The Ontario Securities Commission

OSC Bulletin

December 2, 2005

Volume 28, Issue 48

(2005), 28 OSCB

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
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:
Carswell
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:	Fax: 416-593-8122
Capital Markets Branch:	Fax: 416-593-3651
- Registration:	Fax: 416-593-8283
Corporate Finance Branch:	
- Team 1:	Fax: 416-593-8244
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General Counsel's Office:	Fax: 416-593-3681
Office of the Secretary:	Fax: 416-593-2318

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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

ISSN 0226-9325

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

DECEMBER 2, 2005

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

Telephone: 416-597-0681 Telecopier: 416-593-8348

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- -

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Robert W. Davis, FCA	—	RWD
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David L. Knight, FCA	—	DLK
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Carol S. Perry	—	CSP
Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

TBA **Yama Abdullah Yaqeen**

s. 8(2)

J. Superina in attendance for Staff

Panel: TBA

TBA **Cornwall *et al***

s. 127

K. Manarin in attendance for Staff

Panel: TBA

TBA **Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig**

s. 127

J. Waechter in attendance for Staff

Panel: TBA

TBA **John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir**

S. 127 & 127.1

K. Manarin in attendance for Staff

Panel: TBA

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

s.127

J. Superina in attendance for Staff

Panel: SWJ/RWD/MTM

TBA	**James Patrick Boyle, Lawrence Melnick and John Michael Malone** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
TBA	**Joseph Edward Allen, Abel Da Silva, Chateram Ramdhani and Syed Kabir** **s.127** **J. Waechter in attendance for Staff** **Panel: TBD**
December 5, 2005 10:00 a.m.	**Richard Ochnik and 1464210 Ontario Inc.** s. 127 and 127.1 M. Britton in attendance for Staff Panel: PMM
December 12, 2005 10:00 a.m.	**Olympus United Group Inc.** s.127 M. MacKewn in attendance for Staff Panel: TBA
December 12, 2005 10:00 a.m.	**Norshield Asset Management (Canada) Ltd.** s.127 M. MacKewn in attendance for Staff Panel: TBA
December 16, 2005 10:00 a.m.	**Portus Alternative Asset Management Inc., and Boaz Manor** s. 127 M. MacKewn in attendance for Staff Panel: TBA
January 11, 2006 10:00 a.m.	**Jose L. Castaneda** s.127 T. Hodgson in attendance for Staff Panel: TBA
January 17, 2006 10:00 a.m.	**Portus Alternative Asset Management Inc., Portus Asset Management Inc. Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg** s.127 & 127.1 M. MacKewn in attendance for Staff Panel: TBA
January 31, 2006 10:00 a.m.	**Mega-C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** S. 127 T. Hodgson in attendance for Staff Panel: TBA
January 31, 2006 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: TBA
February 21, 2006	**Fulcrum Financial Group Inc., Secured Life Ventures Inc., Zephyr Alternative Power Inc., Troy Van Dyk and William L. Rogers** s. 127 and 127.1 G. Mackenzie in attendance for Staff Panel: TBA

10:00 a.m.	**Philip Services Corp. *et al***
February 6 to March 10, 2006 (except Tuesdays)	s. 127 K. Manarin in attendance for Staff Panel: PMM/RWD/DLK
April 10, 2006 to April 28, 2006 (except Tuesdays and not Good Friday April 14)	
May 1 to May 19; May 24 to May 26, 2006 (except Tuesdays)	
June 12 to June 30, 2006 (except Tuesdays)	
March 2 & 3, 2006 10:00 a.m.	**Christopher Freeman** s. 127 and 127.1 P. Foy in attendance for Staff Panel: TBA
April 3 to 7, 2006 10:00 a.m.	**Momentas Corporation, Howard Rash, Alexander Funt, Suzanne Morrison and Malcolm Rogers** s. 127 and 127.1 P. Foy in attendance for Staff Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

1.1.2 Notice of Commission Approval – IDA Amendments to Regulations 100.15 and 300.2 Regarding Customer Account Guarantee Agreements

THE INVESTMENT DEALERS ASSOCIATION

AMENDMENTS TO REGULATIONS 100.15 AND 300.2 REGARDING CUSTOMER ACCOUNT GUARANTEE AGREEMENTS

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to IDA Regulations 100.15 and 300.2 regarding customer account guarantee agreements. In addition, the British Columbia Securities Commission did not object, and the Alberta Securities Commission and the Autorité des marchés financiers approved the amendments. The purpose of the amendments is to ensure that the guarantor is aware of his/her obligations under a guarantee agreement and to minimize the legal enforcement risk associated with guarantee agreements. A copy and description of the proposed amendments were published on July 15, 2005, at (2005) 28 OSCB 6150. No comments were received.

1.1.3 CSA Staff Notice 45-305 - FAQ Regarding NI 45-106 Prospectus and Registration Exemptions

CANADIAN SECURITIES ADMINISTRATORS
STAFF NOTICE 45-305

FREQUENTLY ASKED QUESTIONS REGARDING

NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS

Introduction

On September 14, 2005, National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) became effective in every jurisdiction of Canada. We, staff of the Canadian Securities Administrators, are issuing this notice to provide interpretive guidance for certain provisions of NI 45-106.

Frequently asked questions on NI 45-106

Users of NI 45-106 should first consult NI 45-106 itself, its forms and its companion policy for answers to their questions about NI 45-106. To assist with questions regarding NI 45-106 we have compiled the following list of frequently asked questions (FAQs) which will be updated from time to time as new questions arise.

We have divided the FAQs into the following categories. Not all categories have entries at this time.

A. Definitions and Interpretation

B. Capital Raising Exemptions

C. Transaction Exemptions

D. Investment Fund Exemptions

E. Employee, Executive Officer, Director and Consultant Exemptions

F. Miscellaneous Prospectus and Registration Exemptions

G. Registration Only Exemptions

H. Control Block Distributions

I. Offerings by TSX Venture Exchange Offering Document

J. Reporting Requirements

A. Definitions and Interpretation

No entries.

B. Capital Raising Exemptions

Question 1: In section 2.2(1) of NI 45-106 [*Reinvestment plan*], do the words "acting for or on behalf of the issuer" mean this exemption is not available if the trustee, custodian or administrator of a plan acts on behalf of participants?

A: No. For the purpose of a dividend or distribution reinvestment plan established by an issuer for the benefit of its existing security holders (plan participants), the trustee, custodian or administrator (plan administrator) is typically engaged by the issuer and hence, in respect of the plan, acts "for or on behalf of the issuer". The plan administrator therefore falls within the language contained in section 2.2(1) of NI 45-106. The fact that such a plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on section 2.2 of NI 45-106.

Question 2: Why is section 2.2(1)(a) of NI 45-106 [*Reinvestment plan*] restricted to the purchase of securities that are "of the same class or series" as the securities to which the dividends or distributions are attributable?

A: This restriction has proven to be problematic for some existing dividend or distribution reinvestment plans under which securities are purchased that are of a different class or series as the securities to which the dividends or distributions are attributable. Every jurisdiction except Ontario has issued or will issue a blanket order providing an alternative exemption for dividend reinvestment plans that does not contain this restriction. Ontario cannot issue a blanket order but will entertain applications for exemptive relief and will waive the fees for those applications. In addition, staff in Ontario plan to recommend amendments to NI 45-106 in the near term to remove this restriction in Ontario. This will allow existing dividend reinvestment plans to continue to operate in all jurisdictions.

Question 3: Does section 2.2(1)(a) of NI 45-106 [*Reinvestment plan*] permit the trade of securities that are purchased with interest paid on a debenture?

A: Yes. The words "distributions out of earnings…or other sources" cover interest payable on debentures.

Question 4: Why is it that employees of an affiliate of a private issuer are not specifically enumerated in the categories set out in section 2.4(2) of NI 45-106 [*Private issuer*]?

A: Employees of an affiliate are not specifically enumerated in the categories set out in section 2.4(2) because they do not share the same close connection with the issuer as do the issuer's own employees. They are excluded from the "50 persons" restriction set out in section 2.4(1)(b)(ii) in order not to disqualify a private issuer that has acquired an affiliate from benefiting from the exemption. More precisely, we would not want a private issuer to lose its status because employees of the affiliate own securities of the private issuer. In sum, sections 2.4(1)(b)(ii) and 2.4(2) serve different purposes: the first provision limits the scope of the exemption, whereas the second provision sets out the persons to whom an issuer may issue securities for the purposes of the exemption.

C. Transaction Exemptions

No entries.

D. Investment Fund Exemptions

No entries.

E. Employee, Executive Officer, Director and Consultant Exemptions

Question 1: Does a participant under a plan contemplated in section 2.2 of NI 45-106 [R*einvestment plan*] or division 4 of NI 45-106 [*Employee, executive officer, director and consultant exemptions*] have a registration exemption that allows that participant to sell securities through the plan administrator?

A: Yes. If a participant under a plan contemplated in section 2.2 or division 4 of NI 45-106 requests a trustee, custodian or administrator acting for or on behalf of the issuer under a plan (Plan Agent) to sell securities under the plan and the Plan Agent executes the sale through a registered dealer, then we consider the placing of the order to sell with a registered dealer by the plan participant and/or Plan Agent to be a trade by a person acting solely through an agent who is a registered dealer and therefore falls within the exemption set out in section 3.1 of NI 45-106.

Please note, however, that for dividend or distribution reinvestment plans, the activity of the Plan Agent in taking or receiving the order to sell from the plan participant is activity for which there is no registration exemption. We invite Plan Agents who engage in this activity to make application for discretionary relief from the registration requirement. For employee share plans, section 2.27 of NI 45-106 is available to allow the Plan Agent to receive the order.

For dividend or distribution reinvestment plans, we note that, prior to the adoption of NI 45-106, it is unclear whether there was an appropriate exemption for this trade.

F. Miscellaneous Prospectus and Registration Exemptions

No entries.

G. Registration Only Exemptions

Question 1: Does a participant under a plan contemplated in section 2.2 of NI 45-106 [R*einvestment plan*] or division 4 of NI 45-106 [*Employee, executive officer, director and consultant exemptions*] have a registration exemption that allows that participant to sell securities through the plan administrator?

A: Yes. If a participant under a plan contemplated in section 2.2 or division 4 of NI 45-106 requests a trustee, custodian or administrator acting for or on behalf of the issuer under a plan (Plan Agent) to sell securities under the plan and the Plan Agent executes the sale through a registered dealer, then we consider the placing of the order to sell with a registered dealer by the plan participant and/or Plan Agent to be a trade by a person acting solely through an agent who is a registered dealer and therefore falls within the exemption set out in section 3.1 of NI 45-106.

Please note, however, that for dividend or distribution reinvestment plans, the activity of the Plan Agent in taking or receiving the order to sell from the plan participant is activity for which there is no registration exemption. We invite Plan Agents who engage in this activity to make application for discretionary relief from the registration requirement. For employee share plans, section 2.27 of NI 45-106 is available to allow the Plan Agent to receive the order.

For dividend or distribution reinvestment plans, we note that, prior to the adoption of NI 45-106, it is unclear whether there was an appropriate exemption for these trades.

H. Control Block Exemptions

No entries.

I. Offerings By TSX Venture Exchange Offering Document

No entries.

J. Reporting Requirements

Question 1: An issuer completes a private placement by way of a firm commitment underwriting, including a bought deal (collectively referred to as an underwritten private placement). The issuer sells the securities to an underwriter in reliance on the exemption in section 2.33 of NI 45-106 [*Acting as underwriter*]. The underwriter then sells the securities to accredited investors in reliance on the exemption in section 2.3 of NI 45-106 [*Accredited investor*].

Question 1(a): Is a report of exempt distribution required to be filed in respect of this transaction?

A: Yes. While this transaction is technically two trades, we view this transaction as a whole and as a result, consider it to be an indirect distribution to accredited investors by the issuer. A report of exempt distribution in Form 45-106F1 is required to be filed in accordance with section 6.1 of NI 45-106 [*Report of exempt distribution*].

Question 1(b): When should the Form 45-106F1 be filed?

A: The Form 45-106F1 should be filed on or before the 10th day after the distribution. We take the view that the distribution occurs on the day that the securities are sold to the accredited investors. Refer to item 5 and instruction 3 of Form 45-106F1 for direction regarding multiple distributions.

Question 1(c): Who should complete the Form 45-106F1?

A: An individual who can certify on behalf of the issuer should complete and sign the Form 45-106F1. This individual either may be employed by the issuer or employed by the underwriter.

We recognize that in certain underwritten private placements, there will be no individual employed by the issuer available to complete and sign the Form 45-106F1 and an individual employed by the underwriter may not be able to state that he or she is certifying the statements made in the report *on behalf of the issuer*. In this situation, we take the view that, for the purpose of the certificate of Form 45-106F1, the term “issuer” may include the underwriter distributing the securities to the accredited investors.

The views expressed in the answers to these questions (under J1) also apply to an underwritten private placement where the underwriter sells securities to purchasers under an exemption other than the accredited investor exemption in section 2.3 of NI 45-106.

Question 2: Item 7 of Form 45-106F1 states "Complete the following table for each Canadian and foreign jurisdiction where the purchasers of the securities reside". Does this mean that issuers are required to report all distributions regardless of where they occurred and what exemption is being relied upon?

A: The reporting requirements in NI 45-106 do not change each jurisdiction's policy on where a distribution occurs. To determine whether it needs to file a report, an issuer must first determine whether a distribution has occurred in the local jurisdiction. The issuer must then determine whether the exemption it is using is one that requires a report be filed.

The requirement to file the report in section 6.1 of NI 45-106 says "the issuer must file a report in the local jurisdiction in which the distribution takes place … under the following exemptions". We only want information on the distributions that take place in our local jurisdiction and only when certain exemptions are being used.

A distribution may occur in more than one jurisdiction. For example, if an issuer located in the United States without a connection to any Canadian jurisdiction is distributing securities around the world, including to three purchasers in British Columbia and five purchasers in Alberta, that issuer is required to file a report in British Columbia detailing the distributions in British Columbia and a report in Alberta detailing the distributions in Alberta. Neither report is required to describe the distributions occurring elsewhere.

However, if the issuer has a connection to British Columbia, for example, its directors and management are resident in British Columbia, then the BCSC takes the view that the distributions around the world would also be occurring in British Columbia. The report filed in British Columbia would have to detail the distributions in British Columbia and elsewhere. The report filed in Alberta would only need to detail the distributions in Alberta.

Issuers also have the option of completing one report detailing all distributions in Canadian jurisdictions and filing that in each local jurisdiction where the report is required.

In both examples, the issuer would not be required to file a report if the issuer was using an exemption that does not require a report to be filed. If the issuer is relying on a variety of exemptions for the offering, some of which require a report while others do not, the issuer only has to include information in the report on those distributions using exemptions which require the report.

Question 3: If a distribution is occurring in multiple Canadian jurisdictions, does the issuer have to file one report or multiple reports?

A: It is up to the issuer. The issuer can choose to complete one report detailing all distributions in Canadian jurisdictions and file that report in each local jurisdiction where the report is required. Or the issuer can complete and file separate forms in each local jurisdiction.

Question 4: What are the required forms in BC?

A: In British Columbia, the executive director prescribes required forms in BC Policy 13-601 *Required Forms*.

Last updated December 2, 2005

Questions

Please refer your questions to any of:

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission
(403) 297-4220
blaine.young@seccom.ab.ca

Patricia Leeson
Manager, Corporate Finance
Alberta Securities Commission
(403) 297-5222
patricia.leeson@seccom.ab.ca

Leslie R. Rose
Senior Legal Counsel
Policy, Capital Markets Regulation
British Columbia Securities Commission

Direct: (604) 899-6654
lrose@bcsc.bc.ca

Rosann Youck
Senior Legal Counsel, Legal Services, Corporate Finance
British Columbia Securities Commission
Direct: (604) 899-6656
ryouck@bcsc.bc.ca

Dean Murrison
Deputy Director, Legal and Registration
Securities Division
Saskatchewan Financial Services Commission
(306) 787-5879
dmurrison@sfsc.gov.sk.ca

Chris Besko
Legal Counsel - Deputy Director
The Manitoba Securities Commission
(204) 945-2561
cbesko@gov.mb.ca

Sylvie Lalonde
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0558, poste 4398
sylvie.lalonde@lautorite.qc.ca

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

Marsha Gerhart
Senior Legal Counsel, Capital Markets
Ontario Securities Commission
(416) 595-8918
mgerhart@osc.gov.on.ca

Jo-Anne Matear
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-2323
jmatear@osc.gov.on.ca

Darren McKall
Senior Legal Counsel, Investment Funds
Ontario Securities Commission
(416) 593-8118
dmckall@osc.gov.on.ca

Shirley Lee
Securities Analyst
Nova Scotia Securities Commission
(902) 424-5441
leesp@gov.ns.ca

Susan Powell
New Brunswick Securities Commission
(506) 643-7697
susan.powell@nbsc-cvmnb.ca

Katherine Tummon, Legal Counsel
Prince Edward Island Securities Office
(902) 368-4542
ktummon@gov.pe.ca

Paul Myrden
Program & Policy Development
Securities Commission of Newfoundland and Labrador
Government of Newfoundland & Labrador
(709) 729-4501
pmyrden@gov.nl.ca

Gary MacDougall, Registrar, Securities & Corporate Registries
Northwest Territories Securities Registry
(867) 920-3318
gary_macdougall@gov.nt.ca

Gary Crowe, Registrar of Securities
Government of Nunavut, Justice Department
(867) 975-6190
gcrowe@gov.nu.ca

Richard Roberts, Registrar of Securities
Government of Yukon
(867) 667-5225
richard.roberts@gov.yk.ca

1.1.4 CDS Notice and Request for Comment – Material Amendments to CDS Rules Relating to CCP Capping

THE CANADIAN DEPOSITORY FOR SECURITIES LIMTIED

MATERIAL AMENDMENTS TO CDS RULES CCP CAPPING

REQUEST FOR COMMENTS

The Ontario Securities Commission is publishing for a 30-day comment period the amendments filed by The Canadian Depository for Securities Limited (CDS) relating to CCP Capping. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.5 Notice of Commission Approval – Housekeeping Amendments to MFDA By-Law No. 1, Section 23, Regarding Co-operation with Other Authorities

THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)

HOUSEKEEPING AMENDMENTS TO MFDA BY-LAW NO.1, SECTION 23 REGARDING CO-OPERATION WITH OTHER AUTHORITIES

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved the amendments to MFDA section 23 of By-law No. 1, regarding co-operation with other authorities. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved, and the British Columbia Securities Commission did not object to the amendments. The amendments to section 23 of By-law No. 1 broaden the type of information that may be shared with various regulatory authorities by deleting the phrase “relating to trading in securities in Canada or elsewhere”. The amendments are housekeeping in nature. The description and a copy of the amendment is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.3 News Releases

1.3.1 OSC Appeals Sentence in the Andrew Rankin Matter

FOR IMMEDIATE RELEASE
November 25, 2005

OSC APPEALS SENTENCE
IN THE ANDREW RANKIN MATTER

TORONTO – Today, the Ontario Securities Commission (OSC) filed a Notice of Appeal with the Superior Court of Justice regarding the sentence imposed on Andrew Rankin. Rankin was sentenced to six months jail on each of ten counts of insider tipping to be served concurrently. A date for the appeal has not yet been set.

