

The Ontario Securities Commission

OSC Bulletin

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

The Ontario Securities Commission

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August 29, 2005 to September 16, 2005

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

10:00 a.m.

s.127

September 12, 2005

T. Pratt in attendance for Staff

2:30 p.m.

Panel: WSW/PKB/ST

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

September 16, 2005

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

10:00 a.m.

s. 127

M. MacKewn in attendance for Staff

Panel: TBA

September 28 and 29, 2005

Francis Jason Biller

s.127

10:00 a.m.

J. Cotte in attendance for Staff

Panel: RLS/RWD/CSP

October 4, 2005

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

2:30 p.m.

s. 127 and 127.1

P. Foy in attendance for Staff

Panel: PMM/WSW/CSP

October 11, 2005

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

9:00 a.m.

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 Amendments to the Securities Act and Regulation, and to the Commodity Futures Act

NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND REGULATION, AND TO THE COMMODITY FUTURES ACT

On August 2, 2005, the Government of Ontario announced that new provisions to protect investors in the secondary market will come into force on December 31, 2005. For ease of reference, the Commission is publishing in Chapter 9 of today's Bulletin an unofficial consolidation of the following provisions:

- Part XXIII.1 – Civil Liability for Secondary Market Disclosure of the *Securities Act*,
- Sections 126.1 and 126.2 of the *Securities Act*,
- Sections 59.1 and 59.2 of the *Commodity Futures Act*, and
- Amendments made to Regulation 1015 of the *Securities Act*.

1.3 News Releases

1.3.1 OSC News Release - OSC Issues Decision In the Matter of Brian Verbeek involving \$17 million invested by 670 investors in RRSP schemes

**FOR IMMEDIATE RELEASE
July 28, 2005**

OSC ISSUES DECISION IN THE MATTER OF BRIAN VERBEEK INVOLVING \$17 MILLION INVESTED BY 670 INVESTORS IN RRSP SCHEMES

Toronto – By Reasons dated July 26, 2005, the Ontario Securities Commission found that Brian Verbeek, a registered representative whose office was located in Nepean, participated in a scheme that involved over 670 investors, most of which were located in Ontario. The Commission found that Verbeek's conduct violated various provisions of the *Securities Act* and Rule 31-505 and that Verbeek acted contrary to the public interest.

The investors purchased shares of various Canadian Controlled Private Corporations ("CCPCs") that were purported to be qualified RRSP investments. The investors responded to advertisements offering to assist them in collapsing their locked-in RRSPs and using the funds to purchase shares of CCPCs. In exchange, the investors received a loan for approximately 65% of the share purchase. The remaining 35% of the purchase price of the CCPC shares was charged as an administrative fee. Verbeek was involved in these schemes with several Quebec participants. The Commission found that this case involved "the participation by a registered representative for his financial benefit in a scheme that abused securities laws and harmed investors."

Staff of the Commission worked on this investigation in conjunction with Quebec's Autorité des Marchés Financiers.

The Commission found that:

Verbeek participated in distributions of CCPC shares for which no prospectus was available. He participated in the arrangements not merely as an administrative conduit between the CCPC promoters and the trust companies, but on behalf of the CCPC promoters, and as a registered representative on behalf of the holders. He failed in his obligation to ascertain the general investment needs of his clients, the holders. He failed to ascertain the suitability of the purchase of the CCPC shares for the holders, largely low-income earners who were in immediate need of cash. Verbeek participated in the arrangements despite published warnings by the Commission that schemes like the arrangements were considered harmful to investors and contrary to the public interest. His participation was for his own financial benefit at the expense of

unsophisticated investors who needed financial assistance. Although he had intimate knowledge of the arrangements, he misled Staff during the investigation of this matter.

The Commission also found that Verbeek received direct and indirect compensation for his participation in the scheme.

A hearing in respect of the sanctions to be imposed will be scheduled in the near future. A copy of the reasons is available on the OSC's web site (www.osc.gov.on.ca).

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1.3.2 CSA News Release - Regulators Revise Timeline for Internal Control Reporting Project

FOR IMMEDIATE RELEASE
July 29, 2005

REGULATORS REVISE TIMELINE FOR INTERNAL CONTROL REPORTING PROJECT

Montreal – The Canadian Securities Administrators (CSA) announced today that they have extended the timeline for the internal control reporting project. The earliest an internal control reporting instrument would apply is in respect of financial years ending on or after June 30, 2007. Under the proposed internal control instrument, as it was originally published, internal control reporting requirements were to be phased in over four years, commencing with financial years ending on or after June 30, 2006.

The extension to the timeline for the internal control reporting project will allow the CSA sufficient time to assess the potential impact of current developments in the U.S. relating to internal control reporting requirements similar to those proposed in Canada. As well, it will allow the CSA sufficient time to consider issues raised in the 64 submissions from commenters on the proposed Internal Control Instrument.

On February 4, 2005, the securities regulatory authorities in every Canadian jurisdiction other than British Columbia, published for comment a proposed instrument regarding reporting on internal control. Multilateral Instrument 52-111 Reporting on Internal Control over Financial Reporting and Companion Policy 52-111CP and comments submitted on these documents are available on several CSA members' web sites.

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

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1.4 Notices from the Office of the Secretary

1.4.1 Andrew Currah et al.

**FOR IMMEDIATE RELEASE
August 2, 2005**

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

AND

**IN THE MATTER OF
A PROCEEDING BROUGHT PURSUANT TO SECTION
127 OF THE ACT**

**IN THE MATTER OF
ANDREW CURRAH, COLIN HALANEN,
JOSEPH DAMM, NICHOLAS WEIR,
PENNY CURRAH AND WARREN HAWKINS**

TORONTO – The Commission issued its Decision and Reasons following a motion hearing on July 7, 2005 in the above matter.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For Investor Inquiries: OSC Contact Centre
416-593-8314
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1.4.2 Momentas Corporation et al.

FOR IMMEDIATE RELEASE
August 3, 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 its Reasons following a motion hearing on July 14, 2005 in the above matter.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Newport Securities Inc. and Newport Partners Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer proposing to make initial public offering of units - filer proposing to underwrite 3.0% of the offering - filer prohibited from acting as direct underwriter in the distribution since the issuer is a related issuer of the filer - filer unable to rely on exemption in subsection 2.1(3) of NI 33-105 since the proportionate share of the offering to be underwritten by the largest independent underwriter is only 17.5% - independent underwriters in the aggregate will collectively underwrite approximately 60% of the offering - relief granted from subsection 2.1 of NI 33-105 in connection with the offering.

Applicable Rules

National Instrument 33-105 Underwriting Conflicts.

July 27, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO,
BRITISH COLUMBIA, ALBERTA, QUEBEC,
NOVA SCOTIA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND,
NORTHWEST TERRITORIES,
NUNAVUT TERRITORY AND YUKON TERRITORY

AND

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

AND

IN THE MATTER OF
NEWPORT SECURITIES INC. (THE "FILER" or "NSI")
AND NEWPORT PARTNERS INCOME FUND

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 an exemption under the requirement contained in National Instrument 33-105 ("NI

33-105") and Sections 236.1 and 236.2 of the Regulations of the *Securities Act* (Quebec) and Section 181 of the Regulations to the *Securities Act* (Newfoundland and Labrador) relating to the limitations imposed on underwriters in respect of offerings involving a "related issuer".

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. Newport Partners Income Fund (the "Fund") is an unincorporated open-ended limited purpose trust established under the laws of Ontario.
2. The Fund's head office and principal business office is located in Toronto, Ontario.
3. The Fund was created to acquire and hold, indirectly, an interest in Newport Private Yield LP ("NPY LP").
4. NPY LP is a limited partnership formed under the laws of the Province of Ontario.
5. NPY LP's head office and registered office is located in Toronto, Ontario.
6. NPY LP, together with its general partner, Newport Private Yield Inc. (collectively, "Newport"), have indirect interests in a variety of operating businesses.
7. The Fund is currently not a "reporting issuer" in any Canadian province or territory. The Offering will be made under a prospectus (the "Prospectus"). A preliminary prospectus relating to the Offering was filed on June 29, 2005 and an amended and restated preliminary Prospectus relating to the Offering was filed on July 7, 2005.

8. The Fund will use the net proceeds of the Offering to indirectly capitalize NPY LP. NPY LP will use the proceeds of the Offering to pay the expenses of the Offering and related acquisition costs, to pay a portion of a performance fee due to Newport Investment Counsel Inc. ("NICI") to enable NICI to pay source deductions due on related employee bonuses, to pay GST on the performance fee and to redeem certain units in the capital of NPY LP.
9. The underwriters of the Offering (the "Underwriters") are RBC Dominion Securities Inc. ("RBC"), CIBC World Markets Inc. ("CIBC"), BMO Nesbitt Burns Inc. ("BMO"), Scotia Capital Inc. ("SCI"), TD Securities Inc. ("TD"), Newport Securities Inc. ("NSI"), Canaccord Capital Corporation ("CCC"), First Associates Investments Inc. ("FAI"), HSBC Securities (Canada) Inc. ("HSBC"), Orion Securities Inc. ("OSI"), Research Capital Corporation ("RCC"), Desjardins Securities Inc. ("DSI"), and Raymond James Ltd. ("RJL").
10. The proportionate share of the Offering underwritten by each of the Underwriters is expected to be as follows:
- | <u>Underwriter</u> | <u>Proportionate Share</u> |
|--------------------|----------------------------|
| | 32.0% |
| CIBC | 17.5% |
| BMO | 11.0% |
| SCI | 11.0% |
| TD | 9.0% |
| NSI | 3.0% |
| CCC | 2.5% |
| FAI | 2.5% |
| HSBC | 2.5% |
| OSI | 2.5% |
| RCC | 2.5% |
| DSI | 2.0% |
| RJL | 2.0% |
| TOTAL | 100% |
11. The amended and restated preliminary prospectus contains, and the final prospectus will contain a certificate signed by each of the Underwriters.
12. Upon the closing of the Offering, Newport Holdings LP expects to enter into a credit facility with the Canadian chartered bank affiliates of RBC and HSBC.
13. NSI is a wholly-owned subsidiary of Newport Partners Inc. The amended and restated preliminary prospectus contains, and the final prospectus will contain a certificate signed by Newport Partners Inc. as promoter of the Fund.
14. Contemporaneously with the closing of the Offering, Newport will acquire the business assets of Newport Partners Inc.
15. Prior to conducting the Offering, OSI provided a fairness opinion to Newport in respect of the purchase price to be paid by Newport for the business assets of Newport Partners Inc.
16. Each of CIBC, BMO, SCI, TD, CCC, FAI, RCC, DSI and RJL (the "Independent Underwriters") are unrelated and not connected to RBC, HSBC, OSI, NSI and the Fund, and the Independent Underwriters are collectively underwriting 60% of the Offering.
17. All of the underwriters have participated in the due diligence process in connection with the Offering.
18. In light of the credit facility to be entered into between Newport Holdings LP and the Canadian chartered bank affiliates of RBC and HSBC, the Fund may be considered a connected issuer of RBC and HSBC.
19. In light of the fairness opinion provided by OSI to Newport in respect of the purchase price to be paid by Newport for the business assets of Newport Partners Inc., the Fund may be considered a connected issuer of OSI.
20. In light of the fact that NSI is a wholly-owned subsidiary of Newport Partners Inc., the Fund may be considered a connected issuer and a related issuer of NSI pursuant to subsection 1.1 and 1.2(2) of NI 33-105, respectively.
21. NSI did not actively participate in the terms or pricing of the Offering.
22. RBC, HSBC, OSI and NSI will not receive any benefit from the Offering other than their portion of the Underwriters' commission payable by the Fund.
23. NSI did not require that the Fund conduct the Offering, nor was its consent required to be obtained for the Offering to proceed.
24. Subsection 2.1(3) of NI 33-105 provides for an exemption for registrants to whom subsection 2.1(2) applies, whereby at least one registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of (A) 20% of the dollar value of the distribution, and (B) the largest portion of the distribution underwritten by a

registrant that is not an independent underwriter. However, under the Offering, no independent underwriter within the meaning of NI 33-105 will underwrite 20% or more of the dollar value of the distribution, and the largest portion of the distribution is not being underwritten by a registrant that is an independent underwriter.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

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

1. The Prospectus contains the information required in Appendix C to NI 33-105.
2. Each of the Independent Underwriters is unrelated to RBC, HSBC, OSI, NSI and the Fund, and the Independent Underwriters will collectively underwrite 60% of the Offering.

“Erez Blumberger”

2.1.2 Raymond James Ltd. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Registered dealer exempted from the requirements of section 36 of the Act, subject to certain conditions, to send trade confirmations for trades that the dealer executes on behalf of client where: client’s account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; trades in the account are only made on the client’s adviser’s instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client’s adviser; and, the client is sent monthly statements that include the confirmation information.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 36, 147.

July 22, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION
OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN
AND ONTARIO (the Jurisdictions)**

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR
EXEMPTIVE RELIEF APPLICATIONS (the System)**

AND

**IN THE MATTER OF
RAYMOND JAMES LTD. (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) for an exemption from the requirements in the Legislation:
 - (a) except in Ontario, to be registered as an adviser for certain foreign investment advisers (the Sub-Advisers) to provide portfolio management services to the Filer for the benefit of certain clients who are resident in Jurisdictions in which the Sub-Advisers are not registered (the Registration Relief); and

- (b) that a registered dealer send to its clients a written confirmation of any trade in securities (Trade Confirmation) for transactions that the Filer conducts on behalf of its managed account clients (Clients) with respect to transactions under the Filer's investment management program described below (the Confirmation Relief).

Under the System

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

Interpretation

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

Representations

- 3. This decision is based on the following facts as represented by the Filer:
 - 1. the Filer is a corporation continued under the federal laws of Canada with its head office located in Vancouver, British Columbia;
 - 2. the Filer is an investment dealer registered under the Legislation and is a member of the Investment Dealers Association of Canada (IDA);
 - 3. the Filer is authorized to act as an adviser, without registering as an adviser, under exemptions in the Legislation;
 - 4. each Sub-Adviser is or will be registered or otherwise qualified to provide investment counselling and portfolio management services under applicable laws in the jurisdiction where the Sub-Adviser's head office is located;
 - 5. the Filer proposes to offer portfolio management services to clients (Participating Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers have experience and expertise;
 - 6. each Participating Client will enter into an investment management agreement (Investment Management Agreement) with the Filer which:

- (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Participating Client, and
- (b) authorizes the Filer to select and retain portfolio managers to invest all or a portion of the assets in a Participating Client's account (Portfolio);

- 7. the Filer will enter into an agreement (Sub-Advisory Agreement) with each Sub-Adviser that sets out the obligations and duties of each party in connection with the investment services provided to the Participating Clients and provides the Sub-Adviser with discretionary authority over the Portfolios;

- 8. in retaining each Sub-Adviser, the Filer will comply with the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* and, accordingly:

- (a) the Filer will agree under the Investment Management Agreement to be responsible for any loss that arises out of the failure of each Sub-Adviser:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Participating Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,
- (b) the Filer will not be relieved by the Participating Clients from this responsibility under 8(a) above (collectively, the Assumed Obligations);

- 9. if there is any direct contact between a Participating Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio manage-

- ment and investment counselling services in the Jurisdiction where the Participating Client is resident, will be present at all times, either in person or by telephone;
10. a Sub-Adviser that provides investment counselling or portfolio management services to the Filer for the benefit of the Participating Clients would be considered to be acting as an “adviser” under the Legislation and, in the absence of the Registration Relief or an existing exemption, would be subject to the adviser registration requirement;
11. Sub-Advisers who are not registered in Ontario will not be required to register as advisers under the Securities Act (Ontario) as they can rely on the exemption from registration in section 7.3 of Ontario Rule 35-502 Non-Resident Advisers;
12. the Filer offers an investment management program to its Clients under which Clients sign a managed account agreement that provides the Filer with discretionary management authority over their accounts;
13. under the managed account agreement between the Filer and each Client:
- (a) the Client will pay the Filer a fee based upon a fixed percentage of the average market value of assets in that Client’s account;
 - (b) Clients may be responsible for other charges relating to administration fees for deferred income plans, NSF cheques or client initiated transactions or services; and
 - (c) unless otherwise requested, Clients will explicitly waive receipt of the Trade Confirmations;
14. not less than once a month, the Filer will send a statement of account to each Client who has waived receipt of the Trade Confirmations;
15. the statement of account will contain the information required to be contained in a Trade Confirmation under the Legislation, except for the following information (Omitted Information):
- (a) the day and the stock exchange or commodity futures exchange upon which the trade took place;
 - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (c) the name of the salesperson, if any, in the transaction;
 - (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
 - (e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold;
16. the Filer will maintain the Omitted Information with respect to each Client in its books and records and will make the Omitted Information available to the Client on request.

