

The Ontario Securities Commission

# OSC Bulletin

September 23, 2005

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

**The Ontario Securities Commission**

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## Chapter 1

# Notices / News Releases

1.1	Notices		<u>SCHEDULED OSC HEARINGS</u>																																																
1.1.1	<p><b>Current Proceedings Before The Ontario Securities Commission</b></p> <p style="text-align: center;"><b>SEPTEMBER 23, 2005</b></p> <p style="text-align: center;"><b>CURRENT PROCEEDINGS</b></p> <p style="text-align: center;"><b>BEFORE</b></p> <p style="text-align: center;"><b>ONTARIO SECURITIES COMMISSION</b></p> <p style="text-align: center;">-----</p> <p>Unless otherwise indicated in the date column, all hearings will take place at the following location:</p> <p style="margin-left: 40px;">The Harry S. Bray Hearing Room Ontario Securities Commission Cadillac Fairview Tower Suite 1700, Box 55 20 Queen Street West Toronto, Ontario M5H 3S8</p> <p>Telephone: 416-597-0681 Telecopier: 416-593-8348</p> <p><b>CDS</b> <span style="float: right;"><b>TDX 76</b></span></p> <p>Late Mail depository on the 19<sup>th</sup> Floor until 6:00 p.m.</p> <p style="text-align: center;">-----</p> <p style="text-align: center;"><u>THE COMMISSIONERS</u></p> <table border="0" style="width: 100%; margin-left: 40px;"> <tr><td>Paul M. Moore, Q.C., Vice-Chair</td><td style="text-align: center;">—</td><td>PMM</td><td></td></tr> <tr><td>Susan Wolburgh Jenah, Vice-Chair</td><td style="text-align: center;">—</td><td>SWJ</td><td>TBA</td></tr> <tr><td>Paul K. Bates</td><td style="text-align: center;">—</td><td>PKB</td><td></td></tr> <tr><td>Robert W. Davis, FCA</td><td style="text-align: center;">—</td><td>RWD</td><td></td></tr> <tr><td>Harold P. Hands</td><td style="text-align: center;">—</td><td>HPH</td><td></td></tr> <tr><td>David L. Knight, FCA</td><td style="text-align: center;">—</td><td>DLK</td><td></td></tr> <tr><td>Mary Theresa McLeod</td><td style="text-align: center;">—</td><td>MTM</td><td></td></tr> <tr><td>H. Lorne Morphy, Q.C.</td><td style="text-align: center;">—</td><td>HLM</td><td>TBA</td></tr> <tr><td>Carol S. Perry</td><td style="text-align: center;">—</td><td>CSP</td><td></td></tr> <tr><td>Robert L. Shirriff, Q.C.</td><td style="text-align: center;">—</td><td>RLS</td><td></td></tr> <tr><td>Suresh Thakrar, FIBC</td><td style="text-align: center;">—</td><td>ST</td><td></td></tr> <tr><td>Wendell S. Wigle, Q.C.</td><td style="text-align: center;">—</td><td>WSW</td><td></td></tr> </table>	Paul M. Moore, Q.C., Vice-Chair	—	PMM		Susan Wolburgh Jenah, Vice-Chair	—	SWJ	TBA	Paul K. Bates	—	PKB		Robert W. Davis, FCA	—	RWD		Harold P. Hands	—	HPH		David L. Knight, FCA	—	DLK		Mary Theresa McLeod	—	MTM		H. Lorne Morphy, Q.C.	—	HLM	TBA	Carol S. Perry	—	CSP		Robert L. Shirriff, Q.C.	—	RLS		Suresh Thakrar, FIBC	—	ST		Wendell S. Wigle, Q.C.	—	WSW		TBA	<p><b>Yama Abdullah Yaqeen</b></p> <p>s. 8(2)</p> <p>J. Superina in attendance for Staff</p> <p>Panel: TBA</p> <p><b>Cornwall <i>et al</i></b></p> <p>s. 127</p> <p>K. Manarin in attendance for Staff</p> <p>Panel: TBA</p> <p><b>Philip Services Corp. <i>et al</i></b></p> <p>s. 127</p> <p>K. Manarin in attendance for Staff</p> <p>Panel: TBA</p> <p><b>Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig</b></p> <p>s. 127</p> <p>J. Waechter in attendance for Staff</p> <p>Panel: TBA</p> <p><b>Jose L. Castaneda</b></p> <p>s.127</p> <p>T. Hodgson in attendance for Staff</p> <p>Panel: TBA</p> <p><b>John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir</b></p> <p>S. 127 &amp; 127.1</p> <p>K. Manarin in attendance for Staff</p> <p>Panel: TBA</p>
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Notices / News Releases

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September 29, 2005  
10:00 a.m.  
**Francis Jason Biller**  
s.127  
P. Foy in attendance for Staff  
Panel: RLS/RWD/CSP

September 30, 2005  
2:00 p.m.  
**TD-Waterhouse Canada Inc.**  
s.127 and 127.1  
M. Britton in attendance for Staff  
Panel: PMM/CSP/ST

October 4, 2005  
2:30 p.m.  
**Momentas Corporation, Howard Rash, Alexander Funt, Suzanne Morrison and Malcolm Rogers**  
s. 127 and 127.1  
P. Foy in attendance for Staff  
Panel: RWD/CSP

October 6, 2005  
10:00 a.m.  
**Olympus United Group Inc.**  
s.127  
M. MacKewn in attendance for Staff  
Panel: TBA

October 6, 2005  
10:00 a.m.  
**Norshield Asset Management (Canada) Ltd.**  
s.127  
M. MacKewn in attendance for Staff  
Panel: TBA

October 6, 2005  
10:00 a.m.  
**George Theodore**  
s. 127  
P. Foy in attendance for Staff  
Panel: PMM/DLK/ST

October 11, 2005  
9:00 a.m.  
**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boulton and Peter Y. Atkinson**  
s.127  
J. Superina in attendance for Staff  
Panel: SWJ/RWD/MTM

October 12, 2005  
10:00 a.m.  
**Christopher Freeman**  
s. 127 and 127.1  
P. Foy in attendance for Staff  
Panel: RWD/DLK/CSP

October 27, 2005  
2:00 p.m.  
**James Patrick Boyle, Lawrence Melnick and John Michael Malone**  
s. 127 and 127.1  
Y. Chisholm in attendance for Staff  
Panel: PMM

November 2005  
s.127  
**Andrew Currah, Colin Halanen, Joseph Damm, Nicholas Weir, Penny Currah, Warren Hawkins**  
J. Waechter in attendance for Staff  
Panel: TBA

November 23 & 24, 2005  
10:00 a.m.  
**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**  
s. 127  
J. Cotte in attendance for Staff  
Panel: DLK/CSP

December 16, 2005  
10:00 a.m.  
**Portus Alternative Asset Management Inc., and Portus Asset Management, Inc.**  
s. 127  
M. MacKewn in attendance for Staff  
Panel: TBA

**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 Revised OSC Staff Notice 11-742 - Securities Advisory Committee**

**REVISED ONTARIO SECURITIES COMMISSION  
STAFF NOTICE 11-742  
SECURITIES ADVISORY COMMITTEE**

In a Notice published in the OSC Bulletin on July 15, 2005, the Commission invited applications for positions on the Securities Advisory Committee ("SAC"). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives and important capital markets trends and brings various issues to the attention of the Commission and staff.

The current members of SAC have staggered terms. One half of the current members will be completing their terms in October 2005. The Commission would like to take this opportunity to thank the members of SAC, listed below, who have served on the Committee with great dedication over the last three years. Their advice and guidance on a range of issues has been very valuable to the Commission.

- Robert Chapman – McCarthy Tétrault LLP;
- Helen Daley – Wardle Daley LLP;
- Carol Hansell – Davies Ward Phillips & Vineberg LLP;
- Rosalind Morrow – Borden Ladner Gervais LLP;
- Sheila Murray – Blake, Cassels & Graydon LLP;
- Jeffrey Roy – Cassels Brock & Blackwell LLP; and
- Cathy Singer – Ogilvy Renault LLP.

The remaining members of SAC will continue until December 2007.

- Michael Bennett – Blaney McMurtry LLP;
- Andrew Foley – Paul, Weiss, Rifkind, Wharton & Garrison LLP;
- Leslie Ann Johnson – Fraser Milner Casgrain LLP;
- Douglas Marshall – Osler, Hoskin & Harcourt LLP;
- Jeffrey Singer – Stikeman Elliott LLP;
- Richard Steinberg – Fasken Martineau DuMoulin LLP; and
- Robert Vaux – Goodmans LLP.

The Commission was very impressed with the number of highly qualified practitioners who applied for positions on SAC. Unfortunately, there were far more applicants than there were positions available and selection from among the group was very difficult. The Commission would like to thank everyone who applied for their interest in serving on SAC.

The Commission is pleased to publish the names of those individuals who will be participating on SAC for the next three years.

The new members who will be joining in November 2005 are:

- Mark Convery – Ogilvy Renault LLP
- Robert Karp – Torys LLP
- Lonnie Kirsh – Kutkevicius Kirsh, LLP
- Margaret Nelligan – Aird & Berlis LLP
- David Valentine – Blake, Cassels & Graydon LLP
- Gina Yee – Scotia Capital Inc.

The Commission will publish a notice in mid-2007 inviting applications for the next group of new SAC members, who will commence their terms in January 2008.

Reference: Rossana Di Lieto  
Acting General Counsel  
Tel: (416) 593-8106  
Fax: (416) 593-3681  
rdlieto@osc.gov.on.ca

September 23, 2005

**1.1.3 OSC Staff Notice 33-723 - Fair Allocation of Investment Opportunities - Compliance Team Desk Review**

**OSC STAFF NOTICE – 33-723  
FAIR ALLOCATION OF  
INVESTMENT OPPORTUNITIES  
COMPLIANCE TEAM DESK REVIEW**

**What we did and why**

Staff of the Compliance team of the Ontario Securities Commission (OSC) recently completed a desk review of the fairness policies and related business practices of approximately 40 investment counsel/portfolio managers (ICPMs).

Regulation 115 of the *Securities Act* (Ontario) requires ICPMs to treat clients fairly in allocating investment opportunities and to file a copy of their current fairness policy with the OSC.

The OSC has received comments from the public regarding the use of “generic” fairness policies by ICPMs. The generic policies do not clearly set out how ICPMs allocate investment opportunities for the types of activities carried on. The Compliance annual reports for fiscal 2002/2003 and 2003/2004 indicate that a significant number of ICPMs examined during the periods had deficiencies in their fairness policies.

**How we did it**

The Compliance team of the OSC conducted a desk review of the fairness policies and related business processes of approximately 40 ICPMs. A desk review is a review completed at OSC offices by OSC staff of information provided by a group of selected market participants. No on site field review is performed and our follow up on the information provided is limited to written and verbal requests for additional information or clarification of information already provided.

Each ICPM was asked to complete a questionnaire and provide a copy of its most recent fairness policy. No review of actual trades was completed. The questionnaire included questions regarding preparation, filing and amendments to the fairness policy and questions regarding specific policies to ensure fair allocation of investment opportunities, such as:

- whether the ICPM uses block trades and, if so, how fills are allocated and the method used to allocate fills
- whether the ICPM includes proprietary, employee and/or personal accounts with block trades for clients
- whether the ICPM participates in initial public offerings (IPOs) and, if so, how fills are allocated and the method used to allocate fills

**What we found**

The following disclosure or filing deficiencies were noted:

- 74% of the fairness policies were missing one or more of the disclosures set out below under “What should be in an ICPM’s fairness policy?”
- 26% of the fairness policies currently in use had not been filed with the OSC. Since the filing of a fairness policy is required prior to registration being granted, all registrants surveyed should have filed at least one previous fairness policy with the OSC.
- 26% of the fairness policies currently in use had not been provided to clients.
- 15% of the fairness policies were “generic” policies. Some of the fairness policies filed appeared to be identical (other than the name of the registrant). As a result, it wasn’t clear to staff whether the “generic” policies reflected the actual practice of the ICPM in allocating investment opportunities for the types of activities carried on in its business.

All of the ICPMs with disclosure or filing deficiencies have rectified their deficiencies. Staff ensured that any “generic” policies filed accurately reflected the actual practice of the ICPM.

As well, 9% of the ICPMs included proprietary, employee and/or personal accounts in block trades and allocated a pro-rata share of partially filled blocked trades or IPOs to proprietary, employee and/or personal accounts. All of these ICPMs have now amended, or will be amending, their fairness policies and their practices so that proprietary, employee and/or personal accounts are not allocated a pro-rata share of partially filled blocked trades or IPOs before clients trades are completely filled.

Finally, where an ICPM has contracted advisory services to a subadvisor, the ICPM should monitor the subadvisers’ compliance with the ICPM’s fairness policy. No issues were noted regarding subadvisers’ compliance with ICPMs’ fairness policies.

**What should be in an ICPM’s fairness policy?**

The following disclosures should be included in an ICPM’s fairness policy, where applicable to its investment processes.

- method used to allocate price and commission among clients when trades are bunched or blocked.
- method used to allocate block trades and IPOs among client accounts.



- method used to allocate block trades and IPOs among clients that are partially filled (e.g. pro-rata).

**What we'll do in the future and what we expect in the future**

Staff will continue to monitor compliance by ICPMs with Regulation 115 as part of our regular compliance field reviews.

Staff expects ICPMs to enhance their compliance with Regulation 115 and that fewer deficiencies will be found in future compliance field reviews in this area. Staff will take seriously any deficiencies found in future compliance field reviews.

Staff also expects that improved documentation of policies and procedures will result in increased fairness in the allocation of investment opportunities to clients by ICPMs.

For more information, please contact:

Marrianne Bridge, Manager, Compliance  
(416) 595-8907  
mbridge@osc.gov.on.ca

Scott Laskey, Accountant, Compliance  
(416) 204-8981  
slaskey@osc.gov.on.ca

September 23, 2005

**1.2 Notices of Hearing**

**1.2.1 TD Waterhouse Canada Inc.**

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

**AND**

**IN THE MATTER OF  
TD-WATERHOUSE CANADA INC.**

**NOTICE OF HEARING  
(Section 127 and Section 127.1)**

**TAKE NOTICE** that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, (the *Act*) R.S.O. 1990, c. S. 5, as amended at the offices of the Commission, 20 Queen Street West, 17<sup>th</sup> Floor Hearing Room commencing on September 30, 2005 at 2:00 p.m. or as soon thereafter as the hearing can be held.

**AND TAKE NOTICE** that the purpose of the Hearing is for the Commission to consider whether, pursuant to sections 127(1) and 127.1 of the *Act*, it is in the public interest for the Commission:

- (a) to consider a settlement agreement entered into by Staff of the Commission and the Respondent
- (b) to make an order pursuant to subsection 127(1) clause 6 that the Respondent be reprimanded;
- (c) to make an order pursuant to section 127.1 of the *Act* that the Respondent pay the costs of Staff's investigation and costs related to this proceeding; and
- (d) to make such other order as the Commission may deem appropriate.

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

**AND TAKE FURTHER NOTICE** that if any party to the proceedings fails to attend, the hearing may proceed in the absence of the party and the party is not entitled to any further notice of the proceeding.

**DATED** at Toronto this 19th day of September, 2005

"Daisy Aranha"  
per/John Stevenson  
A/Secretary to the Commission

TO: Fasken Martineau DuMoulin LLP  
Barristers and Solicitors  
66 Wellington Street West  
Suite 4200, Toronto Dominion Bank Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1N6

Attention: David A. Hausman

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

**AND**

**IN THE MATTER OF  
TD-WATERHOUSE CANADA INC.**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES  
COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

**I. THE RESPONDENT**

1. TD-Waterhouse Canada Inc. (TDW) is a registrant and is registered in the category of Investment Dealer under the *Securities Act*, R.S.O. 1990, c. S5, as amended (the *Act*).

**II. BACKGROUND**

2. Richard Ochnik (Ochnik) is an individual who resides in Ontario. Ochnik is not affiliated in any way with TDW.
3. 1464210 Ontario Ltd. (1464210) is a company incorporated pursuant to the laws of Ontario.

