he would be able to borrow Air Canada shares to cover short selling activity.

As it turned out, Dealer Y was unable to borrow Air Canada shares. As a result, commencing on June 13, 2003, when faced with a pending buy in at Dealer X, Leckie sold short shares of Air Canada in the Company A's account at Dealer Y and then bought shares of Air Canada into Company A's account at Dealer X to cover the short position at Dealer Y.

In addition to the trades of June 13, 2003, trades of a similar nature occurred on June 17, 19, 20, 24, 26 and 30, 2003.

Although Leckie knew that the trading activity outlined above would not result in a change of beneficial ownership, the intent of the trades was to preserve his client's short position in Air Canada shares. Leckie's trading activity was not carried out with the intent to manipulate the price of Air Canada shares or to deceive the market. Leckie admits that while he spent considerable time reviewing regulatory policy around buy in rules, he did not consider the fact that his actions would be a violation of the "wash trading" rule.

Leckie's client received no benefit and, in fact, ultimately lost money on the Air Canada trading.

Further Information

Participants who require additional information should direct questions to Maureen Jensen, Vice President, Market Regulation, Eastern Region, Market Regulation Services Inc. at 416-646-7216.

About Market Regulation Services Inc.

Market Regulation Services Inc. ("RS") is the regulation services provider for Canadian equity markets including the TSX, TSX Venture Exchange, Canadian Trading and Quotation System, Bloomberg Tradebook Canada Company and Liquidnet Canada Inc., RS is recognized by the *Autorité des marchés financiers* in Québec and the securities commissions of Ontario, Manitoba, Alberta and British Columbia to regulate the trading of securities on these marketplaces by participant firms and their trading and sales staff. RS is mandated to conduct its regulatory activities in a neutral, cost-effective, service-oriented and responsive manner.

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Chapter 25

Other Information

25.1 Exemptions

25.1.1 New Generation Biotech (Balanced) Fund Inc.

Headnote

A revocation and restatement of prior relief granted from certain requirements in National Instrument 81-102 Mutual Funds to a labour sponsored investment fund to pay certain incentive fees to different service providers.

Applicable Statutes

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

Rules Cited

National Instrument 81-102 Mutual Funds, Part 7 and s. 19.1.

June 30, 2005

Gowling Lafleur Henderson LLP

Attention: Iain A. Robb

Dear Sirs/Mesdames:

RE: New Generation Biotech (Balanced) Fund Inc.
Exemptive Relief Application dated November 27, 2000 pursuant to National Instrument 81- 102 -- *Mutual Funds*;
SEDAR Project #: 775538; Ont. App. #317/05

By the application letter dated May 2, 2005, and subsequent submissions (the Application), and pursuant to section 144 of the *Securities Act* (Ontario) (the Act), you applied to the Ontario Securities Commission (the Director) on behalf of New Generation Biotech (Balanced) Fund Inc. (the Fund) to revoke and replace a prior exemption granted to the Fund on January 3, 2001 (the Prior Exemption) with this exemption.

The Prior Exemption exempts the Fund from the restrictions in Part 7 of NI 81-102 relating to the payment of the Performance Bonus (defined herein). In the Prior Exemption, the Fund represented that Genesys (as defined in the Prior Exemption) will initially be entitled to 60% of the Performance Bonus and Triax (as defined in the Prior Exemption) will be entitled to 20% of the Performance Bonus. In the Application, the Fund proposes to pay the Performance Bonus to the Manager (defined herein) and the service providers retained by the Manager in the proportion determined by the Manager from time to time and disclosed to the Fund' shareholders (the Shareholders).

In the Application, the Fund represented the following:

1. The Fund is a corporation incorporated under the *Business Corporations Act* (Ontario) by Articles of Incorporation dated October 31, 2000 which were subsequently amended by Articles of Amendment dated December 27, 2000 and further amended by Articles of Amendment dated December 19, 2003.

2. The Fund is registered as a labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the Ontario Act) and is a prescribed labour-sponsored venture capital corporation under the Income Tax Act (Canada), as amended.

3. A final prospectus for the Fund dated December 27, 2000 (the Prospectus) was filed with and a final receipt was received from the Director. The Fund is a mutual fund as defined in subsection 1(1) of the Act and distributed securities in Ontario until March 1, 2001.

4. NGB Management Inc. is the manager of the Fund (the Manager) pursuant to a management agreement between the Fund and the Manager dated December 22, 2000 (the Agreement). The Manager has retained service providers to perform various investment and administrative services for the Fund.

5. Pursuant to the Agreement, the definition of "Class A Share Investment Portfolio" means, at any point in time, the investments of the Fund, other than investments in reserves, made with capital raised from the sale of Class A Shares.

6. Pursuant to the Agreement, the definition of "reserves" means Canadian dollars in cash or on deposit with qualified Canadian financial institutions, debt obligations of or guaranteed by the Canadian federal government, debt obligations of provincial and municipal governments, Crown corporations and corporations listed on prescribed Canadian stock exchanges, guaranteed investment certificates issued by Canadian trust companies and qualified investment contracts.