Decision

4. 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:

- (a) except in Ontario, the Registration Relief is granted provided that
 - (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and Filer;
 - (ii) the Filer contractually agrees with each Participating Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser to be responsible for any loss that arises out of the failure of the Sub-Adviser:
- (A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Participating

- Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
- (B) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (iii) the Filer is not relieved by its Participating Clients from its responsibility for loss under paragraph (ii) above;
- (iv) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory;
- (v) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
- (vi) a Sub-Adviser will not have any direct and personal contact with a Participating Client residing in Alberta if the Sub-Adviser is not registered under the securities legislation of that province;
- (b) the Confirmation Relief is granted, provided that:
- (i) each Client has previously informed the Filer that the Client does not wish to receive Trade Confirmations for the Client's accounts; and
- (ii) in the case of each trade for a Client's account, the Filer sends to the Client the corresponding statement of account that includes the information for a Trade Confirmation referred to in paragraph 14.

"L.E. Evans", C.A.
Director

2.1.3 Vault Energy Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements in connection with a distribution reinvestment plan.

Applicable Ontario Statutory Provisions

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

Citation: Vault Energy Trust, 2005 ABASC 555

July 7, 2005

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

AND

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

AND

**IN THE MATTER OF
VAULT ENERGY TRUST (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 dealer registration requirement contained in the Legislation and the prospectus requirement contained in the Legislation (collectively, the Registration and Prospectus Requirements) shall not apply to the distribution of trust units of the Filer (Trust Units) to DRIP Participants (as defined below) under a distribution reinvestment plan (the DRIP) (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.

Interpretation

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

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is an open-end, unincorporated investment trust settled under the laws of Alberta under a trust indenture (the Trust Indenture) dated April 25, 2005 (the Settlement Date).
 - 4.2 The Filer's head office is located in Calgary, Alberta.

- 4.3 The Filer became a reporting issuer in certain of the Jurisdictions as a result of a plan of arrangement involving, among others, Chamaelo Energy Inc. (Chamaelo), Chamaelo Exploration Ltd. and the Trust (the Arrangement).
- 4.4 Chamaelo held an annual and special meeting of securityholders of Chamaelo on June 20, 2005 for the purpose of approving the Arrangement after which Chamaelo obtained the approval of the Court of Queen's Bench of Alberta.
- 4.5 The Filer has applied to list the Trust Units on the Toronto Stock Exchange (the TSX).
- 4.6 Under the Trust Indenture, the Filer is authorized to issue an unlimited number of Trust Units, of which there will be approximately 30,570,663 Trust Units issued and outstanding immediately after the date on which the Arrangement becomes effective (the Effective Date).
- 4.7 The mandate of the Filer is to generate stable monthly cash distributions to Unitholders (Distributions).
- 4.8 The Filer proposes to implement, concurrent with the Arrangement becoming effective, the DRIP to permit Unitholders, excluding those who are non-residents of Canada, at their discretion, to automatically reinvest Distributions, if any, paid on their Trust Units in additional Trust Units as an alternative to receiving Distributions. In addition, the DRIP will permit participants in the DRIP (DRIP Participants) to make additional optional cash payments (Optional Cash Payments) to acquire additional Trust Units, subject to a minimum of \$2,000 per Optional Cash Payment and to a maximum of \$50,000 per financial year of the Filer per DRIP Participant. (The Trust Units so acquired either by reinvestment or Optional Cash Payment are referred to as DRIP Units.)
- 4.9 Distributions due to DRIP Participants will be paid to Valiant Trust Company in its capacity as the Trust's agent under the DRIP (the DRIP Agent) and applied by the DRIP Agent to the purchase of DRIP Units, which will be held under the DRIP for the account of the appropriate DRIP Participants.
- 4.10 The DRIP Agent's charges for administering the DRIP and all commissions, service charges, or brokerage fees in connection with the purchases in the market pursuant to the DRIP will be payable by the Filer. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the purchase of DRIP Units under the DRIP.
- 4.11 DRIP Units will be acquired by the DRIP Agent at a price equal to 95% of the treasury purchase price (the Treasury Purchase Price), being the arithmetic average of the daily volume weighted average trading prices of the Trust Units on the TSX for the trading days in the period of successive trading days commencing on the second business day after the distribution record date and ending on the second business day immediately prior to the distribution payment date (provided, however, that if such period exceeds 10 trading days, then the 10 successive trading days preceding the second business day prior to the distribution payment date) on which at least a board lot of Trust Units is traded, appropriately adjusted for certain capital changes (including Trust Unit subdivisions, Trust Unit consolidations, certain rights offerings and certain distributions).
- 4.12 For every financial year of the Filer after the year ending December 31, 2005 (the 2005 Financial Year), the aggregate number of DRIP Units that may be issued pursuant to Optional Cash Payments will be limited to 2% of the number of Trust Units issued and outstanding at the start of such financial year.
- 4.13 A DRIP Participant may terminate its participation in the DRIP at any time by written notice to the DRIP Agent.
- 4.14 Upon termination of the DRIP or termination of a DRIP Participant's participation in the DRIP, the DRIP Participant(s) will receive a certificate for all the whole DRIP Units held in their accounts, a cash payment for any fraction of a DRIP Unit and return of any uninvested Optional Cash Payments. Any fractional DRIP Unit interest will be paid based on the closing market price of a Trust Unit on the TSX on the effective date of termination of the DRIP or the date on which notice of termination is received by the DRIP Agent, as the case may be.
- 4.15 In Alberta, Saskatchewan and New Brunswick, the distribution of DRIP Units pursuant to the DRIP can be made in reliance on exemptions from the Registration and Prospectus Requirements because the DRIP involves the reinvestment of distributable income and not the reinvestment of dividends, interest earnings or surplus of the Filer.
- 4.16 In British Columbia, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut, the distribution of DRIP Units pursuant to the DRIP cannot

be made in reliance on exemptions from the Registration and Prospectus Requirements because the DRIP involves the reinvestment of distributable income and not the reinvestment of dividends, interest or earnings or surplus of the Filer.

- 4.17 The distribution of DRIP Units pursuant to the DRIP, other than the distribution of DRIP Units made pursuant to Optional Cash Payments during the 2005 Financial Year, can be made in reliance on exemptions from the Registration and Prospectus Requirements contained in the Legislation of Alberta, Saskatchewan and New Brunswick.
- 4.18 The distribution of the DRIP Units pursuant to Optional Cash Payments made during the 2005 Financial Year cannot be made in reliance on exemptions from the Registration and Prospectus Requirements contained in the Legislation of Alberta, Saskatchewan and New Brunswick because such exemptions require that in any financial year of an issuer the aggregate number of securities issued pursuant to optional cash payments not exceed 2% of the issued and outstanding securities as at the commencement of each financial year but because the 2005 Financial Year commenced on the Settlement Date, whereon the Filer only had one Trust Unit issued and outstanding, this limit would restrict the Filer to issuing 2% of one DRIP Unit pursuant to Optional Cash Payments made during the 2005 Financial Year.
- 4.19 Legislation in some of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distributions made pursuant to reinvestment plans of mutual funds. Such exemptions are unavailable to the Filer since it is a royalty trust and does not fall within the definition of a "mutual fund" contained in the Legislation of the relevant Jurisdictions.

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:
 - 6.1 in British Columbia, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut, the Requested Relief is granted provided that:
 - 6.1.1 t the time of the trade or distribution, the Filer is a reporting issuer or the equivalent in Québec and at least one of the other Jurisdictions and is not in default of any requirements of the Legislation,
 - 6.1.2 no sales charge is payable by DRIP Participants in connection with the purchase of DRIP Units under the DRIP,
 - 6.1.3 the Filer has caused to be sent to the DRIP Participant to whom the DRIP Units are traded, not more than 12 months before the trade, a copy of the DRIP which contains a statement describing:
 - 6.1.3.1 their right to withdraw from the DRIP and to make an election to receive cash instead of DRIP Units on the making of a Distribution by the Filer (the Withdrawal Right), and
 - 6.1.3.2 instructions on how to exercise the Withdrawal Right,
 - 6.1.4 in every financial year of the Filer, except for the 2005 Financial Year, the aggregate number of DRIP Units issued pursuant to Optional Cash Payments shall not exceed 2% of the aggregate number of Trust Units outstanding at the start of that financial year, and
 - 6.1.5 the aggregate number of DRIP Units issued pursuant to Optional Cash Payments in the 2005 Financial Year shall not exceed 2% of the aggregate number of Trust Units issued and outstanding immediately after the Effective Date,
 - 6.2 in Alberta, Saskatchewan and New Brunswick, the Requested Relief is granted for DRIP Units issued pursuant to Optional Cash Payments in the 2005 Financial Year (the 2005 Optional DRIP Units) provided that the condition in section 6.1.5 of this decision is satisfied,

- 6.3 the first trade or alienation of DRIP Units shall be deemed a distribution or primary distribution to the public in the Jurisdictions unless:
- 6.3.1 in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut, the conditions set out in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 Resale of Securities (the MI 45-102 Conditions) are satisfied, and
- 6.3.2 in Québec:
- 6.3.2.1 at the time of the alienation, the Filer is and has been a reporting issuer in Québec for the four months immediately preceding the alienation and is not in default of any of the requirements of securities legislation in Québec, and, for the purpose of determining the period of time that the Filer has been a reporting issuer in Québec, the period of time that Chamaelo was a reporting issuer in Québec immediately before the Arrangement will be included,
- 6.3.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units,
- 6.3.2.3 no extraordinary commission or other consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the alienation, and
- 6.3.2.4 the vendor of the DRIP Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is in default of any requirement of the securities legislation in Québec, and
- 6.4 the first trade of 2005 Optional DRIP Units shall be deemed a distribution or primary distribution to the public in Alberta and Saskatchewan, unless the MI 45-102 Conditions are satisfied.

“Glenda A. Campbell”, Q.C.
Vice-Chair
Alberta Securities Commission

“Stephen R. Murison”
Vice-Chair
Alberta Securities Commission

2.1.4 Sequence Income Portfolio - s. 19.1 of NI 81-102

July 12, 2005

Torys LLP

Attention: Karen A. Malatest

**Re: Sequence Income Portfolio
Sequence 2010 Conservative Portfolio
Sequence 2010 Moderate Portfolio
Sequence 2020 Conservative Portfolio
Sequence 2020 Moderate Portfolio
Sequence 2030 Moderate Portfolio
Sequence 2040 Conservative Portfolio
Sequence 2040 Moderate Portfolio
(collectively the "Existing Portfolios")
MRRS Application pursuant to Section 19.1 of
National Instrument 81-102 ("NI 81-102")
Application #384/05, Sedar Project #789433**

By letter dated May 27, 2005 and supplemented by letter dated June 28, 2005, (together the "Application"), you requested relief from the regulator or securities regulatory authority in each of the provinces and territories of Canada (the Decision Makers) on behalf of CIBC Asset Management Inc. ("CAMI"), as manager of the Existing Portfolios and on behalf of the Existing Portfolios and any future mutual funds with similar investment objectives to the Existing Portfolios and that are managed and subsequently established by CAMI (together with the Existing Portfolios, collectively, the "Portfolios") for an exemption from ss. 5.1(f) and (g) of NI 81-102 to permit the Portfolios, other than the Sequence Income Portfolio (the "Income Portfolio"), to merge into the Income Portfolio without the requirement for prior approval of unitholders (the "Requested Exemption").

CAMI has represented to the Decision Makers that:

1. CAMI is a corporation established under the laws of Ontario with its head office in Toronto, Ontario. CAMI is, or will be, the manager of the Portfolios.
2. Each of the Portfolios is or will be established under the laws of the Province of Ontario.
3. Securities of the Portfolios are or will be qualified for distribution pursuant to a simplified prospectus and annual information form (the "Prospectus").
4. The Portfolios are or will be reporting issuers in the jurisdictions and are not or will not be (to the knowledge of CAMI) in default of any requirements of the *Securities Act* (Ontario) or applicable securities legislation in each of the other jurisdictions.
5. The Prospectus discloses or will disclose the investment objectives, investment strategies and risks of the Portfolios. The Portfolios intend to

invest their assets in underlying mutual funds managed by CAMI or its affiliates.

6. The investment objective of the Income Portfolio is to create a diversified portfolio of investments based on an asset allocation strategy designed for investors who are seeking income consistent with preservation of capital.
7. The investment objectives of each Portfolio, other than the Income Portfolio, are to create a diversified portfolio of investments based on an allocation strategy designed for investors who are targeting an asset accumulation goal that will occur within a few years of a specified target year and to achieve high total return through a combination of income and capital growth.
8. The investment objective of each Portfolio, other than the Income Portfolio, also includes the intention of the Portfolio to combine with the Income Portfolio, once the asset allocation matches that of the Income Portfolio, as follows:

"When the target asset allocation of the Portfolio is similar to the target asset allocation of Sequence Income Portfolio (approximately five years after its Target Date), it is expected that the Portfolio will be combined with Sequence Income Portfolio and the Portfolio's unitholders will become unitholders of Sequence Income Portfolio. This combination will take place with notice to, but without consent of, unitholders of the Portfolio."

9. In the case of the Portfolios other than the Income Portfolio, the allocations to underlying funds will change over time, so that the asset allocation will change from more aggressive to more conservative, investments in equity underlying funds will decrease, and investments in fixed income and money market underlying funds will increase, as the applicable target date approaches.
10. Within five years after the target date of a particular Portfolio (other than the Income Portfolio), it is expected that its asset allocation will match the asset allocation of the Income Portfolio.
11. At that time, it is proposed that the applicable Portfolio will combine with the Income Portfolio and the unitholders of the applicable Portfolio will become unitholders of the Income Portfolio. This combination will result in a larger fund which should have the benefits of economies of scale.
12. The mechanics of this "combination" cannot be identified at this time, as tax and other factors relevant to the choice of combination method may change over time. The manner of combination

(whether it be by way of merger, reorganization, transfer of assets or wind-up) will be determined based on tax and other factors at the time of the combination.