**TDW facilitates transactions in 1464210**

4. Between May 7, 2002 and November 18, 2002, Ochnik engaged in a RRSP/loan scheme. Ochnik incorporated 1464210 to develop a property as a retirement complex in Listowel, Ontario. Ochnik arranged for various individuals facing financial difficulty to invest in 1464210. These individuals were advised that if they collapsed their locked-in RRSPs or pensions and purchased shares in 1464210, they would receive a non-repayable loan for between 40 and 60% of their locked-in funds. If the individuals were interested, they were referred to a particular registered representative at TDW.
5. In February 2002, Ochnik met with the registered representative at TDW. He told her that he had various individuals who intended to invest in 1464210. He told her that he wanted TDW to establish accounts for them and arrange for the transfer of the shares in 1464210 to the individuals. The registered representative referred the proposed transaction to her Branch Manager, TDW Head Office and TDW Compliance. After reviewing the proposal, Head Office approved the transaction and the registered representative kept Head Office advised of the transaction as it proceeded. At TDW's request Ochnik also provided a copy of an appraisal of the retirement home property, valuations of the shares to be

- acquired, legal opinions, a sample subscription agreement and other due diligence documents to TDW Head Office and Compliance all of which documents were reviewed by TDW.
6. Neither TDW nor the registered representative were aware that there were to be loans associated with the investments in 1464210 shares or that the investment was designed as a method to enable investors to withdraw assets from their locked-in RRSPs. TDW Compliance, however, was aware that the OSC had issued a RRSP/loan scheme alert. At TDW's request, the registered representative specifically asked Ochnik whether there were loans associated with the investment and was advised that no loans were involved. No one at TDW, however, had direct conversations with the investors so the issue of loans associated with the investments was never discussed with them. Had TDW been aware of the loans, it would not have proceeded with the transaction.
  7. After their meeting, Ochnik provided the registered representative with the documentation necessary to transfer the shares from 1464210 to the various individuals.
  8. The registered representative and Ochnik agreed that 1464210 would pay 7% of the funds paid into the client's account to TDW as its commission for facilitating the transactions.
  9. The registered representative sent various documents to the clients including a New Client Application Form (NCAF).
  10. When the clients returned the NCAFs to the registered representative, she reviewed each one and signed them. Based on the information contained on these forms, the financial circumstances of the investors were such that their purchases of 1464210 shares were unsuitable based on the long-term, high-risk nature of the investment.
  11. The registered representative opened RRSP accounts with TDW on behalf of the clients.
  12. The registered representative arranged to have the clients collapse their locked in funds at other institutions and transfer the proceeds to accounts at TDW.
  13. When the funds arrived, the registered representative notified Ochnik. Ochnik then picked up the funds and provided the registered representative one share for every dollar invested. The shares were deposited into the client's account. Upon receipt of the funds, Ochnik provided TDW with a cheque from 1464210 for 7% of the amount of the funds received as TDW's commission.

14. Between June 7, 2002 and December 31, 2002, 43 clients of TDW deposited at least \$1,508,000 into their accounts with TDW. These funds were then transferred to 1464210 who provided 1,508,000 shares to TDW for deposit into the investors' accounts.
15. TDW received \$105,560 from 1464210 as its commission.
16. TDW did not disclose to its clients the 7% commission paid to TDW.

#### **Allegations**

17. The specific allegations advanced by Staff against TDW are:
  - (a) that TDW failed to comply with its suitability obligation to its clients contrary to section 1.5 of Rule 31-505; and
  - (b) that TDW failed to comply with its obligation to deal with its clients fairly by failing to disclose to the clients the 7% commissions that were paid to TDW contrary to section 2.1(2) of Rule 31-505.

and thereby acted contrary to the public interest.

**DATED** at Toronto this 19th day of September, 2005

1.2.2 Affinity Financial Group Inc. et al.

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

**AND**

**IN THE MATTER OF  
AFFINITY FINANCIAL GROUP INC.,  
INTERNATIONAL STRUCTURED PRODUCTS INC.,  
AFFINITY RESTRICTED SECURITIES INC.,  
DIONYSUS INVESTMENTS LTD.,  
BRIAN KEITH MCWILLIAMS, DAVID JOHN LEWIS  
and LOUIS SAPI**

**NOTICE OF HEARING  
(Section 127)**

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act* (the "Act") at the offices of the Commission located on the 17<sup>th</sup> floor, 20 Queen Street West, Toronto on Wednesday, September 21, 2005 at 2:00 pm or as soon thereafter as the hearing can be held;

**TO CONSIDER** whether, pursuant to section 127 and 127.1 of the Act, it is in the public interest for the Commission to make an order that:

- (a) the settlement agreements in this matter dated September 19, 2005 be approved;
- (b) the registration of International Structured Products Inc. ("ISP"), Brian Keith McWilliams ("McWilliams") and David John Lewis ("Lewis") be terminated;
- (c) trading in any securities by Affinity Financial Group Inc, ("Affinity"), ISP, Affinity Restricted Securities Inc. ("ARS") and Dionysus Investments Ltd. ("Dionysus"), cease permanently;
- (d) the exemptions contained in Ontario securities law do not apply to Affinity, ISP, ARS and Dionysus permanently;
- (e) McWilliams, Lewis and Louis Sapi ("Sapi") be required to resign any positions that they hold as a director or officer of a registrant;
- (f) McWilliams, Lewis and Sapi be permanently prohibited from acting as a director or officer of a registrant; and
- (g) McWilliams, Lewis and Sapi be required to pay the costs of the investigation of this matter.

**BY REASON OF** the allegations set out in the Statement of Allegations dated September 19, 2005 and such additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 19<sup>th</sup> day of September, 2005

"Daisy Aranha"  
per: John Stevenson  
A/Secretary to the Commission

**TO:                   Gowling Lafleur Henderson LLP**  
Suite 4900  
Commerce Court West  
Toronto, Ontario  
M5L 1J3

Scott Kugler  
Tel. (416) 369-7107  
Fax (416) 862-7661

**Solicitors to Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc and Dionysus Investments Ltd.**

**AND TO:           Klein Zigler LLP**  
Suite 2929  
390 Bay Street  
Toronto, Ontario  
M5H 2Y2

James Klein  
Tel. (416) 366-9494  
Fax (416) 366-9442

**Solicitors to Brian McWilliams**

**AND TO:           Levine Sherkin Boussidan LLP**  
Suite 200  
4211 Yonge Street  
Toronto, Ontario  
M2P 2A9

Messod Boussidan  
Tel (416) 224-2400  
Fax (416) 224-2408

**Solicitors to David Lewis**

**AND TO:** Paliare Roland Rosenberg Rothstein  
LLP  
Suite 501  
250 University Avenue  
Toronto, Ontario  
M5H 3E5

Meghan Shortreed  
Tel. (416) 646-4308  
Fax (416) 646-4301

**Solicitors to Louis Sapi**

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

**AND**

**IN THE MATTER OF  
AFFINITY FINANCIAL GROUP INC.,  
INTERNATIONAL STRUCTURED PRODUCTS INC.,  
AFFINITY RESTRICTED SECURITIES INC.,  
DIONYSUS INVESTMENTS LTD.,  
BRIAN KEITH MCWILLIAMS, DAVID JOHN LEWIS  
and LOUIS SAPI**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES  
COMMISSION**

**Background**

**The Affinity Respondents**

1. Affinity Financial Group Inc. ("Affinity") is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario.
2. International Structures Products ("ISP", formerly Affinity Capital Markets Inc., is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario. Under the name Affinity Capital Markets Inc., ISP was registered with the Commission as a Dealer in the category of Limited Market Dealer from August 28, 2000 to August 28, 2002.
3. Affinity Restricted Securities Inc. ("ARS") is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario. ARS has never been registered with the Commission.
4. Dionysus Investments Ltd. ("Dionysus") is a company incorporated in the Bahamas. Dionysus has never been registered with the Commission.
5. ISP and ARS are direct and indirect wholly-owned subsidiaries of Affinity. Affinity is jointly owned by Brian McWilliams ("McWilliams"), David Lewis ("Lewis") and Louis Sapi ("Sapi").
6. Affinity had a number of other subsidiaries and related companies, including Dionysus. These companies provided financial planning and reporting services to their clients and sold mutual funds and insurance products.

**The Individual Respondents**

7. McWilliams is an individual who was registered with the Commission as a Salesperson in the category of Limited Market Dealer between August 28, 2000 and December 31, 2002. At all material times, he was the Treasurer, Secretary and a Director of Affinity. He was also the

- President and a Director of ISP, and the President and a Director of ARS.
8. Lewis is an individual who was registered with the Commission as a Salesperson in the category of Mutual Fund Dealer from April 13, 1993 to May 6, 2002 and in the category of Limited Market Dealer from April 13, 1993 to December 31, 2002. At all material times, he was the President and a Director of Affinity. He was also the Secretary, Treasurer and a Director of ISP, and the Vice-President, Secretary, Treasurer and a Director of ARS.
9. Sapi is an individual who has never been registered with the Commission. He was a Director of ARS from March 30, 2001 to July 6, 2001. He was a Director of Affinity at all material times.

#### The Rule 144 Loan Program

10. In the period between October 1998 and June 2002 (the "Material Period") ISP and then ARS and Dionysus (collectively, "ARS") solicited their clients to invest in a program where their funds would be used to make loans to insiders of reporting issuers located in the United States. The insiders would pledge restricted securities of the issuer as collateral for the loans. Clients would receive either the interest payments on the loans or the proceeds of the sale of the restricted securities in return for their investment. This was referred to as the Rule 144 Loan Program.
11. The Rule 144 Loan Program was established, managed and operated by a company named American Financial Group ("AFG") that operated out of Miami, Florida and its principal David Siegel ("Siegel") (collectively, the "Americans").
12. ARS' marketing materials relating to the Rule 144 Loan Program stated that "[ARS], at its discretion, may determine to which deals and to what amount, an investor's funds will be allocated". They further stated that "[i]nvestors will have no right to participate in the management of any of the investment programs, and each investor must be willing to entrust all aspects of the management of his investments to [ARS]".
13. ARS executed an Investment Advisory Agreement with its clients who invested in the Rule 144 Loan Program. This agreement authorized ARS to "continuously review, supervise and administer the investment programs of the [i]nvestor, to determine in the discretion of [ARS] the assets to be held uninvested". It further stated that "the investment and reinvestment of the assets of the [i]nvestor, including the purchase or sale of any securities or the borrowing of any funds on behalf of the [i]nvestor...shall be exclusively within the control and discretion of [ARS]".
14. As noted above, the Rule 144 Loan Program was managed by the Americans. The Americans provided ARS with monthly statements for each investor. ARS prepared monthly account statements on its letterhead for its clients based solely on information provided to it by the Americans.
15. ARS employed sales representatives, all of whom were licensed as mutual fund salespeople and/or limited market dealers, to promote the Rule 144 Loan Program to its clients.
16. During the Material Period, at least 161 of ARS' clients invested at least \$30,937,941 in the Rule 144 Loan Program. ARS thereby acted as an adviser without registration, contrary to section 25(1)(c) of the Act.

#### Disclosure and Due Diligence

17. ARS orally disclosed to most of its clients that the Americans, and in particular Siegel, would select and administer the Rule 144 loans and would make all Rule 144 Loan Program investment decisions.
18. Before beginning to solicit its clients for the Rule 144 Loan Program, ARS reviewed AFG's history with the Rule 144 Loan Program and its history with other investments. ARS did not research Siegel's regulatory status or history. Siegel had previously been enjoined as a result of an enforcement action brought by the United States Securities and Exchange Commission (the "SEC") in response to his participation in a stock manipulation scheme.

#### ARS' Commissions and Fees from the Rule 144 Loan Program

19. ARS' clients were charged an initial commission of between 0% and 3% of the money invested in the Rule 144 Loan Program. This commission was disclosed to ARS' clients in its marketing materials.
20. The Rule 144 Loan Program generated earnings in two ways. If a loan was repaid partially or in full, all of the interest paid by the borrower was transferred directly to ARS' client. If a loan went into default, 80% of the gain generated on the disposition of the share collateral was paid to ARS' client, 10% was retained by the Americans and 10% was paid to ARS. This fee was titled a "performance fee" and was disclosed to ARS' clients in the Investment Advisory Agreement.
21. ARS also received a "loan origination fee" from the Americans for every investment in the Rule 144 Loan Program made by its clients.

### Outcome of the Rule 144 Loan Program

22. On June 19, 2002, ARS was advised by AFG that Siegel had gone missing and had taken all records relating to the Rule 144 Loan Program with him. Three days later, McWilliams and Lewis flew to Florida to investigate the situation. The FBI was contacted as were securities regulators, including the Ontario Securities Commission.
23. When Siegel was finally located several weeks later, he stated that he had lost investor funds through poor hedging strategies and general mismanagement of the Rule 144 loans. Siegel also stated he had provided false statements to ARS while he tried to "trade his way out of trouble".
24. On July 24, 2002, the SEC initiated enforcement proceedings against the Americans, and later secured the appointment of a Receiver to attempt to recover the proceeds of the Rule 144 Loan Program.
25. On January 27, 2005, the Receiver stated in a report to investors that Siegel may have lost the majority of their funds through bad loans and bad stock purchases. The Receiver also stated that despite Siegel's representations that he was selling shares short to offset the shares taken as collateral for the loans, there were very few short sales actually made. The Receiver also stated that although Siegel represented to investors and their reporting agents [such as ARS] that he was selling the shares held as collateral at a profit, this was not the case.
26. On March 28, 2005, the SEC obtained a final judgment against Siegel affirming his violations of US securities laws in the course of the Rule 144 Loan Program, barring him from acting as a director or officer of any issuer, and requiring him to pay disgorgement as well as interest and civil penalties.
27. The court-appointed Receiver is making efforts to locate and redistribute the investor funds entrusted to Siegel and AFG through the Rule 144 Loan Program. No funds have been redistributed, and the receiver has informed investors that they should expect to receive "very little, if anything" from his efforts.

### Responsibility of McWilliams, Lewis and Sapi

28. McWilliams, Lewis and Sapi authorized, permitted or acquiesced in ARS' breaches of Ontario securities law as outlined above.

### Conduct Contrary to the Public Interest

29. By engaging in the conduct described above, Affinity, ISP, ARS, Dionysus, McWilliams, Lewis

and Sapi acted in a manner contrary to the public interest.

30. Staff reserves the right to make such other allegations as it may advise and the Commission may permit.

**DATED** at Toronto this 19th day of September, 2005.

1.3 News Releases

1.3.1 Portus Alternative Asset Management Inc. and Boaz Manor

FOR IMMEDIATE RELEASE  
September 14, 2005

**OSC EXTENDS TEMPORARY ORDERS  
AGAINST PORTUS AND MANOR**

**TORONTO** – The Ontario Securities Commission (OSC) issued an Order today adjourning the hearing to consider whether the temporary orders issued on February 2 and 10, 2005 against Portus Alternative Asset Management Inc. and Boaz Manor should be extended, until December 16, 2005. On consent, the Commission continued the Temporary Orders pending the hearing on December 16, 2005.

As a result of the Order issued today, the protections put in place by the Temporary Orders will remain in effect while the OSC continues to investigate this matter.

A copy of the Order is available on the OSC website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

For Media Inquiries: Wendy Dey  
Director, Communications  
and Public Affairs  
(416) 593-8120

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

1.3.2 OSC Adjourns Hearing in The Matter of James Patrick Boyle, Lawrence Melnick and John Michael Malone

FOR IMMEDIATE RELEASE  
September 16, 2005

**OSC ADJOURNS HEARING IN THE MATTER OF  
JAMES PATRICK BOYLE, LAWRENCE MELNICK  
AND JOHN MICHAEL MALONE**

**Toronto** – On September 15, 2005, the Ontario Securities Commission ordered, on consent of Staff and all respondents, that the first appearance in this matter be adjourned to October 27, 2005 at 2:00 p.m. at the offices of the Commission, 20 Queen Street West, Toronto.

Copies of the Notice of Hearing and Statement of Allegations are available on the OSC's website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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

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



1.3.3 TD Waterhouse Canada Inc.

**FOR IMMEDIATE RELEASE**  
**September 19, 2005**

**OSC TO CONSIDER SETTLEMENT AGREEMENT  
REACHED IN THE MATTER OF TD WATERHOUSE**

**TORONTO** – The Ontario Securities Commission will commence a hearing in the matter of TD Waterhouse Canada Inc. (TDW) to consider a settlement agreement reached between Staff of the Commission and TDW.