The Notice of Appeal is made available on the OSC's website (**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)

1.3.2 OSC Announces Membership of Investor Advisory Committee

FOR IMMEDIATE RELEASE
November 29, 2005

OSC ANNOUNCES MEMBERSHIP OF
INVESTOR ADVISORY COMMITTEE

TORONTO – After receiving applications from more than 140 individuals, the OSC has selected 10 members for its Investor Advisory Committee (IAC). The members were selected on the basis of their experience of investing in the capital markets, knowledge of securities issues, as well as their experience representing retail investors on a broad scale.

"We believe that direct investor input is critical to the health of Ontario's capital markets and we are looking to the IAC to play a key role in our efforts to address issues of importance to retail investors," said David Wilson, Chair of the OSC. "I am pleased that the committee is composed of people with such diverse and interesting backgrounds and that Eric Kirzner has agreed to act as Chair of the IAC".

Eric Kirzner is a Professor of Finance and the John H. Watson Chair in Value Investing at the Rotman School of Management, University of Toronto. He is currently the Vice-Chair of the Board of Market Regulation Services, an independent body that regulates Canadian equity markets. Professor Kirzner is a contributing editor of the *MoneyLetter*, a regular contributor to the *Financial Post*, and co-author of a number of books including *Mutual Fund Buyer's Guide*, *Investments, Analysis and Management*, and *Global Investing the Templeton Way*.

"I am pleased to have the opportunity to chair the IAC. There are many issues of concern to retail investors, and the IAC will provide a useful forum for their voices to be heard. The members represent a broad spectrum of experienced and knowledgeable investors and should provide a strong advisory function for the OSC", said Eric Kirzner.

The IAC includes the following members, each of whom will serve for a two-year term:

William Gleberzon:	Co-director of Canada's Association for the Fifty-Plus (CARP). Co-author of CARP's submission to the Standing Senate Committee on Banking, Trade and Commerce on Financial Services.
Robert Goldin:	Investment dispute consultant and forensic financial auditor.
John Hollander:	Civil litigator with Ottawa-based Doucet McBride LLP, concentrating in securities negligence matters.

Gloria Hutton:	Private investor with first-hand experience of the redress process who made a submission to the Ontario Legislature's Standing Committee on Finance and Economic Affairs.
Richard Manicom:	Information technology consultant and private investor who has been active on various issues including the recent mutual fund settlement.
Poonam Puri:	Associate Professor of Law, Osgoode Hall Law School, York University, specializing in securities law, corporate law and corporate governance.
Pamela J. Reeve:	Private investor who has submitted comments on the OSC's Fair Dealing Model, and complaint handling to the Senate and federal Department of Finance.
Kelly Rodgers:	Consultant to private clients, foundations and aboriginal communities on investment policy, portfolio management and evaluation. Founding member of the Canadian Investment Funds Standards Committee.
Ellen Roseman:	Business columnist with the Toronto Star, author of numerous consumer guides on financial matters. Ms. Roseman teaches personal finance courses at the University of Toronto's School of Continuing Studies.
Whipple Steinkrauss:	Consumer Council of Canada Board Member. Author of a paper to the Ontario Standing Committee on Finance and Economic Affairs regarding the five-year review of securities legislation.

The IAC was established in response to the commitments made at the OSC Town Hall Meeting last May. The mandate of the IAC is to provide advice and guidance on any aspect of the OSC that has an impact on investors. IAC members will help identify and address issues affecting investors, and ensure that the views of consumers of financial services are accessible to the Commission.

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)

1.4 Notices from the Office of the Secretary

1.4.1 Philip Services et al.

FOR IMMEDIATE RELEASE
November 29, 2005

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

AND

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

TORONTO – The Commission issued an Order approving the settlement agreement between Staff of the Commission and Colin Soule on Friday, November 25, 2005.

A copy of the Order and Settlement Agreement is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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)

1.4.2 Fulcrum Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
November 29, 2005

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

AND

IN THE MATTER OF
FULCRUM FINANCIAL GROUP INC.,
SECURED LIFE VENTURES INC.,
ZEPHYR ALTERNATIVE POWER INC.,
TROY VAN DYK AND WILLIAM L. ROGERS

TORONTO – The Commission issued an Order today extending the Temporary Order until February 21, 2006 in the above named matter.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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)

1.4.3 ATI Technologies Inc. et al.

FOR IMMEDIATE RELEASE
May 13, 2005

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

AND

IN THE MATTER OF
ATI TECHNOLOGIES INC., KWOK YUEN HO,
BETTY HO, JO-ANNE CHANG, DAVID STONE,
MARY DE LA TORRE, ALAN RAE
AND SALLY DAUB

TORONTO – The Commission issued its Reasons and Order following a Motion brought by the Respondent, Betty Ho on April 29, 2005 in the above noted matter.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Fidelity Canadian Growth Company Fund and Fidelity Canadian Asset Allocation Fund - MRRS Decision

Headnote

Application for relief from 90-day divestment requirements prescribed by subsection 2.2(2) of National Instrument 81-102 Mutual Funds – Mutual Funds held securities of a Company in excess of the 10% control restriction in paragraph 2.2(1)(a) further to a reorganization of the Company – Securities of the Company are illiquid – Mutual Funds unable to divest themselves of excess securities of the Company in a commercially reasonable manner – Mutual Funds given 24 months from the date of the reorganization to divest of excess securities of the Company.

Rule Cited

National Instrument 81-102 Mutual Funds, ss. 2.2(1)(a), 2.2(2).

November 10, 2005

IN THE MATTER OF
THE SECUR/TIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, YUKON TERRITORY AND NUNAVUT TERRITORY
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
FIDELITY CANADIAN GROWTH COMPANY FUND
(the Growth Fund)

AND

FIDELITY CANADIAN ASSET ALLOCATION FUND
(the Asset Allocation Fund, and together with the Growth Fund, the Fliers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Fidelity Investments Canada Limited (Fidelity), on behalf of the Filers for a decision under section 19.1 of National Instrument 81-102 *Mutual Funds* (NI 81-102 or the Legislation) that the Funds be exempt from subsection 2.2(2) of NI 81-102 in relation to their investment in CorActive Group Inc. (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* or in Quebec Commission Notice 14-101 have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

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

1. Fidelity is a corporation amalgamated under the *Business Corporations Act* (Ontario). Fidelity is the manager and trustee of the Filers.

2. Each Filer is an open-ended mutual fund trust established by Fidelity under the laws of Ontario. The investment objective of the Growth Fund is to achieve long-term capital growth by investing primarily in equity securities of Canadian companies. The investment objective of the Asset Allocation Fund is to achieve a high total investment return using an asset allocation approach by investing in a mix of Canadian equity securities, fixed income securities and money market instruments.

3. Each Filer is a reporting issuer under the securities legislation of each of the Jurisdictions.

4. CorActive High-Tech Inc. (the Company) is a company incorporated under the *Canada Business Corporations Act. The* Company is not, and has never been, a reporting issuer in any Jurisdiction, and its securities are not listed or

quoted on any public exchange or market. The Company's securities are therefore illiquid.

5. On June 21, 2001, the Filers purchased, on a private placement basis, Class D preferred shares in the capital of the Company (the Class D Shares). Each Class D Share was convertible on a one-for-one basis into common shares, subject to certain adjustment provisions. Each Class D Share entitled the holder to one vote for every common share into which it was convertible. The terms of the Class D Shares provided that upon a liquidation of the Company, holders of Class D Shares would be entitled to receive an amount in priority to the holders of shares of any other class (the Liquidation Preference) and would be entitled to participate on a share-for-share basis with holders of the other classes of shares with respect to any assets available for distribution following payment of preferred liquidation amounts on any other classes of shares (the Participation Right).

6. Immediately following the purchase:

   (a) the Class D Shares held by the Growth Fund constituted approximately 8.45% of the outstanding equity securities of the Company. Such Class D Shares entitled the Growth Fund to 8.45% of the votes attached to all outstanding shares of the Company; and

   (b) the Class D Shares held by the Asset Allocation Fund constituted approximately 5.63% of the outstanding equity securities of the Company. Such Class D Shares entitled the Asset Allocation Fund to 5.63% of the votes attached to all outstanding shares of the Company.

7. On June 30, 2005, the Company completed a reorganization (the Reorganization). Pursuant to the Reorganization, all of the equity securities of the Company were exchanged for equity and debt securities of CorActive Group Inc. (Group), and the Company became a wholly-owned subsidiary of Group.

8. Including the Filers, there were 8 shareholders of the Company. Following the Reorganization, these same shareholders of the Company became the only shareholders of Group.

9. Group is a company incorporated under the *Canada Business Corporations Act. It* is not a reporting issuer in any jurisdiction, and its securities are not listed or quoted on any public exchange or market. Group's securities are therefore illiquid.

10. Under the Reorganization, each Class D Share was exchanged for one Class D preferred share of Group (the Group Class D Shares) and one and one-half Class E shares of Group (the Group Class E Shares). In addition, each holder of Class D Shares received a promissory note, the principal amount of which was immediately repaid upon completion of the Reorganization.

11. The Group Class D Shares are not convertible into any other class or series of shares. Each Group Class D Share entitles the holder to one vote. Holders of the Group Class D Shares are entitled to a Liquidation Preference but do not have a Participation Right.

12. The Group Class E Shares are non-voting and non-convertible. Holders of Group Class E Shares are not entitled to a Liquidation Preference, but have a Participation Right to share in the assets available for distribution to shareholders upon a liquidation following payment of preferred liquidation amounts on any other classes of shares.

13. One of the purposes of the Reorganization was to separate the Liquidation Preference and the Participation Right into two separate classes of shares. Accordingly, the number of shares of Group held by each of the Filers following the Reorganization is two and one-half times the number of shares of the Company held prior to the Reorganization, even though the overall fights of a holder of such shares did not increase.

14. As a result of the Reorganization:

   (a) the Growth Fund holds Group Class D Shares and Group Class E Shares, together comprising 14.63% of the outstanding shares in the capital of Group; and

   (b) the Asset Allocation Fund holds Group Class D Shares and Group Class E Shares, together comprising 9.76% of the outstanding shares in the capital of Group.

15. Under the definition of equity securities in section 89(1) of the *Securities* Act (Ontario), the Group Class D Shares would not constitute equity securities. Accordingly, the Group Class E Shares held by the Growth Fund would comprise 15.25% of the outstanding equity securities of Group, and the Group Class E Shares held by the Asset Allocation Fund would comprise 10.17% of the outstanding equity securities of Group.

16. The shares of Group held by the Growth Fund entitle the Growth Fund to 8.45% of the votes attached to all outstanding securities of Group. The shares of Group held by the Asset Allocation Fund entitle the Asset Allocation Fund to 5.63% of

the votes attached to all outstanding securities of Group.

17. The value of the Growth Fund's investment in Group constitutes less than 0.05% of the value of its total portfolio. The value of the Asset Allocation Fund's investment in Group constitutes less than 0.05% of the value of its total portfolio.

18. Each Filer is in compliance with section 2.4 of National Instrument 81-102, which prohibits a mutual fund from having invested more than 15% of its net assets, taken at market value, in illiquid assets.

19. Each Filer is currently unable to divest itself, in a commercially reasonable manner, of the securities of Group held in excess of the limits described in paragraph 2.2(1)(a) of NI 81-102 having regard to the fact that the securities of Group are illiquid and are likely to remain so beyond the prescribed 90-day divestment period in subsection 2.2(2) of NI 81-102.

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:

(a) the Filers will, as quickly as is commercially reasonable, and in any event no later than 24 months from the date of the Reorganization, reduce their respective holdings of equity securities in Group so that they do not hold securities of Group in excess of the limits described in paragraph 2.2(1)(a) of N! 81-102; and

(b) should the Filers' voting rights in respect of their shares of Group come to represent more than 10% of the votes attached to all outstanding voting securities of Group at any time during the 24 month divestment period prescribed in paragraph (a) above, the Filers will not vote those voting securities that are held in excess of the limits described in paragraph 2.2(1)(a) of NI 81-102.

"Leslie Byberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.2 GMP Private Client Ltd. and GMP Private Client L.P. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain filing requirements of MI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an internal reorganization from a corporate structure to a partnership as part of a conversion to an income trust.

Applicable Rule

Multilateral Instrument I 33-109 – Registration Information.

November 16, 2005

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

AND

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

AND

IN THE MATTER OF
GMP PRIVATE CLIENT LTD. (GMP Ltd.)

AND

GMP PRIVATE CLIENT L.P.
(GMP L.P., together with GMP Ltd., the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision pursuant to Part 7 of Multilateral Instrument 33-109 - *Registration Information* (the **Legislation**), exempting the Filers from requirements of the Legislation so as to permit GMP Ltd. to bulk transfer to GMP L.P. the registered and non-registered individuals that are associated on the National Registration Database (**NRD**) with the branch office locations involved in the plan of arrangement (the **Arrangement)** whereby GMP Ltd. will be converting its corporate structure to GMP L.P., a limited partnership structure (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) the MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

1. GMP Ltd. is a member of the Investment Dealers Association of Canada (the **IDA**) and is currently registered as an investment dealer (or equivalent) under the Legislation of each Jurisdiction.

2. GMP Ltd. is incorporated under the laws of Canada and its head office is located in Toronto, Ontario.

3. GMP L.P. has applied for membership in the IDA and for registration as an investment dealer (or the equivalent) under the Legislation of each Jurisdiction.

4. GMP L.P. is a limited partnership organized under the laws of Manitoba and its head office is located in Toronto, Ontario.

5. GMP Ltd. is a Canadian investment dealer whose business is focused on servicing high net worth private investors. GMP Ltd. has approximately 32 employees, including 14 officers, 3 registered directors that are registered to trade on its behalf under the Legislation of one or more of the Jurisdictions.

6. GMP Ltd., to the best of its knowledge, is not in default of any of the requirements of the Legislation of any of the Jurisdictions.

7. The details of the Arrangement are as follows:

    a. GMP Ltd. will be converting its current corporate structure into a limited partnership structure to be called GMP L.P.

    b. GMP L.P. will apply for registration as an investment dealer (or the equivalent) under the Legislation of all the Jurisdictions and will make the necessary applications to replicate the registration and membership status presently held by GMP Ltd. in each of the Jurisdictions and with the IDA.

    c. The public parent corporation, GMP Capital Corp., will be converted into a public income trust.

    d. At the close of the Arrangement, all the business and assets of GMP Ltd. will be transferred to Private Client L.P.

    e. At the close of the Arrangement, GMP L.P. will carry on all of the active securities business of GMP Ltd. in substantially the same manner, and with the same representatives, as previously carried on by GMP Ltd.

8. The arrangement is to be effective on or about December 1, 2005 (the **Closing Date**). The compliance systems, procedures and policies of GMP Ltd. will continue under the business of GMP L.P.

9. As the result of NRD systems constraints and the significant number of individuals to be transferred between the Filers in connection with the Arrangement, it would be unnecessarily difficult, costly and time consuming to conduct the transfer as a separate and distinct transfer of the branch office and sub-branch office locations and each registered and non-registered individual while ensuring that all such transfers occur at the same time in order to preclude any disruption of individuals registrations or GMP Ltd. and Private Client L.P. business activities.

10. It would be unduly onerous to transfer each individual associated with the Filers in accordance with the requirements set out in the Legislation having regard to the fact that there should be no change to their employment or responsibilities and each individual will be transferred under the same category.

11. Within two months of the Closing Date, the Filers will complete the bulk transfer of all affected individuals and locations.

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 pursuant to the Legislation is that the Requested Relief is granted, and the following requirements of the Legislation shall not apply to the Filers in respect of the registered and non-registered individuals that will be bulk transferred from GMP Ltd. to GMP L.P.:

    a. the requirement to submit a notice regarding the termination of each employment, partner or agency relationship under section 4.3 of the Legislation;

b. the requirement to submit a notice regarding each individual who ceases to be a non –registered individual under section 5.2 of the Legislation;

c. the requirement to submit a registration application for each individual applying to become a registered individual under section 2.2 of the Legislation;

d. the requirement to submit a Form 33-109F4 for each non-registered individual under section 3.3. of the Legislation; and

e. the requirement under section 3.1 of the Legislation to notify the regulator of a change to the business location information in Form 33-109F3.

"David M. Gilkes"
Manager, Registrant Regulation
Ontario Securities Commission

2.1.3 GMP Securities Ltd. and GMP Securities L.P. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain filing requirements of MI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an internal reorganization from a corporate structure to a partnership as part of the parent companies conversion to an income trust.

Applicable Rule

Multilateral Instrument 33-109 – Registration Information.

November 16, 2005

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

AND

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

AND

IN THE MATTER OF
GMP SECURITIES LTD. (GMP Ltd.)

AND

GMP SECURITIES L.P.
(GMP L.P., together with GMP Ltd., the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision pursuant to Part 7 of Multilateral Instrument 33-109 - *Registration Information* (the **Legislation**), exempting the Filers from requirements of the Legislation so as to permit GMP Ltd. to bulk transfer to GMP L.P. the registered and non-registered individuals that are associated on the National Registration Database (**NRD**) with the branch office locations involved in the plan of arrangement (the **Arrangement)** whereby GMP Ltd. will be converting its corporate structure to GMP L.P., a limited partnership structure (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) the MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

1. GMP Ltd. is a member of the Investment Dealers Association of Canada (the **IDA**) and is currently registered as an investment dealer (or equivalent) under the Legislation of each Jurisdiction.

2. GMP Ltd. is incorporated under the laws of Canada and its head office is located in Toronto, Ontario.

3. GMP L.P. has applied for membership in the IDA and for registration as an investment dealer (or equivalent) under the Legislation of each Jurisdiction.

4. GMP L.P. is a limited partnership organized under the laws of Manitoba and its head office is located in Toronto, Ontario.

5. GMP Ltd. is an investment dealer whose business is focused on investment banking and institutional equities for corporate clients and institutional investors in Canada. GMP Ltd. has approximately 182 employees, including 66 officers and 2 registered directors that are registered to trade on its behalf under the Legislation of one or more of the Jurisdictions.

6. GMP Ltd., to the best of its knowledge, is not in default of any of the requirements of the Legislation of any of the Jurisdictions.

7. The details of the Arrangement are as follows:

   a. GMP Ltd. will be converting its current corporate structure into a limited partnership structure to be called GMP L.P.

   b. GMP L.P. will apply for registration as an investment dealer (or the equivalent) under the Legislation of all the Jurisdictions and will make the necessary applications to replicate the registration and membership status presently held by GMP Ltd. in each of the Jurisdictions and with the IDA.

   c. The public parent corporation, GMP Capital Corp., will be converted into a public income trust.

   d. At the close of the Arrangement, all the business and assets of GMP Ltd. will be transferred to Private Client L.P.

   e. At the close of the Arrangement, GMP L.P. will carry on all of the active securities business of GMP Ltd. in substantially the same manner, and with the same representatives, as previously carried on by GMP Ltd.