13. From the time they are established, it is contemplated that each of the Portfolios will be combined with the Income Portfolio within five years after the applicable target date.
14. The Prospectus of the Portfolios includes disclosure about the Income Portfolio.

This letter confirms that based on the information and representations contained in the Application and for the purposes described in the Application, the Decision Makers hereby grant the Requested Exemption provided that:

- (a) the investment objective of each Portfolio, other than the Income Portfolio, includes the disclosure set out in paragraph 8; and
- (b) the investment objective of the Income Portfolio does not change.

Yours truly,

"Rhonda Goldberg"
Senior Legal Counsel
(Acting Director)
Investment Funds Branch

2.1.5 Strongco Inc. - s. 83

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., s. 83.

July 28, 2005

Fraser Milner Casgrain LLP

1 First Canadian Place
100 King St. W., Ste. 4100
Toronto, Ontario M5X 1B2

Attention: Catherine Pham

Dear Sirs/Mesdames:

RE: Strongco Inc. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

- the outstanding securities of the Applicant, 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 in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

“Erez Blumberger”
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.6 Keyera Facilities Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders under a distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions – First trade in additional units deemed a distribution unless made in compliance with MI 45-102.

Applicable Ontario Statutory Provisions

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

Ontario Rules

Multilateral Instrument 45-102 – Resale of Securities.

July 29, 2005

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

AND

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

AND

**IN THE MATTER OF
KEYERA FACILITIES INCOME FUND (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) for an exemption from the dealer registration requirements and the prospectus requirements of the Legislation (the Requested Relief) for certain trades of units of the Filer issued pursuant to a distribution reinvestment and optional unit purchase plan.
2. 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* or Québec Commission Notice 14-101 have the same meaning in this document unless they are otherwise defined in this decision.

Representations

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

- (a) The Filer is an unincorporated open-ended trust established under the laws of the Province of Alberta on April 3, 2003 pursuant to a declaration of trust (the Declaration of Trust). The head office of the Filer is located at 600, 144 – 4th Avenue S.W., Calgary, Alberta, T2P 4H2.
- (b) The Filer's purpose is to hold securities or other interests in entities, directly or indirectly, that derive their value from natural gas and energy related assets and to issue trust units (the Units) to the public. The Filer holds a 100% partnership interest in Keyera Energy Partnership (the Partnership). The Partnership's business consists of natural gas gathering and processing as well as the processing, transportation, storage and marketing of natural gas liquids at its facilities located primarily in western Alberta.
- (c) The Filer is administered by Keyera Energy Management Ltd. (the Administrator). Pursuant to the Declaration of Trust, the directors of the Administrator are elected by the holders of Units (Unitholders) by a majority of the votes cast at an annual or special meeting called for that purpose.
- (d) The Unitholders are the sole beneficiaries of the Filer.
- (e) The Filer has been a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions since May 27, 2003 and is not in default of any requirements of the Legislation.
- (f) The Filer is not a "mutual fund" under the Legislation as Unitholders are not entitled to receive on demand an amount

computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer, as contemplated by the definition of "mutual fund" in the Legislation.

- (g) The Filer is authorized to issue an unlimited number of Units, each of which represents an equal undivided beneficial interest in the Filer. All Units share equally in all distributions from the Filer and all Units carry equal voting rights at meetings of Unitholders. As of June 30, 2005, there were 58,901,247 Units issued and outstanding.
- (h) The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX).
- (i) The Filer makes and expects to continue to make monthly cash distributions to its Unitholders in an amount per Unit equal to a pro rata share based upon cash receipts of the Filer less the amounts paid by the Filer in connection with any cash redemptions or repurchases of Units and expenses of the Filer.
- (j) The Filer intends to establish a distribution reinvestment and optional unit purchase plan (the DRIP) pursuant to which eligible resident Canadian Unitholders may, at their option, direct that cash distributions paid by the Filer in respect of their existing Units be applied to the purchase of additional Units (Reinvestment Units) to be held for their account under the DRIP.
- (k) The DRIP also entitles eligible Unitholders who have elected to participate in the DRIP (Participants) to make, at their discretion, optional cash payments for the purchase of Units (Optional Units), subject to the limits established under the DRIP. The aggregate number of Optional Units that may be purchased by all Participants in any financial year of the Filer will be limited to a maximum of 2% of the number of issued and outstanding Units at the start of the financial year. The Filer reserves the right to determine from time to time not to accept optional cash payments for the purchase of Optional Units under the DRIP.
- (l) Reinvestment Units purchased under the DRIP will initially be purchased by the trust company that is appointed as agent under the DRIP (the Agent) directly from the Filer on the relevant distribution

payment date. Under the DRIP, Reinvestment Units may be acquired from the treasury of the Filer at a price equal to 97% of the Treasury Purchase Price (as defined in the DRIP), being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for the 15 trading days ending two Business Days (as defined in the DRIP) immediately preceding the applicable distribution payment date. Reinvestment Units may also be acquired through the facilities of the TSX at prevailing market prices at the time of purchase.

- (m) Optional Units may be acquired from treasury at the Treasury Purchase Price without discount or through the facilities of the TSX at prevailing market prices at the time of purchase.
- (n) Residents of any foreign jurisdiction to whom the issue of Reinvestment Units under the DRIP would not be lawful may not participate in the DRIP.
- (o) Reinvestment Units purchased by the Agent for the account of Participants under the DRIP will be held under the DRIP for the account of such Participants.
- (p) No commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Reinvestment Units or Optional Units under the DRIP.
- (q) No fractional Units will be purchased under the DRIP. A cheque payment in lieu of any fractional Units will be issued by the Agent, on behalf of the Filer, to The Canadian Depository for Securities or its nominee, CDS & Co. (CDS) after each applicable distribution payment date which CDS will credit to Participants via their CDS Brokers (as defined in the DRIP), being a broker, investment dealer, financial institution or other nominee, in its capacity as a participant in the CDS depository service.
- (r) A Participant may terminate its participation in the DRIP by providing instructions to the CDS Broker through which they hold their Units.
- (s) The Filer reserves the right to amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect that would prejudice the interests of the Participants.

The Filer will publicly announce any such amendment, suspension or termination.

- 5. In Alberta, Saskatchewan and New Brunswick, the distribution of Reinvestment Units and Optional Units by the Filer pursuant to the DRIP can be made in reliance on dealer registration and prospectus exemptions contained in the legislation of such provinces.
- 6. In the Jurisdictions, the distribution of Reinvestment Units and Optional Units by the Filer under the DRIP cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of distributable income distributed by the Filer and not the reinvestment of dividends or interest of the Filer.

Decision

- 7. 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.
- 8. The decision of the Decision Makers pursuant to the Legislation is that:
 - (a) in each of the Jurisdictions, the Requested Relief is granted provided that:
 - (i) at the time of the trade or distribution the Filer is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102 Resale of Securities (MI 45-102) and is not in default of any requirements of the Legislation;
 - (ii) no sales charge is payable by Participants in respect of the trade or distribution;
 - (iii) the Filer has caused to be sent to the person or company to whom the Reinvestment Units and Optional Units are distributed, not more than 12 months before the trade, a statement describing:
 - (1) their right to withdraw from the DRIP and to receive Cash Distributions instead of Reinvestment Units, and
 - (2) instructions on how to exercise the right refer-

red to in paragraph (1) above;

- (iv) the aggregate number of Optional Units issued under the DRIP in any financial year of the Filer shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (b) in each of the Jurisdictions except Québec, the first trade of Reinvestment Units and Optional Units will be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.6(3) of MI 45-102 are satisfied; and
- (c) in Québec, the first trade in Reinvestment Units and Optional Units will be a distribution unless:
 - (i) at the time of the first trade, the Filer is a reporting issuer in Québec and has been a reporting issuer in Quebec for the four months preceding the trade and is not in default of any of the requirements of securities legislation of Québec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Reinvestment Units and Optional Units that are the subject of the trade;
 - (iii) no extraordinary commission or other consideration is paid in respect of the first trade; and
 - (iv) if the selling securityholder of the Reinvestment Units and Optional Units is an insider of the Filer, the selling securityholder has no reasonable grounds to believe that the Filer is in default of any requirement of the securities legislation of Québec.

"Paul M. Moore"
Ontario Securities Commission

"Harold P. Hands"
Ontario Securities Commission

2.1.7 Wajax Limited - s. 83

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., s. 83.

August 2, 2005

Ogilvy Renault

Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

ATTN: Paul Fitzgerald

Dear Mr. Fitzgerald

RE: Wajax Limited (the "Applicant") – Application to cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, 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 in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been

met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

“Erez Blumberger”
Assistant Manager, Corporate Finance
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Andrew Currah et al.

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

AND

IN THE MATTER OF A PROCEEDING
BROUGHT PURSUANT TO SECTION 127 OF THE ACT

IN THE MATTER OF
ANDREW CURRAH, COLIN HALANEN,
JOSEPH DAMM, NICHOLAS WEIR,
PENNY CURRAH AND WARREN HAWKINS

Motion Hearing:	July 7, 2005		
Panel:	Paul M. Moore, Q.C.	-	Vice-Chair (Chair of the Panel)
	Robert W. Davis, FCA	-	Commissioner
Counsel:	Jane Waechter	-	For Staff of the Ontario Securities Commission
	Nicholas Weir	-	On his own behalf
	Andrew Currah	-	On his own behalf
	Penny Currah	-	On her own behalf
	Joseph Damm	-	Michael Whitney as agent

DECISION AND REASONS

The Motion

[1] On July 7, 2005, the Commission heard a motion brought by one of the respondents, Nicholas Weir, under Rule 6 of the *Ontario Securities Commission Rules of Practice* (the "Rules") to consider whether the limitation period set out in section 129.1 of the *Securities Act*, R.S.O. 1990, C. s.5 as amended (the "Act") operates to prevent this matter from proceeding.

[2] Weir argued that the action against the respondents should be set aside on the basis that it was undertaken outside the five-year limitation period as set out in the Act in effect in 1998. Further, Weir argued that the issuance of a notice of hearing and of a statement of allegations did not constitute the commencement of this proceeding.

Five years or six years

[3] Counsel for Staff submitted that this proceeding was commenced on July 23, 2004, and that the conduct in question pertains to the period between July 1997 and December 1998. Staff submitted that the limitation provision in section 129.1 (and its predecessor) is a procedural provision, which is capable of retrospective application. When the limitation provision was amended in 1999, the old limitation period of five years had not expired and therefore the respondents did not then have an existing substantive right to a defence that the limitation period had expired. Staff argued that the respondents were not deprived of a vested substantive right when the revised limitation period came into effect. Accordingly, the current version of section 129.1 of the Act, providing for 6 years, applies to the respondents.

[4] After considering the respective arguments made by counsel for Staff and those of the respondent, Weir, we ruled on July 7, 2005, that the six-year provision currently in section 129.1 of the Act applies to this proceeding.

[5] In so ruling, we relied on two Supreme Court of Canada decisions which support the proposition that legislation is presumed not to apply retroactively, except in the case of procedural provisions (see *Angus v. Hart*, [1988] 2 S.C.R. 256 (at para.19); and *Martin v. Perrie*, [1986] 1 S.C.R. 41). We also relied on *Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. No. 15, where the Supreme Court determined that the prohibition against retrospective application of statutes does not apply to an amendment made not to punish but rather to protect the public interest. As stated in *Asbestos*, the purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets (see: *Re Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* (2001), 199 D.L.R. (4th) 577 (S.C.C.) at p. 590).

When did the proceeding commence?

[6] At the hearing, the panel advised the parties that it was reserving on the question of whether or not this proceeding actually commenced within the six-year period. The panel invited counsel for Staff and the respondents to file supplementary written submissions as to when a proceeding is commenced for purposes of section 129.1 of the Act. Staff filed supplementary submissions on July 13, 2005, and two of the respondents who were not represented by counsel, Weir and Andrew Currah, filed supplementary submissions respectively on July 18 and July 20, 2005.

[7] These are our decision and reasons on the question of whether or not this proceeding actually commenced within the six-year limitation period set out in section 129.1 of the Act.

Weir's Submissions

[8] The respondent, Weir, submits that the failure of Staff to base the statement of allegations and notice of hearing on meaningful evidence and to schedule a hearing within a reasonable period of time make the initiating documents improper and invalid and hence, not applicable as a reference for the commencement of the proceeding. For these reasons, Weir submits, this proceeding has not legally commenced, and, if and when proceedings are legally commenced, they will be outside the six-year limitation period.

Currah's Submissions

[9] Currah's submits that: "the applicable limitation period of 6 years be calculated from the date on which the remedy was effected by the Commission's action, that is, the date from which this respondent was originally made legally answerable to what is in issue in this matter." Further, he submits that the word "action" should not be understood within the context of its technical legal meaning defined in Rule 1.03 of the *Rules of Civil Procedure*; rather, it should be understood "within the context of its natural sense."

[10] According to Currah, the six-year limitation period should be calculated "from the date of refusal of the registration, that is, the effective date of the Commission's remedial action taken in the public interest (as it was based on the activities, initiated by the Commission in 1997, investigating and examining what is in issue in this matter)."

[11] In his conclusion, Currah requests "disclosure of the document or documents that record this date, as it is a feature of the history of the Commission's administrative, regulatory, and enforcement activities in relation to this matter." Further he adds, "if the effective date of the Commission's remedial action occurs more than 6 years prior to the issuance of the Notice of Hearing and Statement of Allegations on July 23, 2004, this Respondent submits that the limitation period (...) has expired (...)"

Staff's Submissions

[12] Counsel for Staff submits that section 129.1 of the Act completes section 4.5 of the *Statutory Powers Procedure Act*, R.S.O. 1990 (the "SPPA") by setting out the specific time within which a proceeding may be commenced. Counsel submits that section 4.5 of the SPPA establishes clearly that the commencement of a proceeding involves submitting documentation to be processed by a tribunal or its administrative staff. According to Staff, under the Act, the words "documents relating to the commencement of a proceeding" referred to in section 4.5 of the SPPA can only be the notice of hearing and statement of allegations, which are issued by the secretary's office of the Commission. Hence, counsel submits, this proceeding was commenced on July 23, 2004, earlier than six years from the date of the occurrence of the last event on which the proceeding is based.

The Statutory Powers Procedure Act and the Securities Act

[13] The SPPA governs proceedings under section 127 of the Act. Section 1.(1) of the SPPA provides the following definitions of the terms "hearing" and "proceeding":

"hearing" means a hearing in any proceeding...

“proceeding” means a proceeding to which this Act applies...

[14] A literal interpretation of these definitions makes it clear that a hearing is part of a proceeding. The commencement of a proceeding is addressed in subsection 4.5(1) of the SPPA, which states:

4.5(1). Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the *documents relating to the commencement of proceeding* if

.....

(b) the documents are received after the time required for commencing the proceeding has elapsed...[Emphasis added]

[15] The reference to the words “commencement of a proceeding” found at subsection 4.5(1) is also present in section 129.1 of the Act. Section 129.1 of the Act completes section 4.5 of the SPPA by setting out the specific time within which a proceeding may be commenced. Section 129.1 of the Act reads as follows:

Limitations period – Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

[16] Section 4.5 of the SPPA clearly establishes that the commencement of a proceeding involves submitting documentation to be processed by a tribunal or its administrative staff.

Analysis

[17] Weir’s arguments are based on two aspects: (1) what he perceives as failure by Staff to “base the Statement of Allegation and Notice of hearing on meaningful evidence” and (2) failure of the Commission to schedule a hearing within a reasonable period of time.