The terms of the settlement agreement are confidential until approved by the Commission. The hearing is scheduled for Friday, September 30, 2005 at 2:00 p.m. in the Large Meeting Room on the 17th Floor of the Commission's offices, 20 Queen Street West, Toronto. Copies of the Notice of Hearing and Statement of Allegations dated September 19, 2005 are available on the OSC website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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

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

1.3.4 OSC to Review Settlement Agreements  
Reached With Affinity Financial Group Inc. and  
its Principals

**FOR IMMEDIATE RELEASE**  
**September 20, 2005**

**OSC TO REVIEW SETTLEMENT AGREEMENTS  
REACHED WITH AFFINITY FINANCIAL GROUP INC.  
AND ITS PRINCIPALS**

**Toronto** –The Ontario Securities Commission has issued a Notice of Hearing to consider settlement agreements reached with Affinity Financial Group Inc. (Affinity), International Structured Products Inc. (ISP), Affinity Restricted Securities Inc. (ARS), Dionysus Investments Ltd, Brian Keith McWilliams and Louis Sapi. Staff of the Commission have also delivered a related Statement of Allegations against these parties, as well as David John Lewis.

Staff of the Commission allege that Affinity and its related companies (ISP, ARS and Dionysus) engaged in unlicensed advising in securities by soliciting clients to invest in a product titled the "Rule 144 Loan Program". McWilliams, Lewis and Sapi, the principals of Affinity, are alleged to have authorized, permitted or acquiesced in Affinity's breach.

The Rule 144 Loan Program involved sending investor funds to an entity in the United States called American Financial Group ("AFG"). Clients were led to believe that their funds would be used by AFG to make loans against restricted securities. In June of 2002, however, one of the principals of AFG disappeared and took the majority of the records relating to the program with him. A Receiver has been appointed by the American courts to attempt to locate and redistribute the investor funds entrusted to AFG, but to date no funds have been redistributed.

The terms of the settlement agreements are confidential until approved by the Commission. The Commission will consider the settlement agreements on Wednesday September 21, 2005 at 2:00 pm in the Large Hearing Room located on the 17<sup>th</sup> Floor of the Commission's offices at 20 Queen Street West, Toronto. Copies of the Notice of Hearing and Statement of Allegations are available on the Commission's website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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

Eric Pelletier  
Manager, Media Relations  
416-595-8913

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

**1.4 Notices from the Office of the Secretary**

**1.4.1 Portus Alternative Asset Management Inc. and Boaz Manor**

**FOR IMMEDIATE RELEASE  
September 14, 2005**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.  
AND BOAZ MANOR**

**TORONTO** – The Commission issued an Order in the above-named matter today that the Hearing to consider whether to extend the Temporary Orders is adjourned until December 16, 2005 at 10:00 a.m.; the Temporary Orders issued on February 2 and 10, 2005 are continued until the hearing on December 16, 2005, or until further order of this Commission.

A copy of the Order is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

**1.4.2 James Patrick Boyle, Lawrence Melnick and John Michael Malone**

**FOR IMMEDIATE RELEASE  
September 15, 2005**

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

**AND**

**IN THE MATTER OF  
JAMES PATRICK BOYLE, LAWRENCE MELNICK  
AND JOHN MICHAEL MALONE**

**TORONTO** – The Commission issued an Order adjourning the hearing in this matter to October 27, 2005, or as soon thereafter as a panel may be constituted.

A copy of the Order is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

**1.4.3 TD-Waterhouse Canada Inc.**

**FOR IMMEDIATE RELEASE  
September 19, 2005**

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

**AND**

**IN THE MATTER OF  
TD-WATERHOUSE CANADA INC.**

**TORONTO** – The Commission issued a Notice of Hearing with attached Statement of Allegations scheduling a settlement hearing on September 30, 2005 at 2:00 p.m. in the above named matter.

A copy of the Notice of Hearing with Statement of Allegations is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

**1.4.4 Affinity Financial Group Inc. et al.**

**FOR IMMEDIATE RELEASE  
September 20, 2005**

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

**AND**

**IN THE MATTER OF  
AFFINITY FINANCIAL GROUP INC.,  
INTERNATIONAL STRUCTURED PRODUCTS INC.,  
AFFINITY RESTRICTED SECURITIES INC.,  
DIONYSUS INVESTMENTS LTD.,  
BRIAN KEITH MCWILLIAMS, DAVID JOHN LEWIS and  
LOUIS SAPI**

**TORONTO** – The Commission issued a Notice of Hearing with attached Statement of Allegations scheduling a settlement hearing on September 21, 2005 at 2:00 p.m. in the above named matter.

A copy of the Notice of Hearing with Statement of Allegations is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

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## Chapter 2

# Decisions, Orders and Rulings

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## 2.1 Decisions

### 2.1.1 Brascan Power 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.

September 12, 2005

#### Brascan Power Inc.

480, de la Cité Blvd., Suite 200  
Gatineau, Québec J8T 8R3

**Attention: Patricia Bood, Vice-President of Legal Services and General Counsel**

Dear Ms. Bood:

**Re: Brascan Power Inc. (the “Applicant”) - Application to Cease to be a Reporting Issuer under the Securities Legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec 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

2.1.2 TD Waterhouse Canada Inc. - MRRS Decision

Headnote

MRRS application to vary the requirements in the legislation of the Jurisdictions that requires a dealer to send account statements to clients with inactive accounts not less than once every three months, provided that the Applicant sends the account statements a minimum of four times per year with no time period between account statements exceeding four months.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 123(2).

September 15, 2005.

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
ONTARIO,  
QUÉBEC, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR,  
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF  
TD WATERHOUSE CANADA INC. (THE FILER)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for variation of the Legislation which requires dealers to send to clients who have not effected an account transaction, but who hold funds or securities in an account with the dealer on a continuing basis (**Inactive Account Clients**) an account statement not less than once every three months, provided that the Filer sends the account statements to the Inactive Account Clients a minimum of four times per year with no time period between account statements exceeding four months (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of the Province of Ontario and is a wholly-owned subsidiary of The Toronto-Dominion Bank (**TD Bank**), a bank listed on Schedule I of the *Bank Act* (Canada).
2. The Filer is registered as an investment dealer or its equivalent in all provinces and territories of Canada. It is a member of the Investment Dealers Association of Canada (**IDA**), the Montreal Exchange and the TSX Venture Exchange, and it is a participatory organization of the Toronto Stock Exchange.
3. The fiscal year-end of TD Bank is October 31 in accordance with section 307 of the *Bank Act* (Canada). As a subsidiary of TD Bank, the Filer has the same fiscal year-end as TD Bank to facilitate the preparation and audit of annual consolidated financial statements for TD Bank.
4. As a member of the IDA, the Filer is required to send a statement of account to Inactive Account Clients at the end of each quarter in accordance with IDA Regulation 200.1c. The Filer has made an application to the IDA for exemptive relief from this requirement, similar to the Requested Relief.
5. In order to comply with the Legislation, the IDA rules and external audit requirements, the Filer now sends account statements to Inactive Account Clients five times per year for the periods ending March 31, June 30, September 30, October 31 and December 31 of each year. The extra statement for the period ending October 31 is due to the requirement that the Filer send out fiscal year-end account statements for external audit purposes in order to comply with IDA Regulation 300.2(vii)(6).
6. Subject to obtaining the requested Relief, the Filer intends to send account statements to Inactive Account Clients for the periods ending March 31, June 30, October 31 and December 31.

7. The Requested Relief will not change the Filer's current requirement to send to a client an account statement at the end of each month in which the client has effected a transaction where there is a debit or credit of securities held.

#### 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.

"Donna Leitch"

#### 2.1.3 High Point Resource 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.

**Citation:** High Point Resource Inc., 2005 ABASC 760

September 15, 2005

##### Gowlings

1400, 700 - 2 Street SW  
Calgary, AB T2P 4V5

**Attention: Bennett K. Wong**

Dear Sir:

**Re: High Point Resource Inc. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick 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:

1. 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;
2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
3. 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
4. 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 in the Jurisdictions.

Relief requested granted on the 15th day of September, 2005.

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

#### 2.1.4 Emergis Inc. - MRRS Decision

##### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – modified dutch auction issuer bid with respect to securities tendered at or below clearing price – circular to contain certain disclosure including information regarding take up – offeror to comply with all other legislative requirements – offeror exempt from requirement to take up and pay for securities proportionately according to number of securities deposited by each shareholder – proration will only occur among tenders received during an extension and after the original expiration date – proration procedures will give preference to odd lot holders and will be adjusted to avoid the creation of odd lots as a result of the proration – offeror also exempt from the associated disclosure requirement.

##### Applicable Statutory Provision

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 95(7), 104(2)(c).

##### Applicable Regulatory Provision

Ontario Regulation 1015 – General Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., s. 189(b).

September 8, 2005

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,  
NOVA SCOTIA 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  
EMERGIS INC. (THE “FILER”)

##### MRRS Decision Document

##### Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that, in connection with the proposed purchase by the Filer of a portion of its outstanding common shares without nominal value (the Shares) by way of an issuer bid (the Offer), the Filer be exempt from the following requirements in the Legislation (the Requested Relief) to:



## Decisions, Orders and Rulings

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- (a) take up and pay for Shares on a pro rata basis according to the number of securities deposited by each shareholder (the Proportionate Take-Up and Payment Requirement),
- (b) provide disclosure in the issuer bid circular (the Circular) of the proportionate take up and payment (the Associated Disclosure Requirement), and
- (c) state the number of securities sought under the Offer (the Number of Securities Requirement).

### Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Autorité des marchés financiers 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 presented by the Filer:

1. The Filer is a reporting issuer or the equivalent in each of the Jurisdictions.
2. The Filer is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
3. The authorized capital of the Filer consists of an unlimited number of Shares without nominal value, and an unlimited number of preferred shares, issuable in series (the Preferred Shares). As at August 2, 2005, there were 99,420,167 Shares and no Preferred Shares issued and outstanding.
4. The Shares are listed and posted for trading on the TSX under the symbol "EME". On August 2, 2005, the closing price of the Shares on the TSX was \$3.21 per Share. Based upon such closing prices, the Shares had an aggregate market value of approximately \$319 million on such date.
5. To the knowledge of the directors and officers of the Corporation, the only persons who beneficially own or exercise control or direction over more than 10% of the Shares are: (i) Crescendo Partners II L.P. Series M (Crescendo Partners); and (ii) Letko, Brosseau & Associates (Letko). The Corporation has been informed by Crescendo Partners that, as of August 2, 2005, it owned

13,649,300 Shares, representing 13.7% of all issued and outstanding Shares. Based on publicly available information and to the Corporation's knowledge, Letko owned, as of August 2, 2005, 13,757,025 Shares, representing 13.8% of all issued and outstanding Shares.

6. Pursuant to the Offer, the Filer proposes to acquire Shares in accordance with the following modified Dutch auction procedure (the Procedure):

- (a) the Circular will specify that the maximum amount that the Filer will expend pursuant to the Offer is \$30,000,000 (the Specified Amount);
- (b) the Circular will specify the range of prices (the Range) within which the Filer is prepared to purchase Shares under the Offer;
- (c) any Shareholder wishing to tender to the Offer will have the right either to: (i) specify the lowest price within the Range at which he, she or it is willing to sell the tendered Shares (an Auction Tender); or (ii) elect to be deemed to have tendered the Shares at the Purchase Price determined in accordance with subparagraph 6(e) below (a Purchase Price Tender);
- (d) all Shares tendered and not withdrawn by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered their Shares pursuant to a Purchase Price Tender will be considered to have been tendered pursuant to a Purchase Price Tender;
- (e) the purchase price (the Purchase Price) of the Shares tendered to the Offer and not withdrawn will be the lowest price that will enable the Filer to purchase the maximum number of Shares that may be purchased with the Specified Amount, and it will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price within the Range for the purpose of calculating the Purchase Price;
- (f) all Shares tendered at prices above the Purchase Price will be returned to the appropriate Shareholders;

- (g) all Shares tendered and not withdrawn by Shareholders who specify a tender price for such tendered Shares that falls outside the Range will be considered to have been improperly tendered, will be excluded from the determination of the Purchase Price, will not be purchased by the Filer and will be returned to the appropriate Shareholders; received during the extension and after the original Expiration Date (and subject to the exception relating to "Odd Lots" described in (i) above).
- (h) if the aggregate Purchase Price for Shares validly tendered to the Offer and not withdrawn is less than or equal to the Specified Amount, the Filer will purchase all Shares so deposited; and
- (i) if the aggregate Purchase Price for Shares validly tendered to the Offer and not withdrawn exceeds the Specified Amount, the Filer will take up and pay for tendered Shares on a *pro rata* basis according to the number of Shares tendered by each Shareholder, except that "Odd Lot" deposits (Odd Lots) will not be subject to proration. For the purposes of the foregoing, an Odd Lot deposit is a deposit by a Shareholder who (x) owns in the aggregate less than 100 Shares as of the close of business on the expiration date of the Offer (the Expiration Date) (y) deposits all such Shares pursuant to an Auction Tender at or below the Purchase Price or pursuant to a Purchase Price Tender prior to the Expiration Date and (z) checks the Odd Lots box in either the letter of transmittal or the notice of guaranteed delivery accompanying the Circular. Odd Lot deposits will be accepted for purchase before any pro ration; any Shares tendered but not taken up and paid for by the Filer in accordance with this procedure will be returned to the appropriate tendering Shareholders.
- (j) In the event that the Offer is under-subscribed by the Expiration Date but all of the terms and conditions thereof have been complied with, with the exception of those waived by the Filer, the Filer may wish to extend the Offer for at least 10 days, in which case the Filer must first take up and pay for all Shares deposited thereunder and not withdrawn in accordance with the Legislation. In the event that the Offer is under-subscribed at the original Expiration Date, there would be no proration among the tendered Shares taken up at such time. However, by the time any extension is over, the Offer may be over-subscribed, in which case the Filer intends to pro-rate only among the tendered Shares
7. Prior to the expiry of the Offer, all information regarding the number of Shares deposited and the prices at which such Shares are deposited will be kept confidential, and the selected depository under the Offer will be directed by the Filer to maintain such confidentiality until the Purchase Price is determined.
8. The Circular will:
- a) disclose the mechanics for the take-up and payment for, or return of, Shares as described in representation 6 above;
  - b) explain that, by depositing Shares at the lowest price in the Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so deposited will be purchased at the Purchase Price, subject to pro ration as described in representation 6 above;
  - c) describe the effect that the Offer, if successful, will have on the direct or indirect voting and equity interests of Crescendo Partners and Letko in the Filer; and
  - d) except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids.

#### 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 Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to Shareholders, in the manner described in representation 6.

"Josée Deslauriers"  
Director Capital Markets

## 2.1.5 optionsXpress, Inc. - MRRS Decision

### Headnote

Applicant that is registered in the United States as a dealer exempted from the dealer registration requirements contained in the Securities Act (Ontario) so it can service existing clients in Ontario until a Canadian-incorporated affiliate obtains registration in Ontario and membership in the IDA

### Statutes Cited

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

September 9, 2005

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

AND

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

AND

IN THE MATTER OF  
OPTIONSXPRESS, INC.

MRRS DECISION DOCUMENT

### Background

The local securities regulatory authority, regulator, or Autorité des marchés financiers (the **Decision Maker**) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the **Jurisdictions**) has received an application from optionsXpress, Inc. (**Options**), pursuant to the securities legislation of the Jurisdictions (the **Legislation**) seeking relief in each Jurisdiction until December 31, 2005 from the dealer registration requirements contained in the Legislation, subject to terms and conditions, in respect of accounts (the **Accounts**) already opened by Options for certain residents of the Jurisdictions (the **Existing Clients**), pursuant to a settlement agreement made as of August 11, 2005 (the **Settlement Agreement**) between Options and the securities regulatory authorities, as defined in National Instrument 14-101 Definitions (**NI 14-101**), in each of the Jurisdictions.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

### Interpretation

Defined terms contained in NI 14-101 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 Options and Options Canada (as defined below):

1. Options is a corporation incorporated under the laws of Delaware and is registered as a broker-dealer with the United States (**U.S.**) Securities and Exchange Commission in each of the U.S. states. Options is also a member firm of the National Association of Securities Dealers, Inc., and a member of the Chicago Board Options Exchange, the International Securities Exchange, and the Boston Options Exchange.
2. In late 2000, Options began operations as a web-based Internet securities firm from its principal office in Chicago, Illinois.
3. In early 2001, Options started to trade U.S. securities on behalf of the Existing Clients without being registered in the Jurisdictions.
4. Residents in the Jurisdictions could log on to the Options website and open an Options account to execute on-line trades of securities listed or traded in the U.S.
5. Options is not registered in any capacity in any of the Jurisdictions.
6. In May 2004, as a result of regulatory inquiries by the securities regulatory authorities, Options stopped opening new client accounts for residents in the Jurisdictions.
7. Subsection 213(1) of Ontario Regulation 1015 and its equivalent in most of the Jurisdictions requires that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada. Being incorporated under the laws of Delaware, Options is ineligible to be registered as a dealer in the Jurisdictions.
8. Options' affiliate, optionsXpress Canada Corp./Corporation optionsXpress Canada (**Options Canada**), a corporation incorporated under the laws of Nova Scotia, will fulfill Options'

obligations pursuant to the Settlement Agreement as described in paragraph 9 below.