8. The arrangement is to be effective on or about December 1, 2005 (the **Closing Date**). The compliance systems, procedures and policies of GMP Ltd. will continue under the business of GMP L.P.

9. As the result of NRD systems constraints, and the significant number of individuals to be transferred between the Filers in connection with the Arrangement, it would be unnecessarily difficult, costly and time consuming to conduct the transfer as a separate and distinct transfer of the branch office and sub-branch office locations and each registered and non-registered individual while ensuring that all such transfers occur at the same time in order to preclude any disruption of individuals registrations or GMP Ltd. and Private Client L.P. business activities.

10. It would be unduly onerous to transfer each individual associated with the Filers in accordance with the requirements set out in the Legislation having regard to the fact that there should be no change to their employment or responsibilities and each individual will be transferred under the same category.

11. Within two months of the Closing Date, the Filers will complete the bulk transfer of all affected individuals and locations.

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 pursuant to the Legislation is that the Requested Relief is granted, and the following requirements of the Legislation shall not apply to the Filers in respect of the registered and non-registered individuals that will be bulk transferred from GMP Ltd. to GMP L.P.:

   a. the requirement to submit a notice regarding the termination of each employment, partner or agency

relationship under section 4.3 of the Legislation;

b. the requirement to submit a notice regarding each individual who ceases to be a non –registered individual under section 5.2 of the Legislation;

c. the requirement to submit a registration application for each individual applying to become a registered individual under section 2.2 of the Legislation;

d. the requirement to submit a Form 33-109F4 for each non-registered individual under section 3.3. of the Legislation; and

e. the requirement under section 3.1 of the Legislation to notify the regulator of a change to the business location information in Form 33-109F3.

"David M. Gilkes"
Manager, Registrant Regulation
Ontario Securities Commission

2.1.4 Global Educational Trust Foundation and Global Educational Trust Plan - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Extension of distribution beyond lapse date for a scholarship plan.

Applicable Statutory Provisions

Securities Act R.S.O 1990, c. S.5, as am., s. 62(5).

August 23, 2005

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

AND

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

AND

IN THE MATTER OF
GLOBAL EDUCATIONAL TRUST FOUNDATION (THE "FILER"), AND THE GLOBAL EDUCATIONAL TRUST PLAN (THE "PLAN")

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 an exemption that the time limits pertaining to the distribution of securities of the Plan under the Plan's prospectus dated August 23, 2004 be extended to the time limits that would be applicable if the lapse date was September 23, 2005 (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

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

Interpretation

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

Representations

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

1. The Filer is a non-profit corporation without share capital incorporated by Letters Patent dated November 25, 1996 under the *Canada Corporations Act.*

2. The Filer is the sponsor and administrator of the Plan.

3. The Plan is a trust organized under the laws of the Province of Ontario and holds the assets of Registered Education Savings Plans ("RESP") under the *Income Tax Act* (Canada) (the "Tax Act").

4. The Plan is a reporting issuer or the equivalent thereof within the meaning of the Legislation. The current offering of the Plan is being made pursuant to a prospectus (the "Current Prospectus") dated August 23, 2004. The date of issuance of the receipt for the Current Prospectus in each Jurisdiction was September 7, 2004.

5. Pursuant to the Legislation, the lapse date ("Lapse Date") of the Current Prospectus is August 23 2005 in Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia and Prince Edward Island.

6. On August 15, 2005, which was less than thirty days prior to the lapse date of the Current Prospectus, the Plan filed a pro forma prospectus under SEDAR project number 819016 in all of the Jurisdictions.

7. No material change has occurred in the affairs of the Plan since the date of the Current Prospectus.

8. At the end of 2004, the *Canada Education Savings Act*, S.C. 2004, c. 26 ("CESA") and the *Alberta Centennial Education Savings Plan Act*, S.A. 2004, c. A-14.7 ("ACES") were enacted. CESA repeals the Canadian Education Savings Grant ("CESG") regulations under the *Department of Human Resources Development Act* (Canada), revises the CESG program and introduces the Canada Learning Bond to assist low income families with contributions to registered education savings plans ("RESPs"). ACES introduces another new grant payable into RESPs for children born in and attending school in the Province of Alberta.

9. The regulations under CESA (the Regulations) were published in the Canada Gazette, Vol. 139, No. 11 — June 1, 2005 The Regulations contain very detailed requirements relating to eligibility for and calculation of CESGs and the Canada Learning Bond as well as rules dealing with the implications on CESGs and the Canada Learning Bond of transferring and terminating RESPs. The Regulations also have an impact on the administration of the grant program under ACES.

10. Given that the final version of the Regulations were published in June and enacted July 1, 2005, the Filer seeks an extension of the Lapse Date so that changes to the Plan may be disclosed in the renewal prospectus to ensure that the renewal prospectus will contain full, true and plain disclosure of all material facts in respect of the Plan.

11. On August 29, 2005, the Plan expects to file its interim financial statements for the period ended June 30, 2005. The extension of the Lapse Date is necessary to allow the Plan's auditor to review the interim financial statements. The June 30, 2005 interim financial statements would be required to be included in the renewal prospectus.

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.

"Leslie Byberg"
Manager
Investment Funds Branch

2.1.5 Sprott Securities Inc. and Sprott Securities L.P. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain filing requirements of MI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an internal reorganization from a corporate structure to a partnership as part of the parent companies conversion to an income trust.

Applicable Rule

MI 33-109 – Registration Information.

November 28, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, ONTARIO, QUEBEC,
NEW BRUNSWICK, NOVA SCOTIA
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
SPROTT SECURITIES INC. (Sprott Inc.)

AND

SPROTT SECURITIES L.P.
(Sprott L.P., together with Sprott Inc., the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision pursuant to Part 7 of Multilateral Instrument 33-109 - *Registration Information* (the **Legislation**), exempting the Filers from requirements of the Legislation so as to permit Sprott Inc. to bulk transfer to Sprott L.P. the registered and non-registered individuals that are associated on the National Registration Database (**NRD**) with the branch office locations involved in a restructuring arrangement (the **Restructuring Arrangement)** whereby Sprott Inc. will be converting its corporate structure to Sprott L.P., a limited partnership structure (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) the MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

1. Sprott Inc. is incorporated under the laws of Ontario and its head office is located in Toronto, Ontario with branch offices in Calgary, Alberta and Montreal, Quebec. Sprott Inc. is a member of the Investment Dealers Association of Canada (the **IDA**) and is currently registered as an investment dealer (or equivalent) under the Legislation of each of the Jurisdictions.

2. Sprott L.P. is a limited partnership organized under the laws of Manitoba and its head office is located in Toronto, Ontario. Sprott L.P. has applied for membership in the IDA and for registration as an investment dealer (or equivalent) under the Legislation of each of the Jurisdictions.

3. Sprott L.P. will be owned indirectly by an income trust which will operate under the name “Sprott Securities Income Trust” (the **Income Trust**). This is a tax efficient structure which will allow the units of the Income Trust to be eligible for investment by RRSP’s.

4. Sprott Inc. is an investment dealer whose business is focused on small to mid-size capitalization companies for institutional investors in Canada. Sprott Inc. has approximately 42 employees, including 11 trading officers and 15 registered directors that are registered under the Legislation of one or more of the Jurisdictions.

5. Sprott Inc. to the best of its knowledge, is not in default of any of the requirements of the Legislation of any of the Jurisdictions.

6. The details of the Restructuring Arrangement are as follows:

   (i) Current shareholders of Sprott Inc. as well as certain other parties wishing to have an ongoing interest in the business of Sprott L.P. will do so through the Income Trust. The sole asset of the Income Trust will be units of Sprott Securities Commercial Trust (the **Holding Trust**).

(ii) Shareholders of Sprott Inc. will sell their shares to the Income Trust. The Income Trust will sell units of the Income Trust (**Income Units**) to former shareholders of Sprott Inc. and other members of the public (including associates of former Sprott Inc. shareholders) pursuant to an offering memorandum;

(iii) The Income Trust will sell the Sprott Inc. shares that it acquires to the Holding Trust in exchange for units of the Holding Trust (**Holding Units**);

(iv) The Holding Trust will sell the Sprott Inc. shares that it acquires to Sprott L.P. in exchange for limited partnership units (the **Sprott L.P. Units**);

(v) Sprott L.P. will transfer the Sprott Inc. shares to a newly-formed corporation (**Newco**) under the *Business Corporations Act* (Ontario) in exchange for common shares in the capital of Newco;

(vi) Sprott Inc. will either be wound-up into Newco or will amalgamate with Newco;

(vii) Newco (or the resulting amalgamated corporation) will distribute all or substantially all of its assets (including cash) to Sprott L.P. as a return of capital;

(viii) Sprott L.P. will apply for registration as an investment dealer (or the equivalent) under the Legislation of all the Jurisdictions and will make the necessary applications to replicate the registration and membership status presently held by Sprott Inc. in each of the Jurisdictions and with the IDA; and

(ix) This Restructuring Arrangement is to be effective on or about December 31, 2005 the **Closing Date**). There will be no interruption in the ability of the Applicants to service their clients.

7. Sprott L.P. will carry on all of the active brokerage business of Sprott Inc. in a substantially similar manner with the same registered and non-registered individuals of Sprott Inc. For this reason, many of the concerns regarding notifications and registrations which the Legislation was intended to address are not applicable in the case of the Restructuring Arrangement.

8. Given the multiple business locations and the large number of employees of Sprott Inc. it would be very difficult and time-consuming to transfer each individual to Sprott L.P., as per the requirements set out in the Legislation. Moreover, it is imperative that the transfer of the relevant individuals occur on the same date, in order to ensure that there is no break in registration. It would be unduly onerous to transfer each individual associated with the Filers in accordance with the requirements set out in the Legislation having regard to the fact that there should be no change to their employment or responsibilities and each individual will be transferred under the same category.

9. The restructuring of Sprott inc. is not contrary to the public interest and will have no negative consequences on the ability of the Filers to comply with all applicable regulatory requirements or the ability to satisfy any obligations to clients of the Filers.

12. Within two months of the Closing Date, the Filers will complete the bulk transfer of all affected individuals and locations.

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 pursuant to the Legislation is that the Requested Relief is granted, and that in respect of the registered and non-registered individuals that will be bulk transferred from Sprott Inc. to Sprott L.P., the following requirements of the Legislation shall not apply to the Filers:

a. the requirement to submit a notice regarding the termination of each employment, partner or agency relationship under section 4.3 of the Legislation;

b. the requirement to submit a notice regarding each individual who ceases to be a non –registered individual under section 5.2 of the Legislation;

c. the requirement to submit a registration application for each individual applying to become a registered individual under section 2.2 of the Legislation;

d. the requirement to submit a Form 33-109F4 for each non-registered individual under section 3.3. of the Legislation; and

e. the requirement under section 3.1 of the Legislation to notify the regulator of a change to the business location information in Form 33-109F3.

"David M. Gilkes"
Manager, Registrant Regulation
Ontario Securities Commission

2.1.6 Leitch Technology Corporation - 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.

November 28, 2005

Andrew Gordon
Blake, Cassels and Graydon LLP
199 Bay Street, Suite 2800
Toronto, ON M5L 1A9

Dear Mr. Gordon,

Re: Leitch Technology Corporation (the "Applicant") – Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, and Newfoundland and Labrador (the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the security 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

2.1.7 GrowthWorks Canadian Fund Ltd. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – approval of a merger of certain Labour Sponsored Investment Funds and approval of suspension of redemptions in connection with the merger under National Instrument 81-102 Mutual Funds.

Rules Cited:

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.5(1)(d).

November 22, 2005

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

AND

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

AND

IN THE MATTER OF
GROWTHWORKS CANADIAN FUND LTD., GROWTHWORKS OPPORTUNITY FUND LTD., CAPITAL ALLIANCE VENTURES INC. AND CANADIAN SCIENCE AND TECHNOLOGY GROWTH FUND INC. (the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filers dated September 23, 2005 for :

(a) approval of a proposed merger of the Filers (the Merger) pursuant to clause 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**); and

(b) approval pursuant to clause 5.5(1)(d) of NI 81-102 for the Filers to suspend the rights of the Filers' respective security holders to request redemptions of their Class A shares during a short data transfer and records update transition period (both (a) and (b) together shall be referred to as the Approval).

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 Filers:

The Filers

GrowthWorks Canadian Fund Ltd.

1. GrowthWorks Canadian Fund Ltd. (GWCF) was incorporated under the *Canada Business Corporations Act*.

2. GWCF is a registered labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and is a registered labour-sponsored venture capital corporation under the *Income Tax Act* (Canada). GWCF is an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan). GWCF's investing activities are governed by such legislation (the "**LSIF Legislation**").

3. GWCF primarily invests in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation.

4. The labour sponsor of GWCF is the Canadian Federation of Labour.

5. The authorized capital of GWCF is as follows:

   (a) an unlimited number of Class A shares issuable in series, which are widely held, of which there are currently 13 series issued;

   (b) 1,000 Class B Shares which are held by the sponsor of GWCF; and

   (c) an unlimited number of Class C shares issuable in series, of which there is one issued series designated as "IPA shares" held by the manager of GWCF to provide for a "participating" or "carried" interest in the venture investments of GWCF.

   GrowthWorks WV Management Ltd. (the "**Manager**") is the manager of GWCF under a management contract.

6. GWCF's shares are not listed on an exchange, however GWCF currently offers 12 series of its Class A shares: Venture/Balanced Commission I and II, Venture/Growth Commission I and II, Venture/Income Commission I and II, Venture/Financial Services Commission I and II, Venture/Resource Commission I and II, and Venture/Diversified Commission I and II under a prospectus dated December 24, 2004, as amended (the "**GWCF Prospectus**").

7. As of August 31, 2005, GWCF had approximately $275 million in net assets.

8. The net asset value of GWCF is calculated at least weekly.

9. GWCF has complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**") in connection with the Merger proposal.

GrowthWorks Opportunity Fund Ltd.

10. GrowthWorks Opportunity Fund Ltd. (GWOF) was incorporated under the *Canada Business Corporations Act*.

11. GWOF is a registered labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and is a registered labour-sponsored venture capital corporations under the *Income Tax Act* (Canada).

12. GWOF primarily invests in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation.

13. The labour sponsor of GWOF is the Canadian Federation of Labour.

14. The authorized capital of GWOF is as follows:

   (a) an unlimited number of Class A shares issuable in series, which are widely held, of which there are currently 13 series issued;

   (b) 1,000 Class B Shares, all of which are issued and held by the sponsor of GWOF; and

   (c) an unlimited number of Class C shares issuable in series, of which 1,500,000

Series 1 shares are issued and held by GWCF.

15. The Manager is the manager of GWOF under a management contract.

16. GWOF no longer offers any series of its Class A shares.

17. As of August 31, 2005, GWOF had approximately $19.8 million in net assets.

18. The net asset value of GWOF is calculated at least weekly.

19. GWOF has complied with Part 11 of NI 81-106 in connection with the Merger proposal.

Capital Alliance Ventures Fund Inc.

20. Captial Alliance Ventures Fund Inc. (CAVI) is incorporated under the *Canada Business Corporations Act*.

21. CAVI is a registered labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and is a registered labour-sponsored venture capital corporation under the *Income Tax Act* (Canada).

22. CAVI primarily invests in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation.

23. The labour sponsor of CAVI is the Canadian Federation of Labour, effective March 2, 2005.

24. The authorized capital of CAVI is as follows:

    (a) an unlimited number of Class A shares, which are widely held;

    (b) 25,000 Class B Shares, 10 of which are issued and held by the sponsor of CAVI; and

    (c) an unlimited number of Class C shares issuable in series, none of which are issued.

25. Fullarton Capital Corporation (**"Fullarton"**), a wholly-owned subsidiary of the Manager, is the manager of CAVI pursuant to a management agreement dated October 7, 1994, as amended. On December 29, 2004, the Manager, GWL and certain other parties entered into a purchase agreement under which the Manager agreed to purchase all the shares of Fullarton. Approval of the securities regulatory authorities for the change of control of Fullarton was obtained on February 18, 2005. On March 2, 2005 it was announced that the purchase had been completed.

26. CAVI's securities are not listed on any exchange, however CAVI currently offers its Class A shares under a prospectus dated October 27, 2004, as amended.

27. As of August 31, 2005, CAVI had approximately $35.5 million in net assets.

28. The net asset value of CAVI is calculated at least weekly.

29. CAVI has complied with Part 11 of NI 81-106 in connection with the Merger proposal.

Canadian Science and Technology Growth Fund Inc.

30. Canadian Science and Technology Growth Fund Inc. (CSTGF) is incorporated under the *Canada Business Corporations Act*.

31. CSTGF is a registered labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and is a registered labour-sponsored venture capital corporation under the *Income Tax Act* (Canada). CSTGF is a prescribed labour-sponsored venture capital corporation under the *New Brunswick Income Tax Act*.

32. CSTGF primarily invests in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation.

33. The labour sponsor of CSTGF is the Canadian Federation of Labour, effective March 2, 2005.

34. The authorized capital of CSTGF is as follows:

    (a) an unlimited number of Class A shares, which are widely held;

    (b) 25,000 Class B Shares, 1 of which is issued and held by the sponsor of CSTGF; and

    (c) an unlimited number of Class C shares, issuable in series, none of which are issued.

35. Fullarton is the manager of CSTGF pursuant to a management agreement dated September 24, 1996. On December 29, 2004, the Manager, GrowthWorks Ltd. and certain others entered into a purchase agreement under which the Manager agreed to purchase all the shares of Fullarton. Approval of the securities regulatory authorities for the change of control of Fullarton was obtained on February 18, 2005. On March 2, 2005 it was announced that the purchase had been completed.

36. CSTGF's securities are not listed on any exchange, however CSTGF currently offers its Class A shares under a prospectus dated December 20, 2004, as amended.

37. As of August 31, 2005, CSTGF had approximately $31.2 million in net assets.

38. The net asset value of CSTGF is calculated at least daily.

39. CSTGF has complied with Part 11 of NI 81-106 in connection with the Merger proposal.

The Merger

40. On June 27, 2005, GWCF, GWOF, CAVI and CSTGF announced that GWCF had submitted a proposal (the "**Merger Proposal**") to the Boards of the other Funds that contemplates the Merger of GWOF, CAVI and CSTGF into GWCF. Under the Merger Proposal, the Merger is subject to approval by the boards and shareholders of all of the Funds, as well as applicable regulatory approvals.

41. It is anticipated that the shareholders of the Funds will vote on the Merger at shareholders' meetings to be held on or about November 23, 2005, and, if approved, the Merger would be effective on or about November 29, 2005 (the "**Effective Date**").

42. In connection with the shareholders' meetings, shareholders of the Funds will be sent information circulars (the "**Circulars**") which contain details of the proposed Merger, including income tax considerations associated with the Merger.

43. The Merger will be effected by the following steps:

    (a) GWCF will purchase the net assets of each of GWOF, CAVI and CSTGF in exchange for Class A shares of GWCF (the "**Merger Shares**"); and

    (b) Each of GWOF, CAVI and CSTGF will redeem all of their own issued Class A shares through an automatic redemption procedure in exchange for transferring Merger Shares to their shareholders.