[18] This cannot be correct. As to the first aspect, what constitutes meaningful evidence cannot be known until the Commission hears evidence at the hearing (i.e. after the proceeding has commenced). As to the second aspect, we do not agree that the commencement of a proceeding is determinable in any way by an event that will occur subsequent to the commencement, such as scheduling a hearing.

[19] As to Currah’s arguments, their logic failed to convince us. Currah suggests that the applicable limitation period of 6 years be calculated from “the date *on which the remedy was effected by the Commission’s action*, that is, the date from which this respondent was made legally answerable to what is in issue in this matter and that the word “action” should be understood in its natural sense rather than its legal one.”

[20] We rely on three decisions which deal specifically with the question at issue. We also considered cases submitted by Staff which demonstrate the existence of analogous concepts in civil proceedings.

[21] The issue of when proceedings are commenced, for limitation period purposes, under the *British Columbia Securities Act*, was recently considered by the British Columbia Court of Appeal in *Smolensky v. British Columbia (Securities Commission)*, (2004), 236 D.L.R. (4th) 262. The court considered the manner in which proceedings were commenced and concluded that the issuance of a notice of hearing marked the commencement of the proceedings. The court stated at paras 27 and 28:

(...)The issue is whether the proceedings against the appellant have been “commenced”. The executive director of the Commission sent a notice of hearing to the appellant dated 11 September 2002, containing particulars of the allegations. The notice did not set a hearing date; rather it set a date on which the appellant could be heard with respect to a hearing date. The appellant submits that, unlike a writ of summons or information, a notice of hearing has no legal effect and proceedings do not commence until the hearing commences, which of course has not yet occurred in this case.

The Commission cannot make an enforcement order under s. 161, other than a temporary order, without a hearing. Due process requires that the intended subject of enforcement proceedings be given notice of the hearing. While not a document formally identified in the Act it is an essential prerequisite of an enforcement proceeding, unless waived. *In my view, the notice is the initiating document that commences the proceedings and the proceedings against the appellant have been commenced within the six years provided by s. 159. [Emphasis added]*

[22] The reasoning in *Smolensky* applies directly to the issue raised in this motion. The limitation period considered in *Smolensky* was quite similar to that set out in section 129.1 of the Act. Consequently, the rationale for concluding that a proceeding was commenced by issuance of a notice of hearing is directly applicable to the circumstances of this case.

[23] The combination of the notice of hearing and statement of allegations issued by the secretary's office of the Commission serves the same purpose as the notice of hearing considered in *Smolensky*, namely, to provide particulars of Staff's allegations against a respondent. The legal effect of the initiating documents, which is to signify the commencement of the proceeding, is the same in British Columbia and in Ontario.

[24] The fact that proceedings are commenced before the Commission by issuance of a notice of hearing and a statement of allegations was also recognized in *Re Belteco*, (1997) 20 O.S.C.B. 2921 at para. 1.02:

The proceedings began, originally, by a Notice of Hearing and Statement of Allegations dated December 15, 1993.

[25] In a later decision in the same matter (*Re Belteco*, (1998) 21 O.S.C.B. 7743 at p. 7744), the Commission stated: "Throughout the hearing on the merits which started on July 6, 1998...", and again referred to the limitation period in effect when the notice of hearing was issued.

[26] These two decisions make it clear that the time of commencement of proceedings is the date on which the notice of hearing and the statement of allegations are issued and not the subsequent date on which the hearing commences.

[27] In civil proceedings, an action is commenced by having the court issue an originating document, such as a statement of claim or a notice of application (see Rules 1.03 and 14.01 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg 194).

[28] In the decisions of *Jeffrey v. Hakim* (1977), 13 O.R. (2d) 99 (Ont. H.C.J.) and *Bryson v. Kerr* (1977), 13 O.R. (2d) 672 (Ont. H.C.J.), where the court had to examine the expiration of a limitation period against the date on which a writ was issued, the court concluded that a proceeding was commenced at the time a document (in those cases, a writ) was issued.

[29] By analogy to civil proceedings, we are of the view that the notice of hearing and the statement of allegations issued by the secretary's office of the Commission have the same legal effect to commence the proceeding as the issuance of a writ (now called a statement of claim or a notice of application) has in a civil proceeding.

Conclusion

[30] We conclude that a proceeding under section 127 of the Act is commenced on the date on which the notice of hearing and statement of allegations are issued by the office of the secretary of the Commission.

[31] The notice of hearing and statement of allegations in this proceeding were issued on July 23, 2004 which is within six years of the date of the latest alleged event on which this proceeding is based.

[32] Accordingly, we dismiss the motion.

[33] Currah's requests for disclosure "of the document or documents that record this date, as it is a feature of the history of the Commission's administrative, regulatory, and enforcement activities in relation to this matter" is denied.

[34]

Dated at Toronto this 29th day of July, 2005

"Paul M. Moore"

"Robert W. Davis"

3.1.2 Momentas Corporation et al.

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)

Motion Hearing: July 14, 2005

Panel: Paul M. Moore, Q.C. - Vice-Chair (Chair of the Panel)
Wendell Wigle, Q.C. - Commissioner
Carol S. Perry - Commissioner

Counsel: Pamela Foy - For Staff of the Ontario Securities
Shauna Flynn - Commission

Linda Fuerst - For Momentas Corporation
Jennifer King
(Summer Student)

REASONS

[1] These are the reasons for an order issued by the Ontario Securities Commission (the "Commission") after a hearing on July 14, 2005, in which the temporary order of June 9, 2005, and the order of July 8, 2005 against Momentas Corporation ("Momentas") were extended pursuant to section 127 of the *Securities Act*, R.S.O. 1990, C. s.5 as amended (the "Act"). Similar orders against the other respondents were extended on consent.

Findings and Order

[2] On July 14, 2005, the Commission held a hearing to determine whether or not it was in the public interest to extend the temporary order against Momentas requiring that it cease trading in securities and removing the applicability of any exemptions in Ontario securities laws to Momentas.

[3] In particular, Staff sought an order of the Commission: (1) extending the terms of the temporary order as against Momentas until the conclusion of a hearing in this matter; and (2) extending the terms of the order of the Commission of July 8, 2005 that Momentas cease trading in any securities until the conclusion of the hearing in this matter.

[4] After having heard the arguments made by both counsel for Staff and for Momentas, and upon considering the evidence before it, the panel concluded that Momentas had been acting as a market intermediary and distributing securities without being registered. Further, the panel concluded that it would be in the public interest to grant an extension of the temporary order and the order of July 8, 2005, 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.

[5] In granting the extension to the temporary order and the order of July 8, 2005, pending the conclusion of the hearing, the panel provided 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.

The Evidence

[6] Staff filed six documents as exhibits. These documents were: (1) a letter to Staff from Harry G. Black, Q.C., former counsel for Momentas, dated February 14, 2005, together with a sample of documentation provided (i.e. Form 45-501, closing settlement statement, subscription agreement, investor accreditation certificate and letter of direction); (2) a letter from Harry G.

Black, Q.C. dated March 9, 2005, providing requested information which shows that Momentas employs a sizable sales team to solicit investors to purchase the Convertible Debentures; (3) Momentas' promotional brochure; (4) Momentas' confidential offering memorandum as amended April 1, 2004; (5) A print-out of Momentas' website from June 2005; and (6) Form 45-501 F1s filed by Momentas. These documents were not challenged by Momentas.

The Facts

A. Momentas Corporation

[7] Momentas is a private corporation incorporated pursuant to the laws of the Province of Ontario on July 30, 2003, with its head office located in Toronto.

[8] Momentas is not registered in any capacity with the Commission and is not a reporting issuer in Ontario.

[9] In its offering memorandum, Momentas describes its principal business activities as being the use of an automated equities trading system ("ARF") for equities trading and the trading of foreign currencies through foreign exchange traders.

[10] Since approximately August 2003, Momentas has been issuing and selling its own Convertible Debentures to residents of Ontario and elsewhere pursuant to the offering memorandum as amended April 1, 2004 to fund those business activities.

[11] The offering memorandum discloses, among other things, the proposed use of the funds by Momentas, the nature of Momentas' business, and the highly speculative nature of an investment in the Convertible Debentures. In particular, Momentas states in its offering memorandum that it intends to raise \$10 million from the sale of the Convertible Debentures for its stated business. Further, the offering memorandum provides that the Convertible Debentures are to be issued in denominations of \$5,000 and multiples of \$2,500 thereafter. The Convertible Debentures provide for significant returns:

Each Convertible Debenture bears interest at a rate of 10% per annum until August 31, 2004, 12% per annum thereafter until August 31, 2005 and 14% per annum thereafter until August 31, 2006, calculated and payable monthly until maturity on August 31, 2006. On maturity, the Corporation will pay on each Convertible Debenture a premium of 20% of the principal amount of such debenture. The Convertible Debentures are redeemable at the option of the Corporation at any time upon payment to the holder of the principal amount of the debenture, the 20% premium and any accrued and unpaid interest to the date of redemption. The principal amount and the premium, but not the interest, of each debenture is convertible in whole or in part at the option of the holder on maturity of the Convertible Debentures into common shares ("Common Shares") of the Corporation at a conversion price of \$1.00 per Common Share subject to adjustment in specified circumstances.

[12] 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.

[13] Momentas employs approximately 27 individuals, 19 of them for the primary purpose of selling its Convertible Debentures. These individuals are either "lead generators" or "sales representatives." Lead generators call prospective investors to explain the nature of the Convertible Debentures and to ascertain that individuals are accredited. These employees earn a base salary of between \$400 and \$1,200 per week, plus sales commissions of 10%.

[14] 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.

[15] Virtually all of Momentas' capital comes from the proceeds of the sale of its Convertible Debentures.

Staff's Submissions

[16] Staff submitted that Momentas, through the sale of its Convertible Debentures, and in acting as a "professional trader" of equities and foreign currencies using funds raised from investors through the sale of its Convertible Debentures, has been acting as a market intermediary, and consequently, is required to be registered pursuant to section 25 of the Act, which it has failed to do.

[17] Staff argued that the fact that Momentas employed and paid its staff to sell its own securities, in itself, made Momentas a market intermediary regardless of its other businesses. However, Staff argued, the fact that Momentas intended to use the proceeds of the sale of its Convertible Debentures to invest and trade professionally for the indirect benefit of its investors in the Convertible Debentures (i.e. to generate funds to pay the 10-14% coupon rates and repay the principal and 20% premium owing on the Convertible Debentures) also made Momentas a market intermediary.

Momentas' Submissions

[18] Momentas submitted that Momentas is not a market intermediary. Selling its own securities (the Convertible Debentures), even through its own employees retained and remunerated for such purposes, was not the business of Momentas, but an incident of its funding. The business of Momentas, argued Momentas, includes the ongoing development and use of ARF for equities trading and foreign currency trading, which is funded by the sales of Convertible Debentures issued by the company. Momentas argued that clauses (a),(b),(c),(d), of subsection 204 of the Regulation under the Act contemplate that a "market intermediary" is an entity involved in the trading of securities of another issuer and not its own. Rather, Momentas submitted, the term "intermediary" contemplates an entity that interposes itself between an issuer and investors.

[19] Furthermore, Momentas submitted that it does not become a market intermediary simply by virtue of describing itself as being in the business of professionally trading securities for itself. According to Momentas, such trading is always for investment, being the laying out of money with a view to obtaining profit or gain.

[20] Momentas further submitted that in the circumstances where the Commission has released no decision interpreting or explaining what constitutes a "market intermediary", it would be unfair to issue a cease trade order. Further, it is inappropriate for the Commission to use interim cease trade orders to make new policy or law.

[21] Momentas argued that it is not in the public interest to continue the cease trade order when Momentas is complying with securities law and cooperating with Staff's inquiries and where there are no other circumstances justifying the continuation of the orders. Notwithstanding this position, counsel submitted that in the event that the Commission were to extend the temporary order in the public interest, broad carve-outs ought to be made in order to allow trading activities on a very limited basis.

The Issues

[22] The issues that the panel had to determine were as follows:

- (1) Is Momentas a market intermediary?
- (2) What is the appropriate order, if it is a market intermediary?

The Law

A. The Accredited Investor Exemption

[23] Sections 25 and 53 of the Act contain the general registration and prospectus requirements for trading in securities.

[24] Pursuant to subsection 25(1)(a) of the Act, no company shall trade in a security unless the company is registered as a dealer.

[25] OSC Rule 45-501 provides certain exemptions from the registration requirements for trading in securities.

[26] One of the categories of exemptions contained in Rule 45-501 includes the sale of securities to "accredited investors". Section 2.3 of Rule 45-501 provides that sections 25 and 53 of the Act do not apply to trades in securities if the purchaser is an accredited investor and purchases as principal. However, section 3.4 of Rule 45-501 removes the registration exemption for market intermediaries.

B. The Definition of Market Intermediary

[27] The definition of market intermediary is set out at section 204(1) of the Regulation:

"market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, and, without limiting the generality of the foregoing, includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,

- (a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities,
- (b) participating in distributions of securities as a selling group member,

(c) making a market in securities, or

(d) trading in securities with accounts fully managed by the person or company as agent or trustee,

whether or not the person or company engages in trading in securities purchased for investment only.

Policy Statement

[28] On July 8, 2005, the Canadian Securities Administrators published a proposed new rule that proposes to harmonize and consolidate prospectus and registration exemptions across Canada. The proposed new rule would carry forward, virtually unchanged, the current law on market intermediaries and the unavailability of the registration exemptions for them when dealing with accredited investors.

[29] The proposed companion policy to the proposed new rule states in part:

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities; the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries (Appendix C, National Instrument 45-106, (2004) OSCB (Supp. 3)).

[30] This is not new policy, but a statement of the view of the Commission with respect to the current law, even though it is recorded in a proposed companion policy to the proposed new rule.

Analysis

A. Momentas a market intermediary

[31] The basis for the temporary order was that Momentas and the other respondents appeared to hold themselves out as engaging in the business of trading in securities in Ontario and appeared to be acting as market intermediaries without being registered pursuant to the Act. Further, it appeared that no exemptions could be relied upon by the respondents.

"Engages or holds itself out as engaging in Ontario in the business of trading in securities as principal or agent"

[32] Momentas has been raising capital through the sale of its Convertible Debentures in order to carry out its stated business as a "professional trader" and as a developer of a computer software trading system known as "ARF".

[33] It has hired and remunerated a significant number of employees (approximately 70% of its workforce) for the sole purpose of raising capital. It is carrying on, internally, the business of raising funds, rather than relying on the efforts of others in the business of raising funds. This alone is sufficient to constitute Momentas a market intermediary.

[34] Momentas was also acting as a market intermediary when the sale of its Convertible Debentures and the use of the proceeds are considered together. The investors in the Convertible Debentures supplied most of the capital used by Momentas; a minuscule amount came from other investors. Most of the capital raised was to be invested in the capital markets (in fixed income, equity and foreign exchange securities). Some of the net proceeds received from the sale of the Convertible Debentures were to be invested in the ARF software development. The ARF trading program and other trading activities were to be used to generate the funds necessary for Momentas to pay the returns promised on the Convertible Debentures.

"Other than trading in securities purchased by the company for its own account for investment only"

[35] We do not accept the argument made by Momentas that it was engaged in the trading of securities purchased by it for its own account for investment only.