7. Pursuant to the Agreement, the definition of "Eligible Investment" means an investment which, at the time of purchase, qualified as an Eligible Business or as an eligible business for a Community Small Business Investment Fund

(CSBIF) in which the Fund invests as contemplated in the Ontario Act.

8. Pursuant to the Agreement, the definition of "Portfolio Company" means a business in which either the Fund or a CSBIF, in which the Fund has invested, has made an Eligible Investment.

9. Pursuant to the Agreement, the definition of "Disposition Date" means the date the Fund or the CSBIF in which the Fund has invested receives the proceeds, whether in cash, securities or other property, from the disposition of an investment in a Portfolio Company.

10. Pursuant to the Agreement the definition of "Income" means all interest, dividends, fees, capital gains and other distributions received by the Fund from its investment in a CSBIF.

11. Pursuant to the Agreement, the Fund has agreed to pay a performance bonus payable on the Disposition Date (the Performance Bonus) based on the realized gains and the cumulative performance of the Class A Share Investment Portfolio. Before any Performance Bonus is paid by the Fund on the realization of an investment, the Class A Share Investment Portfolio must have:

    (a) earned sufficient Income to generate a rate of return on investments in excess of accumulative annualized threshold return of 6%. The Income on Eligible Investments includes investment gains and losses (realized and unrealized) earned and incurred since the inception of the Fund;

    (b) earned Income from the investment which provides a cumulative investment return at an average annual rate in excess of 6% since the date of the investment; and

    (c) and fully recovered from the investment an amount equal to all principal invested in the investment.

    Subject to all of the above, the Performance Bonus will be an amount equal 20% of all Income earned from each investment provided that the payment of the Performance Bonus does not reduce the return to Shareholders on a Class A Share Investment Portfolio below the threshold outlined in (a) above. The Fund will pay the Performance Bonus to the Manager and the service providers (Service Providers) retained by the Manager in the proportion determined by the Manager from time to time and disclosed to Shareholders.

    The threshold return shall be calculated on a compound annual basis only on capital actually invested in Eligible Investments.

12. Section 7.1 of NI 81-102 provides that a mutual fund shall not pay, or enter into arrangements that would require it to pay, and no securities of a mutual fund shall be sold on the basis that an investor would be required to pay, a fee that is determined by the performance if the mutual fund, unless the calculation and payment of the fee complies with paragraphs 7.1(a) and 7.1(b). Paragraph 7.1(a) and 7.1(b). Paragraph 7.1(a) requires that the fee be calculated with reference to a benchmark or index. Paragraph 7.1(b) requires that the payment of the fee be based on a comparison of the cumulative total return of the mutual fund against the cumulative total percentage increase or decrease of the benchmark or index for the period that began immediately after the last period for which the performance fee was paid.

13. The Performance Bonus does not conform to the requirements of section 7.1 of NI 81-102. The Performance Bonus is based on realized gains and the cumulative performance of the Class A Share Investment Portfolio (and not in relation to a benchmark). The Performance Bonus is not based on the total return of the Fund because reserves are not included in the Class A Share Investment Portfolio and because the quantum of the Performance Bonus is calculated on an investment-by-investment basis.

14. The Fund is a labour sponsored fund; a labour sponsored fund is designed to encourage the public to invest in a vehicle that makes venture capital investments. The making of venture capital investments is substantially different from the types of investments generally made by public mutual funds. This fundamental difference is recognized in subsection 240(a) of the Regulation to the Act, which exempts labour sponsored investment fund corporations from a number of the ordinary investment restrictions contained in a rule, policy or practice of the Commission (including NI 81-102).

15. The basis for payment of the Performance Bonus, as described in Recital 11 (the Incentive Arrangement), is appropriate in light of the nature of venture capital investing and is consistent with those commonly used in the venture capital industry, and in particular, in private venture capital funds. The Fund believes that it needs to be able to offer an incentive fee arrangement similar to those of other venture capital funds in order to attract the necessary professional expertise to be able to carry out the investment operations and its mandate, which is a mandate already recognized by the Regulation to the Act.

16. The Prospectus for the Fund:

(a) Fully discloses that the Manager considers the Performance Bonus and the Incentive Arrangement to be appropriate given the disclosed investment objectives and strategies of the Fund; and

(b) Provides an explanation of why the Performance Bonus and the Incentive Arrangement are appropriate for the Fund.

This letter confirms that, based on the information and representations contained in the Application, and for the purposes described in the Application, the Director hereby revokes and replaces the Prior Exemption with this exemption that the Fund is exempt from section 7.1 of NI 81-102 in respect of the Performance Bonus and Incentive Arrangement provided that:

i) the Manager fully discloses to Shareholders that the Manager considers the Performance Bonus and the Incentive Arrangement to be appropriate given the disclosed investment objectives and strategies of the Fund and provides an explanation of why the Performance Bonus and the Incentive Arrangement are appropriate for the Fund; and

ii) the Service Providers are not dealers distributing securities of the Fund .

The relief provided herein is conditional upon compliance with all other applicable provisions of NI 81-102.

Yours truly,

"Leslie Byberg"
Manager, Investment Funds Branch

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