9. Pursuant to the terms of the Settlement Agreement, Options undertakes that Options Canada will, on a non-resident basis:

- (i) seek diligently
  - (a) registration in the Jurisdictions as a dealer in the category of investment dealer or equivalent; and
  - (b) membership with the Investment Dealers Association of Canada; and
- (ii) cooperate fully with the securities regulatory authorities in each Jurisdiction.

10. Pursuant to the terms of the Settlement Agreement, Options undertakes that from the date of this decision to and including the date that Options Canada obtains registration as a dealer in the category of investment dealer or equivalent in each Jurisdiction, at which time Options will transfer all Accounts to Options Canada, and subject to the applicable dealer registration exemptions with respect to the Existing Clients, it will:

- (i) make or ensure that it has made such enquiries about each Existing Client of Options as enable Options to establish the identity and the creditworthiness of each Existing Client, and the reputation of the Existing Client if information known to Options causes doubt as to whether the Existing Client is of good reputation, although Options is not required to make enquiries as to the creditworthiness of an Existing Client if Options is not financing the acquisition of securities by the Existing Client;
- (ii) cooperate fully with the securities regulatory authorities in each Jurisdiction and comply with all requirements in the Legislation in a manner equivalent to that required of a dealer registered in the category of investment dealer or equivalent in each Jurisdiction to the greatest possible extent; and
- (iii) not open any new client accounts on behalf of residents of the Jurisdictions.

11. As part of the Settlement Agreement, staff of the securities regulatory authorities have agreed:

- (i) to recommend that the Decision Makers grant Options an exemption from the

dealer registration requirements of the Legislation, in respect of Options' Existing Clients only, until December 31, 2005, so that Options Canada can become registered in the Jurisdictions as a dealer in the category of investment dealer or equivalent;

- (ii) not to oppose a future application by Options to extend the decision granted hereby, as reasonably required, to complete the dealer registration process provided that Options Canada has diligently been seeking registration in the Jurisdictions as a dealer in the category of investment dealer or equivalent.

### 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 this decision has been met.

The decision of the Decision Makers under the Legislation is that Options is exempt from the dealer registration requirements of the Legislation, in respect of the Existing Clients only, until December 31, 2005, provided that Options does not open any new client accounts on behalf of residents of the Jurisdictions.

"Paul M. Moore"  
Commissioner  
Ontario Securities Commission

"Robert W. Davis"  
Commissioner  
Ontario Securities Commission

"David L. Knight"  
Commissioner  
Ontario Securities Commission

## 2.1.6 Gastar Exploration Ltd. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from requirements in National Instrument 52-107 and National Instrument 51-102 to prepare financial statements and management discussion and analysis in accordance with Canadian GAAP and have such financial statements audited in accordance to Canadian GAAS and instead to prepare and have such financial statements and management discussion and analysis prepared in accordance with US GAAP and US GAAS.

### Ontario Rules

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency.

National Instrument 51-102 Continuous Disclosure Obligations.

September 15, 2005

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA,  
ALBERTA, ONTARIO AND MANITOBA**

**AND**

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

**AND**

**IN THE MATTER OF  
GASTAR EXPLORATION LTD. (THE "FILER")**

### MRRS DECISION DOCUMENT

#### Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Ontario and Manitoba (the "Jurisdictions") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

1. the requirement contained in the Sections 3.1 and 3.2 of National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency ("NI 52-107") requiring financial statements other than acquisition statements, be prepared and audited in accordance with Canadian GAAP and GAAS accordingly, not apply to the Filer in respect of its September 30, 2005 interim financial statements and December 31, 2005 annual financial statements; and

2. the Filer be permitted to file MD&A in accordance with section 5.2 of National Instrument 51-102.

(the "Requested Relief").

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

### Interpretation

Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*.

### Representations

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

1. The Filer is a corporation governed by the *Business Corporations Act* (Alberta) with its head office in Houston, Texas.
2. The Filer is a reporting issuer under the Legislation and is not in default of any requirements of the Legislation.
3. The authorized capital of the Filer consists of an unlimited number of common shares without nominal or par value ("Common Shares"), of which 135,185,130 Common Shares are currently issued and outstanding. 17,329,600 Common Shares have been reserved for issuance pursuant to the Filer's incentive stock option plan.
4. Of the 135,185,130 Common Shares outstanding, all of which hold one vote per share, 10,343,320 (7.6%) are directly or beneficially held by Canadian residents.
5. The Common Shares are listed and posted for trading on the Toronto Stock Exchange.
6. The Filer is engaged in the exploration, development and production of oil and gas from properties located outside of Canada.
7. The Filer is the resulting entity of a reverse take over transaction and accordingly while the Corporation is governed by the *Business Corporations Act* (Alberta), the statements are those of its primary operating subsidiary which is governed by corporate laws outside of Canada. The Filer recently completed a financing which, pursuant to the terms thereof, the Filer is required to file an S1 with the Securities Exchange Commission ("SEC") of the United States which S1 is to be approved by the SEC and effective on or before December 17, 2005. The Filer will become an SEC Filer, as defined by NI 52-107, upon the Filer satisfactorily answering all

comments raised by the SEC upon the S1, which is expected to occur December 15, 2005.

8. All of the Filer's operating subsidiaries are incorporated under the laws of a foreign jurisdiction.
9. The majority of executive officers and directors of the Filer are resident outside of Canada.
10. The majority of the consolidated assets of the Filer are located outside of Canada.
11. The business of the Filer is administered principally outside of Canada.

**Decision**

Each Decision Maker 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 Maker under the Legislation, is that the Requested Relief is granted, provided that:

1. the Filer files Financial Statements that are prepared in accordance with US GAAP;
2. the notes to the first two sets of the Filer's annual financial statements after the change from Canadian GAAP to US GAAP and the notes to the Filer's interim financial statements for interim periods during those two years:
  - i. explain the material differences between Canadian GAAP as applicable to public enterprises and US GAAP that relate to recognition, measurement and presentation;
  - ii. quantify the effect of material differences between Canadian GAAP as applicable to public enterprises and US GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP as applicable to public enterprises; and
  - iii. provide disclosure consistent with disclosure requirements of Canadian GAAP as applicable to public enterprises to the extent not already reflected in the financial statements;
3. the financial information for any comparative periods in the Financial Statements that were previously reported in accordance with Canadian GAAP presented as follows:

- i. as previously reported in accordance with Canadian GAAP;
- ii. as restated and presented in accordance with US GAAP; and
- iii. supported by an accompanying note that:
  - A. explains the material differences between Canadian GAAP as applicable to public enterprises and US GAAP that relate to recognition, measurement and presentation;
  - B. quantifies the effect of material differences between Canadian GAAP as applicable to public enterprises and US GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income as previously reported in the financial statements and net income as restated and presented in accordance with US GAAP.

4. the Financial Statements are accompanied by an auditor's report prepared in accordance with US GAAS that:
  - i. contains an unqualified opinion;
  - ii. identifies all financial periods presented for which the auditor has issued an auditor's report;
  - iii. refers to the former auditor's reports on the comparative periods, if the Filer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and
  - iv. identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.
5. the Filer files the supplement to its management's discussion and analysis of the Financial Statements set out in section 5.2 of National Instrument 51-102;
6. where the Legislation requires financial statements to be audited, the Financial Statements are audited in accordance with US GAAS;
7. the Filer refiles the Financial Statements for the periods ended March 31, 2005 and June 30, 2005 using US GAAP and US GAAS; and

8. if the Filer does not receive the SEC Registration by December 31, 2005, the Filer will refile on SEDAR all the previous financial statements and management discussion and analysis it filed using US GAAP and US GAAS using Canadian GAAP and Canadian GAAS.

“Agnes Lau”, CA  
Deputy Director, Capital Markets  
Alberta Securities Commission

## 2.1.7 AXA S.A. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Application for relief from prospectus requirements in respect of certain trades in units of an employee savings fund made pursuant to a classic offering and a leveraged offering by French issuer – Relief from registration and prospectus requirements upon the redemption of units for shares of the issuer – Relief from the registration and prospectus requirements granted in respect of first trade of shares where such trade is made through a registrant or the facilities of a stock exchange outside of Canada – Relief granted to the manager of the fund from the adviser registration requirement.

### Applicable Ontario Statutory Provisions

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

### Rules

Multilateral Instrument 45-102 Resale of Securities.  
Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors and Consultants.

July 22, 2005

### Translation

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, NEWFOUNDLAND AND  
LABRADOR

AND

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

AND

IN THE MATTER OF  
AXA S.A.

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the “**Decision Maker**”) in each of British Columbia, Alberta, Manitoba, Ontario, Québec, New Brunswick and Newfoundland and Labrador (collectively, the “**Jurisdictions**”) has received an application from AXA S.A. (the “**Filer**”) for a decision under the securities legislation (the “**Legislation**”) of the Jurisdictions that:

- (i) the prospectus requirements contained in the Legislation shall not apply to trades in of the units (“**Units**”) of the two compartments, the AXA Shareplan Direct

Global (the “**Classic Compartment**”) and the AXA Plan 2005 Global (the “**Leveraged Compartment**”)(the Classic Compartment and the Leveraged Compartment are collectively, the “**Compartments**”) made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions who elect to participate in the Employee Share Offering (the “**Canadian Participants**”);

- (ii) the registration requirements contained in the Legislation shall not apply to trades in Units of the Classic Compartment made pursuant to the Employee Share Offering to or with Canadian Participants, nor to trades in Units of the Leveraged Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;
- (iii) the registration and prospectus requirements shall not apply to the trades of ordinary shares of the Filer (the “**Shares**”) by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartment at the end of the Lock-Up Period (as defined below);
- (iv) the registration and prospectus requirements shall not apply to the first trade in any Shares acquired by Canadian Participants under the Employee Share Offering where such trade is made through the facilities of a stock exchange outside of Canada; and
- (v) the manager of the Compartments, AXA Investment Managers Paris (the “**Manager**”) is exempt from the adviser registration requirements contained in the Legislation to the extent that its activities in relation to the Employee Share Offering require compliance with such requirements.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the “**System**”), the Autorité des marchés financiers is the principal regulator for this application;

**AND WHEREAS**, unless otherwise defined, the terms herein have the meaning set out in National

Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;

**AND WHEREAS** the Filer has represented to the Decision Makers that:

1. The Filer is a corporation formed under the laws of France. It is not and has no intention of becoming a reporting issuer (or equivalent) under the Legislation. The Shares are listed on the New York Stock Exchange (in the form of American Depositary Shares).
2. The Filer carries on business in Canada through the following affiliated companies: AXA Assurances Inc., AXA Canada Inc., AXA Insurance (Canada), AXA Pacific Insurance Company, Insurance Corporation of Newfoundland Limited, AXA Assistance Canada Inc., AXA RE, AXA Corporate Solutions Assurance, and Anthony Insurance Inc. (the “**Canadian Affiliates**”, together with the Filer and other affiliates of the Filer, the “**AXA Group**”). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no intention of becoming, a reporting issuer (or equivalent) under the Legislation.
3. The Filer has established a worldwide stock purchase plan for employees of the AXA Group (the “**Employee Share Offering**”) which is comprised of two subscription options: (i) an offering of Shares to be subscribed through the Classic Compartment (the “**Classic Plan**”); and (ii) an offering of Shares to be subscribed through the Leveraged Compartment (the “**Leveraged Plan**”).
4. Only persons who are employees of a member of the AXA Group at the time of the Employee Share Offering with a minimum seniority of three months (such three-month period to be calculated on a continued or discontinued basis since January 1, 2005) (the “**Employees**”), or persons who have retired from an affiliate of the AXA Group and who continue to hold units in French investment funds in connection with previous employee share offerings by the Filer (the “**Retired Employees**” and, together with the Employees, the “**Qualifying Employees**”) will be invited to participate in the Employee Share Offering.
5. The Compartments were established for the purpose of implementing the Employee Share Offering.
6. The Fund is not and has no intention of becoming a reporting issuer under the Legislation.
7. The Fund is a collective shareholding vehicle (fonds communs de placement d’entreprise or “**FCPEs**”) of a type commonly used in France for the conservation or custodianship of shares held by employee investors. Only Qualifying



- Employees will be allowed to hold Units of the Fund in an amount proportionate to their respective investments in the Fund.
8. Under French law, all Units acquired in the Employee Share Offering will be subject to a hold period of approximately five years (the “**Lock-Up Period**”), subject to certain exceptions prescribed by French law (such as a release on death or termination of employment). At the end of the Lock-Up Period, a Canadian Participant may:
    - (i) redeem Units: (a) in the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (b) continue to hold Units in the Classic Compartment and redeem those Units at a later date.
  9. In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may redeem Units: (a) from the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (b) from the Leveraged Compartment using the Redemption Formula (described below), by using the market value of the Shares at the time of unwind to measure the increase, if any, from the Reference Price (described below).
  10. Under the Classic Plan, Canadian Participants will be issued Units in the Classic Compartment, which will subscribe for Shares on behalf of the Canadian Participants, at a subscription price that is equal to the average of the opening price of the Shares on the 20 trading days ending on the date of approval of the Employee Share Offering by the board of directors of the Filer (the “**Reference Price**”), less a 20% discount. Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. The Canadian Participants will receive additional Units or fractions of Units representing such Shares.
  11. Under the Leveraged Plan, Canadian Participants will subscribe for Units in the Leveraged Compartment, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Deutsche Bank (the “**Bank**”).
  12. Canadian Participants in the Leveraged Plan receive a 17.5% discount in the Reference Price. Under the Leveraged Plan, the Canadian Participants effectively receive a share appreciation entitlement in the increase in value, if any, of the Shares financed by the Bank Contribution (as described below).
  13. Participation in the Leveraged Plan represents an opportunity for Qualifying Employees potentially to obtain significantly higher gains than would be available through participation in the Classic Plan, by virtue of the Qualifying Employee’s indirect participation in a financing arrangement involving a swap agreement (the “**Swap Agreement**”) between the Leveraged Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by the Qualifying Employee’s contribution (the “**Employee Contribution**”) under the Leveraged Plan at the Reference Price less the 17.5% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for an additional nine Shares (the “**Bank Contribution**”) at the Reference Price less the 17.5% discount.
  14. Under the terms of the Swap Agreement, at the end of the Lock-Up Period (the “**Settlement Date**”), the Leveraged Compartment will owe to the Bank an amount equal to the market value of the Shares held in that Compartment, less
    - (i) 100% of the Employee Contributions; and
    - (ii) an amount equal to approximately 84.5% of the increase, if any, in the market price of the Shares from the Reference Price (the “**Appreciation Amount**”).
  15. If, at the Settlement Date, the market value of the Shares held in the Leveraged Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to a guarantee agreement, make a cash contribution to the Leveraged Compartment to make up any shortfall.
  16. At the end of the Lock-Up Period, the Swap Agreement will terminate after the making of final swap payments and a Canadian Participant (i) may redeem his or her Leveraged Compartment Units in consideration for a payment of an amount equal to the value of the Canadian Participant’s Employee Contribution and the Canadian Participant’s portion of the Appreciation Amount, if any, to be settled by delivery of such number of Shares equal to such amount or the cash equivalent of such amount (the “**Redemption Formula**”); or (ii) may elect that his or her investment be transferred to the Classic Compartment or any other similar Compartment. New Units of the Classic Compartment will be issued to the applicable Canadian Participants in recognition of the assets transferred to the Classic Compartment. The Canadian Participants may redeem the new Units whenever they wish.