[36] When analysing the nature of Momentas' business activities, we focused on the substance and not merely on the form of these activities. In *Pacific Coast Coin Exchange of Canada v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 at para. 43, the Supreme Court of Canada held that:

Such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed. Substance, not form, is the governing factor.

[37] Not only were the investors in Convertible Debentures the only significant source of funds for Momentas, but the returns promised on the Convertible Debentures were extremely rich and, obviously, were dependent on the successful execution by Momentas of its professional trading activities.

[38] In this regard, Momentas was acting very similarly to a manager of a pooled investment fund for fully managed accounts: essentially obtaining funds from investors for the purpose of investing the funds in a proprietary trading and investment program to generate promised or expected returns.

[39] We do not consider the fact that the returns on the Convertible Debentures were not explicitly tied to the performance by Momentas of its professional trading activities to be a significant factor. We viewed the fixed rate of returns on the Convertible Debentures more analogous, in effect, to a guaranteed performance promise with respect to the ARF trading program and other trading activities. In addition, we considered the convertible feature a factor connecting performance of the trading activities with potential returns on the Convertible Debentures.

[40] Consequently, all of the aforementioned factors led us to the conclusion that Momentas was in essence, if not in form, soliciting investors through the sale of its Convertible Debentures for funds to be invested for their benefit through its ARF trading program and other trading activities.

B. Appropriate Order

[41] In making our determination as to whether it is in the public interest to extend the temporary order and the order of July 8, 2005, the panel considered the following facts: (1) there were no allegations of fraud or manipulation against Momentas; (2) no allegations that the investors were not accredited investors; (3) no allegation that any trading activity, day trading or program trading, was somehow improper; (4) no allegation of misuse of funds; (5) no allegations that there were misstatements in the offering memorandum; and (6) no allegation that the disclosure was incomplete. The sole issue that the panel had to determine was whether Momentas was, in fact, acting as a market intermediary and if so, what the appropriate remedy was pending the hearing on the merits.

[42] The registration requirements set out in the Act exist to protect investors. Compliance with these provisions is in the public interest.

[43] The panel recognized that a temporary cease trade order is an extraordinary power that should be resorted to cautiously. In this case, we had regard to the impact of the cease trade order on the ability of Momentas to carry on its business, and the effect of such impact upon the financial interest of the existing investors who had been sold the Convertible Debentures.

[44] In the circumstances of this case, we were particularly mindful of the need to craft an order that would minimize harm to existing investors, while preventing the sale of Convertible Debentures to new investors when an exemption from registration is not available to Momentas. The carve-outs in our order of July 14, 2005 are extremely limited. The first carve-out enables Momentas to continue developing ARF, one of the business activities set out in the offering memorandum, subject to the monitoring of Staff. The second carve-out enables Momentas to choose the most advantageous time for closing out foreign currency exchange positions, also subject to Staff oversight.

[45] In conclusion, we determined that it was in the public interest to grant an extension of the temporary order and the order of July 8, 2005 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.

[46] The panel requests, in the event that Momentas and its officers, directors and/or employees seek registration prior to the hearing on the merits, that this be allowed to be done on an expedited basis. We also suggest that Staff not hold against the applicants for registration the fact that they failed to register in this case, but subject to normal inquiries and considerations not related to the facts considered by us.

Dated at Toronto this 2nd day of August, 2005

“Paul M. Moore”

“Wendell Wigle”

“Carol S. Perry”

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Revoke
Lucid Entertainment Inc.	22 Jul 05	03 Aug 05	03 Aug 05	
Napier Environmental Technologies Inc.	03 Aug 05	15 Aug 05		
Teddy Bear Valley Mines, Limited	03 Aug 05	15 Aug 05		

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		
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		
Kinross Gold Corporation	01 Apr 05	14 Apr 05	14 Apr 05		
Rex Diamond Mining Corporation	04 Jul 05	15 Jul 05	15 Jul 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 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Pur. Price (\$)	No. of Securities
20-Jul-2005	4 Purchasers	Adams Respiratory Therapeutics Inc. - Shares	728,068.00	35,050.00
18-Jul-2005	David Cottingham	AIG NON-U.S. Employee Feeder, L.P. - Limited Partnership Interest	72,900.00	60,000.00
29-Jul-2005	232511 Investments Limited	Alberta Wind Energy Corporation - Common Shares	100,000.00	50,000.00
20-Jun-2005	Fred Kiernicki	Alexandria Minerals Corporation - Common Shares	22,500.00	125,000.00
15-Jul-2005	19 Purchasers	Aurogin Resources Ltd. - Units	236,800.00	3,946,060.00
30-Jun-2005	4 Purchasers	Bullion Management Group Inc. - Common Shares	50,000.00	200,000.00
30-Jul-2005	Quinte St. Lawrence Electrical Workers Health and Welfare Trust Fund	Canso Corporate Bond Fund - Units	1,722,905.00	341,035.00
30-Jun-2004 to 23-Dec-2004	4 Purchasers	Canso High Yield Fund - Units	6,557,339.00	1,099,314.00
24-Aug-2004	Ontario Teachers Pension Plan Board	Capital International Emerging Markets Fund - Shares	31,680,021.48	664,952.00
28-Jul-2005	Marc Spillman Dr. Joseph Greenberg	Card One Plus Ltd. - Common Shares	85,000.00	21,250.00
19-Jul-2005	Mark Turkienicz	Castleworth Ventures Inc. - Units	25,000.00	62,500.00
12-Jul-2005	CitiBank Canada Investment Funds Limited	Citi FCP - CitiEquity Asia (ex Japan) Analyst Fund - Units	301,300.00	2,192.00
21-Jul-2005	18 Purchasers	Co-operators Financial Services Limited - Debentures	87,891,427.00	87,901.00
30-Jun-2005	14 Purchasers	Creststreet Energy Hedge Fund L.P. - Limited Partnership Units	1,364,153.00	126,269.00
22-Jul-2005	22 Purchasers	DB Mortgage Investment Corporation #1 - Common Shares	4,205,000.00	4,205.00
21-Jul-2005	Philip Siftt Hugh Thorne	Firestone Ventures Inc. - Units	39,600.00	110,000.00
15-Jul-2005	Dundee Precious Metals Inc.	Frontier Pacific Mining Corporation - Units	3,750,000.00	12,500,000.00

Notice of Exempt Financings

30-Jun-2005	Gerry Doyle	Full Metal Minerals Ltd. - Common Shares	8,000.00	20,000.00
26-Jul-2005	FrontierAlt Mining 2005 Flow-Through Limited Partnership	Gallery Resources Limited - Units	100,000.00	1,666,666.00
06-Jul-2005	72 Purchasers	Glacier Ventures International Corp. - Common Shares	10,289,841.00	4,287,434.00
05-Jul-2005	City of Ottawa Superannuation Fund	GMO World Opportunities Equity Allocation Fund - Units	239,990,400.00	1,197,723.00
05-Jul-2005	City of Ottawa Superannuation Fund	GMO World Opportunities Equity Allocation Fund - Units	29,835,290.00	1,197,723.00
25-Jul-2005	Daniel Hachey	Harbour Pacific Oil & Gas Ltd. - Common Share Purchase Warrant	5,000.00	300,000.00
21-Jul-2005	38 Purchasers	Icron Technologies Corporation - Units	3,299,580.00	1,833,100.00
19-Jul-2005	5 Purchasers	Imaflex Inc. - Shares	717,000.00	6,350,000.00
14-Jul-2005	6 Purchasers	Inter-Citic Minerals Inc. - Units	345,000.00	575,000.00
26-Jul-2005	John Burke	Inter-Citic Minerals Inc. - Units	25,000.00	41,666.00
18-Jul-2005	AIG Life Insurance	KBSH Private - Canadian Equity Fund - Units	24,068.00	1,391.00
18-Jul-2005	AIG Life Insurance	KBSH Private - Special Equity Fund - Units	16,593.00	777.00
18-Jul-2005	AIG Life Insurance	KBSH Private - U.S. Equity Fund - Units	13,702.00	1,073.00
18-Jul-2005	AIG Life Insurance	KBSH Private Global Leading Companies Fund - Units	15,325.00	1,993.00
18-Jul-2005	AIG Life Insurance	KBSH Private International Equity Fund - Units	7,324.00	832.00
15-Jul-2005	6 Purchasers	Kingwest Avenue Portfolio - Units	1,094,850.00	41,268.00
15-Jun-2005	Lionel Fogler	Kingwest U.S. Equity Portfolio - Units	14,400.00	1,122.00
19-Jul-2005	A Better Search Inc.	Laramide Resources Ltd. - Common Shares	0.00	25,000.00
19-May-2005	First Ontario Labour Sponsored Investment Fund	Lexicon Value Management Inc. - Common Shares	40.00	40.00
18-Jul-2005	11 Purchasers	Liberty Mines Inc. - Units	475,420.00	2,160,999.00
28-Jul-2005	Gypsy Holdings Corp.	ListenUp Hearing Healthcare Canada Inc. - Common Shares	1,000,000.00	1,000,000.00
19-Jul-2005	8 Purchasers	Literary Partners Limited Partnership - Units	2,700,000.00	1,000.00
18-Jul-2005	Conrad T. Eagan John Seaman	Mansfield Minerals Inc. - Units	65,000.00	162,500.00

Notice of Exempt Financings

05-Jul-2005	25 Purchasers	Maple Minerals Corp. - Flow-Through Shares	2,123,550.00	1,573,000.00
24-Jun-2005	Claude Lefebvre	Medical Staffing Direct, Inc. - Units	15,110.00	1.00
20-Jul-2005	9 Purchasers	Milagro Energy Inc. - Shares	1,454,600.00	993,500.00
14-Jul-2005	3 Purchasers	Mylan Laboratories Inc. - Notes	906,682,300.00	761,000.00
15-Jul-2005	N-Brook Mortgage Limited Partnership	N-Brook Funding Trust - Notes	304,729.61	1.00
15-Jul-2005	N-Brook Lender Services Inc.	N-Brook Funding Trust - Notes	548,646.24	1.00
15-Jul-2005	N-Brook Lender Services Inc.	N-Brook Funding Trust - Notes	772,636.12	1.00
15-Jul-2005	N-Brook Mortgage Limited Partnership	N-Brook Funding Trust - Notes	311,048.48	1.00
25-Jul-2005	Ruland Realty Limited	Natural Data Inc. - Common Shares	50,000.00	100,000.00
13-Jul-2005	Thelma Taylor	New Solutions Financial (II) Corporation - Debentures	80,000.00	80,000.00
26-Jul-2005	3 Purchasers	Newcast Energy Corp. - Common Shares	640,000.00	128,000.00
15-Jul-2005	Denis Archambault	Novik Inc. - Units	50,000.00	100,000.00
15-Jul-2005	3 Purchasers	O'Donnell Emerging Companies Fund - Units	75,306.00	10,194.00
26-Jul-2005	1471158 Ontario Ltd. Starport Holdings 1471159 Ont. Ltd.	Outback Exploration Ltd. - Common Shares	75,375.00	167,500.00
20-Jul-2005	17 Purchasers	Pacific Stratus Energy Ltd. - Units	3,500,000.00	14,000,000.00
18-Jul-2005	Sprott Asset Management Inc.	Pan African Mining Corp. - Units	500,000.00	500,000.00
14-Jul-2005	19 Purchasers	Paramount Resources Ltd. - Flow-Through Shares	13,459,750.00	633,400.00
19-Jul-2005	4 Purchasers	Pine Valley Mining Corporation - Common Shares	5,000,000.00	1,250,000.00
19-Jul-2005	17 Purchasers	Precept 2005 Flow-Through Limited Partnership - Limited Partnership Units	630,000.00	630.00
25-Jul-2005	MineralFields 2005-II Super Flow-Through Limited Partnership frontierAlt Mining 2005 Flow-Through Limited Partnership	Probe Mines Limited - Units	200,000.00	444,444.00
13-Jul-2005	5 Purchasers	Queen Street Entertainment Capital Inc. - Common Shares	185,000.00	740,000.00

Notice of Exempt Financings

08-Jul-2005	Nursing Homes and Related Industries Pension Plan	Real Assets US Social Equity Index Fund - Units	366,740.00	50,837.00
19-Jul-2005	BMO Nesbitt Burns Inc.	Real Return Trust - Trust Units	113,270,004.00	12,000,000.00
19-Jul-2005	Ontario Teachers Pension Plan Board	Republic of Colombia - Bonds	3,198,750.00	1.00
18-Jul-2005	MACRO Trust	SMART Trust - Notes	266,284.69	1.00
20-Jul-2005	MACRO Trust	SMART Trust - Notes	1,118,743.00	1.00
20-Jul-2005	Credit Union Central of Ontario Limited	SMART Trust - Notes	449,595.00	1.00
18-Jul-2005	6 Purchasers	SuiteWorks Inc. - Shares	700,000.00	17,500.00
20-Jul-2005	Ralph Blatt	Sultan Minerals Inc. - Units	10,000.00	50,000.00
13-Jul-2005	10 Purchasers	Syscan International Inc. - Units	399,000.00	997,500.00
13-Jul-2005	3 Purchasers	Tagish Lake Gold Corp. - Units	142,000.00	130,909.00
22-Jul-2005 to 26-Jul-2005	3 Purchasers	Tangerine Concepts Corporation - Units	38,603.00	38,603.00
18-Jul-2005	6 Purchasers	Tech Capital II Limited Partnership - Limited Partnership Units	35,000,000.00	35,000.00
21-Jul-2005	9 Purchasers	TG World Energy Corp. - Units	190,400.00	272,000.00
26-Jul-2005	11 Purchasers	Twin Mining Corporation - Flow-Through Shares	217,999.80	1,211,110.00
26-Jul-2005	Cedric E. Ritchie W. Warren Holmes	Twin Mining Corporation - Units	333,999.72	1,855,554.00
26-Jul-2005	14 Purchasers	University of British Columbia - Debentures	66,350,000.00	66,350,000.00
21-Jul-2005	14 Purchasers	Vanquish Oil & Gas Corporation - Common Shares	180,549.00	124,517.00
21-Jul-2005	15 Purchasers	Vanquish Oil & Gas Corporation - Flow-Through Shares	183,149.00	107,735.00
30-Jun-2005	Dr. George J. Vasiga The Trustees of Coherent	Vertex Balanced Fund - Trust Units	52,300.00	3,406.00
30-Jun-2005	Dr. George J. Vasiga The Trustees of Coherent	Vertex Balanced Fund - Units	52,300.00	3,407.00
30-Jun-2005	6 Purchasers	Vertex Fund - Trust Units	274,400.00	19,751.00
30-Jun-2005	6 Purchasers	Vertex Fund - Trust Units	274,400.00	19,751.00
22-Jul-2005	F.J. stork Holdings 2000 Ltd.	We-Create Inc. - Convertible Debentures	115,000.00	115,000.00

Notice of Exempt Financings

19-Jul-2005	Berdine Hurley	Westbow Energy Inc. - Preferred Shares	5,000.00	500.00
29-Jul-2005	5 Purchasers	Xtra-Gold Resources Corp. - Units	10,395.00	18,900.00
21-Jul-2005	10 Purchasers	Xtreme Coil Drilling Corp. - Shares	3,202,800.00	1,067,600.00

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Chapter 9

Legislation

9.1.1 Notice of Amendments to the Securities Act and Regulation, and to the Commodity Futures Act

NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND REGULATION, AND TO THE COMMODITY FUTURES ACT

On August 2, 2005, the Government of Ontario announced that the amendments to the *Securities Act* (Act) in respect of civil liability for continuous disclosure (Part XXIII.1 of the Act), as well as fraud and market manipulation (section 126.1 of the Act), and misleading or untrue statements (section 126.2 of the Act), will come into force on December 31, 2005.