    The end result of these steps is that the net assets of GWOF, CAVI and CSTGF will be held by GWCF and shareholders of each of GWOF, CAVI and CSTGF will become shareholders of GWCF.

    Each of GWOF, CAVI and CSTGF will retain sufficient assets to pay their respective liabilities, if any, as of the Effective Date. With no public shareholders and no assets or liabilities, each of GWOF, CAVI and CSTGF will be dissolved or wound-up as soon as reasonably possible following the Effective Date.

44. The Merger does not meet the requirement of s. 5.6(1)(b) of NI 81-102 as it will not be a "qualifying transaction" within the meaning of section 132.2 of the Income Tax Act. Therefore, the distribution of Merger Shares of GWCF on the redemption of Class A shares of each of GWOF, CAVI and CSTGF will be a taxable event resulting in a capital gain or capital loss to the shareholders of GWOF, CAVI and CSTGF depending on each shareholder's adjusted cost base of the shares. However, about 93% of the Class A shares of GWOF, CAVI and CSTGF are held in registered retirement savings plans not subject to tax. Moreover, based on historical selling prices and the anticipated relative values of the Merger Shares and the Class A shares of each of GWOF, CAVI and CSTGF on the Merger Effective Date, very few of the shareholders of GWOF, CAVI and CSTGF will realize a capital gain as a result of the Merger.

45. The last scheduled pricing date for Class A shares of each of the Funds before the anticipated Effective Date of the Merger will be on or about November 24, 2005, two business days before the Effective Date of the Merger. If the Merger is approved by shareholders, the Class A shares of each of the Funds will go off-sale and off-redemption as at the close of business on this date while back office data transfers/conversions from existing service providers to CAVI and CSTGF takes place and the Merger transaction is completed and reported out to dealer back-offices. Shareholder approval for going off-redemption temporarily during this short transition period will be sought at the shareholder meeting at which shareholder approval of the Merger transaction is sought. Sales and redemptions of Class A shares of GWCF will resume after GWCF receives a receipt for its renewal prospectus, expected to be on or about December 12, 2005. Post-Merger, the Merger Shares will be redeemable on similar terms to those that apply to GWOF, CAVI and CSTGF Class A shares now. The net asset value of the funds except for CSTGF are determined weekly and therefore the suspension period would only cover two valuation periods for those funds.

46. Shareholders of each of GWOF, CAVI and CSTGF will be entitled to exercise dissent rights pursuant to and in the manner set forth in Section 190 of the Canada Business Corporations Act with respect to the resolution approving the sale of all or substantially all of the assets of each of GWOF, CAVI and CSTGF to GWCF. Shareholders that validly exercise these rights and do not withdraw their dissent ("**Dissenting Shareholders**") will be entitled to receive the "fair value" of their GWOF, CAVI or CSTGF Class A shares as at the day before the resolution approving the sale is adopted by shareholders. Any Dissenting

Shareholders who held their GWOF, CAVI or CSTGF Class A shares for less than eight years will be required, in accordance with applicable rules, to repay federal and provincial tax credits granted when the shares were originally purchased.

47. The Manager will continue to serve as manager for GWCF post-Merger.

48. The Board of Directors of each of CAVI and CSTGF decided to appoint special committees (the "**Special Committees**") to review, consider and make recommendations to the boards with respect to the Merger Proposal. The Special Committees have retained Borden Ladner Gervais LLP to provide legal advice relating to the Merger and have retained KPMG LLP as financial advisors to assess the cost savings associated with the Merger.

49. The costs of effecting the Merger, excluding the costs associated with the activities of the Special Committees, will be paid by the managers (or their affiliates) of the Funds, not the Funds and are estimated to be approximately $1,000,000. Costs of the Special Committees, including additional meeting fees and expenses payable to the members of those committees for their extra work in assessing the proposed Merger and costs of the professional advisors retained by the Special Committees to help them review and assess the Merger, will be paid by the Fund for which the Special Committee acts. Therefore, the Merger would not also meet the requirements of s. 5.6(1)(h) of NI 81-102.

50. The costs of the Special Committees are estimated to be approximately $80,000. These costs are independent of the implementation costs of the Merger and do not duplicate costs that would normally be incurred with respect to the implementation of the Merger. The professional advisors retained by the Special Committees are independent of the Manager, the Manager's professional advisors with respect to the Merger and the auditors of CAVI and CSTGF.

Shareholder Disclosure

51. The materials to be sent to shareholders of GWOF, CAVI and CSTGF will not include: a copy of the GWCF Prospectus or a copy of the annual and interim financial statements of GWCF, as required by Section 5.6(1)(f)(ii) of NI 81-102. However, the Circulars sent to these shareholders will instead:

    (a) include prospectus-like disclosure concerning GWCF and the shares of GWCF to be issued under the Merger including information regarding fees, expenses, investment objective, investment strategy, valuation procedures, the manager, the investment manager, redemptions, income tax considerations, dividend policy and risk factors;

    (b) disclose that shareholders can obtain the most recent annual and interim financial statements of GWCF, that have been made public, at no cost by accessing the SEDAR website at www.sedar.com, by accessing the GrowthWorks website at www.growthworks.ca or by calling a toll-free telephone number (in which case the Manager of GWCF will cause the requested statements to be promptly mailed to the requesting shareholder);

52. The Circulars will contain a description of the Merger, including the tax considerations associated with the Merger. Disclosure will be provided to shareholders to allow them to make an informed decision with respect to the Merger. This will be in addition to the prospectus-like disclosure concerning GWCF and the shares to be issued under the Merger.

53. Since a Labour Sponsored Investment Fund does not use the simplified prospectus and annual information form model of disclosure, and NI 81-106 does not require the filing of an annual information form by investment funds that have a current prospectus, an annual information form for GWCF will not be available to shareholders of GWOF, CAVI and CSTGF, as required by Section 5.6(1)(f)(iii) of NI 81-102.

Decision

Each of the Decision Makers is satisfied that the test contained in NI 81-102 that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under NI 81-102 is that the Approval is granted subject to the following:

(a) the Filers have prominently disclosed in the first few pages of the Circulars of CAVI, CSTGF and GWOF that shareholders can obtain the most recent annual and interim financial statements of GWCF, that have been made public, at no cost by accessing the SEDAR website at www.sedar.com, by accessing the GrowthWorks website at www.growthworks.ca or by calling a toll-free telephone number, and

(b) the Filers have prominently disclosed in the first few pages of the Circulars of CAVI, CSTGF and GWOF a reference to where shareholders can find the prospectus-like disclosure referred to

above in paragraph 51 concerning GWCF.

"Leslie Byberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.2 Orders

2.2.1 Amaranth Advisors (Calgary) ULC - s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) -- relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to an adviser not ordinarily resident in Ontario in respect of advising certain mutual funds, non-redeemable investment funds and similar investment vehicles established outside of Canada in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges primarily outside Canada and cleared through clearing corporations primarily outside Canada, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.
Securities Act, R.S.O. 1990, c. S.5, as am. -- Rule 35-502 -- Non Resident Advisers.

November 15, 2005

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C. 20,
AS AMENDED (the CFA)

AND

IN THE MATTER OF
AMARANTH ADVISORS (CALGARY) ULC

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Amaranth Advisors (Calgary) ULC (the **Applicant**) to the Ontario Securities Commission (the **Commission** or the **OSC**) for an order pursuant to section 80 of the CFA that the Applicant and its directors, officers, partners, members and employees (the **Representatives**), be exempt, for a period of three years, from the requirements of paragraph 22(1)(b) of the CFA in respect of advising certain mutual funds, non-redeemable investment funds and similar investment vehicles (the **Funds**) established outside of Canada in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges primarily outside Canada and cleared through clearing corporations primarily outside Canada;

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

AND UPON the Applicants having represented to the Commission that:

1. The Applicant, Amaranth Advisors (Calgary) ULC, is an unlimited liability company incorporated under the laws of Nova Scotia with its head office located in Calgary, Alberta. The Applicant may also include other entities not ordinarily resident in Ontario that may subsequently execute and submit to the Commission a verification certificate confirming the truth and accuracy of the information set out in this Order with respect to that particular Applicant.

2. The Funds include "feeder" funds (the **Feeder Funds**) that invest all or substantially all of their assets in "master" funds (the **Underlying Funds**). The Underlying Funds are each wholly-owned by certain of the Feeder Funds. The Feeder Funds and the Underlying Funds are, or will be, established outside of Canada.

3. The Applicant is a trading advisor or sub-advisor for the Underlying Funds.

4. Securities of the Feeder Funds are, or will be, offered primarily outside of Canada. Given that the Underlying Funds are wholly-owned subsidiaries of the Feeder Funds, securities of the Underlying Funds are themselves not offered to third party investors. Securities of the Feeder Funds will be offered and distributed in Ontario through Ontario-registered dealers, in reliance upon an exemption from the prospectus requirements of the Securities Act (Ontario) (the **OSA**), and in reliance upon an exemption from the adviser registration requirement of the OSA under Section 7.10 of OSC Rule 35-502 *Non-Resident Advisers* (**Rule 35-502**).

5. The Feeder Funds and the Underlying Funds may invest in a variety of assets, including commodity futures contracts and commodity futures options traded on organized exchanges primarily outside of Canada and cleared through clearing corporations primarily outside of Canada.

6. None of the Funds is or has any current intention of becoming a reporting issuer in Ontario or in any other Canadian jurisdiction.

7. The Applicant, where required, is or will be registered or licensed or is or will be entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction. In particular, Amaranth Advisors (Calgary) ULC relies on an exemption, or exemptive relief, from the requirement to register under the *Securities Act* (Alberta).

8. The Applicant is not registered in any capacity under the CFA or the OSA.

9. Prospective investors in the Feeder Funds who are Ontario residents will receive disclosure that includes (a) a statement that there may be difficulty in enforcing legal rights against the applicable Feeder Fund (or any of the Underlying Funds), or the trading advisor of the applicable Feeder Fund (or any of the Underlying Funds), because they are resident outside of Ontario and all or substantially all of their assets are situated outside of Ontario; and (b) a statement that the trading advisor advising the applicable Feeder Fund and, where applicable, the trading advisor(s) advising the relevant Underlying Fund, are not, or will not be, registered with or licensed by any securities regulatory authority in Ontario and, accordingly, the protections available to clients of a registered advisor will not be available to purchasers of the Feeder Fund.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to section 80 of the CFA that the Applicant and its Representatives responsible for advising the Funds are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of their advisory activities in connection with the Funds, for a period of three years.

"David L. Knight"
Commissioner

"Paul M. Moore"
Commissioner

2.2.2 Leitch Technology Corporation - 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).

November 29, 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
LEITCH TECHNOLOGY CORPORATION

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of Leitch Technology Corporation (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission as follows:

1. The head office of the Applicant is located at 150 Ferrand Drive, Suite 700, Toronto, Ontario, M3C 3E5;

2. The authorized capital of the Applicant consists of an unlimited number of common shares and an unlimited number or preference shares, issuable in series, of which, as at the close of business on September 1, 2005, 39,350,922 common shares, and no preference shares, were issued and outstanding. At the close of business on September 1, 2005, there were outstanding options to purchase an aggregate of 3,339,075 common shares;

3. The Applicant is an "offering corporation" as defined in the OBCA;

4. On October 25th, 2005, the Applicant completed a plan of arrangement (the "Plan of Arrangement") whereby 2081259 Ontario Inc., an indirect wholly-owned subsidiary of Harris Corporation (a company existing under the laws of the State of Delaware), acquired all of the common shares of the Applicant;

5. The Plan of Arrangement also effected the cancellation of all outstanding options to acquire common shares of the Applicant;

6. The outstanding securities of the Applicant, including debt securities, are beneficially owned by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

7. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

8. The Applicant has no plans to seek public financing by offering its securities in Canada;

9. The Applicant is not in default of any of its obligations as a reporting issuer under the *Securities Act* (Ontario) (the "Act") or the rules and regulations made thereunder; and

10. The Applicant is not a reporting issuer under the Act in any jurisdiction in Canada;

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

"Paul M. Moore"

"Carol S. Perry"

2.2.3 Colin Soule - ss. 127, 127.1

November 25, 2005

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

AND

**IN THE MATTER OF
COLIN SOULE**

**ORDER
(Sections 127 and 127.1)**

WHEREAS on August 30, 2000, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the Ontario *Securities Act*, as amended, with respect to Philip Services Corp., Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey, Colin Soule, Robert Waxman and John Woodcroft;

AND WHEREAS on October 12, 2005, an Amended Statement of Allegations was delivered;

AND WHEREAS the respondent Colin Soule entered into a settlement agreement dated November 25, 2005 (the "Settlement Agreement"), in which the respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated August 30, 2000, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the respondent and from Staff of the Commission;

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

IT IS ORDERED THAT:

1. the Settlement Agreement dated November 25, 2005, attached to this Order as Schedule "1", is hereby approved;

2. pursuant to clause 8 of subsection 127(1) of the Act, Soule will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date that this Settlement Agreement is approved;

3. pursuant to clause 127.1 of the Act, Soule will pay costs to the Commission in the amount of $50,000; and

4. pursuant to clause 6 of subsection 127(1) of the Act, Soule will be reprimanded by the Commission.

"Paul K. Bates"

"Suresh Thakrar"

2.2.4 Fulcrum Financial Group Inc. et al. - s. 127

November 29, 2005

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

AND

FULCRUM FINANCIAL GROUP INC.,
SECURED LIFE VENTURES INC.,
ZEPHYR ALTERNATIVE POWER INC.,
TROY VAN DYK and WILLIAM L. ROGERS

ORDER
(Section 127)

WHEREAS on the 3rd day of November, 2005, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of s.127(1) of the Securities Act, R.S.O. 1990, c.S.5, as amended (the "*Act*"), that all trading in securities by Secured Life Ventures Inc., Zephyr Alternative Power Inc. and Fulcrum Financial Group Inc. cease and, pursuant to clause 3 of s. 127(1) of the *Act*, that exemptions in Ontario securities law do not apply to Troy Van Dyk and William L. Rogers (the "Temporary Order");

AND WHEREAS on November 9, 2005, the Commission issued a Notice of Hearing, pursuant to s.127 and 127.1 of the *Act*;

AND WHEREAS on November 17, 2005, the Commission ordered an adjournment of the hearing and an extension of the Temporary Order until November 30, 2005;

AND WHEREAS the parties have requested a further adjournment of the hearing in order for the Respondents to complete their review of disclosure and to permit a pre-hearing conference to be held and the parties have consented to this Order extending the Temporary Order to February 21, 2006, or such earlier date as may be agreed by counsel and approved by the Commission;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS HEREBY ORDERED pursuant to s.127(7) of the Act that the Temporary Order is extended until February 21, 2006, and that this matter is to be returned before the Commission at that time to consider the matters identified in the Notice of Hearing and any matters arising from the pre-hearing conference.

"Susan Wolburgh Jenah"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Philip Services Corp. et al.

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

AND

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

SETTLEMENT AGREEMENT
RE: COLIN SOULE

I. INTRODUCTION

1. By Notice of Hearing, dated August 30, 2000 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to subsections 127(1) and 127.1(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make an order that:

(a) the Respondents cease trading in securities, permanently or for such time as the Commission may direct;

(b) the individual Respondents are prohibited from becoming or acting as a director or officer of any issuer;

(c) the individual Respondents resign any positions they may have as a director and/or officer of any issuer;

(d) he Respondents be reprimanded;

(e) the Respondents, or any of them, pay the costs of Staff's investigation and this proceeding; and/or

(f) such further orders as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated against Colin Soule ("Soule") by the Notice of Hearing in accordance with the terms and conditions set out below. Soule consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out in Part III below.

III. STATEMENT OF FACTS

3. Staff and Soule agree, solely for the purposes of this Settlement Agreement and any order of the Commission contemplated hereby, with the facts and conclusions set out in Part III of this Settlement Agreement. Staff and Soule agree that this Settlement Agreement is without prejudice to Soule in any civil proceedings which may be brought by any other person.

Background

4. Philip Services Corp. ("Philip" or the "Company"), was, at all material times, a reporting issuer in Ontario, Alberta, British Columbia, Quebec, Saskatchewan, Nova Scotia and Newfoundland. Philip's common shares were listed for trading on the Toronto Stock Exchange, the Montreal Exchange and the New York Stock Exchange under the symbol PHV. At all material times, Philip was a corporation amalgamated under the laws of the Province of Ontario, with its head office in the City of

Hamilton, in the Province of Ontario. Prior to May, 1997, Philip operated its business under the name of Philip Environmental Inc.

5. Philip was an integrated resource recovery and industrial services company providing metal recovery and processing services to major industry sectors throughout North America. It was considered one of North America's leading suppliers of metals recovery and industrial services. For the year ended December 31, 1997, Philip reported revenues of U.S. $1.75 billion, of which U.S. $1.1 billion was attributed to the Company's Metals and Recovery Group (the "Metals Group").

6. In 1997, Philip's business was organized into two operating divisions – the Metals Group and the Industrial Services Group ("ISG"). The Metals Group was Philip's largest operating division, accounting for more than 60% of the Company's revenue in 1996 and 1997.

7. Robert Waxman (“Waxman”) was a Director of Philip and was the President of the Metals Group. In late September 1997, he was relieved of his day-to-day duties and signing authority, although this fact was not publicly disclosed.

8. Philip announced that Waxman had resigned as a Director of Philip and as President of the Metals Group in a press release dated January 5, 1998. Details surrounding Waxman's departure from the Company are more fully described below.

9. Allen Fracassi ("A. Fracassi") and Philip Fracassi ("P. Fracassi") are brothers and were the founders of a company purchased by Philip. A. Fracassi was the President, CEO and a Director of Philip. P. Fracassi was the Executive Vice-President, Chief Operating Officer and a Director of Philip.

10. Howard Beck ("Beck") was the Chairman of Philip's Board of Directors and Chair of Philip's Audit Committee.

11. Marvin Boughton ("Boughton") was the Executive Vice-President and Chief Financial Officer ("CFO") of Philip. Boughton is a chartered accountant.

12. Peter Chodos ("Chodos") was the Executive Vice-President, Corporate development of Philip.

13. Felix Pardo ("Pardo") was a Director of Philip.

14. Colin Soule ("Soule") was the General Counsel, Executive Vice-President and Corporate Secretary of Philip.

15. Herman Turkstra ("Turkstra") was a Director of Philip and one of Philip's outside legal counsel.

16. John Woodcroft ("Woodcroft") was the Executive Vice-President, Operations of Philip.

The November Offering

17. On November 6, 1997, Philip made a public offering of 20 million common shares (the "November Offering"), 15 million of which were sold in the United States and 5 million of which were sold in Canada and internationally. The November Offering raised approximately U.S. $364 million and closed on or about November 12, 1997. The price per each offered common share was U.S. $16.50.