17. Under no circumstances will a Canadian Participant in the Leveraged Compartment be entitled to receive less than 100% of his or her Employee Contribution at the end of the Lock-Up Period, nor be liable for any other amounts.
18. Under French law, the Fund, as a FCPE, is a limited liability entity. The risk statement provided to Canadian Participants will confirm that, under no circumstances, will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.
19. During the term of the Swap Agreement, dividends paid on the Shares held in the Leveraged Compartment will be remitted to the Leveraged Compartment, and the Leveraged Compartment will remit an equivalent amount to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.
20. For Canadian federal income tax purposes, the Canadian Participants in the Leveraged Compartment will be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution, at the time such dividends are paid to the Leveraged Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants by virtue of the terms of the Swap Agreement. Consequently, Canadian Participants will be required to fund the tax liabilities associated with the dividends from their own resources.
21. The declaration of dividends on the Shares remains at the sole discretion of the board of directors of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment in respect of dividends.
22. To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer will indemnify each Canadian Participant in the Leveraged Plan for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of euros per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to quantify, with certainty, his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.
23. At the time the Canadian Participant's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. To the extent that dividends on Shares that are deemed to have been received by a Canadian Participant are paid by the Compartment on behalf of the Canadian Participant to the Bank, such payments will reduce the amount of any capital gain (or increase the amount of any capital loss) to the Canadian Participant under the Swap Agreement. Capital losses (gains) realized by a Canadian Participant under the Swap Agreement may be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).
24. The Manager, AXA Investment Managers Paris, is an asset management company governed by the laws of France. The Manager is registered with the Autorité des marchés financiers (the "**French AMF**") to manage French investment funds and complies with the rules of the French AMF. The Manager is not and has no intention of becoming a reporting issuer under the Legislation.
25. The Manager's portfolio management activities in connection with the Employee Share Offering and the Fund are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.
26. The Manager is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Compartment. The Manager's activities in no way affect the underlying value of the Shares and the Manager will not be involved in providing advice to any Canadian Participants.
27. Shares issued in the Employee Share Offering will be deposited in the relevant Compartment through BNP Paribas Securities Services (the "**Depository**"), a large French commercial bank subject to French banking legislation.
28. Under French law, the Depository must be selected by the Manager from among a limited number of companies identified on a list by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depository carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow

- each Compartment to exercise the rights relating to the securities held in its portfolio.
29. The Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.
30. The total amount invested by a Qualifying Employee in the Employee Share Offering, including any Bank Contribution, cannot exceed 25% of his or her estimated gross annual compensation for 2005, or for his or her last year of employment, as the case may be, although a lower limit may be established for Canadian Participants by the Canadian Affiliates.
31. None of the Filer, the Manager, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the Shares or the Units.
32. The Filer will retain a securities dealer registered as a broker/investment dealer under the Legislation of Ontario and Manitoba (the "Registrant") to provide advisory services to Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances. The Registrant will establish accounts for, and will receive the initial account statements from the Leveraged Compartment on behalf of, such Canadian Participants. The Units of the Leveraged Compartment will be issued by the Leveraged Compartment to Canadian Participants resident in Ontario or Manitoba solely through the Registrant.
33. Units of the Leveraged Compartment will be evidenced by account statements issued by the Leveraged Compartment.
34. The Canadian Participants will receive an information package in the French or English language, as applicable, which will include a summary of the terms of the Employee Share Offering, a tax notice relating to the relevant Compartment containing a description of Canadian income tax consequences of subscribing to and holding the Units in the Compartments and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package for Canadian Participants in the Leveraged Plan will also include a risk statement which will describe certain risks associated with an investment in Units pursuant to the Leveraged Plan, and a tax calculation document which will illustrate the general Canadian federal income tax consequences of participating in the Leveraged Plan.
35. Upon request, Canadian Participants may receive copies of the Filer's annual report on Form 20-F filed with the United States Securities and Exchange Commission (the "SEC") and/or the French Document de Référence filed with the French AMF in respect of the Shares and a copy of the relevant Compartment's rules (which are analogous to company by-laws). The Canadian Participants will also receive copies of the continuous disclosure materials relating to the Filer furnished to AXA shareholders generally.
36. There are approximately 1,885 Employees resident in Canada, in the provinces of Québec (1,200), Ontario (358), British Columbia (142), Alberta (103), Newfoundland and Labrador (60), New Brunswick (18) and Manitoba (4), who represent in the aggregate approximately 2% of the number of Employees worldwide.
37. There are approximately 34 eligible Retired Employees resident in Canada, in the provinces of Québec (20), Ontario (10), and British Columbia (4), for a total of 1,953 Qualifying Employees resident in Canada.
38. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.
- AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- AND WHEREAS** 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) the prospectus requirements shall not apply to trades in Units of the Compartments made pursuant to the Employee Share Offering to or with the Canadian Participants, provided that the first trade in Units of the Compartments acquired by Canadian Participants pursuant to this Decision, in a Jurisdiction, shall be deemed a distribution or a primary distribution to the

- public under the Legislation of such Jurisdiction;
- (b) the registration requirements shall not apply to:
- (i) trades in Units of the Classic Compartment made pursuant to the Employee Share Offering to or with Canadian Participants;
  - (ii) trades in Units of the Leverage Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario and Manitoba;
- (c) the registration and prospectus requirements shall not apply to:
- (i) trades of Shares by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants pursuant to the Employee Share Offering; and
  - (ii) the issuance of Units of the Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartment;
- provided that, the first trade in any such Shares or Units acquired by a Canadian Participant pursuant to this Decision, in a Jurisdiction, shall be deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction;
- (d) the registration and prospectus requirements shall not apply to the first trade in any Shares acquired by a Canadian Participant under the Employee Share Offering provided that such trade is:
- (i) made through a person or company who/which is appropriately licensed to carry on business as a broker/dealer (or the equivalent) under the applicable securities legislation in the foreign jurisdiction where the trade is executed; and
  - (ii) executed through the facilities of a stock exchange outside of Canada; and
- (e) the Manager shall be exempt from the adviser registration requirements, where applicable, in order to carry out the activities described in paragraphs 25 and 26 hereof.

"Josée Deslauriers"  
Director, Financial Markets

**2.2. Orders**

**2.2.1 Portus Alternative Asset Management Inc. and Boaz Manor - s. 127**

**September 14, 2005**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET  
MANAGEMENT INC. and BOAZ MANOR**

**ORDER  
(Section 127)**

**WHEREAS** on February 2, 2005, the Ontario Securities Commission (the "Commission") ordered that terms and conditions be imposed on the registration of Portus Alternative Asset Management Inc. ("Portus") such that Portus is precluded from opening new client accounts and accepting any new funds or other assets for investment in respect of any existing client accounts;

**AND WHEREAS** on February 10, 2005, the Commission ordered that:

- (a) trading in any securities by Portus cease, except with respect to certain pre-authorized periodic account withdrawals (as described in paragraph 2(b) of the Order);
- (b) an additional term and condition be imposed on Portus' registration such that Portus be precluded from redeeming or returning funds or assets from any existing client accounts except with respect to pre-authorized periodic account withdrawals (as described in paragraph 2(b) of the Order);
- (c) Boaz Manor ("Manor") be precluded from undertaking any action that directly or indirectly constitutes a trade or act in furtherance of a trade with respect to the Notes in which client funds are deposited (as defined in the Temporary Order of February 10, 2005, the "Notes"); and
- (d) that Manor shall not authorize, direct or execute trades in the Notes or appoint, authorize or direct any other party to make trades in the Notes;

**AND WHEREAS** on February 10, 2005, the Commission issued an Amended Notice of Hearing pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c.S.5, to hold a hearing on February 17, 2005, to consider whether it is in the public interest to extend the temporary

orders made on February 2, 2005 and February 10, 2005 (the "Temporary Orders");

**AND WHEREAS** on February 15, 2005 the Commission issued an Order, on consent, adjourning the hearing to consider the extension of the Temporary Orders until May 17, 2005 and extending the Temporary Orders until May 17, 2005;

**AND WHEREAS** on May 16, 2005 the Commission issued an Order, on consent, adjourning the hearing to consider the extension of the Temporary Orders until September 16, 2005 and extending the Temporary Orders until September 16, 2005;

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

**AND WHEREAS** Staff of the Commission, and the Respondents have consented to the making of this Order;

**IT IS HEREBY ORDERED** that:

1. the hearing to consider whether to extend the Temporary Orders is adjourned until December 16, 2005 at 10:00 a.m.;
2. the Temporary Orders issued on February 2 and 10, 2005 are continued until the hearing on December 16, 2005, or until further order of this Commission; and
3. any person or company affected by this Order may apply to the Commission for an order revoking or varying the terms of this Order pursuant to s.144 of the *Securities Act*.

"Paul Moore"

**2.2.2 Brascan Power Inc. - s 1(6) of the OBCA**

**Headnote**

Issuer deemed to have ceased to be offering its securities to the public under the OBCA.

**Statute Cited**

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

**September 9, 2005**

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

**AND**

**IN THE MATTER OF  
BRASCAN POWER INC.**

**ORDER  
(Section 1(6) of the OBCA)**

**UPON** the application (the "Application") of Brascan Power Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order, pursuant to Section 1(6) of the OBCA, that it be deemed to have ceased to be offering its securities to the public;

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

**AND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant is an "offering corporation" as defined in the OBCA.
2. The Applicant was continued under the laws of the Province of Ontario by a Certificate and Articles of Continuance dated December 22, 1980. The name of the Applicant was changed from "Great Lakes Power Inc." to "Brascan Power Inc." effective December 1, 2004. The head and registered office of the Applicant is currently located in Toronto, Ontario.
3. The authorized capital of the Applicant consists of an unlimited number of common shares ("Common Shares") and an unlimited number of Class A Preferred Shares. As at August 4, 2005, there are 101,383,135 Common Shares issued and outstanding and no Class A Preferred Shares issued and outstanding.
4. Prior to February 28, 2001, the Applicant's Common Shares were listed on the Toronto Stock Exchange. On February 28, 2001, the shareholders of the Applicant (formerly named Great Lakes Power Inc.) approved at a special

meeting a going private transaction proposed by the principal shareholder, Brascan Corporation ("Brascan"). Pursuant to this offer, Brascan acquired in February 2001 all of the then-outstanding publicly held Common Shares of the Applicant not already owned by it in exchange for cash and Class A Limited Voting Shares of Brascan. As a result of this transaction, the Applicant's Common Shares ceased to be listed on the Toronto Stock Exchange.

5. As of March 1, 2005, the publicly held unsecured notes of the Applicant, issued on August 18, 1999, matured and were repaid in full. Other than the Common Shares, the Applicant has no securities issued and outstanding.
6. All the issued and outstanding Common Shares of the Applicant are held, directly and indirectly, by Brascan.
7. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
8. The Applicant does not intend to seek public financing by way of a public offering of its securities.
9. The Applicant is not in default of any of its obligations as a reporting issuer under the securities legislation of the jurisdictions in Canada in which it is currently a reporting issuer.
10. The Applicant has submitted an MRRS application to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.

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

**IT IS ORDERED** pursuant to Section 1(6) of the Act, that the Applicant is deemed to have ceased to be offering its securities to the public under the Act.

"Paul M. Moore, Q.C."

"Robert L. Shirriff, Q.C."

**2.2.3 James Patrick Boyle, Lawrence Melnick and John Michael Malone - ss. 127 and 127.1**

September 15, 2005

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

**AND**

**IN THE MATTER OF  
JAMES PATRICK BOYLE, LAWRENCE MELNICK  
AND JOHN MICHAEL MALONE**

**ORDER**

**WHEREAS** on August 5, 2005, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended;

**AND WHEREAS** the hearing of this matter was scheduled to be heard on September 15, 2005;

**AND WHEREAS** Staff and the respondents have agreed to an adjournment of the hearing to Thursday, October 27, 2005;

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

**IT IS HEREBY ORDERED THAT:**

1. The hearing of this matter is adjourned to Thursday, October 27, 2005.

"Paul M. Moore"

**2.2.4 Parlay Entertainment Inc. - s. 83.1(1)**

**Headnote**

Subsection 83.1(1) – Issuer deemed to be a reporting issuer in Ontario – Issuer already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario – Significant connection to Ontario.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.1(1).

September 16, 2005

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

**AND**

**IN THE MATTER OF  
PARLAY ENTERTAINMENT INC.**

**ORDER  
(Subsection 83.1(1))**

**UPON** the application of Parlay Entertainment Inc. (Parlay) for an order pursuant to subsection 83.1(1) of the Act deeming Parlay to be a reporting issuer for the purposes of Ontario securities law;

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

**AND UPON** Parlay having represented to the Commission as follows:

1. Parlay is a corporation that was amalgamated under the provisions of the *Business Corporations Act* (Ontario) on November 30, 2004.
2. Parlay's head office and primary place of business is located in Oakville, Ontario.
3. The authorized share capital of Parlay consists of 50,000,000 common shares without par value (the Common Shares), of which 12,590,500 Common Shares were issued and outstanding as of August 30, 2005.
4. The Common Shares are listed on the TSX Venture Exchange (the TSX-V) under the trading symbol "PEI".
5. Parlay has a significant connection to Ontario in that all of its directors and officers are located in Ontario and its head office is located in Ontario.

6. Parlay has been a reporting issuer under the *Securities Act* (British Columbia) (the B.C. Act) and the *Securities Act* (Alberta) (the Alberta Act) since June 17, 2005, the date that the Common Shares began trading on the TSX-V.
7. Parlay is not in default of any of the requirements of the TSX-V and is not in default of any of the requirements of the B.C. Act or the Alberta Act.
8. The continuous disclosure requirements of the B.C. Act and the Alberta Act are substantially the same as the continuous disclosure requirements under the Act.
9. The continuous disclosure materials filed by Parlay under the B.C. Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval (SEDAR).
10. Other than British Columbia and Alberta, Parlay is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada.
11. Neither Parlay nor any of its officers, directors nor, to the knowledge of Parlay, its officers and directors, any of its controlling shareholders, has:
- (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;
  - (b) entered into a settlement agreement with a Canadian securities regulatory authority; or
  - (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.
12. Neither Parlay nor any of its officers, directors nor, to the knowledge of Parlay, its officers and directors, any of its controlling shareholders, is or has been subject to:
- (a) any known or ongoing or concluded investigations by
    - (i) a Canadian securities regulatory authority, or
    - (ii) a court or regulatory body, other than a Canadian securities regulatory authority,
- that would be likely to be considered important to a reasonable investor making an investment decision; or
- (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding ten (10) years.
13. None of the directors or officers of Parlay, nor to the knowledge of Parlay, its directors and officers, any of its controlling shareholders, is or has been at the time of such event a director or officer of any other issuer which is or has been subject to:
- (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than thirty (30) consecutive days, within the preceding ten (10) years; or
  - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding ten (10) years.
14. Parlay shall remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 *Fees* by no later than two (2) business days from the date hereof.

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

**IT IS HEREBY ORDERED** pursuant to subsection 83.1(1) of the Act that Parlay be deemed to be a reporting issuer for the purposes of Ontario securities law.

“Charlie MacCready”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission



## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
eOptimize Advanced Systems Inc.	08 Sept 05	20 Sept 05	20 Sept 05	

### 4.2.1 Temporary, Permanent & Rescinding Management 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
ACE/Security Laminates Corporation	06 Sept 05	19 Sept 05	19 Sept 05		
TS Telecom Ltd	08 Aug 05	19 Aug 05	19 Aug 05	15 Sept 05	

### 4.2.2 Outstanding 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
ACE/Security Laminates Corporation	06 Sept 05	19 Sept 05	19 Sept 05		
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Fareport Capital Inc.	13 Sept 05	26 Sept 05			
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	24 Aug 05	06 Sept 05	06 Sept 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	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		
TS Telecom Ltd	08 Aug 05	19 Aug 05	19 Aug 05	15 Sept 05	
Xplore Technologies Corp.	04 Jul 05	15 Jul 05	15 Jul 05		

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## Chapter 7

# Insider Reporting

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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](http://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](http://www.sedi.ca)).