Amendments made to the *Commodity Futures Act* respecting fraud and market manipulation, and misleading or untrue statements will also come into on December 31, 2005.

The amendments to the Act and to the *Commodity Futures Act* were enacted under the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* (formerly Bill 198). These provisions were subsequently amended by the *Budget Measures Act (Fall), 2004* (formerly Bill 149).

On August 2, 2005, the Government of Ontario also announced amendments to Regulation 1015 under the Act. Some of the amendments made to Regulation 1015 relate to civil liability for continuous disclosure and will come into force on July 29, 2005. Other amendments to Regulation 1015 are housekeeping amendments and came into effect on the date they were filed. These housekeeping amendments include:

- amendments to remove “underwriter” as a separate category of registration;
- amendments to correctly reflect applicable sections of OSC Rule 31-505 *Conditions of Registration*;
- amendments to no longer require the filing with the Commission of financial statements and Statement C of Form 9 by mutual fund dealers that are members in good standing with the Mutual Fund Dealers Association of Canada;
- amendments to revoke Form 7 in connection with an application to amend an registration;
- amendments to revoke sections 38 and 79, and Forms 17, 18, and 19 in connection with the Commission’s adoption of National Policy 46-201 *Escrow for Initial Public Offerings* and Form 46-201F1 *Escrow Agreement*; and
- amendments to refer to correct sections of the Act.

For ease of reference, we are publishing:

1. An unofficial consolidated blackline version of Part XXIII.1 of the *Securities Act*. This unofficial consolidation reflects the legislative amendments introduced by Bill 198, as amended by Bill 149.
2. The amendments made to Regulation 1015 relating to the civil liability for secondary market disclosure.
3. An unofficial consolidated blackline version of sections 126.1 and 126.2 of the *Securities Act*, as amended by Bill 149.
4. An unofficial consolidated blackline version of sections 59.1 and 59.2 of the *Commodity Futures Act*, as amended by Bill 149.
5. The housekeeping amendments made to Regulation 1015.

Questions may be referred to:

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**PART XXIII.1
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

INTERPRETATION AND APPLICATION

Definitions

138.1 In this Part,

“compensation” means compensation received during the 12 month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded; (“rémunération”)

“control person” means,

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or
- (b) each person or company or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer,

to affect materially the control of the issuer, and, where a person or company, or combination of persons or companies, holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer; (“personne qui a le contrôle”)

“core document” means,

- (a) where used in relation to,
 - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
 - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
 - (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager, ~~who is not also an officer of the responsible issuer,~~

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, ~~and~~ annual financial statements and interim financial statements of the responsible issuer, ~~or~~

- (b) where used in relation to,
 - (i) a responsible issuer or an officer of the responsible issuer,
 - (ii) an investment fund manager, where the responsible issuer is an investment fund, or
 - (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements, and a report required by subsection 75 (2), of the responsible issuer, and

- (c) such other documents as may be prescribed by regulation for the purposes of this definition; (“document essentiel”)

“document” means any written communication, including a communication prepared and transmitted only in electronic form,

Legislation

- (a) that is required to be filed with the Commission, or
- (b) that is not required to be filed with the Commission and,
 - (i) that is filed with the Commission,
 - (ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules or regulations, or
 - (iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; ("document")

"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators; ("expert")

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act; ("non-respect des obligations d'information occasionnelle")

"forward-looking information" means all disclosure regarding possible events, conditions or results ~~(including future- that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective results of operations, a prospective financial position or prospective changes in financial position that is based on assumptions about future economic conditions and courses of action)~~ cash flows that is presented as either a forecast or a projection; ("information prospective") **[This definition was moved to s. 1(1) of the Securities Act.]**

"influential person" means, in respect of a responsible issuer,

- (a) a control person,
- (b) a promoter,
- (c) an insider who is not a director or senior officer of the responsible issuer, or
- (d) an investment fund manager, if the responsible issuer is an investment fund; ("personne influente")

"issuer's security" means a security of a responsible issuer and includes a security,

- (a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and
- (b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; ("valeur mobilière d'un émetteur")

"liability limit" means,

- (a) in the case of a responsible issuer, the greater of,
 - (i) 5 per cent of its market capitalization (as such term is defined in the regulations), and
 - (ii) \$1 million,
- (b) in the case of a director or officer of a responsible issuer, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
- (c) in the case of an influential person who is not an individual, the greater of,

- (i) 5 per cent of its market capitalization (as defined in the regulations), and
- (ii) \$1 million,
- (d) in the case of an influential person who is an individual, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,
- (e) in the case of a director or officer of an influential person, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the director's or officer's compensation from the influential person and its affiliates,
- (f) in the case of an expert, the greater of,
 - (i) \$1 million, and
 - (ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and
- (g) in the case of each person ~~or company~~ who made a public oral statement, other than an individual ~~under referred to in~~ clause (a), ~~(b)~~, ~~(c)~~, (d), (e) or (f), the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the person ~~or company's~~ compensation from the responsible issuer and its affiliates; ~~("limite de responsabilité")~~

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Ontario securities law; ("rapport de gestion")

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed; ("déclaration orale publique")

"release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or a stock exchange or to otherwise make available to the public; ("publication")

"responsible issuer" means,

- (a) a reporting issuer, or
- (b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; ("émetteur responsable")

"trading day" means a day during which the principal market (as defined in the regulations) for the security is open for trading. ("jour de Bourse")

Application

138.2 This Part does not apply to,

- (a) the ~~acquisition~~ purchase of an issuer's security ~~under offered by~~ a prospectus during the period of distribution;
- (b) the acquisition of an issuer's security pursuant to an ~~exemption~~ a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;

- (c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or
- (d) such other transactions or class of transactions as may be prescribed by regulation.

LIABILITY

Liability for secondary market disclosure

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of ~~an~~the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director of the responsible issuer at the time the document was released;
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

Public oral statements by responsible issuer

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of ~~an~~the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
 - (i) the person who made the public oral statement to make the public oral statement, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and

- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of anthe issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (f) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

Failure to make timely disclosure

(4) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of anthe issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple roles

(5) In a ~~proceeding~~an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

Multiple misrepresentations

(6) In a ~~proceeding~~an action under this section,

- (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

No implied or actual authority

(7) In a ~~proceeding~~an action under subsection (2) or ~~subsection (3)~~, if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In a ~~proceeding~~an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;
- (b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in a ~~proceeding~~an action under section 138.3 in relation to an expert.

Failure to make timely disclosure

(3) In a ~~proceeding~~an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in a ~~proceeding~~an action under section 138.3 in relation to,

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- (a) a responsible issuer;
- (b) an officer of a responsible issuer;
- (c) an investment fund manager; or
- (d) an officer of an investment fund manager.

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in ~~a proceeding~~an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

- (a) with knowledge that the document or public oral statement contained a misrepresentation; or
- (b) with knowledge of the material change.

Reasonable investigation

(6) A person or company is not liable in ~~a proceeding~~an action under section 138.3 in relation to,

- (a) a misrepresentation if that person or company proves that,
 - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or
- (b) a failure to make timely disclosure if that person or company proves that,
 - (i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

Factors to be considered by court

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the ~~court~~court shall consider all relevant circumstances, including,

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person or company;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;
- (f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;
- (g) the period within which disclosure was required to be made under the applicable law;
- (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

Legislation

- (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

Confidential disclosure

(8) A person or company is not liable in ~~a proceeding an action~~ under section 138.3 in respect of a failure to make timely disclosure if,

- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3);
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;
- (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
- (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

Forward-looking information

(9) A person or company is not liable in ~~a proceeding an action~~ under section 138.3 for a misrepresentation in forward-looking information if the person or company proves ~~that all of the following things:~~

- (a) ~~the 1.~~ The document or public oral statement containing the forward-looking information contained, proximate to ~~the forward-looking that~~ information,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; ~~and.~~
- (b) ~~the 2.~~ The person or company had a reasonable basis for drawing the conclusions or making the forecasts or and projections set out in the forward-looking information.

Same

~~(10) Subsection (9) does not apply to a person or company in respect of forward-looking information contained in the prospectus of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer or contained in financial statements prepared by the responsible issuer.~~ 9.1) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

- (a) made a cautionary statement that the oral statement contains forward-looking information;
- (b) stated that,
 - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

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(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about,

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document.

Same

(9.2) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available.

Exception

(10) Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

- (a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and
- (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

Same

(12) An expert is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that, the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

Release of documents

(13) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document the person or company did not know and had no reasonable grounds to believe that the document would be released.

Derivative information

(14) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange

- before the release of the document or the public oral statement made by or on behalf of the responsible issuer;
- (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and
 - (c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in a ~~proceeding~~ an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- (a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

DAMAGES

Assessment of damages

138.5 (1) Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the

average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

- i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
- ii. if there is no published market, the amount that the court considers just.

Same

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis), and
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - ii. if there is no published market, then the amount that the court considers just.

Same

(3) Despite subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

Proportionate liability

138.6 (1) In a ~~proceeding~~an action under section 138.3, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 138.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

Same

(2) Despite subsection (1), where, in a ~~proceeding~~an action under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

Same

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

Same

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in a ~~proceeding~~an action under section 138.3 is the lesser of,

- (a) the aggregate damages assessed against the person or company in the action, and,
- (b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

PROCEDURAL MATTERS

Leave to proceed

138.8 (1) No ~~proceeding~~an action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

Same

(2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court.

Same

(4) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed.

Notice

138.9 A person or company that has been granted leave to commence ~~a proceeding~~ an action under section 138.3 shall,

- (a) promptly issue a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3;
- (b) send a written notice to the Commission within seven days, together with a copy of the news release; and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed.

Restriction on discontinuation, etc., of proceeding ~~action~~

138.10 ~~A proceeding~~ An action under section 138.3 shall not be ~~stayed, discontinued, abandoned or settled or dismissed for delay~~ without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the ~~proceeding~~ action, the court shall consider, among other things, whether there are any other ~~proceedings~~ actions outstanding under section 138.3 or under comparable legislation in ~~the other provinces or territories in Canada~~ in respect of the same misrepresentation or failure to make timely disclosure.

Costs

138.11 Despite the *Courts of Justice Act* and the *Class Proceedings Act, 1992*, the prevailing party in ~~a proceeding~~ an action under section 138.3 is entitled to costs determined by a court in accordance with applicable rules of civil procedure.

Power of the Commission

138.12 The Commission may intervene in ~~a proceeding~~ an action under section 138.3 and in an application for leave under section 138.8.

No derogation from other rights

138.13 The right of action for damages and the defences to ~~a proceeding~~ an action under section 138.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in ~~a proceeding~~ an action brought otherwise than under this Part.

Limitation period

138.14 No ~~proceeding~~ action shall be commenced under section 138.3,

- (a) in the case of misrepresentation in a document, later than the earlier of,
 - (i) three years after the date on which the document containing the misrepresentation was first released, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in the other provinces or territories in ~~Canada~~ in respect of the same misrepresentation;
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of,
 - (i) three years after the date on which the public oral statement containing the misrepresentation was made, and

- (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and
- (c) in the case of a failure to make timely disclosure, later than the earlier of,
 - (i) three years after the date on which the requisite disclosure was required to be made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

**CHANGES MADE TO REGULATION 1015
IN RESPECT OF CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

**ONTARIO REGULATION
MADE UNDER THE
SECURITIES ACT
AMENDING REG. 1015 OF R.R.O. 1990
(GENERAL)**

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at www.e-laws.gov.on.ca.

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19. The Regulation is amended by adding the following Part:

**PART XVI
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

248. In this Part,

“equity security” has the same meaning as it has in subsection 89 (1) of the Act.

249. For the purposes of Part XXIII.1 of the Act, “market capitalization” means, in respect of an issuer, the amount determined as follows:

1. For each class of equity securities for which there is a published market, determine the sum of the number of outstanding securities of the class at the close of trading on each of the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
2. Divide the sum determined under paragraph 1 by 10.
3. Multiply the quotient determined under paragraph 2 for each class by the trading price of the securities of the class on the principal market for the securities for the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
4. Add the amounts determined under paragraph 3 for each class of equity securities for which there is a published market.
5. For each class of equity securities not traded on a published market, determine the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
6. Add the amounts determined under paragraph 5 for each class of equity securities not traded on a published market.
7. Add the amount determined under paragraph 4 to the amount determined under paragraph 6 to determine the market capitalization of the issuer.

250. For the purposes of Part XXIII.1 of the Act,

“principal market” means, in respect of a class of securities of a responsible issuer,

- (a) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred; or
- (b) the published market on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, if securities of that class are not traded during those 10 trading days on a published market in Canada.

251. For the purposes of Part XXIII.1 of the Act, “trading price” means, in respect of a security of a class of securities for which there is a published market, the amount determined under the following rules:

1. Subject to paragraphs 2 and 3, the trading price of the security is the volume weighted average price of securities of that class on the published market during the period for which the trading price is to be determined.
2. Subject to paragraph 3, if there was trading in the securities of that class in the published market on fewer than half of the trading days during the period for which the trading price of the securities is to be determined, the trading price of the security is determined as follows:
 - i. Calculate the sum of the average of the highest bid and lowest ask prices for each trading day in the period on which there were no trades in securities of that class in the published market.
 - ii. Divide the amount determined under subparagraph i by the number of trading days on which there were no trades in securities of that class in the published market.
 - iii. Add to the amount determined under subparagraph ii the volume weighted average price of securities of that class on the published market for those trading days on which securities of that class were traded.
 - iv. Divide by two the amount determined under subparagraph iii.
3. If there were no trades of securities of that class in the published market during the period for which the trading price is to be determined, the trading price of the security is the fair market value of the security.

252. (1) Part XXIII.1 of the Act applies to the acquisition of an issuer’s security pursuant to an exemption from section 53 or 62 of the Act that is set out in clause 72 (7) (b) of the Act, which exemption is prescribed for the purposes of clause 138.2 (b) of the Act.

(2) Part XXIII.1 of the Act applies to the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid described in clause 93 (1) (a), (b) or (e) of the Act or an issuer bid described in clause 93 (3) (e), (f) or (h) of the Act, which bids are prescribed for the purposes of clause 138.2 (c) of the Act.

.....

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.

SECTIONS 126.1 AND 126.2 OF THE SECURITIES ACT

Fraud and market manipulation

126.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a securities; or
- (b) perpetrates a fraud on any person or company.

Misleading or untrue statements

126.2(1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) ~~significantly affects, or would reasonably be expected to have a significant effect on,~~ the market price or value of a security.

Same

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1.

SECTIONS 59.1 AND 59.2 OF THE COMMODITY FUTURES ACT

Fraud and market manipulation

59.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to commodities or contracts that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a commodity or contract; or
- (b) perpetrates a fraud on any person or company.

Misleading or untrue statements

59.2 A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) ~~significantly affects, or~~ would reasonably be expected to have a significant effect on, the market price or value of a commodity or contract.

**CHANGES MADE TO REGULATION 1015
IN RESPECT OF HOUSEKEEPING AMENDMENTS**

**ONTARIO REGULATION
MADE UNDER THE
SECURITIES ACT
AMENDING REG. 1015 OF R.R.O. 1990
(GENERAL)**

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at www.e-laws.gov.on.ca.