18. In connection with the November Offering, Philip filed a Prospectus with the Commission and obtained a final receipt on November 6, 1997. As required pursuant to section 58 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Prospectus contained an Issuer's Certificate signed by the CEO (A. Fracassi) and the CFO (Boughton) and two directors (Waxman and Turkstra) on behalf of Philip's Board of Directors. A registration statement was filed with the United States Securities and Exchange Commission (the "SEC") on or about November 6, 1997.

19. The Prospectus included audited financial statements for the Company for the fiscal years ended December 31, 1996 and December 31, 1995, for which Philip's auditor, Deloitte & Touche ("Deloitte"), had issued unqualified audit opinions. Furthermore, the Prospectus contained unaudited interim financial statements for the six month periods ended June 30, 1997 and June 30, 1996. Deloitte provided a letter of comfort to the Commission dated November 5, 1997 with respect to the inclusion of the unaudited interim financial statements in the Prospectus. The Prospectus also included unaudited third quarter results for the three and nine month periods ended September 30, 1997.

20. In connection with the November Offering, Philip entered into a U.S. Underwriting Agreement dated November 6, 1997 with a syndicate of underwriters, which provided for the sale by the Company of 15 million common shares in the United States.

Relevant Portions of the Prospectus

21. Page 5 of the Prospectus states the following under the heading "Forward-Looking Statements".

> *Factors that may cause actual results to differ materially from those contemplated or projected, forecast estimated or budgeted in such forward-looking statements include among others, the following possibilities…(6) loss of key executives…* [Emphasis added.]

22. Page 18 of the Prospectus states the following under the heading "Reliance on Key Personnel":

> *The Company's operations are dependent on the abilities, experience and efforts of its senior management. While the Company has entered into employment agreements with certain members of its senior management, should any of these persons be unable or unwilling to continue his employment with the Company, the business prospects of the Company could be materially and adversely affected*. [Emphasis added.]

23. Waxman is described on page 67 of the Prospectus under the heading "Management" as "President, Metals Recovery Group and Director". On page 68 of the Prospectus, Waxman is further discussed as follows:

> *Mr. Waxman has been a director of Philip since January, 1994. Mr. Waxman has been the President, Metals Recovery Group, since February 28, 1996. Since September 1993, Mr. Waxman has been President and Chief Executive Officer of Waxman Resources Inc. From 1989 to 1993, Mr. Waxman was Chief Operating Officer of I. Waxman & Sons Limited.*

24. The only disclosure provided in the Prospectus regarding indebtedness to Philip by any person who is or was an executive officer or senior officer of Philip is set out on page 71 as follows:

> *As at November 4, 1997, the aggregate amount of indebtedness (other than routine indebtedness) due to the Company from all current or former officers, directors and employees was Cdn $737,200, consisting of the outstanding balance of a loan made to Allen Fracassi, the President and Chief Executive Officer of the Company for the purpose of purchasing a home … the largest aggregate amount of outstanding under the loan during the fiscal year ended December 31, 1996 was Cdn $787,200.*

25. As noted above, Waxman was one of the directors who executed the Certificate of the Company (the "Certificate"), at page C-1 of the Prospectus, on behalf of the Board of Directors. The Certificate was in the form required pursuant to s.58(1) of the Act as follows:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XV of the Securities Act and the regulations thereunder.* [Emphasis added]

Background Facts Regarding Robert Waxman

26. In 1973, Waxman began working in the scrap metals industry for I. Waxman & Sons Limited, the Waxman family business. In or around September, 1993, I. Waxman & Sons Limited rolled all of its active operating assets into Waxman Resources Inc. ("Resources") and then sold all of the shares of Resources to Philip. At the time Philip purchased the shares of Resources, Waxman was the President and CEO of Resources.

27. In light of his substantial experience, contacts and good reputation in the metals industry, Philip gave Waxman the responsibility of running the operations it had acquired from Resources as well as other metals holdings of Philip. He became a Director of Phillip in January of 1994 and President of Philip's Metals Group in February of 1996. Waxman performed an integral role for Philip in both the operations of the Metals Group and the strategic planning for the numerous acquisitions by Philip in the metals industry.

28. Waxman reported to A. Fracassi, although on a day-to-day basis, he also reported to P. Fracassi and John Woodcroft.

Waxman's Conduct

29. In or around June 1997, Tony Pingue ("Pingue"), the Executive Vice President, Corporate and Government Affairs for Philip, received information from a senior employee of the Metals Group that Waxman and one of his subordinates had established a "shrinkage programme" to improperly divert Philip inventory.

30. In or around July, 1997, Pingue became aware that weigh tickets of the Metals Group may have been falsified. The weigh tickets appeared to acknowledge receipt of a higher grade of metal than Philip had in fact received. Philip was required to pay for the higher grade.

31. In or around mid-September, 1997, Waxman admitted to Woodcroft that he had derived a personal benefit of $2 million from certain transactions that he had instituted. This admission will be referred to as the "Waxman Admission".

32. In or around October, 1997, Pingue advised a number of Philip's directors and officers, including Soule, about the above allegations regarding Waxman and the Metals Group.

33. As a result of the Waxman Admission, in or around September/October, 1997, Philip took the following steps:

(a) On or around September 16, 1997, Waxman was relieved of his day-to-day duties and his signing authority for Philip;

(b) On or around September 19, 1997, Fred Cranston, the VP, Financial Operations was re-positioned as head of the Metals Group, reporting to P. Fracassi and Woodcroft;

(c) In or around late September or early October, 1997, the employee who had been involved in the "shrinkage programme" was terminated from Philip's employment and was paid $120,000 in return for his agreement not be compete with Philip for three years; and

(d) In October of 1997, Waxman signed a promissory note in favour of Philip in the amount of $10 million dollars (the "Waxman Promissory Note") as an indication of his willingness to reimburse Philip for any amounts found owing by him to the Company upon completion of the review being conducted into his activities.

34. Notwithstanding that Waxman had been relieved of his day-to-day duties and signing authority, Waxman continued to be held out, by various directors and/or officers of Philip, as President of the Metals Group to the remaining members of Philip's Board of Directors, other members of senior management, the employees of Philip and the general public. In fact, Waxman continued to attend Board meetings and represented the Company in connection with certain acquisitions. As noted above, Waxman also executed the Issuer's Certificate in the Prospectus on behalf of the Board of Directors.

35. Moreover, on January 5, 1998, almost four months after Waxman had been relieved of his duties and operating authority, Philip issued a press release announcing that Waxman had "resigned". The press release stated, in part as follows:

> *Philips Services Corp. ("Philip") today announced that as part of the Company's consolidation and restructuring program, a senior management structure has been established within each of the four key divisions of its metal operations… As part of this consolidation, Philip has accepted the resignation of Robert Waxman as a Director & President of the Company's Metal Services Group, effective January 5, 1998.* [Emphasis added.]

The Waxman Admission

36. As noted above, the Waxman Admission was made to Woodcroft in mid-September of 1997. The day the Waxman Admission was made, Woodcroft advised Soule and A. Fracassi about it. In mid-September of 1997, A. Fracassi, Soule and Woodcroft agreed that Waxman should be relieved of his day-to-day duties and his signing authority. By October 15, 1997, Soule was aware that Boughton also knew about the Waxman Admission and the subsequent investigation. A. Fracassi told Soule that he had also told P. Fracassi, Chodos, Turkstra, Beck and Pardo.

37. In or around late October, 1997, Soule, A. Fracassi, Woodcroft and Boughton were aware that Waxman had executed the Waxman Promissory Note.

38. The balance of the Board of Directors was advised of the Waxman Admission at a meeting of the Board of Directors held on December 23, 1997. The minutes of this meeting state as follows:

> *Allen Fracassi advised the Board that in the late spring of 1997, the Company became concerned about certain copper transactions that Robert Waxman, the President of the Company's Metal Recovery Operations had entered into. The Company had commenced a review of the transactions and though questionable in nature, the Company had been unable to conclude that the transactions were anything other than bad business judgement or poor management. Subsequently, in mid-September of 1997, Mr. Waxman admitted to Mr. John Woodcraft, Executive Vice-President, Operations, that he had derived a personal benefit of US $2 million from certain transactions that he had instituted. Mr. Woodcraft reported Mr. Waxman's admission to Mr. Fracassi. Mr. Waxman was immediately relieved of his duties and any operating authority that he had. The Company intensified its review of Mr. Waxman's actions. Pending the completion of the review, Mr. Waxman as an indication of his willingness to reimburse the Company, executed a US $10 million promissory note, Mr. Fracassi apprised Mr. Howard Beck, Mr. Felix Pardo and Mr. Herman Turkstra of the Waxman admission.*
>
> *Mr. Fracassi advised that the Company's subsequent review of the Waxman transactions indicated that invoices for approximately US $5 million had not been rendered. H[e] noted that Mr. Waxman had caused US $1.5 million of the un-invoiced transactions to be repaid and was prepared to guaranty an additional US $2.5 million of receivables due from Parametals.*

… The Board concluded that the Company should request Mr. Waxman's immediate resignation from his position as an officer and director. [Emphasis added.]

39. The Prospectus dated November 12, 1997 did not disclose the Waxman Admission, the fact that Waxman had been relieved of his day-to-day duties and his signing authority and the fact that Waxman had executed the Waxman Promissory Note (collectively the "Waxman Facts"). Soule and other directors and/or officers or Philip, failed, and caused Philip to fail to disclose the Waxman Facts, in the Prospectus.

Philip Re-States its Financial Results

40. In early 1998, Philip made a series of public announcements that negatively altered Philip's financial situation, as disclosed in the Prospectus filed with the Commission in November of 1997. Those public announcements included the following:

(i) That there was a discrepancy in the copper inventory in the audited financial statements for the year ended December 31, 1997 in the amount of US $92 million (pre-tax) resulting from trading losses and a further amount of approximately US $32.9 million (pre-tax) caused by incorrect recording of copper transactions, which losses were incurred over a three year period as a result of speculative transactions done outside of Philip's normal business practices.

(ii) Its 1997 year end audited financial results included a US $199 million (pre-tax), one-time special and non-recurring charge related to the write-down of certain assets;

(iii) It reported a net loss of US $126.3 million for its 1997 year end;

(iv) It restated its earnings for fiscal year 1995 to US $3.2 million (rather than the approximately CDN $32.7 million it originally disclosed); and,

(v) It restated its earnings for fiscal year 1996 to US $20 million dollar loss (rather than CDN $39 million earnings as originally disclosed).

41. Following these disclosures, the price of Philip's shares dropped dramatically, and Philip was ultimately put into bankruptcy.

Conduct Contrary to the Public Interest

42. At the time, based in part on discussions he had with Allen Fracassi, Soule held the belief that the Waxman Facts, taken as a whole, were not facts which were required to be disclosed in the Prospectus. Soule admits, for the purpose of this proceeding, that his belief was unreasonable in the circumstances, and that the Waxman Facts should have been disclosed in the Prospectus. Soule acted in a manner contrary to the public interest in relation to the disclosure of the Waxman Facts.

Mitigating Facts

43. Soule has cooperated fully with Staff's investigation of the matters that form the subject-matter of the Notice of Hearing.

44. Soule believed that A. Fracassi, Beck, Pardo, P. Fracassi and Turkstra, all directors of Philip had fully considered the Waxman Facts and concluded that, in the circumstances, they were not facts that were required to be disclosed in the Prospectus.

45. Soule remained employed with Philip after the matters that form the subject-matter of the Notice of Hearing came to light and continued in his role as General Counsel and Corporate Secretary until August 31, 2000 and Executive Vice-President until October 31, 2000, during which time Soule:

(a) fully cooperated with and assisted in investigations conducted by an independent committee of the Board, by Philip's lenders and by all regulatory agencies;

(b) worked diligently to effect a restructuring of Philip pursuant to the *Companies' Creditors Arrangement Act* and Chapter 11 of the U.S. Bankruptcy Code in order to maximize recovery value for all stakeholders of Philip; and

(c) after leaving Philip's employ in October, 2000, Soule was engaged as a consultant to provide legal services to Philip for a period of two years.

Soule's continued involvement in Philip's business and legal affairs was all with the full support of the restructured Board and the stakeholders of Philip.

IV. TERMS OF SETTLEMENT

46. Soule agrees to the following terms of settlement:

1. The Commission will make an Order:

(a) approving the settlement agreement;

(b) pursuant to clause 8 of subsection 127(1) of the Act, Soule will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date that this Settlement Agreement is approved;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Soule will be reprimanded;

(d) pursuant to clause 127.1 of the Act, Soule will pay costs to the Commission in the amount of $50,000; and

(e) Soule undertakes to continue to co-operate with Staff in these proceedings, including testifying as a witness for Staff in the hearing before the Commission.

V. STAFF COMMITMENT

47. If this settlement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any other order in respect of any conduct or alleged conduct of Soule in relation to any of the facts set out in Part III of this agreement or in relation to the allegations set out in the notice of hearing and/or the statement of allegations.

VI. FAILURE TO HONOUR UNDERTAKING

48. If this settlement agreement is approved by the Commission and at any subsequent time Soule fails to honour the undertaking contained in subparagraph (e) above, Staff reserve the right to bring proceedings under Ontario securities law against Soule based on the facts set out in Part III of the Settlement Agreement, as well as for breach of that undertaking.

49. If this settlement is approved by the Commission, Staff will not initiate any other proceeding against Soule in relation to the facts set out in Part III of this agreement or in relation to any of the allegations set out in the notice of hearing and/or the statement of allegations.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

50. Approval of the settlement set out in this agreement shall be sought at the public hearing of the Commission in accordance with the procedures described in this agreement.

51. Staff and Soule may refer to any part, or all, of this Agreement at the settlement hearing. Staff and Soule agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement hearing.

52. If this Settlement Agreement is approved by the Commission, Soule agrees to waive his rights to a full hearing, or judicial review appeal of the matter under the Act.

53. Staff and Soule agree that if this settlement is approved by the Commission, neither Staff nor Soule will make any public statement inconsistent with this agreement.

54. If, at the conclusion of the settlement hearing, and for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Soule leading up to the settlement hearing shall be without prejudice to Staff and Soule;

(b) each of Staff and Soule will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this agreement or the settlement negotiations;

(c) the terms of settlement contained in this agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of both Staff and Soule or as may be required by law; and

(d) Soule agrees that he will not, in any proceeding, refer to or rely upon this agreement or this negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF AGREEMENT

55. Except as permitted above, the existence of this agreement, the settlement provided for herein and its terms, will be treated as confidential and will not be disclosed by any party to the agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of all parties or as may be required by law.

56. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF AGREEMENT

57. This agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

58. A facsimile copy of any signature shall be as effective as an original signature.

Dated this 25th day of November, 2005.

"Colin Soule"

STAFF OF THE ONTARIO SECURITIES COMMISSION

Per: "Michael Watson"

Michael Watson
Director of Enforcement

SCHEDULE "A"

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

and

IN THE MATTER OF
COLIN SOULE

ORDER
(Sections 127 and 127.1)

WHEREAS on August 30, 2000, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the Ontario *Securities Act*, as amended, with respect to Philip Services Corp., Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey, Colin Soule, Robert Waxman and John Woodcroft;

AND WHEREAS on October 12, 2005, an Amended Statement of Allegations was delivered;

AND WHEREAS the respondent Colin Soule entered into a settlement agreement dated November 25, 2005 (the "Settlement Agreement"), in which the respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated August 30, 2000, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the respondent and from Staff of the Commission;

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

IT IS ORDERED THAT:

1. the Settlement Agreement dated November 25, 2005, attached to this Order as Schedule "1", is hereby approved;

2. pursuant to clause 8 of subsection 127(1) of the Act, Soule will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date that this Settlement Agreement is approved;

3. pursuant to clause 127.1 of the Act, Soule will pay costs to the Commission in the amount of $50,000; and

4. pursuant to clause 6 of subsection 127(1) of the Act, Soule will be reprimanded by the Commission.

DATED at Toronto this day of November, 2005.

3.1.2 ATI Technologies Inc. et al.

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

AND

IN THE MATTER OF
ATI TECHNOLOGIES INC., KWOK YUEN HO, BETTY HO,
JO-ANNE CHANG, DAVID STONE, MARY DE LA TORRE,
ALAN RAE AND SALLY DAUB

Motion Hearing:	April 29, 2005		
Panel:	Susan Wolburgh Jenah	-	Vice-Chair (Chair of the Panel)
	M. Theresa McLeod	-	Commissioner
	H. Lorne Morphy, Q.C.	-	Commissioner
Counsel:	Matthew Britton Tyler Hodgson	-	For Staff of the Ontario Securities Commission
	Joel Wiesenfeld Andrew Gray	-	For the Respondent, Betty Ho

REASONS AND ORDER

The Motion

[1] On April 29, 2005, at the close of the evidence introduced by Staff of the Commission ("Staff"), counsel for the respondent Betty Ho (the "Respondent") brought a motion for a nonsuit before the panel (the "Panel") seeking an order dismissing the allegations against her.

[2] Counsel for Mrs. Ho brought this motion on the basis that Staff has not led sufficient evidence to establish a *prima facie* case that the Respondent committed insider trading contrary to section 76 of the *Securities Act* (the "Act").

The Issues

[3] The issues raised by the Respondent's motion are as follows:

(1) Is a motion for a nonsuit available in proceedings before the Commission?

(2) If such a remedy is available, does the Commission have discretion to decide whether or not to put the moving party to its election?

(3) What is the test for granting a nonsuit motion?

(4) Application of the test to the circumstances of this case.

1. Is a motion for a nonsuit available in proceedings before the Commission?

[4] As a preliminary matter to this nonsuit motion, Staff raised the issue as to whether, having regard to the Commission's public interest jurisdiction, such a motion could be brought before the Commission. In so doing, Staff relies on a recent decision of the Alberta Securities Commission, *Re Ironside*, [2003] A.S.C.D. No. 1514 at 2, para. 4, in which a panel decided that entertaining a nonsuit motion would be inconsistent with its public interest jurisdiction. The Alberta Securities Commission stated:

> A section 198 and 199 hearing is an administrative proceeding, not a civil or criminal action. The paramount question that the Commission must decide is whether it is in the public interest for the Commission to make one or more of the orders permitted by sections 198 and 199. That question governs this Panel's ultimate decision on all issues raised in the hearing. *To answer that question, and given the Commission's statutory mandate to act in the public interest, we must hear all relevant evidence prior to determining whether to exercise our public interest jurisdiction.* [Emphasis added]

[5] Counsel for the Respondent submits that a nonsuit motion is generally available in administrative proceedings, and asserts that such a motion is appropriate where a respondent in an administrative proceeding before the Commission has no case to meet at the conclusion of Staff's case. He submits that such is the case in this proceeding. Counsel relies on several decisions supporting the availability of nonsuit motions before administrative tribunals: *Re City of Toronto and Toronto Civic Employees' Unio*n, Local 416 (2000), 93 L.A.C. (4th) 372, *White v. Canadian Union of Shinglers & Allied Workers*, [1996] O.L.R.B. Rep. 215; *Labourers' International Union of North America v. Hurley Corporation*, [1992] O.L.R.B. Rep. 940; *LSUC v. Pinckard*, [2000] LSDD No. 59.