## Chapter 8

# Notice of Exempt Financings

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### REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	# of Purchaser(s)	Issuer/Security	Total Pur. Price (\$)	# of Securities
08/26/2005	1	Altrinsic Global Opportunities Fund - Units	39,282.00	345.00
09/07/2005	2	Arctic Star Diamond Corp. - Flow-Through Shares	403,000.00	1,300,000.00
08/30/2005	71	Baymount Corporation - Units	3,641,000.00	9,102,500.00
09/12/2005	1	BBC Capital Management Inc. - Common Shares	75,000.00	150,000.00
08/30/2005	17	Bear Creek Mining Corporation - Units	5,373,550.00	1,653,400.00
08/30/2005	1	Bedford Capital III, LP - Units	4,000,000.00	4,000.00
09/12/2005	22	Berens Energy Ltd. - Common Shares	5,417,900.00	2,778,410.00
09/30/2005	4	BSM Technologies Inc. - Units	546,111.00	5,461,111.00
09/01/2005	8	Canadian Hydro Developers, Inc. - Debentures	59,000,000.00	59,000,000.00
08/16/2005	1	Candover 2005 Fund U.S. No. 3 Limited Partnership - Limited Partnership Units	220,588,235.00	150,000,000.00
09/09/2005	13	Cannasat Therapeutics Inc. - Common Shares	385,200.00	453,176.00
09/08/2005	3	Caribou Resources Corp. - Flow-Through Shares	5,037,750.00	1,655,000.00
09/08/2005	11	Caribou Resources Corp. - Units	7,372,540.00	3,009,200.00
09/01/2005	1	Carpathian Gold Inc. - Common Shares	10,000.00	100,000.00
08/31/2005 to 09/09/2005	2	Challenger Energy Corp. - Common Shares	50,000.00	200,000.00
09/14/2005	1	Chartwell Master Care LP - Limited Partnership Units	8,947,448.00	585,183.00
08/31/2005	1	Davis-Rea Ltd. - Units	160,114.00	14,772.00
09/01/2005 to 09/09/2005	9	Dynex Capital Limited Partnership 2 - Limited Partnership Units	441,000.00	441.00
09/02/2005	1	Epocal Inc. - Preferred Shares	25,000.00	4,167.00
09/08/2005	11	Epsilon Energy Ltd. - Common Shares	2,426,250.00	2,426,250.00
09/12/2005	2	Excalibur Limited Partnership - Limited Partnership Units	1,685,300.00	33.00
09/14/2005	4	Exchange Industrial Income Fund - Trust Units	211,400.00	17,616.00
09/09/2005	45	Exploration Tom Inc. - Flow-Through Shares	1,013,500.00	2,027,000.00
09/01/2005	12	FactorCorp. - Debentures	1,160,000.00	1,160,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchaser(s)</b>	<b>Issuer/Security</b>	<b>Total Pur. Price (\$)</b>	<b># of Securities</b>
08/09/2005	8	Fair Sky Resources Inc. - Common Shares	108,625.00	86,900.00
09/01/2005	3	Fluid Audio Network, Inc. - Preferred Shares	114,631.00	54,800.00
09/01/2005	1	FrontPoint Offshore Value Discovery Fund, Ltd. - Common Shares	1,192,400.00	1,000.00
09/09/2005	3	GeoGlobal Resources Inc. - Units	6,500,000.00	1,000,000.00
09/12/2005	40	GeoGlobal Resources Inc. - Units	15,772,250.00	2,426,500.00
09/07/2005	5	Georgia Ventures Inc. - Units	58,050.00	387,000.00
08/31/2005	2	Gladiator Limited Partnership - Limited Partnership Units	625,000.00	625,000.00
08/31/2005	6	Gold Port Resources Ltd. - Units	90,500.00	301,668.00
08/31/2005	3	Grandview Gold Inc. - Flow-Through Shares	1,500,000.00	1,200,000.00
08/31/2005	2	Grandview Gold Inc. - Units	350,000.00	280,000.00
08/29/2005	4	Harte Gold Corp. - Units	300,000.00	1,000,000.00
09/02/2005	3	High Plains Uranium, Inc. - Special Warrants	2,337,200.00	3,619,000.00
09/09/2005	1	HNR VENTURES INC. - Common Shares	50,000.00	5,000,000.00
09/02/2005	2	Idelix Software Inc. - Units	31,000.00	124,000.00
09/09/2005	1	IMC2 Corporation - Flow-Through Shares	500,500.00	910,000.00
08/30/2005	1	IMI International Medical Innovations Inc. - Units	266,900.00	1,700.00
09/12/2005	2	Internet Identity Presence Co. - Common Shares	20,000.00	1,000,000.00
09/08/2005	1	JPMorgan Chase & Co. - Bonds	441,000.00	1.00
09/02/2005	9	JumpTV.com, Inc. - Common Shares	173,898.00	9,661.00
09/08/2005	1	KBSH Enhanced Income Fund - Units	150,000.00	12,807.00
09/06/2005	1	KBSH Income Trust Fund - Units	114,250.00	8,811.00
08/25/2005	1	KBSH Private - Balanced Registered Fund - Units	175,593.00	17,127.00
09/06/2005	1	KBSH Private - Fixed Income Fund - Units	306,000.00	29,112.00
09/06/2005	1	KBSH Private - Money Market Fund - Units	500,000.00	50,000.00
09/06/2005	1	KBSH Private - Money Market Fund - Units	1,100,000.00	110,000.00
09/06/2005	1	KBSH Private - U.S. Equity Fund - Units	193,500.00	15,822.00
09/06/2005	1	KBSH Private International Equity Fund - Units	50,000.00	5,305.00
08/31/2005	2	Kingwest Avenue Portfolio - Units	255,000.00	9,196.00
09/02/2005	27	Lakeview Real Estate Investment Trust - Trust Units	8,015,494.00	3,035,333.00
06/13/2005 to	2	Magenta II Mortgage Investment Corporation -	244,000.00	244,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchaser(s)</b>	<b>Issuer/Security</b>	<b>Total Pur. Price (\$)</b>	<b># of Securities</b>
09/09/2005		Common Shares		
09/01/2005	1	MCAN Performance Strategies - Limited Partnership Units	54,000.00	485.00
09/01/2005	1	Mellon Offshore Global Opportunity Fund, Ltd, - Common Shares	37,936,000.00	32,000.00
09/12/2005	2	Montez Retail Fund Inc. - Common Shares	1,484,846.00	1,484,846.00
08/31/2005	3	Newport Alternative Income Fund - Units	200,000.00	254.00
09/08/2005	3	Outlook Resources Inc. - Common Shares	58,878.36	872,272.00
09/07/2005	7	Peerless Energy Inc. - Common Shares	3,902,750.00	1,165,000.00
09/12/2005	2	Petrolia Inc. - Units	750,000.00	1,875,000.00
09/06/2005	1	PharmaGap Inc. - Notes	1,500,000.00	1.00
08/24/2005	9	PharmEng International Inc. - Units	302,749.45	672,776.00
09/09/2005	1	Planet Trust - Bonds	403,094.00	1.00
09/06/2005	1	Polar Enterprise Partners II - Limited Partnership Units	200,000.00	2,000.00
09/12/2005	49	Ranger Canyon Energy Inc. - Common Shares	407,000.00	4,070,000.00
09/02/2005	1	Real Assets US Social Equity Index Fund - Units	19,760.00	2,765.00
09/09/2005	1	Real Assets US Social Equity Index Fund - Units	15,808.00	2,201.00
08/29/2005	39	Resilient Resources Ltd. - Common Shares	2,352,000.00	3,136,001.00
09/09/2005	1	Resolve Ventures Inc. - Common Shares	1.00	1,190,476.00
09/12/2005	1	Ruby Red Resources Inc. - Units	10,000.00	50,000.00
08/31/2005	1	SAMSys Technologies Inc. - Debentures	6,000,000.00	1.00
09/09/2005	2	Santoy Resources Ltd. - Flow-Through Shares	1,450,000.00	3,222,222.00
09/06/2005	2	SC Stormont Holdings Inc. - Debentures	1,000,000.00	2.00
09/02/2005	16	Searchlight Minerals Corp. - Units	861,445.00	1,450,000.00
09/07/2005	2	Sonoma Resource Ltd. - Common Shares	105,000.00	87,500.00
08/17/2005	2	Stratabound Minerals Corp. - Flow-Through Shares	16,500.00	110,000.00
09/08/2005	1	Sustainable Energy Technologies Ltd. - Common Shares	500,000.00	1,851,852.00
09/08/2005	1	Sustainable Energy Technologies Ltd. - Limited Partnership Units	500,000.00	50.00
08/24/2005	2	Sustainable Energy Technologies Ltd. - Units	30,000.00	3.00
09/09/2005	3	Synex International Inc. - Common Shares	556,250.00	1,250,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchaser(s)</b>	<b>Issuer/Security</b>	<b>Total Pur. Price (\$)</b>	<b># of Securities</b>
09/13/2005	1	Tangarine Concepts Corporation - Units	8,352.00	8,352.00
08/31/2005	2	TD Harbour Capital Balanced Fund - Trust Units	213,678.02	1,887.00
08/31/2005	1	The McElvaine Investment Trust - Trust Units	50,000.00	2,126.00
08/25/2005	1	Trez Capital Corporation - Mortgage	294,525.00	1.00
08/31/2005	1	Trez Capital Corporation - Mortgage	351,660.00	1.00
08/26/2005	2	Trident Global Opportunities Fund - Units	89,734.00	783.00
09/01/2005	1	Trident Resources Corp - Common Shares	5,000,000.00	100,000.00
09/01/2005	1	Trident Resources Corp - Units	45,000,000.00	606,061.00
09/02/2005	2	Tyhee Development Corp. - Units	500,000.00	1,851,850.00
08/30/2005	2	Van Arbor Canadian Advantage Fund - Units	30,000.00	1,921.00
08/31/2005	2	Vertex Balanced Fund - Trust Units	50,000.00	8,252.00
08/31/2005	15	Vertex Fund - Trust Units	827,904.55	46,951.00
08/06/2005	1	WALLBRIDGE MINING COMPANY LIMITED - Flow-Through Shares	1,498,000.00	2,675,000.00
08/31/2005	1	Waterfall Tipping Point L.P. - Limited Partnership Units	250,000.00	250.00
08/31/2005	8	Waterfall Vanilla L.P. - Limited Partnership Units	4,440,000.00	4,440.00
08/30/2005	12	WaveForm Energy Ltd. - Common Shares	2,489,000.00	1,310,000.00
09/15/2005	1	Western Warrior Resources Inc. - Common Shares	9,750.00	65,000.00
05/17/2005	1	Whispering Oaks International, Inc. - Units	31,388.00	31,388.00
06/06/2005	1	Workstream Company - Common Shares	8,544,053.00	5,085,746.00
07/19/2002 to 07/29/2005	55	ZBx Corp. - Common Shares	1,555,974.00	1,802,557.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Antrim Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 14, 2005

**Offering Price and Description:**

8,333,333 Units at \$1.80 per Unit (\$15,000,000.00) Agents' Option 6,111,111 Common Shares and 3,055,555 Private Placement Warrants issuable on exercise of Special Warrants 611,111 Brokers' Warrants issuable on exercise of Underwriters' Special Warrants

**Underwriter(s) or Distributor(s):**

Research Capital Corporation  
Octagon Capital Corporation

**Promoter(s):**

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**Project #832054**

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**Issuer Name:**

Avenir Diversified Income Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 16, 2005  
Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

\$150,000,537.50 - 11,857,750 Trust Units Price: \$12.65 per Unit

**Underwriter(s) or Distributor(s):**

GMP Securities Ltd.  
Raymond James Ltd.  
First Associates Investments Inc.  
Canaccord Capital Corporation  
Acumen Capital Finance Partners Limited

**Promoter(s):**

William M. Gallacher  
Gary H. Dundas

**Project #832796**

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**Issuer Name:**

Bronco Energy Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

\$4,000,000.00 to \$5,500,000.00 - 4,888,888 to 6,888,888 Common Shares and Flow-Through Shares. Price \$0.75 per Share and \$0.90 per Flow-Through Share

**Underwriter(s) or Distributor(s):**

First Associates Investments Inc.

**Promoter(s):**

Brian Alford

**Project #832275**

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**Issuer Name:**

CanWest MediaWorks Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated September 20, 2005  
Mutual Reliance Review System Receipt dated September 20, 2005

**Offering Price and Description:**

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

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Richardson Partners Financial Limited  
Wellington West Capital Markets Inc.

**Promoter(s):**

CanWest MediaWorks Inc.

**Project #830094**

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**Issuer Name:**

Credential Enrich Canadian Equity Pool  
Credential Enrich Income Pool  
Credential Enrich International Equity Pool  
Credential Enrich US Equity Pool  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Simplified Prospectus dated September 16, 2005  
Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

Class A and B Units

**Underwriter(s) or Distributor(s):**

Credential Asset Management Inc.  
Credential Asset Management Inc.

**Promoter(s):**

Ethical Funds Inc.

**Project #832723**

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**Issuer Name:**

Innergex Power Income Fund  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated September 19, 2005  
Mutual Reliance Review System Receipt dated September 19, 2005

**Offering Price and Description:**

\$55,857,050.00 - 4,033,000 Subscription Receipts, each representing the right to receive one Trust Unit  
Price: \$13.85 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

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

**Promoter(s):**

-

**Project #833090**

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**Issuer Name:**

Macquarie Power Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 14, 2005

**Offering Price and Description:**

\$64,745,000.00 - 5,630,000 Subscription Receipts, each representing the right to receive one Unit  
Price: \$11.50 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

TD Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Westwind Partners Inc.

**Promoter(s):**

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**Project #831763**

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**Issuer Name:**

Pitchstone Exploration Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated September 15, 2005  
Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

\$2,035,000.00 - 6,000,000 Units Price: \$0.55 per Unit

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation  
Pacific International Securities Inc.  
Haywood Securities Inc.

**Promoter(s):**

Edward A.G Trueman

**Project #832506**

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**Issuer Name:**

Sierra Vista Energy Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

Up to 10,000 Units (\$10,000,000.00) - Minimum Offering:  
6,500 Units (\$6,500,000) Maximum Offering: 10,000 Units  
(\$10,000,000.00) Price: \$1,000 per Unit - Minimum  
Subscription: Five Units (\$5,000.00)

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation

**Promoter(s):**

Mark A. Malouin  
Morley Mychaluk  
**Project #832127**

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**Issuer Name:**

Yamana Gold Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 20,  
2005  
Mutual Reliance Review System Receipt dated September  
20, 2005

**Offering Price and Description:**

\$130,000,000.00 - 26,000,000 Common Shares Price:  
\$5.00 per Common Share

**Underwriter(s) or Distributor(s):**

Canaccord Capital Corporation  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Sprott Securities Inc.  
Wellington West Capital Markets Inc.  
Blackmont Capital Inc.  
Paradigm Capital Inc.  
Raymond James Ltd.

**Promoter(s):**

Santa Elina Mines Corporation  
**Project #833464**

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**Issuer Name:**

Axis Investment Fund Inc.

**Type and Date:**

Amendment #1 dated September 12, 2005 to Final  
Prospectus dated December 13, 2004  
Received on September 15, 2005

**Offering Price and Description:**

Series 1 Class A Shares and Series 2 Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Axis Capital Corporation  
**Project #703112**

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**Issuer Name:**

BNS Split Corp. II  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 15, 2005  
Mutual Reliance Review System Receipt dated September  
16, 2005

**Offering Price and Description:**

Capital Shares and Preferred Shares

**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**

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**Issuer Name:**

Bonnett's Energy Services Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

\$45,000,000.00 - 4,500,000 Trust Units Price: \$10.00 per Trust Unit

**Underwriter(s) or Distributor(s):**

Raymond James Ltd.  
Sprott Securities Inc.  
Westwind Partners Inc.

**Promoter(s):**

Bonnett's Wireline Services Ltd.  
The Testers Inc.

**Project #820006**

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**Issuer Name:**

B.E.S.T Total Return Fund Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated September 7, 2005 to Prospectus dated December 20, 2004  
Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

CLAC B.E.S.T. Sponsor Inc.  
6154417 Canada Inc.  
6154409 Canada Inc.

**Project #712521**

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**Issuer Name:**

Calloway Real Estate Investment Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Shelf Prospectus dated September 14, 2005  
Mutual Reliance Review System Receipt dated September 14, 2005

**Offering Price and Description:**

\$2,000,000,000.00 - Debt Securities Units and Subscription Receipts

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #829564**

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**Issuer Name:**

Canada Dominion Resources 2005 II Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 19, 2005  
Mutual Reliance Review System Receipt dated September 20, 2005

**Offering Price and Description:**

\$50,000,000.00 (maximum) 2,000,000 Limited Partnership Units @ \$25/unit

**Underwriter(s) or Distributor(s):**

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

**Promoter(s):**

Canada Dominion Resources 2005 II Corporation  
**Project #823658**

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**Issuer Name:**

Canadian Science and Technology Growth Fund Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment #3 dated September 8, 2005 to Final  
Prospectus dated December 20, 2004  
Mutual Reliance Review System Receipt dated September  
15, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #711703**

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**Issuer Name:**

Capital Alliance Ventures Inc.

**Type and Date:**

Amendment #3 dated September 8, 2005 to Final  
Prospectus dated October 27, 2004  
Received on September 15, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #692398**

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**Issuer Name:**

Chou Associates Fund  
Chou RRSP Fund  
Chou Europe Fund  
Chou Asia Fund  
Chou Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated September 12, 2005  
Mutual Reliance Review System Receipt dated September  
15, 2005

**Offering Price and Description:**

Series A Units and Series F Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Chou Associates Management Inc.