1. Section 38 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.

2. Section 79 of the Regulation is revoked.

3. Section 100 of the Regulation is revoked and the following substituted:

100. (1) The registration of a mutual fund dealer, scholarship plan dealer or securities issuer authorizes the dealer or issuer to act as an underwriter for the sole purpose of distributing the securities that the dealer or issuer is registered to trade but not for any other purpose.

(2) The registration of a limited market dealer, international dealer or financial intermediary dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that the dealer is authorized to make by section 208 or 209 or Ontario Securities Commission Rule 31-503 *Limited Market Dealers*, as the case may be, but not for any other purpose.

4. (1) Subsection 104 (1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(1) A registrant who is a registered dealer or adviser or a partner or officer of a registered dealer or adviser and who proposes to acquire, directly or indirectly, beneficial ownership of or control or direction over any security of another registered dealer or adviser shall give written notice of the proposed acquisition to the Director at least 30 days before the acquisition and shall provide with the notice all relevant facts to permit the Director to determine if the acquisition,

.....

(2) Clause 104 (4) (a) of the Regulation is revoked and the following substituted:

(a) a partner or officer of a registered dealer or adviser who, alone or in combination with any other person or company, proposes to acquire securities that, together with the securities already beneficially owned or over which control or direction is already exercised, do not exceed more than 5 per cent of any class or series of securities of any other registered dealer or adviser that are listed and posted for trading on a stock exchange anywhere in the world;

(3) Clause 104 (4) (d) of the Regulation is revoked and the following substituted:

(d) an acquisition by a registered dealer in the ordinary course of its business of trading in securities.

5. Subsection 107 (5) of the Regulation is revoked.

6. (1) Subsection 108 (3) of the Regulation is amended by striking out “every security issuer, every adviser and every underwriter” and substituting “every security issuer and every adviser”.

(2) Subsection 108 (4) of the Regulation is amended by striking out “dealer, adviser or underwriter” in the portion before clause (a) and substituting “dealer or adviser”.

(3) Subsection 108 (6) of the Regulation is revoked and the following substituted:

(6) The Director may exempt registrants who are members of a recognized self-regulatory organization referred to in section 21.1 of the Act or a recognized stock exchange from compliance with subsection (4) if the Director is satisfied that the registrant is subject to requirements imposed by that organization or exchange that provide at least equal protection for clients to the protection provided under subsection (4).

7. Subsection 110 (1) of the Regulation is revoked and the following substituted:

(1) Every dealer, other than a security issuer, shall participate in a compensation fund or contingency trust fund approved by the Commission and established by,

- (a) a recognized self-regulatory organization referred to in section 21.1 of the Act;
- (b) a recognized stock exchange; or
- (c) a trust corporation registered under the *Loan and Trust Corporations Act*.

8. (1) Paragraph 8 of subsection 113 (3) of the Regulation is amended by striking out “Subject to subsection 114 (4)” at the beginning and substituting “Subject to section 1.5 of Ontario Securities Commission Rule 31-505 Conditions of Registration”.

(2) Subparagraph 8 iii of subsection 113 (3) of the Regulation is revoked and the following substituted:

- iii. in the case of a margin account, a properly executed margin agreement containing the signature of the owner and the guarantor, if any, and the additional information obtained under section 115 of this Regulation and sections 1.2, 1.5 and 1.6 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*,

9. Subsection 132 (1) of the Regulation is amended by striking out “dealer, adviser or underwriter” and substituting “dealer or adviser”.

10. Sections 135, 137 and 138 of the Regulation are revoked.

11. Section 139 of the Regulation is revoked and the following substituted:

REPORTING TO ONTARIO SECURITIES COMMISSION

139. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act, every adviser and every scholarship plan dealer shall deliver to the Commission, not more than 90 days after the end of each financial year of the dealer or adviser, a copy of its financial statements for the year.

12. Sections 141 and 142 of the Regulation are revoked and the following substituted:

141. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act and every scholarship plan dealer shall deliver a report prepared in accordance with Statement C of Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

142. Every securities dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act shall deliver a report prepared in accordance with Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

13. Subsection 145 (1) of the Regulation is amended by striking out “self-regulatory body referred to in section 20 of the Act” in the portion before clause (a) and substituting “self-regulatory organization that is recognized by the Commission under section 21.1 of the Act or a recognized stock exchange”.

14. Section 146 of the Regulation is revoked and the following substituted:

146. Every audit under section 21.10 of the Act shall satisfy the audit requirements published by the Commission, in addition to the requirements in that section, and in the event of a conflict, the requirements of section 21.10 prevail.

15. (1) Subsection 147 (1) of the Regulation is revoked.

(2) Subsection 147 (2) of the Regulation is amended by striking out “an audit under section 21 of the Act” at the end and substituting “an audit under section 21.10 of the Act”.

16. Subsection 212 (2) of the Regulation is revoked.

17. (1) Subsection 230 (1) of the Regulation is amended by striking out “other than sections 221 and 222”.

(2) Subsection 230 (5) of the Regulation is revoked.

18. Section 232 of the Regulation is amended by striking out “sections 221 and 222” and substituting “section 2.1 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*”.

.....

20. Form 3 is revoked and the following substituted:



Ontario
Securities
Commission

**Form 3
Securities Act**

**Application for Registration as
Dealer or Adviser**

NOTE: Should any space be insufficient for your answers, a statement may be attached and marked as an exhibit cross-referencing each statement to the item to which it pertains provided it is initialled by the applicant and the Commissioner taking the affidavit.

Application is made for registration under the *Securities Act*

(**NOTE:** Refer to sections 98 and 99 of the Regulation to confirm the appropriate category of registration.)

in the category of

1. (a) Name of Applicant
- (b) Head Office Business Address
Telephone No. Postal Code
- (c) Address for Service in Ontario:
Telephone No. Postal Code
2. The applicant maintains accounts at the following bank(s): (State bank and branches through which business is transacted)
3. Is applicant applying for registration of any branch offices?
If so, state addresses:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

4. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,
 - (a) been registered in any capacity under any *Securities Act* of Ontario?
 - (b) applied for registration, in any capacity, under any *Securities Act* of Ontario?
5. Is the applicant, or to the best of the applicant's information and belief, is any affiliate of the applicant, now, or has any such person or company been,
 - (a) registered or licensed in any capacity in any other province, state or country which requires registration or licensing to deal or trade in securities?
 - (b) registered or licensed in any other capacity in Ontario or any other province, state or country under any legislation which requires registration or licensing to deal with the public in any capacity? (e.g., as an insurance agent, real estate agent, used car dealer, mortgage broker, etc.)
 - (c) refused registration or a licence mentioned in 5(a) or (b) above or has any registration or licence been suspended or cancelled in any category mentioned in 5(a) or (b) above?
 - (d) denied the benefit of any exemption from registration provided by any *Securities Act* of Ontario, or similar exemption provided by securities acts or regulations of any other province, state or country?
6. Is the applicant, or to the best of the applicant's information and belief is any affiliate of the applicant, now, or has any such person or company been,
 - (a) a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?

Legislation

- (b) refused membership in any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?
 - (c) suspended as a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?
7. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant, operated under, or carried on business under, any name other than the name shown in this application?
8. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,
- (a) ever been convicted under the law of any province, state or country, excepting minor traffic violations?

Is there currently an outstanding charge or indictment against the applicant or affiliate?

INSTRUCTION: Question 8(a) refers to all laws, e.g., Criminal, Immigration, Customs, Liquor, etc. of any province, state or country in any part of the world. You are not required to disclose any convictions for which a pardon has been granted under the Criminal Records Act (Canada), and which pardon has not been revoked.

- (b) ever been the defendant or respondent in any proceedings in any civil court in any jurisdiction in any part of the world wherein fraud was alleged?
 - (c) at any time declared bankruptcy, or made a voluntary assignment in bankruptcy? (If "Yes", give particulars and also attach a certified copy of discharge.)
 - (d) ever been refused a fidelity bond?
9. Set out in the space provided, the name of the applicant, or the name of and position held by each officer or partner of the applicant seeking or holding registration.

(In addition to last name, give full first and middle names)	Office Held	(In addition to last name, give full first and middle names)	Office Held
1.		5.	
2.		6.	
3.		7.	
4.		8.	

10. Attach and mark as an exhibit:
- (a) a completed Form 4 for each partner or officer of the applicant seeking or holding registration, unless the information required by Form 4 has previously been filed by such person and remains unchanged;
 - (b) for each person or company who is a partner, officer or director of the applicant and not referred to in clause (a), the information required by Form 4 excluding questions 4, 7 and 10 and Part D thereof unless such information has previously been filed with the Commission and remains unchanged; and
 - (c) in the case of applicants for registration as investment counsel only, a letter from each person who, on behalf of the applicant will give investment advice, outlining directly related experience of such person so as to justify designation by the Director of such person to so act.

11. A - Capitalization of Company:

Other than a Security Issuer, complete below or attach marked as an exhibit to the application a statement containing the information called for below, to provide information with respect to the financial structure and control of the applicant company.

- (a) The authorized and issued capital of the company, stating:

	Preferred Shares (State number of shares <u>and dollar value</u>) Shares \$	Common Shares (State number of shares <u>and dollar value</u>) Shares \$
(1) authorized capital		
(2) issued		
(3) total dollar value of other securities:		
(i) Bonds		
(ii) Debentures		
(iii) Any other loans, state source and maturity dates		
\$		
TOTAL \$		

(b) The names, addresses and usual place of residence of registered, and direct, and indirect, beneficial owners of each class of security or obligation issued, and if a trust is the beneficial owner, the names, addresses and usual place of residence of each person or company having a beneficial interest in the trust, and the nature and extent of the holdings and percentage of interest attributable to each security holder, lender or *cestui que* trust (beneficiary).

(c) State name and address of every depository holding any of the assets of the company:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(d) Has any person or company undertaken to act as a guarantor in relation to the financial or other undertakings of the applicant?

(e) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(f) Is there any person or company whose name is not disclosed in the statement called for by (b) above who has any direct or indirect interest in the applicant, either beneficially or otherwise?

B - Capitalization of a Partnership or Proprietorship:

Attach, marked as an exhibit to the application, a statement containing the information called for below with respect to the assets of the partnership or proprietorship, and demonstrate therein the degree of control (voting power) of each of the participants in the applicant.

(a) Amount of paid-in capital \$

(b) Description of the assets:

(c) State name and address of every depository holding any of the assets:

(d) Source, amount and maturity date of any obligations owing by the partnership, if any:
(Where applicable, give names and addresses of creditors).

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(e) Has any person or company undertaken to act as guarantor in relation to the financial or other undertakings of applicant?

(f) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(g) Is there any person or company whose name is not disclosed above who has any interest in the applicant, either beneficially or otherwise?

DATED at

(Name of applicant)

This day of, 20.....

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT
In the matter of the Securities Act

Province of Ontario

)

I, _____

(Name in full)

..... of

)

of the

To Wit:

)

in the County of

MAKE OATH AND SAY:

1. I am the applicant (or a partner or officer of the applicant) herein for registration and I signed the application.
2. The statements of fact made in the application are true.

SWORN before me at the

)

in the of

)

This day of, 20.....

)

(Signature of Deponent)

(A Commissioner, etc.)

)

It is an offence under the Securities Act to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

21. Form 5 is revoked and the following substituted:



Ontario Securities Commission

Form 5 Securities Act

Application for Renewal of Registration as Dealer or Adviser

Note: This form is not to be used for the reporting of amendments.

Application is made for renewal of registration under the Securities Act as: _____

in the category of:

1. Name of Applicant:

2. Head Office Business Address:

Telephone No:

Postal Code:

3. Attached as an exhibit is a statement giving the full particulars of all changes in the information given in my last application for registration under the Securities Act particulars of which have not been filed previously as an application for amendment or renewal of registration.

DATED at

(Name of applicant)

This day of, 20.....

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT In the matter of the Securities Act

Province of Ontario)

I, _____
(Name in full)

..... of)

of the

To Wit:)

in the County of

MAKE OATH AND SAY:

- 1. I am the applicant (or a partner or officer of the applicant) herein for renewal of registration and I signed the application for renewal of registration.
2. The statements of fact made in the application for renewal of registration are true.

SWORN before me at the)

in the of)

This day of, 20.....)

(Signature of Deponent)

(A Commissioner, etc.))

It is an offence under the *Securities Act* to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

22. Forms 7, 17, 18 and 19 are revoked.

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

BNS Split Corp. II
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

\$ * \$ * - * Capital Shares * Preferred Shares
Prices: \$ * per Capital Share and \$ * per Preferred Share
(Two Capital Shares will be issued for each Preferred Share)

Underwriter(s) or Distributor(s):

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

Promoter(s):

Scotia Capital Inc.
Project #811064

Issuer Name:

Crystallex International Corporation

Type and Date:

Preliminary Short Form Shelf Prospectus dated July 28, 2005

Received on July 28, 2005

Offering Price and Description:

C\$75,000,000.00 - Senior Unsecured Notes
Common Shares – Warrants - Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #810430

Issuer Name:

Equal Sector Income Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 29, 2005
Mutual Reliance Review System Receipt dated August 2, 2005

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Dundee Securities Corporation
First Associates Investments Inc.
Wellington West Capital Inc.
RBC Dominion Securities Inc.

Promoter(s):

RBC Dominion Securities Inc.
Project #812178

Issuer Name:

Front Street Long/Short Income Fund II
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

Minimum \$* (•Units)
Maximum \$* (•Units)
Price: \$10.00 per Unit
Minimum Purchase: 500 Units

Underwriter(s) or Distributor(s):

National Bank Financial Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Richardson Partners Financial Limited
First Associates Investments Inc.
MGI Securities Inc.
Tuscarora Capital Inc.
Wellington West Capital Inc.

Promoter(s):

Front Street Capital 2004
Project #810554

Issuer Name:

Legacy Pharma Income Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Genuity Capital Markets
First Associates Investments Inc.

Promoter(s):

Legacy Pharma Inc.
401 Capital Partners Inc.

Project #810351

Issuer Name:

OFI Income Fund
Principal Regulator - Ontario

Type and Date:

Amended and Restated Preliminary Prospectus dated August 2, 2005
Mutual Reliance Review System Receipt dated August 2, 2005

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
First Associates Investments Inc.
Wellington West Capital Markets Inc.

Promoter(s):

OFI Holdings Ltd.

Project #806211

Issuer Name:

Phoenix Capital Income Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

Minimum Offering: 2,000,000 Units (\$20,000,000.00)
Maximum Offering: 5,000,000 Units (\$50,000,000.00)
Price: \$10.00 per Unit

Underwriter(s) or Distributor(s):

First Associates Investments Inc.
Acumen Capital Finance Partners Limited
Dundee Securities Corporation
Research Capital Corporation

Promoter(s):

Phoenix Capital Inc.
Project #809957

Issuer Name:

Sentry Select FIDAC U.S. Mortgage Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

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

Promoter(s):

Sentry Select Capital Corp.
Project #811020

Issuer Name:

Strategic Energy Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

Maximum: \$ (Units)
EXCHANGE OPTION AND CASH OPTION
PRICE: \$ * per Unit

Minimum Cash Purchase: 200 Units

Underwriter(s) or Distributor(s):

First Associates Investments Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Berkshire Securities Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
Wellington West Capital Inc.
GMP Securities Ltd.
Industrial Alliance Securities Inc.
IPC Securities Corporation
Jory Capital Inc.
Research Capital Corporation
Rothenberg Capital Management Inc.
Octagon Capital Corporation

Promoter(s):

-

Project #810734

Issuer Name:

Value Partners Canadian Equity Pool
Value Partners Canadian Income Pool
Value Partners Foreign Equity Pool
Principal Regulator - Manitoba

Type and Date:

Preliminary Simplified Prospectus dated July 25, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

Series A Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

Value Partners Investments Inc.