[6] Paragraph 25.0.1(a) of the *Statutory Powers Procedure Act*, R.S.O. 1990 (the "SPPA") provides:

> A tribunal has the power to determine its own procedures and practices and may for that purpose,
>
> (a) make orders with respect to the procedures and practices that apply in any particular proceeding;

[7] The Commission's Rules of Practice further provide as follows:

> **1.2 General (1) General Powers of the Commission under these Rules** – The Commission may exercise any of its powers under these Rules on its own initiative or at the request of a party.
>
> (…)
>
> **(4) General Principle** – These Rules shall be construed to secure the most expeditious and least expensive determination of every proceeding before the Commission on its merits, consistent, however, with the requirements of justice.

[8] Having reviewed the Re Ironside decision to which we were referred by Staff, we do not find it to be determinative. Numerous decisions were referred to us by the Respondent as noted above in which nonsuit motions were entertained by administrative tribunals.

[9] We have considered the submissions of the parties, the relevant authorities and our ability to determine our own procedure and practices in proceedings before us. While we are not aware of such a motion having been brought previously before the Commission, we are of the view that such a motion can be brought.

2. Does the Commission have discretion to decide whether or not to put the moving party to its election?

[10] Counsel for the Respondent submits that in an administrative context, there is no requirement to put the moving party to an election with respect to whether he or she intends to call evidence. Counsel argues that the Commission has the discretion to forego such a requirement pursuant to its ability to control its own procedure. Further, counsel submits that where the propriety of an individual's conduct is at issue, it is appropriate to do so. He refers to *Abary v. North York Branson Hospital* (1988), 9 C.H.R.R. D/4975 where a board of inquiry stated that:

> (…) Similarly, in administrative hearings, particularly where the propriety of conduct is involved, a respondent should not be required to present evidence unless the proponent has first presented evidence upon which an adverse finding could be based. In other words, the principle of fairness should not require an evidentiary response in the absence of a "case to meet."

[11] Staff submits that in the *Abary* case, the Commissioner of the Ontario Human Rights Commission relied on the decision of Mr. Justice Lamer in *R. v. Dubois* [1985], 2 S.C.R. 350 ("*Dubois*"), in support of the proposition that an accused should not be required to present evidence unless the Crown has first presented evidence upon which a conviction could be based. Staff submits that the *Dubois* case is distinguishable in that it dealt with section 13 of the *Canadian Charter of Rights and Freedoms* and the protection against self-incrimination in the context of a criminal proceeding.

[12] Staff submits that the Respondent must be put to her election concerning intention to call evidence prior to the Panel entertaining this nonsuit motion. This, according to Staff, is the rule applicable in civil proceedings in Ontario.

[13] Staff submits that, although the decisions of various administrative tribunals are in conflict on this point, the seminal court case which squarely addressed this issue decided the matter conclusively against the Respondent. In *Ontario v. Ontario Public Service Employees Union*, [1990] O.J. No. 635 (Ont. Div. Ct.) at 9 (QL) ("*OPSEU*"), Mr. Justice Reid concluded:

> Over the years there has been some variation in the practice on non-suits turning on the question whether the mover must concurrently elect to call no evidence. That has now been resolved. A motion will not be entertained without an election to call no evidence [citation omitted].

> There is no reason to think that a motion for a non-suit before an administrative tribunal should not conform with the law that governs the courts.

[14] In Sopinka and Lederman, *The Law of Evidence in Canada* (2nd ed), pp. 139-42, the consequences of an election in civil proceedings are described in detail and were summarized by Staff as follows: (1) if the defendant elects to call no evidence and the motion is dismissed the defendant is precluded from leading further evidence and the case is immediately submitted to the trier-of-fact to arrive at a verdict; (2) if the defendant elects to call evidence, a decision on the motion is reserved until all the evidence in the case has been adduced. Similarly, if only one of the two defendants to an action brings a nonsuit motion, and that defendant elects to call no evidence, the motion is reserved and the evidence adduced by the remaining defendant may be used by the plaintiff in rebutting the outstanding nonsuit application.

[15] We accept that there is a well recognized general practice in Ontario that when a party brings a nonsuit motion in civil proceedings, the party is put to its election prior to the court entertaining the motion. Staff argued that such an election should be required in proceedings before the Commission, relying on the practice of civil courts in Ontario.

[16] The Respondent maintains that an election should not be required and relies on decisions of the Ontario Labour Relations Board, labour arbitrators and the Human Rights Commission. For example, counsel for the Respondent referred us to the following cases. In *White v. Canadian Union of Shinglers & Allied Workers*, cited above, the Ontario Labour Relations Board said as follows at paragraphs 20 and 30:

> 20. … Similarly, the courts have come to recognize that the differences between them and administrative tribunals may justify a different approach to such motions by the latter (*Metropolitan Toronto vs. The Joint Board et al.*, [1991] 6 O.R. (3d) 88 (Divisional Court)). The Board has taken a second look at how a nonsuit motion should be dealt with in its proceedings. In the result, and recognizing the discretion it clearly has in that respect, *the Board has become more receptive to the notion of a nonsuit motion without an election*.(…)
>
> 30. In short, whether the Board will exercise its discretion to invite or allow a nonsuit motion to proceed without putting the moving party to its election will depend on the circumstances and the Board's assessment of the situation in the case in which the issue arises. [Emphasis added]

[17] In *Labourers' International Union of North America v. Hurley Corporation*, cited above, the Ontario Labour Relations Board stated at para. 6:

> The Board is satisfied that it has a discretion to decide whether or not to put a party making a motion for non-suit to its election, prior to entertaining the motion itself. Provided its discretion is exercised in a fair manner, consistent with natural justice, the Board is entitled, in given circumstances, to decline to put a party to its election. In this regard, the Board will no doubt consider all of the circumstances, including the need for fair, efficient, and expeditious proceedings before the Board.

[18] Staff submits that the decision of Mr. Justice Reid in the *OPSEU* case has not been overturned and therefore continues to reflect prevailing law in Ontario. On the other hand, counsel for the Respondent referred us to numerous decisions in which administrative tribunals declined to put the moving party to his or her election prior to considering a nonsuit motion. It is unnecessary for us to attempt to reconcile these various decisions.

[19] We accept that Mr. Justice Reid's comments in the *OPSEU* case continue to be applicable and should be carefully considered by administrative tribunals when nonsuit motions are brought. However, as an administrative tribunal, we have the ability to control our own procedure. We must balance considerations of efficiency and expediency against the need for fairness and natural justice in proceedings before us. In this case, we are satisfied that the Respondent's motion was not frivolous or vexatious. Nor was it brought to cause delay in these proceedings. In the particular circumstances of this case, and given that the Panel invited and heard submissions of both counsel on all the issues enumerated above, we exercise our discretion not to require the Respondent to be put to an election as to whether she will call evidence prior to considering the nonsuit motion.

3. What is the test for granting a nonsuit motion?

[20] Counsel for the Respondent submits that a nonsuit motion should be granted in an administrative proceeding where a party has failed to make out a *prima facie* case. He further submits that in an insider trading case, if Staff failed to make out a *prima facie* case with respect to any one of the elements of the offence, it would be appropriate for the Panel to grant the nonsuit motion as this failure to establish any of the elements would be fatal to the case against the Respondent.

[21] Staff submits that the test governing a nonsuit motion is the same for criminal or civil proceedings. In assessing circumstantial evidence, the adjudicator must assign "the most favourable meaning which can reasonably be attributed to any ambiguous" evidence. Staff argues that in determining the reasonableness of proposed inferences, the adjudicator is not to be influenced by the existence of alternative or more appealing inferences.

[22] With respect to inferences to be drawn from the evidence adduced, Staff submits that even if inferences could only be drawn with difficulty, a nonsuit motion must fail. They say that considerations of which inferences the trier of fact is more or most likely to draw fall outside the jurisdictional scope of the task assigned to the Panel when considering a nonsuit motion. In support of these submissions, Staff cites the case *R. v. Katwaru*, [2001] O.J. No. 209 (Ont. C.A.) at 8, paras 39-40 in which Mr. Justice Moldaver says as follows:

> Without reproducing the specific passages from the charge, suffice it to say that in the course of his instructions on the law relating to circumstantial evidence, the trial judge told the jury on numerous occasions that they could infer a fact from established facts but only if the inference flowed "easily and logically from [the] other established facts".
>
> The appellant submits, correctly in my view, that the trial judge erred by inserting the word "easily" into the equation. *In order to infer a fact from established facts, all that is required is that the inference be reasonable and logical. The fact that an inference may flow less than easily does not mean that it cannot be drawn. To hold otherwise would lead to the untenable conclusion that a difficult inference could never be reasonable and logical.* [Emphasis added]

[23] We refer to the decision in *Re City of Toronto and Toronto Civic Employees' Union, Local 416*, in which the test is stated as follows:

> In determining a non-suit motion, the standard of proof applied in the courts is that of a prima facie case, and not the higher standard of the balance of probabilities. That is, the question on a non-suit motion is whether there is any evidence which, taken at its highest, establishes or gives rise to a reasonable inference in favour of the party responding to the motion. *Any doubts in that respect are to be resolved in favour of the responding party.* [Emphasis added]

[24] In applying that test here, we are satisfied that, if one could hypothetically infer from the evidence adduced the existence of the elements of a section 76 offence, there is a basis for concluding that a prima facie case has been established for the purposes of the nonsuit motion.

4. Application of the test to the facts of this case

[25] Counsel for the Respondent submits that the necessary elements of the allegation of insider trading against Mrs. Ho are that: (i) she was a person in a special relationship within the meaning of section 76(5) of the Act; (ii) there was a material undisclosed fact about ATI Technologies Inc. ("ATI"), namely that "ATI would fall short of its forecasted revenue and earnings for Q3-2000"; (iii) Mrs. Ho had actual knowledge of the alleged material undisclosed fact about ATI; and (iv) Mrs. Ho traded ATI shares while she was in possession of the alleged material undisclosed fact about ATI. He maintains that Staff has not made out a *prima facie* case against Mrs. Ho with respect to these elements of insider trading and the Panel ought, therefore, to grant the nonsuit motion and dismiss the allegations against the Respondent at this stage of the proceeding.

[26] Further, counsel for the Respondent submits that the insider trading case against Mrs. Ho relies entirely on the hearsay evidence introduced through Mr. Sikora, the Staff investigator, which consists of a review of portions of documents selected by him. Counsel submits that given Staff's statutory power to collect evidence, including interviews under oath and pursuant to an investigation order, failure to call any direct evidence is conspicuous. Hence, counsel for the Respondent argues that an adverse inference should be drawn from the fact that the evidence of witnesses expected to be called by Staff to testify would have been unfavourable to Staff's case. For example, counsel asks the Panel to draw an adverse inference from Staff's failure to call Mr. Andrew Le Feuvre or anyone else at TD Evergreen with direct knowledge of the trades in question.

[27] In Staff's submission, the Respondent's argument is essentially that there is no evidence that Betty Ho traded on material, undisclosed information while in a special relationship with ATI because of (1) lack of direct evidence concerning marital communications of confidential material information and (2) Betty Ho was neither an officer, director or employee of ATI and was not a recipient of any documentary evidence.

[28] Staff submits that there is ample evidence from which the Panel could reasonably infer that the Respondent engaged in insider trading contrary to section 76 of the Act including:

(a) the interchangeability of funds and securities between KY Ho and Betty Ho's account, including the transfer of the 150,000 ATI shares from Betty Ho's account to KY Ho's account on April 26, 2000 that were ultimately donated by KY Ho to charity;

Exhibits 251 to 258

(b) Betty Ho was able to sign for and authorize the transfer of funds from KY Ho's account into her own account on her own authority;

Exhibit 261

(c) Despite owning in excess of 4,000,000 ATI shares, Betty Ho had never disposed of ATI shares prior to April, 2000, and first sold stock in the company contemporaneous to KY Ho's charitable donation;

Exhibits 252, 256

(d) Between the period of April 24 – May 2, 2000, Betty Ho sold 240,900 shares in ATI for total proceeds $6,954,279;

(e) Betty Ho avoided a loss of $3,352,824 by selling her shares in advance of the May 24, 2000 early warning press release issued by ATI.

[29] Staff submits that, in these circumstances, the Panel can infer that the Respondent traded on material, undisclosed information while in a special relationship with ATI and cites the decision of *SEC v. Ginsburg* (2004), 362 F. 3d 1292 (11th Cir.) at p. 10 (QL) in which the court said as follows:

> By contrast, people do not make large stock trades for as many reasons as businesses take job actions. Although there are exceptions, people generally buy when they believe the price of a stock is going up and sell when they believe it is going down (either absolutely or relative to the expected performance of other stock). The factfinder in an insider trading case need only infer the most likely source of that belief. The temporal proximity of a phone conversation between the trader and one with insider knowledge provides a reasonable basis for inferring that the basis of the trader's belief was the inside information. The larger and more profitable the trades, and the closer in time the trader's exposure to the insider, the stronger the inference that the trader was acting on the basis of inside information.

[30] The Respondent's counsel conceded in oral argument before us that the burden on Staff to defeat a nonsuit motion is "lower" than the burden of proving the allegations made. As was established in the OPSEU case referred to above, the question on a nonsuit motion is whether there is any evidence which, taken at its highest, establishes or gives rise to a reasonable inference in favour of the party responding to the motion. Any doubts in this regard are to be resolved in favour of the responding party to the nonsuit motion. In deciding to dismiss the nonsuit motion, we are not deciding that the inferences Staff would ask the Panel to draw at the conclusion of the case are inferences we would draw. Based on the evidence led by Staff, we need only decide that they are inferences that could reasonably be drawn. Accordingly, we conclude that the Respondent has failed to discharge the onus upon it to succeed on this nonsuit motion.

Conclusion

[31] In summary, we conclude that:

(1) a nonsuit motion is available in proceedings before the Commission;

(2) the Commission has discretion to put a party making a nonsuit motion to its election. In the circumstances of this case, we exercise our discretion not to require the Respondent to make such an election prior to considering the nonsuit motion;

(3) the test for granting a nonsuit motion is whether Staff failed to make out a prima facie case that Mrs. Ho committed insider trading contrary to section 76 of the Act; and

(4) the Respondent's motion for a nonsuit is dismissed.

Dated at Toronto this 11th day of May, 2005

"Susan Wolburgh Jenah"

"M. Theresa McLeod"

DISSENTING REASONS OF COMMISSIONER MORPHY

[32] I have had the opportunity to consider the decision of my two colleagues. While I concur with them that a motion for non-suit should be available in proceedings before the Commission, I do not concur in their decision in not requiring Betty Ho to be put to an election as to whether she intends to call evidence.

[33] This motion was brought on the basis that Staff had not led sufficient evidence to establish a *prima facie* case against Betty Ho of a breach of section 76 of the Ontario *Securities Act*.

[34] The Commission has no rule of practice or jurisprudence concerning motions for non-suits. There is, however, a long history in the Ontario courts of non-suit motions being brought in civil cases on the same basis as the motion of Betty Ho. Consistently the courts have held that the applicant on the motion should be put to his or her election. In *Ontario v. Ontario Public Service Employees Union* [1990] O.J. No. 635 (Ont. Div. Ct.), Mr. Justice Reed indicated that administrative tribunals should conform to the law that governs the courts on this issue.

[35] We have been referred to a number of decisions of the Ontario Labour Relations Board and certain labour arbitrators where the directions have not been followed. I am not convinced that the Commission should follow their practice.

[36] Accordingly, I would require Betty Ho to elect as to whether or not she intends to call evidence before considering the merits of her motion.

[37] Having regard to this determination, it would not be appropriate that I deal with the issue as to whether a *prima facie* case has been led.

Dated at Toronto this 11th day of May, 2005

"H. Lorne Morphy, Q.C."

3.2 Court Decisions, Orders and Rulings

3.2.1 Philip Services Corp. (Receiver of) v. Ontario Securities Commission (Ont. Div. Ct.)*

COURT FILE NO.: 15/05
DATE: 20050825

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

BETWEEN:

PHILIP SERVICES CORP. (RECEIVER OF)
Appellant)

AND

ONTARIO SECURITIES COMMISSION
Respondent)

HEARD: March 22, 23, 24, 2005

BEFORE: O'Driscoll, Lane and Linhares de Sousa JJ.

COUNSEL: David R. Byers and Bradley M. Davis, for the Appellant

Karen Manarin and Judy E. Cotte, for the Respondent

REASONS FOR JUDGMENT

LANE J.:

[1] The appellant ("Philip") appeals from the decision of the Ontario Securities Commission ("Commission") dated December 7, 2004, finding that Philip had waived privilege in respect of ten documents (collectively "the Documents") described in five classes: Legal Opinions; Skadden Letters; Stikeman Letter; Soule Notes and Caisse Notes. With respect to the first three classes, the Commission decided that Philip had waived privilege by providing them to its auditor, Deloitte & Touche LLP ("Deloitte"), without cautioning Deloitte that they were privileged or requesting the maintenance of confidentiality. As to the Caisse Notes and the Soule Notes, the Commission decided that they were not privileged but had they been privileged it had been waived when they were given to the Staff of the Commission ("Staff").

[2] Because of the dual role of the Commission as both investigator and regulator, I will adopt the terminology used by the parties and refer to the Commission when it acted as investigator/prosecutor as "Staff" and to the Commission in its decision-making role as "the Commission".

Background

[3] Philip Services Corp. was a multi-national company, listed on the Toronto Stock Exchange and other exchanges. In the late summer and fall of 1997, it was preparing to launch a public offering of 20 million common shares, 15 million of which were to be sold in the United States and 5 million in Canada and internationally. The offering was intended to raise approximately (U.S.) $364 million.

[4] In September, 1997, a senior officer and Board Member of Philip, Robert Waxman, admitted to the senior management of Philip that he had fraudulently diverted at least $2 million, and perhaps as high as $20 million, of company funds for his own benefit (the "Waxman Issue"). As a result of this disclosure, Philip obtained the Legal Opinions in October of 1997, advising as to whether Philip had an obligation to disclose the Waxman Issue in the pending prospectus. Philip did not disclose the Waxman Issue in the prospectus.

[5] On November 6, 1997, Philip filed with the Commission the prospectus, audited financial statements for the years ended 1995 and 1996, and unaudited financial statements for the first nine months of 1997. At the same time, Philip filed a

* Source: Canadian Legal Information Institute.

Registration Statement with the United States Securities and Exchange Commission (the "SEC"). None of these documents referred to the Waxman Issue.

[6] In January 1998, two months after the public offering, Philip made the first of a series of announcements that significantly reduced Philip's earnings as set out in its audited 1995 and 1996 financial statements, and substantially altered its 1997 financial picture. Following these disclosures, the price of the Philip shares dropped dramatically. Philip was subsequently de-listed and sought bankruptcy protection.

[7] In May 1998, Staff commenced an investigation, authorized by the Commission under s. 11 of the Act, into the adequacy of the disclosure made by Philip in support of the public offering. Staff was concerned that Philip was aware of the Waxman Issue and other negative financial information in November 1997 but chose not to disclose it until after the public offering was completed.