**Project #815686**

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**Issuer Name:**

Citigroup Finance Canada Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Base Shelf Prospectus dated September  
16, 2005  
Mutual Reliance Review System Receipt dated September  
19, 2005

**Offering Price and Description:**

\$8,000,000,000.00 - Medium Term Notes (unsecured)

**Underwriter(s) or Distributor(s):**

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

**Promoter(s):**

-

**Project #831210**

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**Issuer Name:**

Covington Fund I Inc.

**Type and Date:**

Amendment #1 dated September 8, 2005 to Prospectus  
dated February 9, 2005  
Received on September 14, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

COVINGTON CAPITAL CORPORATION,

**Project #720862**

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**Issuer Name:**

Covington Fund II Inc.

**Type and Date:**

Amendment #1 dated September 8, 2005 to Prospectus  
dated December 20, 2004  
Received on September 14, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Covington Capital Corporation

**Project #711663**

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**Issuer Name:**

E2 Venture Fund Inc.

**Type and Date:**

Amendment #1 dated September 12, 2005 to Prospectus dated January 10, 2005

Received on September 19, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Covington Group of Funds Inc.

**Project #711590**

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**Issuer Name:**

Eurogas Corporation

Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated September 14, 2005

Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

Rights to Subscribe for up to 24,348,286 Common Shares

Subscription Price: \$1.32 per Common Share

(Upon the exercise of four Rights)

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation

Sprott Securities Inc.

**Promoter(s):**

-

**Project #808702**

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**Issuer Name:**

FAMILY MEMORIALS INC.

Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 6, 2005

Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

\$1,250,000.00 - ,000,000 Common Shares PRICE: \$0.25 per Common Share

**Underwriter(s) or Distributor(s):**

First Associates Investments Inc.

**Promoter(s):**

-

**Project #734225**

**Issuer Name:**

Financial Industry Opportunities Fund Inc.

**Type and Date:**

Amendment #1 dated September 12, 2005 to Prospectus dated January 14, 2005

Received on September 15, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

CFPA Sponsor Inc.

Covington Group of Funds Inc.

**Project #723232**

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**Issuer Name:**

First Ontario Labour Sponsored Investment Fund Ltd.

**Type and Date:**

Amendment #1 dated September 8, 2005 to Prospectus dated December 20, 2004

Received on September 14, 2005

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Promittere Securities Limited

**Promoter(s):**

First Ontario Management Ltd.

**Project #711711**

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**Issuer Name:**

Growthgen Equity Inc.

Principal Regulator - Ontario

**Type and Date:**

Final CPC Prospectus dated September 10, 2005

Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

Minimum of \$1,000,000.00 and Maximum of \$1,900,000.00

- 3,333,333 Common Shares and Maximum of 6,333,333

Common Shares Price: \$0.30 per Common Share

**Underwriter(s) or Distributor(s):**

First Associates Investments Inc.

**Promoter(s):**

Craig Leon

**Project #807217**

**Issuer Name:**

GrowthWorks Canadian Fund Ltd.

Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated September 8, 2005 to Prospectus dated December 24, 2004

Mutual Reliance Review System Receipt dated September 15, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

GrowthWorks Capital Ltd.

**Promoter(s):**

GrowthWorks WV Management Ltd.

**Project #701638**

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**Issuer Name:**

Hudson's Bay Company

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Shelf Prospectus dated September 16, 2005

Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

\$500,000,000.00 - Debt Securities; Preferred Shares - Common Shares; Warrants to Purchase Equity Securities; Warrants to Purchase Debt Securities Share Purchase Contracts Share Purchase or Equity Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #830248**

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**Issuer Name:**

IPC US Real Estate Investment Trust

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated September 16, 2005

Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

U.S. \$60,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures Price: U.S. \$1,000 per Debenture

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.

National Bank Financial Inc.

CIBC World Markets Inc.

Scotia Capital Inc.

Desjardins Securities Inc.

TD Securities Inc.

Canaccord Capital Corporation

HSBC Securities (Canada) Inc.

Genuity Capital Markets

Raymond James Ltd.

**Promoter(s):**

-

**Project #830613**

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**Issuer Name:**

New Generation Biotech (Equity) Fund Inc.

**Type and Date:**

Amendment #1 dated September 12, 2005 to Prospectus dated December 24, 2004

Received on September 19, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

TD Securities Inc.

**Promoter(s):**

CFPA Sponsor Inc.

NGB Management Inc.

**Project #711598**

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**Issuer Name:**

Pyramid Petroleum Inc.  
Principal Regulator - Alberta

**Type and Date:**

Final CPC Prospectus dated September 15, 2005  
Mutual Reliance Review System Receipt dated September 19, 2005

**Offering Price and Description:**

A Minimum of 2,500,000 Common Shares (\$500,000.00)  
and a Maximum of 7,500,000 Common Shares  
(\$1,500,000.00) Price: \$0.20 per Common Share

**Underwriter(s) or Distributor(s):**

Research Capital Corporation

**Promoter(s):**

Mansoor A. Anjum

**Project #789340**

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**Issuer Name:**

RBC DS Balanced Global Portfolio (formerly RBC DS  
Balanced Portfolio)  
RBC DS Growth Global Portfolio (formerly RBC DS Growth  
Portfolio)  
RBC DS Aggressive Growth Global Portfolio (formerly RBC  
DS Aggressive Growth Portfolio)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated September 15, 2005  
Mutual Reliance Review System Receipt dated September 16, 2005

**Offering Price and Description:**

Advisor Series Units and Series F Units

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

RBC Asset Management Inc.

**Project #820005**

**Issuer Name:**

The Business, Engineering, Science & Technology  
Discoveries Fund Inc.

**Type and Date:**

Amendment #1 dated September 7, 2005 to Prospectus  
dated January 11, 2005  
Received on September 15, 2005

**Offering Price and Description:**

CLASS A SHARES, SERIES I,  
CLASS A SHARES, SERIES II AND CLASS A SHARES,  
SERIES III

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

1208733 Ontario Inc.  
B.E.S.T. Investment Counsel Limited

**Project #720054**

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**Issuer Name:**

The Thomson Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Base Shelf Prospectus dated September 20, 2005  
Mutual Reliance Review System Receipt dated September 20, 2005

**Offering Price and Description:**

US\$2,000,000,000.00 - Debt Securities (unsecured)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

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**Project #828861**

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**Issuer Name:**

The Vengrowth Traditional Industries Fund Inc.  
The VenGrowth Advanced Life Sciences Fund Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated September 8, 2005 to Prospectuses  
dated November 26, 2004  
Mutual Reliance Review System Receipt dated September 14, 2005

**Offering Price and Description:**

Class A Shares  
Offering Price: Net Asset Value per Class A Share

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

APSFA/AGFFP Sponsor Corp.

**Project #697410**

**Issuer Name:**

The VenGrowth III Investment Fund Inc.

Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated September 8, 2005 to Prospectus dated October 4, 2004

Mutual Reliance Review System Receipt dated September 14, 2005

**Offering Price and Description:**

Class A Shares

Offering Price: Net Asset Value per Class A Share

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

APSFA/AGFFP Sponsor Corp.

**Project #666722**

**Issuer Name:**

VRB Power Systems Inc.

Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated September 19, 2005

Mutual Reliance Review System Receipt dated September 20, 2005

**Offering Price and Description:**

Cdn. \$10,200,240.00 - 4,167,000 Common Shares

Issuable on Exercise of 14,167,000 Special Warrants

**Underwriter(s) or Distributor(s):**

Sprott Securities Inc.

Loewen, Ondaatje, McCutcheon Limited

**Promoter(s):**

Fraser MacKenzie Limited

**Project #829002**

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**Issuer Name:**

Triax Growth Fund Inc.

Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated September 12, 2005 to Prospectus dated December 24, 2004

Mutual Reliance Review System Receipt dated September 19, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

Triax Growth Fund Inc.

**Promoter(s):**

CFPA Sponsor Inc.

Covington Group of Funds Inc.

**Project #711578**

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**Issuer Name:**

Venture Partners Equity Fund Inc.

**Type and Date:**

Amendment #1 dated September 12, 2005 to Prospectus dated December 24, 2004

Received on September 19, 2005

**Offering Price and Description:**

Class A Shares

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

CFPA Sponsor Inc.

Covington Group of Funds Inc.

**Project #712119**

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## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Qtrade Asset Management Inc.	Mutual Fund Dealer	September 6, 2005
New Registration	MM Asset Management Inc.	Limited Market Dealer and Investment Counsel and Portfolio Manager	September 20, 2005
New Registration	Interward Asset Management Ltd.	Investment Counsel & Portfolio Manager	September 12, 2005
Surrender of Registration	META Financial Management Ltd.	Mutual Fund Dealer and Limited Market Dealer	September 9, 2005
Change of Name	From: First Associates Investments Inc. To: Blackmont Capital Inc.	Investment Dealer	September 16, 2005
Change of Name	From: Network Portfolio Management Inc. To: Brickburn Asset Management Inc.	Extra-Provincial Investment Counsel & Portfolio Manager	June 23, 2005

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## SRO Notices and Disciplinary Proceedings

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### 13.1.1 MFDA – Conflicts of Interest (Rule 2.1.4)

#### MFDA – CONFLICTS OF INTEREST (RULE 2.1.4)

##### I. OVERVIEW

###### A. Current Rule

Rule 2.1.4(a) currently provides that each Member and Approved Person and other employee and agent of a Member shall be aware of the possibility of conflicts of interest arising in connection with business conducted by them for a client and that in the event that such a conflict or potential conflict of interest arises, the Member must ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

Rule 2.1.4(b) currently provides that any conflict that arises or can reasonably be expected to arise, shall be immediately disclosed in writing by the Member to the client prior to the Member, or any person acting on its behalf in connection with its business, conducting business for the client.

###### B. Issues

Rule 2.1.4(a) and (c) refers to conflicts of interest arising in connection with business conducted by Members and Approved Persons for clients. The requirements of Rule 2.1.4 are intended to apply to any conflicts of interest that arise between the interests of the Member or the Approved Person and the interests of the client regardless of whether they relate specifically to Member business. This would include, for example, conflicts of interest that arise where Approved Persons are engaged in outside business activity or personal dealings with clients.

Rule 2.1.4 does not expressly require Approved Persons to report any conflicts or potential conflicts of interest that they identify to the Member. Implicit in both Rule 2.1.4(a) and (b) is the notion that where an Approved Person becomes aware of a conflict or potential conflict of interest, the Approved Person must immediately bring the conflict to the attention of the Member so as to permit the Member to ensure that the conflict is addressed through the exercise of responsible business judgment influenced only by the best interests of the client and to fulfill the obligation to provide written notice of the conflict of interest to the client.

Rule 2.1.4 (a), which requires that conflicts or potential conflicts be addressed through the exercise of responsible business judgment, does not expressly reference Approved Persons. Approved Persons are required to comply with the requirements of Rule 2.1.4 by virtue of Rule 1.1.2, which provides that each Approved Person shall comply

with the by-laws and rules "...as they relate to the Member and Approved Person."

MFDA Rule 2.1.4(a) currently references other employees or agents of the Member. The definition of "Approved Person" in By-law No.1 includes an employee or agent of the Member who participates in dealer business of the Member and who is subject to the jurisdiction of the Corporation. The reference to employees or agents of the Member in Rule 2.1.4 (a) is therefore redundant.

###### C. Objective

The objective of the proposed amendments is to clarify the obligations of Members and Approved Persons with respect to conflicts of interest.

###### D. Effect of Proposed Amendments

The proposed amendment will help to ensure that Members and Approved Persons are fully aware of their responsibilities with respect to conflicts of interest. The amendments will clarify that the requirements of Rule 2.1.4 apply equally to situations where Approved Persons are engaged in outside business activity or personal dealings with clients where the activity or transaction that gives rise to the conflict or potential conflict is not considered Member business. The proposed amendments will also assist Members in meeting their obligations under the Rule with respect to conflicts of interest by expressly requiring Approved Persons to report conflicts or potential conflicts to the Member.

##### II. DETAILED ANALYSIS

###### A. Proposed Amendment

Rule 2.1.4(a) will be amended to clarify that the requirements of the Rule apply to all conflicts that arise between the interests of the Member or Approved Person and the interests of the client. The proposed amendment to Rule 2.1.4(a) will remove the wording "in connection with business conducted by them for a client" and require Members and Approved Persons to be aware of the possibility of conflicts arising between the interests of the Member and Approved Person and the interests of the client.

The proposed amendment to MFDA Rule 2.1.4(a) is intended to clarify that, where an Approved Person becomes aware of a conflict or potential conflict of interest, the Approved Person must immediately bring the conflict of interest to the attention of the Member to enable the Member to ensure that the conflict is handled in accordance with the requirements of the Rule. Accordingly, the amendment will add the sentence "Where

an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.” after the first sentence of Rule 2.1.4(a). The words “and other employee and agent of a Member” will also be deleted from Rule 2.1.4(a).

Rule 2.1.4 will also be amended to add the phrase “and the Approved Person” before the reference to the obligation to ensure that the conflict is addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

In addition, the phrase “by the Member, or by the Approved Person as the Member directs” will be added after the reference to the obligation to disclose conflicts of interest to clients in Rule 2.1.4(b). This wording will clarify that either the Member or the Approved Person acting in accordance with the Member’s direction, is required to provide immediate written notice of a conflict or potential conflict to the client. Rule 2.1.4(b) will also be amended to remove the reference “...in connection with its business, conducting business for the client” and will add the words “...proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.” This amendment, which is consistent with the amendment to section (a) of Rule 2.1.4 as discussed above, is intended to clarify that the requirement to provide disclosure to the client applies to all situations where there is a conflict or proposed conflict of interest.

The reference to conflicts of interest that “can reasonably be expected to arise” in Rule 2.1.4(b) will be replaced with a reference to potential conflict of interest. In addition, the wording “or any person acting on its behalf” will be replaced with “or Approved Person”. These amendments will ensure consistency with the wording in other sections of the Rule.

The last sentence of the current Rule 2.1.4(a) will become Rule 2.1.4(b), and, consequently, Rule 2.1.4(b) will be renumbered Rule 2.1.4(c) and Rule 2.1.4(c) will be renumbered Rule 2.1.4(d).

**B. Issues and Alternatives Considered**

No other issues or alternatives were considered.

**C. Best Interests of the Capital Markets**

The Board has determined that the proposed Rule amendment is in the best interests of the capital markets.

**D. Public Interest Objective**

The proposed amendment is in the public interest in that it will ensure that Members and Approved Persons understand their responsibilities with respect to conflicts and potential conflicts of interest that arise with clients.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed Rule amendments will be filed for approval with the Alberta, British Columbia, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

**B. Effectiveness**

The proposed amendments are simple and effective.

**C. Process**

The proposed amendments were developed by MFDA staff in response to comments received from Members and based on input from MFDA staff. The proposed amendments were approved by the MFDA Board of Directors.

**D. Effective Date**

The amended Rule will be effective on a date to be subsequently determined by the MFDA.

**IV. SOURCES**

**MFDA Rule 2.1.4**

**V. OSC REQUIREMENT TO PUBLISH FOR COMMENT**

The MFDA is required to publish for comment the proposed amendments so that the issue referred to above may be considered by Ontario Securities Commission staff.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, 19<sup>th</sup> Floor, Box 55, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Paige Ward  
Director of Policy and Regulatory Affairs  
Mutual Fund Dealers Association of Canada  
(416) 943-5838

**MUTUAL FUND DEALERS  
ASSOCIATION OF CANADA**

**MFDA RULE 2.1.4 (CONFLICTS OF INTEREST)**

On September 14, 2005, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted the following amendment to Rule 2.1.4:

**2.1.4 Conflicts of Interest**

- (a) Each Member and Approved Person ~~and other employee and agent of a Member~~ shall be aware of the possibility of conflicts of interest arising ~~in connection with business conducted by them for a client, between the interests of the Member or Approved Person and the interests of the client.~~ Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
- ~~(b)~~ In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4~~(b)(c)~~ and ~~(e)(d)~~.
- ~~(b)(c)~~ Any conflict or potential conflict of interest that arises ~~or can reasonably be expected to arise as referred to in Rule 2.1.4(a)~~ shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person or any person acting on its behalf proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest, in connection with its business, conducting business for the client.
- ~~(e)(d)~~ Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), ~~and (b)- and (c).~~ and (c).