Project #808529

Issuer Name:

Variable Rate MBS Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Raymond James Ltd.
First Associates Investments Inc.
Wellington West Capital Inc.
Richardson Partners Financial Limited
Berkshire Securities Inc.

Promoter(s):

MACCs Administrator Inc.

Project #810498

Issuer Name:

AGF U.S. Risk Managed Class
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectus dated July 26, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

Mutual Fund Series, Series D, Series F and Series O
Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #769824

Issuer Name:

AIC Private Portfolio Counsel RSP Global Pool
Principal Regulator - Ontario

Type and Date:

Amendment #2 dated July 22, 2005 to Final Simplified
Prospectus and Annual Information Form dated February
16, 2005

Mutual Reliance Review System Receipt dated July 28,
2005

Offering Price and Description:

Pool Units and Class F Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

AIC Limited

Project #722234

Issuer Name:

BMO World Bond Fund (formerly BMO International Bond
Fund)

Principal Regulator - Ontario

Type and Date:

Amendment #2 dated July 22, 2005 to Final Simplified
Prospectus and Annual Information Form dated April 21,
2005

Mutual Reliance Review System Receipt dated August 2,
2005

Offering Price and Description:

Mutual Fund Units Net Asset Value

Underwriter(s) or Distributor(s):

BMO Investments Inc.

BMO Investments Inc.

BMO Investments Inc.

Promoter(s):

BMO Investments Inc.

Project #732315

Issuer Name:

Brascan Adjustable Rate Trust I

Principal Regulator - Ontario

Type and Date:

Final Prospectus dated July 28, 2005

Mutual Reliance Review System Receipt dated July 28,
2005

Offering Price and Description:

Maximum: 6,000,000 Trust Units @ \$25 per Unit =
\$150,000,000.00

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.

CIBC World Markets Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

Scotia Capital Inc.

TD Securities Inc.

HSBC Securities (Canada) Inc.

Desjardins Securities Inc.

Raymond James Ltd.

Canaccord Capital Corporation

Dundee Securities Corporation

First Associates Investments Inc.

Trilon Securities Corporation

Wellington West Capital Inc.

Promoter(s):

Brascan Adjustable Rate Management Ltd.

Project #801890

Issuer Name:

Canadian Apartment Properties Real Estate Investment
Trust

Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated July 28, 2005

Mutual Reliance Review System Receipt dated July 28,
2005

Offering Price and Description:

\$60,065,000.00 - 4,100,000 Units

Price: \$14.65 per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

CIBC World Markets Inc.

National Bank Financial Inc.

BMO Nesbitt Burns Inc.

Canaccord Capital Corporation

Desjardins Securities Inc.

Raymond James Ltd.

Promoter(s):

-

Project #807369

Issuer Name:

Canadian Financial Income Fund
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

Maximum 25,000,000 Trust Units @ \$10 per Unit =
\$250,000,000.00

Underwriter(s) or Distributor(s):

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

Promoter(s):

Claymore Investments Inc.

Project #802835

Issuer Name:

Creststreet Power & Income Fund LP
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 27, 2005

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

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

Promoter(s):

Creststreet Asset Management Limited

Project #797620

Issuer Name:

Cumberland Capital Appreciation Fund
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

Mutual fund trust units at net asset value

Underwriter(s) or Distributor(s):

Cumberland Asset Management Corp.

Promoter(s):

Cumberland Private Wealth Management Inc.

Project #798371

Issuer Name:

Elite Technical Inc.
Principal Regulator - Alberta

Type and Date:

Final Long Form Prospectus dated July 29, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

Minimum Offering: 23,076,923 Units at \$0.13 per Unit
(\$3,000,000.00)

Maximum Offering: 26,923,077 Units at \$0.13 per Unit
(\$3,500,000.00)

Agent's Option

Underwriter(s) or Distributor(s):

Wolverton Securities Ltd.

Promoter(s):

Peter K. Fenton

Project #781938

Issuer Name:

Enerplus Resources Fund
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

\$351,500,000.00 - 7,600,000 SUBSCRIPTION RECEIPTS
PRICE: \$46.25 per Subscription Receipt

Underwriter(s) or Distributor(s):

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

Promoter(s):

-

Project #807632

Issuer Name:

Great-West Lifeco Inc.
Principal Regulator - Manitoba

Type and Date:

Final Short Form Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

\$300,000,000.00 - (12,000,000 shares)
4.85% Non-Cumulative First Preferred Shares, Series H
Price: \$25.00 per share to yield 4.85%

Underwriter(s) or Distributor(s):

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

Promoter(s):

-

Project #808341

Issuer Name:

Liponex Inc.
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

MINIMUM OF \$11,500,000.00 MAXIMUM OF \$12,500,000.00
MINIMUM OF 11,500,000 COMMON SHARES, MAXIMUM OF 12,500,000 COMMON SHARES
PRICE: \$1.00 PER COMMON SHARE

Underwriter(s) or Distributor(s):

Jennings Capital Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
Dundee Securities Corporation
Wellington West Capital Inc.

Promoter(s):

-

Project #785938

Issuer Name:

Naples Capital Corp.
Principal Regulator - Alberta

Type and Date:

Final CPC Prospectus dated July 22, 2005
Mutual Reliance Review System Receipt dated July 27, 2005

Offering Price and Description:

OFFERING: \$300,000.00 (1,500,000 COMMON SHARES)
Price: \$0.20 per Common Share

Underwriter(s) or Distributor(s):

First Associates Investments Inc.

Promoter(s):

Michael G. Thomson

Project #800711

Issuer Name:

Newport Partners Income Fund
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 29, 2005

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Newport Securities Inc.
Canaccord Capital Corporation
First Associates Investments Inc.
HSBC Securities (Canada) Inc.
Orion Securities Inc.
Research Capital Corporation
Desjardins Securities Inc.
Raymond James Ltd.

Promoter(s):

Newport Partners Inc.

Project #802656

Issuer Name:

Primaris Retail Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated July 27, 2005
Mutual Reliance Review System Receipt dated July 27, 2005

Offering Price and Description:

\$85,387,500 - 5,750,000 Units - Price: \$14.85 per Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
Raymond James Ltd.

Promoter(s):

-

Project #807445

Issuer Name:

Sentry Select Balanced Fund
Sentry Select Canadian Energy Growth Fund
Sentry Select Canadian Income Fund
Sentry Select Diversified Total Return Fund
Sentry Select Focused 50 Income Fund
Sentry Select Focused Wealth Management Fund
Sentry Select Money Market Fund
Sentry Select Precious Metals Growth Fund
Sentry Select REIT Fund
Sentry Select Small Cap Income Fund
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated July 27, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

Mutual fund trust units at net asset value

Underwriter(s) or Distributor(s):

Sentry Select Capital Corp.
NCE Financial Corporation

Promoter(s):

-

Project #799528

Issuer Name:

StarPoint Energy Trust
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated July 28, 2005
Mutual Reliance Review System Receipt dated July 28, 2005

Offering Price and Description:

\$223,800,000.00 - 12,000,000 Subscription Receipts,
each representing the right to receive one Trust Unit
Price: \$18.65 per Subscription Receipt

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
CIBC World Markets Inc.
TD Securities Inc.
Orion Securities Inc.
National Bank Financial Inc.
GMP Securities Ltd.
RBC Dominion Securities Inc.
Tristone Capital Inc.
Canaccord Capital Corporation
First Associates Investments Inc.
Haywood Securities Inc.

Promoter(s):

-

Project #807612

Issuer Name:

Sunrise Senior Living Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated July 26, 2005
Mutual Reliance Review System Receipt dated July 27,
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:

Tiberon Minerals Ltd.
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated July 29, 2005
Mutual Reliance Review System Receipt dated July 29,
2005

Offering Price and Description:

\$80,001,600.00 - 33,334,000 Common Shares
Price: \$2.40 per Common Share

Underwriter(s) or Distributor(s):

Paradigm Capital Inc.

Promoter(s):

-

Project #807795

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Name	From: Assante Asset Management Limited To: United Financial Corporation/Gestion d'Actifs Assante Ltee	Extra-Provincial Investment Counsel and Portfolio Manager	July 21, 2005
Change of Name	From: Refco Futures (Canada) Ltd. To: Refco Canada Co.	Investment Dealer & Futures Commission Merchant	June 29, 2005
Change of Name	From: Capital Access Corporation To: C.A. Bancorp Inc.	Limited Market Dealer	July 26, 2005
Change in Category	Questrade, Inc.	From: Investment Dealer To: Investment Dealer & Futures Commission Merchant	July 26, 2005
Change in Category	Felcom Management Corp.	From: Investment Counsel & Portfolio Manager To: Investment Counsel & Portfolio Manager & Commodity Trading Counsel & Commodity Trading Manager	July 29, 2005
New Registration	Sentry Select Capital Corp.	Commodity Trading Manager	July 29, 2005
New Registration	Morrison Williams Capital Advisors Inc.	Limited Market Dealer and Investment Counsel and Portfolio Manager	July 28, 2005
New Registration	Morrison Williams Investment Management LP	Limited Market Dealer and Investment Counsel and Portfolio Manager	July 27, 2005

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Disciplinary Notice - Ian Macdonald, Edward Boyd, Peter Dennis and David Singh

July 28, 2005

Persons Disciplined

On July 28, 2005, a Hearing Panel of the Hearing Committee of Market Regulation Services Inc. ("RS") approved a settlement agreement (the "Settlement Agreement") concerning Ian Macdonald, Edward Boyd, Peter Dennis and David Singh (hereinafter referred to collectively as the "Respondents"). The RS Notices of Hearing and Statements of Allegations pertaining to the Respondents and the Notice of Hearing and Statement of Allegations pertaining to RBC Dominion Securities Inc. ("RBC DS") dated May 30, 2005 and the Replies of the Respondents and RBC DS dated June 20, 2005, were withdrawn.

Requirements Contravened

Under the terms of the Settlement Agreement, the Respondents admit that the following requirements were contravened:

On August 11, 2004, the Respondents effected trades in shares of Royal Bank of Canada and Bank of Montreal in the Market On Close Facility of the Toronto Stock Exchange which involved no change of beneficial or economic ownership, which constitutes a manipulative and deceptive method of trading, contrary to UMIR Rules 2.2(1) and 2.2(2)(b), for which they are liable pursuant to UMIR 10.4(1)(a).

Sanctions Approved

The following sanctions were approved:

Macdonald

- (a) A fine of \$90,000.00 payable by Macdonald to RS; and,
- (b) Costs of \$35,000.00 payable to RS.

Boyd

- (a) A fine of \$60,000.00 payable by Boyd to RS; and,
- (b) Costs of \$20,000.00 payable to RS.

Singh

- (a) A fine of \$60,000.00 payable by Singh to RS; and,
- (b) Costs of \$20,000.00 payable to RS.

Dennis

- (a) A fine of \$20,000.00 payable by Dennis to RS; and,
- (b) Costs of \$7,000.00 payable to RS.

Summary of Facts

On August 11, 2004, RBC DS and a Canadian chartered bank ("Bank A") agreed to execute trades in the shares of Royal Bank of Canada ("RY") and Bank of Montreal ("BMO") to establish hedges to over the counter SWAP trades. Both RBC DS and Dealer Y, who acted as agent for Bank A, were to enter the market orders into the MOC Facility on the TSX so that the RY and BMO shares in the transaction received their respective closing price levels on opposite sides of the market.

Boyd entered the RBC DS market MOC orders for RY and BMO at 12:20:53 and 12:21:13, respectively. The orders were entered for RBC DS inventory accounts.

Dealer Y failed to enter the Bank A's side of the BMO trade into the MOC Facility prior to 15:40 because it attached an improper marker when attempting to input the BMO order. Dealer Y entered the Bank A's side of the RY market MOC order but then cancelled the RY order prior to 15:40 because Dealer Y incorrectly thought that RBC DS had not entered its side of the trade into the MOC Facility, because Dealer Y was unaware that the MOC Facility was blind.

At 15:40 on August 11, 2004, large MOC Facility imbalances were broadcast on RY and BMO as a result of the entry of the RBC DS orders in the MOC Facility and Dealer Y's failure to enter the agreed upon market orders for RY and BMO shares into the MOC Facility. After the MOC imbalances were broadcast, Dealer Y responded by entering limit orders into the MOC Facility for RY and BMO shares.

After discussions amongst the Respondents concerning how they could limit RBC DS's potential liability caused by Dealer Y's errors, Singh instructed Bank A to have Dealer Y cancel the limit orders for the RY and BMO shares which Bank A told the Respondents had been entered into the MOC Facility by Dealer Y for Bank A. Boyd and Dennis then entered offsetting limit MOC orders for RBC DS

inventory accounts in the shares of RY and BMO into the MOC Facility. The Respondents knew the MOC Facility allocation mechanism increased the probability that MOC imbalance orders would trade against MOC limit orders in time priority, causing wash trades, since unintentional crosses always trade first.

Just after 16:00, a substantial part of RBC DS's limit MOC orders were traded against RBC DS's market MOC orders entered earlier that day. When executed, these offsetting orders caused the RY and BMO shares to be wash traded through unintentional crosses. The Respondents knew when the limit MOC orders in RY and BMO shares were entered into the MOC Facility that any ensuing unintentional crosses would increase the likelihood of trades involving no change of beneficial ownership.

None of the Respondents contacted RS for direction after learning of the MOC imbalances and why they had occurred. The Respondents knew that it was not possible for the MOC market orders to be cancelled, which is why they considered, but then did not call the TSX, about cancellation. Dennis and Macdonald discussed putting in offsetting orders for Bank A through Bank A's RBC DS account. Consideration was again given to calling the TSX prior to entering the offsetting orders. Macdonald and Dennis decided not to call. The Respondents entered the offsetting orders to limit the potential liability created by the MOC Imbalance.

The Respondents agree that they should not have acted without consulting RS to mitigate potential liability. The Respondents agree that they should have contacted RS for direction as soon as they learned the reason behind the MOC Imbalance. This would have allowed for the opportunity for RS to consider what course of action was in the best interests of a fair and orderly market.

It should also be noted that the impugned trades constitute an isolated incident resulting initially from an error of another Dealer. The Respondents did not engage in a pattern of manipulative or deceptive conduct. They admitted their error to RS upon being contacted immediately following the subject trades. None of the Respondents has ever before been the subject of discipline proceedings by any securities regulator. None of the Respondents benefited personally from this trading. The Respondents were acting in a very compressed timeframe to address a serious problem created by another dealer's error.

By effecting these trades contrary to UMIR Rules 2.2(1) and 2.2(2)(b), the Respondents engaged in conduct for which they are liable pursuant to UMIR 10.4(1)(a). They failed to consider that they were putting the interests of RBC DS ahead of the best interests of a fair and orderly market.

RBC DS has agreed to make restitution of the estimated net losses of \$231,479.36 to the market participants who traded on the basis of the MOC Imbalance broadcast.

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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