[8] A Summons to produce documents was served by Staff on Philip and another on Deloitte and each responded. In response to the summons dated July 15, 1998, Deloitte assembled 324 files. Staff attended at the location where the files were stored at various times, including on September 1 to 4, 1998 and August 30 to September 30, 1999, to review and copy documents. In addition, Deloitte also sent copies of documents to Staff on various occasions.

[9] On August 28, 1998, in response to the summons, Philip made disclosure of a number of documents to Staff, including a copy of the Caisse Notes. On September 30, 1998, Philip produced another group of documents, which included a second copy of the Caisse Notes. Connie Caisse was the Director of Corporate Accounting for Philip.

[10] Between September 1 and September 4, 1998 Staff obtained copies of the Soule Notes and the Caisse Notes from Deloitte, pursuant to Staff's review of the documents produced by Deloitte.

[11] The Legal Opinions were provided to Staff in a letter dated December 17, 1999, from Deloitte's U.S. legal counsel, enclosing them. The letter stated that the documents were responsive to the Summons, and went on to state that,

> Some of these documents were only recently uncovered. Others were maintained in a privileged file, but upon our review of that file, we have determined that the documents produced herewith are not privileged. Thus, you should disregard the "Privileged & Confidential" stamp that appears on some of these documents. In addition, you will note that many of these documents are duplicative of documents that have previously been produced to you (and there may also be multiple copies of some document within this production); nevertheless, we believed it was best to err on the side of producing multiple copies.

The Main Proceeding

[12] On August 30, 2000, a Notice of Hearing and Statement of Allegations was issued by the Commission against Philip and seven of its former officers and directors under section 127 of the *Securities Act*, in which Staff alleged failure by the defendants to make full, true and plain disclosure of material facts concerning, inter alia, the Waxman Issue, including the amount of his personal benefit, the fact that Mr. Waxman had been relieved of his duties, and the taking of a promissory note from him. Staff also alleged that the management was aware, prior to the Prospectus filing, that developments, largely in the Metals Division, would lead to a re-structuring charge which had largely been identified and quantified by late summer of 1997, but which was not disclosed in the Prospectus filed November 6, 1997. The Allegations contain what are alleged to be quotations from certain legal opinions received by Philip prior to the filing date. Portions are underlined in an apparent effort to show that the defendants knew that these two matters should have been reported as material events. The Allegations conclude that Philip and certain officers failed to advise the Underwriters and the public of the facts as to the Waxman Issue and were aware at the filing of the prospectus of the charges to be taken by Philip in respect of the Metals Division, which made the financial statements misleading.

[13] Within the Proceeding begun on August 30, a hearing was held to determine the issues as to solicitor-client privilege in certain documents.

The Disputed Documents

[14] The following ten documents are the subject of the appeal:

(a) Letter from Brice Voran, Shearman & Sterling to John Warren, Borden & Elliot;

(b) Borden & Elliot letter to Colin Soule, Senior Vice-President, General Counsel and Corporate Secretary, Philip Services Corp.;

(c) Letter from Brice Voran, Shearman & Sterling, to John Warren, Borden & Elliot;

(d) Internal Shearman & Sterling memorandum from Nancy Bertrand to Brice Voran and Richard Price re: disclosure requirements;

(e) Letter from Paul Mingay, Borden & Elliot, to Colin Soule, Philip Services Corp.;

(f) Colin Soule's handwritten notes from the audit committee meeting of Philip Services Corp. held on April 23, 1998 (the "Soule Notes");

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

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

(i) Connie Caisse's handwritten notes of audit committee meeting of Philip Services Corp held on January 19, 1998 (the "Caisse Notes"); and

(j) Letter to Colin Soule re: special matter from David R. Byers of Stikeman Elliott LLP (the "Stikeman Letter").

[15] Documents (a) to (e) (collectively, the "Legal Opinions") were prepared for Philip by the law firms of Borden & Elliot and Shearman & Sterling for the purpose of providing legal advice to Philip concerning Philip's disclosure obligations.

[16] Documents (g) and (h) (collectively, the "Skadden Letters") were prepared by the law firm of Skadden, Arps, Slate, Meagher and Flom LLP for the purpose of providing legal advice to Philip concerning Philip's filings with the U.S. Securities and Exchange Commission.

[17] The Soule Notes and the Caisse Notes are the notes made by their respective authors of communications between Philip's in-house counsel, Colin Soule, and Philip's Audit Committee at Committee meetings.

[18] The Stikeman Letter was prepared by the law firm of Stikeman Elliott for the purpose of providing Philip with advice on responding to potential questions from the press and analysts concerning Philip's restatement of its financial statements.

[19] The Commission held that the disputed documents were no longer privileged and were to be disclosed to the respondents other than Philip. Philip appeals.

Standard of Review

[20] Pursuant to s. 9 of the *Securities Act*, a party may appeal a final decision of the OSC to the Divisional Court:

> s. 9(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly.

[21] The statutory right of appeal under the Act is not limited. In fact, the powers of the Court on appeal are quite broad, which might lead one to infer that little deference should be paid to the Commission. However, the Supreme Court of Canada in *Pezim v. British Columbia (Superintendent of Brokers*), dealt in detail with the appropriate standard of review to be applied when reviewing administrative tribunals generally, and securities commissions in particular.

[22] The Supreme Court explained the range of possible standards to be applied, and the criteria for deciding which standard to use. It concluded that a securities commission is a highly specialized tribunal with policy-making authority derived from statute and broad discretion to determine what conduct is in the public interest. The Court said:

> Consequently, even where there is no privative clause and where there is a statutory right of appeal, the concept of the specialization of duties requires that deference be shown to decisions of specialized tribunals on matters which fall squarely within the tribunal's expertise.
>
> In the case at bar, the Commission's primary role is to administer and apply the Securities Act. It also plays a policy development role. Thus, this is an additional basis for deference.
>
> Thus, on precedent, principle and policy, I conclude as a general proposition that the decisions of the Commission, falling within its expertise, warrant judicial deference.

[23] The position of the Supreme Court with respect to the deference that should be shown to securities commissions was confirmed in the recent case of *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*. In that decision, Justice Iacobucci, for the Court, said, at pp. 152-153:

> The OSC is a specialized tribunal with a wide discretion to intervene in the public interest and that the protection of the public interest is a matter falling within the core of the OSC's expertise. Therefore, although there is no privative clause shielding the decisions of the OSC from review by the courts, that body's relative expertise in the regulation of the capital markets, the purpose of the Act as a whole and s. 127(1) in particular, and the nature of the problem before the OSC, all militate in favour of a high degree of curial deference. However, as there is a statutory right of appeal from the decision of the OSC to the courts, when this factor is considered with all the other factors, an intermediate standard of review is indicated. Accordingly, the standard of review in this case is one of reasonableness.

[24] Philip submitted that the Commission's application of the law of privilege is to be reviewed on a standard of correctness. Staff agreed, but submitted that findings of fact and factual inferences should be reviewable on a standard of reasonableness. In our view, the position of Staff is correct. Some deference is due to the Commission even on a paper record, as here, having regard to its statutory role as primary finder of fact. But in respect to the major issue before it, the Commission has no advantage, relative to the Court, in its understanding of the common law of privilege, and the court is entitled to substitute its view of the law for the view of the Commission.

Factual Review: The Legal Opinions

[25] We have already seen that the Legal Opinions came to Staff from Deloitte after a review of whether they were privileged by Deloitte's lawyers. Since legal advice is commonly privileged, it is necessary to explore the circumstances of the disclosure of the Legal Opinions by Philip to Deloitte. They came into the hands of Deloitte from Philip as a result of an Audit Committee meeting. Messrs. Ron McNeill and Alan Kesler of Deloitte were involved in the audit of Philip. They attended a meeting of the Philip audit committee on January 19, 1998. Ms. Caisse was also present and made the Caisse Notes. At that meeting, management presented a summary of the Waxman Issue and Deloitte immediately advised Philip to obtain legal advice as to whether Philip was required to publicly disclose the Waxman Issue. In response, Deloitte was told by Mr. Soule that legal advice on that issue had already been obtained and the Legal Opinions had been received in or around September of 1997. Howard Beck, the Chairman of the audit committee, directed that Deloitte and the audit committee should be provided with a copy of the Legal Opinions.

[26] Mr. Kesler was examined by the SEC and he explained how Deloitte was provided with a copy of the Legal Opinions. His evidence is as follows:

> . . . In the course of that meeting, we being members of – representatives of – Deloitte & Touche, and I can't recall whether I raised or Ron McNeill [another partner at Deloitte] raised it, but we apprised the audit committee and members of management that we believed their obligations, reporting obligations were relative to the discovery of a significant event, public disclosure of a significant event and our responsibilities when becoming aware of what we believed was a significant event in respect to how they reacted to the discovery of such circumstances. And we advised them that it was our – in our judgment, these matters indicated that they should immediately seek outside legal counsel, that they should consult with their SEC legal counsel as to what those reporting obligations were because we believed that was a legal interpretation as opposed to an accounting obligation but that we had specific responsibilities as auditors in regards to it but that we wanted them to consult immediately with external legal counsel.
>
> In discussion which ensued from that advice we became aware that they had already sought legal counsel previously and it was made clear that that legal advice had been sought when the company first became aware of issues with Bob Waxman, again, in that September time frame. Best of my recollection, that was the first knowledge I had of the existence of any such previous consultation with external legal counsel, and I requested copies of the consultation that had been made and the results of that consultation immediately and continued to press that I believed it was appropriate since there were now many new facts and circumstances which had come to the attention of management that at a minimum, that it was appropriate that they consult again. So following the meeting I was provided with copies of the responses which had been received from external legal counsel…

[27] From this evidence, it appears that the Legal Opinions were given to Deloitte in their capacity as auditors, and the Commission so found at paragraphs 69 and 70:

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

> Deloitte who asked for the Legal Opinions, not Philip who gave them with instructions to provide input for further solicitation.
>
> Deloitte was not consulted on the first round of legal advice. Deloitte only learned of the Legal Opinions well after the fact of non-disclosure in the prospectus. We do not accept Philip's position that Deloitte was involved in the 'continuum' of the provision of legal advice since Deloitte only learned of the Legal Opinions after the issuance of the prospectus.

[28] The Commission went on to find that Deloitte also acted at all subsequent times in the capacity of auditor, received the documents free of any warning that they were released for a limited purpose only and that Philip's decision, (presumably as conveyed by Audit Committee Chairman Beck) to release the Legal Opinions to Deloitte was informed and voluntary.

[29] Philip submitted that the documents given to Deloitte as a result of the meeting of the Audit Committee were "provided to Deloitte in its expert capacity for the purposes of seeking, receiving or implementing legal advice regarding Philip's affairs." The findings of the Commission are inconsistent with this submission and we must give deference to the Commission's findings of fact if there is evidence to support them. The evidence of Mr. Kesler provides such a foundation and, accordingly, we proceed on the basis that the documents in question were given to Deloitte in its capacity as auditor and not otherwise. That brings us to the heart of this part of the case: What is the effect of giving privileged documents to your auditor? Does the privilege, or any part of it survive?

Law of Privilege

[30] The place of beginning of any discussion of the privilege attached to solicitor and client communication is *Descoteaux,* where the Supreme Court determined that solicitor-client privilege is a substantive rule of law and not a rule of evidence, and set out the way in which courts are to approach conflicts between the privilege and other principles of law: (page 875)

> 1. The confidentiality of communications between solicitor and client may be raised in any circumstances where such communications are likely to be disclosed without the client's consent.
>
> 2. Unless the law provides otherwise, when and to the extent that the legitimate exercise of a right would interfere with another person's right to have his communications with his lawyer kept confidential, the resulting conflict should be resolved in favour of protecting the confidentiality.
>
> 3. When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising that authority should be determined with a view to not interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.
>
> 4. Acts providing otherwise in situations under paragraph 2 and enabling legislation referred to in paragraph 3 must be interpreted restrictively.

[31] Philip submitted that it follows from these passages that where the right of an auditor to demand information from the audited company and its officers and directors is exercised in relation to documents which are privileged, the resulting disclosure must be treated as limited to the purpose for which the statute grants the right to obtain disclosure. I will return to this submission after considering certain jurisprudence relied on by the parties.

[32] In its reasons, the Commission referred to two important cases, one in Ontario, *Cineplex* and one, *Arthur Young* in the U.S. Supreme Court, (cited at length in *Cineplex*) on the disclosure of privileged documents to auditors.

[33] In *Cineplex*, the firm of Peat Marwick Thorne ("Peat") acted through its tax department as tax advisors of Cineplex and, through its audit department as the external auditor. Outside solicitors created documents for the purpose of giving legal advice to Cineplex and met with in-house counsel and Peat's tax team to whom they gave the documents for the purpose of Peat assisting in the giving of the legal advice. Subsequently, some of the documents were provided to the audit team by Ms. Levine, a member of the tax team, without instructions to do so from the client and without any intention to waive the privilege. Haley J. held that the general principle was clear: information and advice passing between client and accountant was not privileged. However, these documents were privileged in the hands of Ms. Levine because they were received by her as agent of the client in obtaining legal advice for the client. These circumstances brought the receipt of the documents within the exception to the general rule enunciated by the Exchequer Court of Canada in *Susan Hosiery,* where the accountant is using his skill as an accountant in acting as the agent of the client to obtain legal advice.

[34] Haley J. went on to discuss the different situation of the auditor in passages that are obiter, in that the documents were given to assist the accountant in providing legal advice and not as auditor, but are nevertheless of importance:

> Peats as external auditor for the applicant corporation is governed by the guidelines set out in the handbook of the Canadian Institute of Chartered Accountants. The auditor is called upon to give an objective opinion of the fairness and accuracy of the financial statements prepared by the management of the corporation. Ms. Levine agreed that the auditor must maintain an independence from the management of the corporation in performing the audit. The auditor's report is prepared for the shareholders of the corporation as opposed to the management.
>
> If such an audit were conducted by another firm of chartered accountants there would be no question that they would be third parties in relation to the corporation and disclosures to those auditors would constitute waiver of privilege subject to certain limited exceptions which I will discuss later. Is the function of the audit by the same accounting firm sufficiently different from that of the tax team in the same firm, acting as agent for the client, that the audit team must be notionally treated as a third party for consideration of waiver of privilege?
>
> In my view the answer is yes. If the tax team provided advice to the client or to its solicitor that advice would not be privileged. It is only in the very limited situation where the tax team provides [page146] information to the solicitor for the purpose of the client's receiving legal advice that the privilege can be maintained. This is not the creation of an accountant-client privilege but the acknowledgement of an extension of solicitor-client privilege through the principles of agency. If advice given by the tax team, which cannot be protected by the agency because it is not given for the purpose of obtaining legal advice, turns up in the auditor's file it is clearly not privileged.

[35] She then considered the U.S. law:

> The position of the independent certified public accountant acting as auditor was considered by the Supreme Court of the United States in U.S. v. Arthur Young & Co., 84-1 U.S.T.C. 83,670. In that case privilege was claimed by the client in tax accrual work papers prepared by the accounting firm in the course of its audit. In finding that there was no privilege in the work papers the court commented on the role of the auditor at p. 83,765:
>
> Nor do we find persuasive the argument that a work-product immunity for accountants' tax accrual work papers is a fitting analogue to the attorney work- product doctrine established in Hickman v. Taylor, supra. The Hickman work-product doctrine was founded upon the private attorney's role as the client's confidential advisor and advocate, a loyal representative whose duty it is to present the client's case in the most favourable possible light. An independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. To insulate from disclosure a certified public accountant's interpretation of the [page147] client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations.

[36] Haley J. continued:

> It is this difference in function and duty owed that leads me to conclude that the audit team of Peats is in a notional third party position vis-a-vis the rest of the firm. While as a consequence accounting firms may have to take steps to isolate those documents which come to it as agent of the client for the purpose of the client's obtaining legal advice I do not think that will necessarily create chaos in the accounting firm. It may instead underline the anomalous position in which an auditor is placed if he is also part of the firm rendering accounting advice to the corporate client whose financial statements are being audited.

[37] At page 150, concluding her reasons, Haley J. wrote:

> It appears from the practice in the United States outlined in an article "Lawyers' Responses to Audit Inquiries and the Attorney-Client Privilege", Arthur B. Hooker; in (1980), 35 Bus. Law. 1021, that auditors will often request, privileged documents from clients or their attorneys in the course of the audit. To the extent that these disclosures are necessary to permit the independent auditor to fulfil his obligations the client will be required to waive the privilege.

[38] It is important to observe that the decision in *U.S. v. Arthur Young and Co.* was not a case involving privileged documents handed over to the auditor, but rather involved a claim of “work-product privilege” of the kind enjoyed by lawyers for their litigation files, claimed for the auditor’s working papers. The difference in function between the lawyer and the auditor led the U.S. Supreme Court to reject the analogy and deny the privilege. The case is not directly applicable to the case at bar as the two privileges are quite different.

[39] Since the decision in *Cineplex*, Haley J.’s reasons have been considered in several cases. One of interest is the decision of Noel J. in *Canadian Museum* where the Museum had laid off seven employees and the Union published a report

criticizing the Museum's management and handling of funds. In response, the Museum ordered a forensic audit to be prepared by Peat Marwick Thorne, ("PMT"), accountants, in order to support potential legal action against the authors of the Union report. The President of the Museum referred to the PMT report before a Parliamentary Committee as likely to discredit the Union report. At a meeting of the Museum Audit committee at which representatives of the Auditor General were present, it was proposed that a copy of the PMT report be given to the Auditor General, the statutory external auditor of the Museum. This was done to enable the Auditor General to answer any questions about the issues. When the Union brought proceedings to obtain the PMT report, the Museum asserted privilege. The Union contended that the Museum had waived its privilege by voluntarily disclosing the PMT report to the Auditor General.

[40] Noel J. reviewed the passages in *Cineplex* that I have referred to, including the references to the practice in the United States at page 150, and at page 456, he commented:

> The reason behind such a practice is obvious. Because of the higher duty which they owe to the shareholders, external auditors are bound to disclose otherwise privileged information which comes to their attention and which may have a material impact on the financial statements under audit so that the release of such information to the auditors is a de facto abandonment of the privilege by the client.
>
> The Auditor General is by law the auditor of the Museum. [See Note 4 below] As such his responsibilities and functions are essentially the same as those of external auditors. He acts as a "public watchdog" which demands in turn that he maintain total independence at all times. He owes no fidelity to the entities which he is called upon to audit. His only obligation in relation to any given audit is to state for the benefit of the responsible minister and Parliament whether the statements audited present information fairly in accordance with stated accounting principles on a basis consistent with prior years together with any reservations he may have. [See Note 5 below]
>
> Note 4: Museums Act, S.C. 1990, c. 3, s. 30. Note 5: Auditor General Act, s. 6.
>
> Keeping the foregoing in mind, I believe that the Auditor General must be looked upon as a third party vis-à-vis the government entities that he is called upon to audit. In terms of the privilege, it is also apparent that the disclosure of an otherwise privileged document to the Auditor General in the course of an audit is wholly inconsistent with an intent to maintain the privilege and as such amounts to a waiver. The mere fact that the Auditor General cannot be confined by a privilege belonging to the entity which he is called upon to audit, [See Note 6 below] and that he must indeed make use of relevant and material information that comes to his attention in the fulfilment of his statutory mandate clearly establishes that the voluntary release of information to the Auditor General must be understood as a waiver of privilege by all those concerned.