**13.1.2 Request for Comments – MFDA Policy 5  
Regarding Branch Review Requirements**

**MUTUAL FUND DEALERS  
ASSOCIATION OF CANADA  
POLICY 5 - BRANCH REVIEW REQUIREMENTS**

**I. OVERVIEW**

On September 14, 2005, the MFDA Board of Directors approved MFDA Policy 5, which is intended to clarify MFDA requirements with respect to minimum standards for Member branch review procedures.

**A. Current Rule**

There are currently no specific standards contained in the MFDA By-laws, Rules and Policies with respect to branch review requirements.

Under MFDA Rules, Members are responsible for and required to supervise the conduct of each Approved Person in respect of Member business. MFDA Policy 2, in particular, requires Members to conduct an on-going review of sales compliance procedures and practices both at head office and at branch offices to ensure that adequate supervision is being completed. Further, Members are responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation. MFDA Rule 2.9 requires each Member to establish and maintain adequate internal controls. The requirement to complete regular branch reviews is consistent with these obligations.

**B. The Issues**

MFDA staff have observed that some Members have not implemented branch review procedures that are sufficient to allow them to meet their supervisory obligations. The MFDA has developed a proposed policy to provide guidance regarding the MFDA's minimum expectations with respect to branch reviews, while allowing Members sufficient flexibility to develop procedures that are appropriate to the particular Member's size and business model.

**C. Objectives**

The proposed policy was developed to ensure that certain minimum standards are observed by Members in monitoring branch compliance. It will require Members to implement a formal branch review program that prescribes criteria for branch selection, review procedures, reporting of results and proficiency requirements for branch reviewers.

The objective for each Member is to develop a branch review program that maximizes the ability of the Member to detect potential problems, so that corrective action may be promptly taken.

#### **D. Effect of Proposed Amendments**

By requiring that effective branch review programs be in place, the ability of Members to assess and monitor the quality of supervision employed at their branches will be enhanced. Members will be better able to ensure that branch managers have a complete understanding of their fundamental supervisory requirements and to provide ongoing education of staff and Approved Persons with respect to compliance issues.

Members that do not presently have adequate branch review procedures in place will be required to make appropriate arrangements. As a result, some Members may incur additional costs.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or that the proposed amendments will require Members to implement significant technological systems changes to comply with the proposed policy.

### **II. DETAILED ANALYSIS**

#### **A. Relevant History**

The MFDA Rules currently require Members to perform an adequate level of supervision of their branch locations. To assess Member compliance with this requirement, MFDA staff review Members' policies and procedures regarding branch reviews when conducting Member compliance examinations.

The proposed policy was developed to give Members more detailed guidance in complying with their obligations with respect to monitoring branch supervision. Certain basic requirements must be satisfied by all Members to ensure that they can have a good understanding of the adequacy of their branch supervision systems.

#### **B. Proposed Policy**

Each Member will be required to implement a branch review program that allows the Member to assess the supervisory procedures employed at its branches, as well as the quality of execution of those procedures. The review process must involve interviews with supervisors and other individuals as well as substantive testing, including a review of client files and trade blotters. The reviewer must verify that there is proper documentation of the required know-your-client information on file and proper evidence of client instructions. Evidence of supervisory reviews must be reviewed to confirm that trade reviews have been performed in a timely fashion and the quality of review is consistent with head office standards and regulatory expectations. The branch review program must also address other regulatory concerns, such as sales communications, referral arrangements, outside business activities and complaints handling to confirm that the branch practices and procedures comply with MFDA By-laws, Rules and Policies and other applicable securities legislation.

Members will be required to develop an appropriate branch review schedule and cycle. Branches must be prioritized by risk ranking. Members with a smaller number of branches and sub-branch locations are expected to perform a review of these locations annually. Where a Member has a significant number of branch and sub-branch locations and is able to justify a longer review cycle based upon their risk assessment, the review cycle can exceed one-year but should not in any event exceed three years.

The individuals responsible for completing the branch reviews must have the training, skills and proficiency necessary to accomplish the objectives of the review program. Individuals that have two years of relevant industry experience or that have successfully completed the courses required for designation as a branch manager as set out under MFDA Rules would generally be considered sufficiently qualified to perform branch reviews.

The Member must have as part of the branch review process a consistent means of tracking results; a means of reporting the results back to the branch in a timely fashion; a means of tracking responses; and a means of ensuring that the branch implements any required changes in a reasonable amount of time.

Branch review files, including working papers and other documentation, must be maintained in accordance with MFDA Rule 5 and must be made available to MFDA staff upon request.

#### **C. Issues and Alternatives Considered**

No other alternatives were considered.

#### **D. Comparison with Similar Provisions**

The Investment Dealers Association does not currently have a formal policy that prescribes particular standards for the implementation of a branch review program. On a more general level, IDA By-law 29.27(a) does require its members to establish and maintain a supervisory system that includes periodic on-site reviews of branch office supervision and requires proper records to be maintained with respect to such reviews.

NASD Rule 3010(c) prescribes standards regarding internal inspections by Members of branch offices to detect and prevent violations of applicable rules and legislation and to promote member compliance. The NASD rule specifies cycles for review of branch offices based on the type of supervisory activity carried on at the office. Under the rule, certain branch offices may require more frequent inspections where the risk ranking for the branch warrants. The rule requires that findings be recorded in a written report and kept on file by the member for a minimum of three years, or at least until the next inspection report has been written. Mandatory testing of certain basic supervisory procedures is required under the rule.

The proposed policy is consistent with existing MFDA Rules and Policies and with the requirements of other regulators as noted above.

**E. Best Interests of the Capital Markets**

The Board has determined that the implementation of the proposed policy is in the best interests of the capital markets.

**F. Public Interest Objective**

The proposed policy creates standards with respect to Member branch review procedures that are consistent with existing MFDA Rules and Policies. Furthermore, the proposed amendments will assist in the protection of the investing public by enhancing controls with respect to branch supervision and awareness of compliance policies at branch offices of Member firms.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed Rule amendments will be filed for approval with the Alberta, British Columbia, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

**B. Effectiveness**

The proposed Policy is simple and effective.

**C. Process**

The proposed Policy was developed by MFDA staff in response to comments received from Members and was reviewed by the MFDA Policy Advisory Committee. The proposed Policy has been approved by the MFDA Board of Directors.

**D. Effective Date**

The proposed Policy will be effective on a date to be subsequently determined by the MFDA.

**IV. SOURCES**

- MFDA Rule 1.1.4
- MFDA Rule 1.1.5
- MFDA Rule 2.5.1
- MFDA Rule 2.9
- MFDA Policy 2
- IDA By-law 29.27(a)

**V. OSC REQUIREMENT TO PUBLISH FOR COMMENT**

The MFDA is required to publish for comment the proposed Policy so that the issues referred to above may be considered by Ontario Securities Commission staff.

The MFDA has determined that the entry into force of the proposed Policy would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed Policy. Comments should be made in writing. One copy of each comment letter should be

delivered within 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, 19<sup>th</sup> Floor, Box 55, Toronto, Ontario, M5H 3S8.

On request, the MFDA will make available all comments received during the comment period.

Questions may be referred to:

Mark Stechishin  
Senior Legal and Policy Counsel  
Mutual Fund Dealers Association of Canada  
(416) 943-4677



## MUTUAL FUND DEALERS ASSOCIATION OF CANADA

### BRANCH REVIEW REQUIREMENTS [POLICY 5]

On September 14, 2005, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted Policy 5, as follows:

#### INTRODUCTION

This Policy establishes minimum standards for the development and implementation of branch review procedures.

Members are responsible for establishing, implementing and maintaining policies and procedures to ensure that business is conducted and managed in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation. Under MFDA Policy 2, the Member is required to conduct an on-going review of sales compliance procedures and practices at both head office and at branch offices to confirm that these procedures are adequately fulfilling the purposes for which they have been designed. The requirement to complete regular branch reviews is consistent with these obligations and will serve to enhance the Member's ability to meet the fundamental supervision requirements under MFDA Rules.

The intent of this Policy is to establish minimum standards for internal branch review programs, while allowing Members sufficient flexibility to develop procedures that are appropriate to the Member's size and business model. Accordingly, strict adherence to the minimum standards as set out in this Policy will not necessarily ensure that a Member's branch review program is effective to ensure proper supervision and compliance with MFDA Rules. The objective is for Members to create and effectively implement processes that maximize their ability to detect potential compliance issues, so that corrective action may be taken before serious problems occur. MFDA staff will assess the effectiveness of the Member's branch review policy in the course of conducting compliance examinations and may impose additional requirements to ensure compliance with MFDA Rules.

#### BRANCH REVIEW POLICIES AND PROCEDURES

Each Member must establish procedures to effectively assess and monitor compliance with regulatory requirements at all branch and sub-branch locations.

##### a) *General Requirements*

- Branch reviews must include an assessment of the supervisory procedures and practices in place at the branch, as well as the quality of execution of those procedures.
- The branch review program must touch on all significant issues that are addressed in the Member's policy and

procedures manual and in the MFDA By-laws, Rules and Policies.

- The review process must include interviews with branch supervisors and other Approved Persons along with substantive testing to verify the accuracy of information that is provided in the interviews. Substantive testing should involve reviewing client files, trade blotters, trust account records, advertising and marketing material and other relevant records.

##### b) *Branch Interviews*

- The purpose of the interviews is to confirm that the branch manager and Approved Persons are aware of the requirements under MFDA Rules and other securities regulations. It is particularly important that the reviewer confirm that the branch manager has a good understanding of the fundamental supervisory requirements. The interview process also serves as a forum for the branch manager and Approved Persons to raise and discuss issues and areas of regulatory concern.
- The interviews must also include discussion about branch policies and procedures relating to:
  - products and services offered to clients;
  - complaints;
  - advertising and sales communications;
  - referral arrangements;
  - outside business activities;
  - account opening procedures; and
  - other branch and sub-branch supervision issues.

##### c) *Review of Trade Blotters and Other Supervisory Review Documentation*

- Documentation must be reviewed to confirm that trade reviews have been performed adequately and in a timely manner covering all trades in exempt securities and a sample of initial trades, leveraged transactions, trades made under a limited trading authorization or power of attorney, and trades in

speculative funds. Samples of different types of transactions, including purchases, switches and redemptions must be reviewed. Trade blotters must be reviewed to assess:

- trading patterns;
- evidence of supervision; and
- timeliness of review.

- The suitability of individual trades must be assessed to confirm that the quality of trade supervision is consistent with the Member's standards and regulatory expectations.
- Trade supervision records must also be reviewed to confirm the recording of issues noted by supervisory staff, inquiries made, responses received and resolutions achieved.

**d) Review of Client Files**

- Client files must be examined to verify that there is proper account opening documentation on file. Know-your-client information must be reviewed to:
  - assess completeness;
  - confirm that back up for any changes has been maintained on file;
  - confirm that branch client files are appropriately safeguarded; and
  - confirm that KYC information on the back office system matches with that recorded in the files.
- The review process must confirm that account opening approval procedures have been properly followed, where these are the responsibility of branch staff.
- Client files must be examined to verify that proper evidence of client instructions and any relevant trading authorizations have been maintained on file. Files should be reviewed to assess the adequacy of notes regarding advice or recommendations provided to the client, as well as notes regarding discussions relating to fees and services, if any.

- Trade orders must be reviewed to:
  - assess suitability;
  - detect unlicensed / out-of-province trading;
  - confirm proper identification of leveraged trades; and
  - confirm timeliness of trade processing.

**e) Review of Client Communications**

- The branch review program must include a review of client communications, including advertising, business cards, letterhead and websites to confirm that any required approvals have been obtained.
- The review process must also involve, where appropriate, discussions and testing to detect:
  - misleading communications;
  - undisclosed use of Approved Person trade names;
  - undisclosed outside business activities or personal financial dealings with clients;
  - securities related business conducted outside of the Member; and
  - undisclosed referral arrangements.
- Where the reviewer detects a potential material deficiency with respect to the conduct of outside business or personal financial dealings under MFDA By-laws, Rules or Policies, the branch review policy must provide that files of Approved Persons relating to non-Member business must be reviewed.

**f) Complaints**

- The review process must confirm that any complaints that may have been made involving individuals at the branch have been recorded and handled in accordance with Member procedures and MFDA By-laws, Rules and Policies.
- The nature of any complaints, as well as the timeliness and fairness of resolution must be assessed.

- The review process must confirm that all complaints and pending legal actions are made known to the compliance officer at head office (or another person at head office designated to receive such information) within two business days in accordance with MFDA Policy No. 3 (“Handling Client Complaints”).

### **SCOPE OF REVIEW**

Sample size and the extent of the review are matters of discretion for the Member. However, at a minimum, the review should involve a preliminary screening of the branch that is sufficient to provide a reasonable indication of items or issues for further investigation. Sample size and the extent of review must be reasonable based on a number of factors such as the specific activities at the branch, complaints history, trade volume, commissions earned, results of previous reviews, MFDA compliance examination findings, daily trade supervision issues, the nature of dual occupations or outside business activities carried on at the branch, the volume of leveraged trades or the date of the last review.

### **SELECTION CRITERIA**

The branch review policy must include criteria for selection and prioritization of the branches. This may be based on a number of factors such as complaints history, trade volume, commissions earned, results of previous reviews, MFDA compliance examination findings, daily trade supervision issues, the nature of dual occupations or outside business activities carried on at the branch, the volume of leveraged trades or the date of the last review. In any case, the Member must be able to demonstrate that there is a rational method for branch selection in place that is reasonable for the Member’s size and business model.

### **BRANCH REVIEW CYCLE**

The Member must be able to justify its branch review schedule and cycle by developing a risk-based methodology to rank branch and sub-branch locations as high, medium or low risk using appropriate criteria. Such criteria would include: complaints history, trade volume, commissions earned, results of previous reviews, MFDA compliance examination findings, daily supervision issues, the nature of dual occupations or outside activities carried on at the branch or the volume of leveraged trades. Members with a smaller number of branches and sub-branch locations are expected to perform a review of these locations annually. Where a Member has a significant number of branch and sub-branch locations and is able to justify a longer review cycle based upon their risk assessment, the review cycle can exceed one-year but should not in any event exceed three years.

The branch review cycle and the status of completion of the branch review cycle against benchmarks should be included as part of the annual compliance report to the board of directors or partners of the Member required by MFDA Rule 2.5.2(b).

### **QUALIFICATIONS FOR REVIEWERS**

The individuals responsible for completing the branch reviews must have the training, skills and proficiency necessary to accomplish the objectives of the review program. The individuals must possess sufficient knowledge not only to be able to follow prescribed procedures, but to be able to know where follow up review should be pursued. Individuals that have two years of relevant industry experience or that have successfully completed the courses required for designation as a branch manager as set out under MFDA Rule 1.2.2(a) would generally be considered sufficiently qualified to perform branch reviews. Relevant industry experience would include formal audit experience or legal training in the area of securities and mutual fund regulation.

The branch reviewer must be independent of the branch and the branch manager, so as to ensure that the reviewer can act objectively without preconceived opinions and is not subject to inappropriate influence when performing the review.

### **REPORTING OF RESULTS**

All serious issues detected in the branch reviews must be made known to the compliance officer at head office (or another person at head office designated to receive such information) within a reasonable period of time.

Each Member must also ensure that branch managers and Approved Persons are made aware of all issues that are identified in the branch review in a timely manner.

The report to the branch manager on the results of the branch review must include the following information:

- the date of the review;
- basic branch information, including the Approved Persons and staff at the branch location;
- details of any compliance deficiencies noted in completing the branch review including missing documentation or any gaps in supervision;
- the date of the report; and
- the date by which a response is required.

### **FOLLOW UP OF BRANCH REVIEW FINDINGS**

The Member must have in place processes to ensure that the issues identified in the course of the internal examination are followed up and resolved. Therefore, the branch review process must provide for:

- consistent and timely reporting of results;
- a means of tracking responses to the reports; and

- a means of ensuring that the branch implements all required changes in a reasonable amount of time.

**BRANCH REVIEW FILES**

Members must maintain orderly, up-to-date files for each branch that has been reviewed. The files must include details of the procedures performed at the branch and all working papers to support the work done and provide evidence of any deficiencies noted. All follow-up documentation, including the report to the branch manager, must also be included in the file. Records must be maintained for a period of seven years and must be made available for review by the MFDA, if requested.

Branch review records should be used to identify significant deficiencies that may disclose a need for further education and training of branch supervisors, Approved Persons, or other staff. When systemic issues are detected through the branch review process, a review of internal procedures and practices may be warranted.

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