[41] Staff submitted that these cases support the view that the voluntary giving of a privileged document to the auditor by the person possessing the privilege must be understood to be a complete waiver of the privilege. I am not so sure that they go that far. Noel J's comments that auditors are "bound to disclose otherwise privileged information", can equally be read as confined to a waiver for the purposes of the audit, if one limits the duty to disclose to the requirements of the law and auditing standards, as I think it must be. There is no free-standing duty on auditors to make public disclosure of everything they learn that might interest the criminal or tax authorities; their duties arise from their role as auditors as governed by law and professional obligations.

[42] Philip submits:

> However, given Philip's statutory obligation to cooperate with its auditor, and the public policy rationale for encouraging full and frank disclosure by a company to its auditors, it is respectfully submitted that a company should not be required to waive solicitor-client privilege for all purposes over a document where the document is provided to an auditor in its capacity as auditor.

[43] In support of this submission, Philip refers to the *Ontario Business Corporations Act* ("OBCA"), the legislation that governed Philip's affairs throughout the material time. The OBCA expressly recognizes the important nature of the relationship between an auditor and the officers and directors of a company by making mandatory the provision of documents to an auditor (the failure of which is subject to sanction of fine or imprisonment). Section 153(5) to (7) of the OBCA provides, as follows:

> Right of access
>
> (5) Upon the demand of an auditor of a corporation, the present or former directors, officers, employees or agents of the corporation shall furnish such,
>
> (a) information and explanations; and

(b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section and that the directors, officers, employees or agents are reasonably able to furnish.

Furnishing information

(6) Upon the demand of the auditor of a corporation, the directors of the corporation shall,

(a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section; and

(c) furnish the information and explanations so obtained to the auditor.

Idem

(7) Any oral or written communication under this section between the auditor or former auditor of a corporation and its present or former directors, officers, employees or agents or those of any subsidiary of the corporation, has qualified privilege.

[44] Philip emphasizes that the statute creates a compulsion to disclose to the auditor which is inconsistent with the concept that disclosure to the auditor is voluntary and so forms the basis for an implied waiver of privilege for all purposes. Whether the statute is formally invoked or not, company and auditor alike are aware of it and the company must be deemed to have acted under it, as a form of practical compulsion.

[45] In further support of the existence of a limited waiver, Philip referred to *Interprovincial Pipe Line* where Gibson J. of the Federal Court dealt with the issue of the waiver of privilege in the context of demands for production of documents under the *Income Tax Act*. By coincidence, *Interprovincial* and *Canadian Museum* were decided virtually simultaneously, the former on October 13, 1995 and the latter on October 5, 1995. Neither refers to the other. In *Interprovincial* the documents included (a) notes prepared by external auditors during their audit and (b) documents exchanged between the Edmonton and Toronto offices of the auditors relating to advice given by them to outside counsel for the client in order that those counsel could advise the client.

[46] In *Interprovincial*, the Federal Court held that the provision of a privileged document to an auditor must be considered a limited waiver of privilege, not a waiver of privilege for all purposes. Interprovincial was governed by the *Canada Business Corporations Act* ("CBCA") which contains, in section 170(1), provisions similar to those of section 153 of the OBCA discussed above, which require a company to furnish its auditor with whatever documents are requested. Gibson J. referred to the substantive rule of privilege as set out in *Descoteaux,* supra, and concluded that the statutory obligation to furnish documents to an auditor must be read in a manner that does not interfere with any claim of solicitor-client privilege except to the extent absolutely necessary to achieve the ends sought by the legislation. He held, at page 380:

> It was clearly the applicants' intent to disclose the legal opinions that it had received for a limited purpose only, namely to assist in the conduct of the audit and examination of its financial statements. It made the legal opinions available in accordance with its duty to assist that can be drawn from subsection 170(1) of [the CBCA]. It would be contrary to public policy if the applicants' action in making the legal opinions available for audit purposes "had the effect of automatically removing the cloak of privilege which would otherwise be available to them" on an audit by the respondent. This conclusion is, I am satisfied, consistent with the propositions … that have been enunciated by the Supreme Court of Canada and consistent with a strict interpretation of the impact on solicitor-client privilege of subsection 170(1) of the [CBCA]. If Parliament had intended there to be a secondary purpose in section 170(1) … beyond the primary purpose of accuracy in financial reporting, it was open to it to enunciate that purpose … Since Parliament did not do so, it would be inappropriate, and indeed contrary to the principles enunciated in *Descoteaux,* to interpret subsection 170(1) more broadly than necessary to achieve the end clearly sought to be served.

[47] It is true, as urged by Staff, that in *Interprovincial,* the giving of the documents was accompanied by statements intended to protect privilege. In my view that does not affect the basis of the decision, that disclosure to the auditors for their purposes is not properly disclosure to the world, because of the great importance of the solicitor-client privilege to the proper functioning of the legal system. The documents were sought by Mr. Kesler because Deloitte was the auditor and were given to him in that capacity. It would be contrary to the basis of the decisions in *Descoteaux,* supra, and *Lavallee,* infra, to extend the scope of that disclosure to the world.

[48] In the English case of *British Coal* the Court of Appeal dealt with a case of litigation privilege in which documents prepared for a civil action, and therefore privileged, were given to the police to assist them in their investigation of possible criminal fraud arising from the same facts. The police laid charges and produced the documents to the accused as part of their disclosure. The accused were acquitted and sought to use the documents in the civil action. The judge required the return of the documents and enjoined the accused/defendants from using them. The defendants appealed alleging that the privilege had been waived by disclosure to the police. The court dismissed the appeal. The act of disclosure of the documents to the police to assist in the criminal case could not objectively be regarded as a waiver of any rights in the civil case. The plaintiff acted in pursuance of a duty to assist in the conduct of the criminal proceedings and it would be contrary to public policy if the plaintiff's act had the effect of automatically removing the "cloak of privilege which would otherwise be available to them in the civil litigation for which the cloak was designed."

[49] While *British Coal* deals with a different form of the privilege, the acceptance of the concept of a limited waiver is of interest in the present case.

[50] In *Lavallee, Rackel & Heintz*, the Supreme Court dealt with whether section 488.1 of the *Criminal Code*, which authorizes a procedure for determining issues of privilege in the context of seizure of documents from a person's solicitor, infringed section 8 of the *Charter.* The court divided on the issue, but both Arbour J. for the majority and LeBel J. for the minority, agreed that solicitor and client privilege must be strictly upheld. Arbour J. reviewed the prior jurisprudence holding that the privilege has "long been regarded as fundamentally important to our justice system" and that the privilege "must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis." Arbour J. also observed (at paragraph 20) that Lamer J. in *Descoteaux* (supra) had applied the minimal impairment test, limiting the breach of solicitor-client privilege to "what is strictly inevitable". At page 241, Arbour J. wrote:

> Indeed, solicitor-client privilege must remain as close to absolute as possible if it is to retain relevance. Accordingly, this court is compelled in my view to adopt stringent norms to ensure its protection. Such protection is ensured by labeling as unreasonable any legislative provision that interferes with solicitor-client privilege more than is absolutely necessary. In short, in the specific context of law office searches for documents that are potentially protected by solicitor-client privilege, the procedure set out in s.488.1 will pass *Charter* scrutiny if it results in a "minimal impairment" of solicitor-client privilege.

[51] While the present case does not involve a *Charter* challenge, the message from the Supreme Court jurisprudence is clear: restrictions on solicitor-client privilege to attain other important societal objectives are to be closely scrutinized and restricted to what is absolutely necessary for the competing objective so as to achieve the minimal necessary impairment of solicitor-client privilege. It would follow, therefore, that section 153 of the OBCA cannot be read as authorizing the auditor to ignore the solicitor-client privilege with which the documents are impressed in his hands by their nature as Legal Opinions and the limited use that may be made of them.

[52] Accepting the above as the guiding principle, I turn to the case at hand. Auditors, in pursuit of their important public function of ensuring the fairness of the presentation of the accounts of public companies, have the right to obtain whatever documentation they require, which may, as here, involve the production to them of documents as to which the client claims solicitor-client privilege. Auditors are not in the family of the client; they are third parties. Ordinarily the voluntary production of privileged documents to third parties is a waiver of the claim for solicitor-client privilege. Clearly, the auditor must be free to use the documents for the purposes of the audit without limitation. The auditor may ask the client to publish them or a summary of them in a note to the financial statements if that is required for a fair presentation, failing which the auditor, in a serious case, will likely feel obliged to resign, a serious and public event for a company regulated by a securities commission. But the mere possession of the documents does not give the auditor the right to publish them in the financial statement, never mind otherwise. The financial statements are the clients; the auditor's right is to withhold the certificate. To what extent do these functions require that the waiver of solicitor-client privilege by the client be for all purposes at all future times?

[53] The appellant Philip submits at paragraph 65 of its factum:

> 65. There is a strong public policy rationale for protecting privileged documents from further disclosure when such documents are provided to a company's auditors as part of the conduct of the legislatively prescribed audit process. To conclude otherwise would lead to an improper result; public companies would be required to weigh the need to engage in full and frank disclosure with their auditors with the risk that associated legal advice will become a matter of public record. Where public policy dictates, it is open to the court to find that the waiver of privilege should be circumscribed, not a waiver for all purposes.

[54] On the other hand, respondent Staff assert at paragraph 70 of their factum

> 70. The fact that auditors have a public duty beyond that of the companies they audit reveals why this Court should reject Philip's argument (paragraphs 59-66 of its factum) that the law should be changed to recognize the concept of

> limited waiver and allow companies, in these circumstances, to share privileged documents with their auditor without waiving privilege. (It should be noted that Philip did not make this argument before the Commission. Therefore, this Court does not have the benefit of the Commission's decision and expertise regarding the role of an auditor.) Contrary to Philip's assertion, it would be against public policy to allow a company to prevent auditors from disclosing or acting upon information or documents provided to them that reveal wrongdoing or fraud in the companies they audit, on the grounds of privilege. Such a policy would allow companies to conceal such wrongdoing from their shareholders, and prevent auditors from complying with their own independent obligations to report such wrongful conduct.

[55] Philip's submissions speak to the company weighing the need for frank disclosure to the auditor as opposed to the chance that their information will become public. That may in practice be the case where the company is less than appropriately forthcoming. In my view, the effect of section 153 of the OBCA is that there is no weighing that is appropriate; the company must in any event disclose what the auditor seeks. That is part of the basis for confining the extent of the waiver. The submissions of Staff assume that the limited waiver of the privilege for the purposes of the audit will prevent the auditors from making disclosures revealing fraud that they otherwise would make. But the purposes of the audit are those established by law or by the standards of the auditing profession, and to the extent that the law or those standards require that auditors report to the shareholders, or to anyone else, on any matter, the waiver will extend to that matter. To come to the Waxman Issue in particular, the auditors would be able to use the disclosed documents as an aid to judging the need for amendments or notes to financial statements, the need for further examination of the company's financial controls, the need for amendments to certificates appended to financial statements filed with regulators, any need for reporting to insurers, any requirement for reporting to licensing authorities, and so forth.

[56] It was submitted that a limited waiver would place auditors in an impossible position: they would have the document but be unable to use it. For the reasons set out above, I disagree. The auditor has the scope to use the document across the full range of auditor responsibilities. Whether the auditor could disclose the contents of the document in the course of explaining why they were resigning the account seems a red herring. With a regulated public company, the resignation of the auditor accompanied by a refusal to certify the accounts is the kind of weapon that renders the disclosure of legal advice redundant.

[57] In my view, there is no necessity, in order to achieve the societal objective of fair financial statements certified as fair by fully informed auditors, that the waiver go beyond the auditors. By definition, the waiver enables the auditors to comply with the full scope of their audit standards. To hold that the waiver is broader than that, is to sanction a more than "minimal impairment" of this privilege which is fundamentally important to our justice system. In my view, the jurisprudence prevents finding that the Legal Opinions, once given to the auditors in that capacity for their purposes, were thereby made available to be handed over to the Commission for its purposes. That the statute compelling production to the auditors was not directly invoked seems to me to be irrelevant: it was there in the background. Even if the statute did not exist, the fundamental importance of solicitor-client privilege would dictate the narrow waiver rather than the broad.

[58] In my view, the Commission erred when it found that the giving of the Legal Opinions to Deloitte constituted an unlimited waiver of the solicitor-client privilege.

Discussion of the Legal Opinions at the Audit Committee:

[59] The Commission found, at paragraphs 74 to 79, that the Deloitte representatives were present at the Audit Committee meetings of January 19, 1998 and April 23, 1998, as part of the audit team and they received the documents in question, other than the Caisse Notes, to assist Deloitte in their audit function. Further, the Commission found that the disclosure made as to the Legal Opinions at the meeting of January 19, itself constituted a waiver of the privilege even before the documents themselves were handed over. The Caisse Notes, the Commission said, provided evidence that the substance of the Legal Opinions was discussed in the presence of the Deloitte people and so the privilege was waived. These are findings of fact, save as to the conclusion on the waiver point, and deserve deference. There is evidence in the record from which these conclusions can be reached either directly or by logical inference, and I accept the facts as found.

[60] As the meeting was for audit purposes and the Deloitte representatives were present as part of the audit team, it follows that the oral disclosures of the contents of the Legal Opinions were made on the same basis as the delivery of the Legal Opinions themselves: to the auditor for audit purposes. There is no reason the treat the two kinds of disclosure, oral and documentary, differently. In my view, the privilege was waived to the same extent in each case: for the purposes of the audit and not beyond.

Protecting Privilege

[61] The Commission notes that there was no evidence before it that the documents provided to Deloitte, other than the Legal Opinions, were provided with an intention that privilege be retained; indeed there was no evidence as to how Deloitte obtained them. The Commission inferred that Philip did not regard those documents as privileged or, if it did, that Philip intended to waive the privilege by permitting the documents to come into Deloitte's possession to inform Deloitte of pertinent information in performing its audit role. In my view, given that Deloitte was the auditor, the only reasonable inference is that Deloitte received

these documents in that role. It follows that the privilege was waived, but, as with the Legal Opinions, only to the extent necessary to enable the auditor to carry out its function. Philip did protect its privilege on the occasion of giving the documents to Deloitte, to the extent it was necessary to do so, by giving the documents on that occasion only to its auditors, thereby limiting the scope of the waiver.

The Caisse Notes and the Soule Notes

[62] Ms. Caisse was Director of Corporate Accounting and made notes of the proceedings at the Audit Committee meeting of January 19, 1998. Mr. Soule was General Counsel and made notes at the Audit Committee meeting of April 28, 1998. The notes contain evidence of some of the matters discussed at those meetings, including references to the Legal Opinions. Philip refers to these notes as the "memorialization of communications between Philip's house counsel and the Audit committee." It seems to me that these Notes, to the extent that they reveal legal advice, are privileged except that the privilege was waived by the presence of the Deloitte people, but only to the extent necessary for the audit function that the Deloitte people were performing.

[63] However, Philip did not list the Caisse Notes in its letter itemizing its claims for privilege and actually produced them to Staff in two batches of documents in response to the Summons. In addition, Ms. Caisse was cross-examined on them and they were made an exhibit. They were also released to the SEC on consent. Mr. Beck was also cross-examined, the Caisse Notes were made an exhibit and questions were answered as to whether the Board had ever discussed the point of whether the Waxman Issue should be disclosed because of the management integrity aspect referred to in the Shearman and Sterling letter and deferred by that firm to the Board for decision. The Commission found that, on these facts, there was no privilege left and there was ample evidence to support the finding.

[64] The Soule Notes were also produced, but in a redacted form excising the notes about the content of legal advice provided to the Audit Committee by Mr. Soule. There was no evidence as to how these notes, made by Philip's General Counsel at an Audit Committee meeting, came into the possession of Deloitte. When Deloitte included the Soule Notes on a list of Philip documents in Deloitte's possession, Philip instructed Deloitte not to produce them. The Soule Notes record the discussion of legal issues and are prima facie privileged. The privilege was waived when the discussion took place in the presence of Deloitte representatives, but only to the extent necessary for Deloitte's purposes as auditors. Any subsequent delivery of the Soule Notes to Deloitte ought not to affect the scope of the waiver. In view of the importance of confining interference with the solicitor-client privilege to the most minimal intrusion, delivery of these Notes to Deloitte should be presumed to have been in furtherance of the existing relationship, i.e. in performance of its audit role. The Commission found in its reasons at paragraph 84 that one interpretation of the presence of these documents in Deloitte's files was exactly that. In my view, that interpretation must be adopted in these facts to achieve minimal intrusion.

Other Documents

[65] The Skadden Letters and the Stikeman Letter were found by the Commission to be prima facie privileged, but were found in the files of Deloitte without any evidence as to why they got there. However, on their face they relate to the same issue that led Philip to give other related documents to Deloitte, which leads to an inference that they were probably delivered to Deloitte for the same purpose as the others. Again, in view of the importance of the privilege and the pressing public interest in confining interference with it to the most minimal intrusion, the documents should be presumed to have been delivered in furtherance of the audit function of Deloitte.

Delivery to Staff by Deloitte

[66] Philip submits that, if the Legal Opinions, the Stikeman Letter, the Skadden Letters and the Soule Notes remained privileged at the time that Philip provided them to Deloitte, the subsequent production of these documents by Deloitte cannot impact on the strength of those privilege claims. As stated above, this court must determine whether the individual purportedly waiving the legal right to privilege possessed the requisite authority to make such a waiver. The disclosure of privileged documents to Staff by Deloitte does not waive privilege in the documents, as Deloitte lacked the requisite authority to waive privilege over the documents.

[67] In support of this submission, Philip refers to the decision of the Alberta Court of Appeal in *Syncrude* where the court dealt with alleged waiver of privilege. Privileged documents turned up ten years after they had been created for the plaintiff in the possession of one of the defendants. There was no direct evidence of how they got there, but former counsel for that defendant had recorded when arranging the documents for the case, that these had come from a binder of documents given to one Kutner, who had been engaged by the parties jointly to investigate the facts. There were submissions made as to the lack of evidence, but the court cut to the chase:

> What is more, the gap in the evidence is about a point which seems to us largely irrelevant. Why or how or with what intent Mr. Kutner may have let the papers get into the hands of Bechtel really does not matter. Clearly Mr. Kutner had no authority to act as the plaintiff's agent to waive privilege. If anything, the all-party agreement would suggest the

> opposite. Privilege can only be waived by the party (client) owning it or his agent, not by strangers. That is elementary law. And waiver is the issue, for it is now clear that mere loss of physical control over documents does not destroy privilege.

[68] Equally clearly, Deloitte had no authority to act as the agent of Philip to waive the privilege, which still attached to these documents in its possession. Philip gave Deloitte no specific authority to waive privilege. Nor can there be an implied authority, for the audit responsibilities of the auditor do not normally require the surrender of the client's privileged documents to third parties for their purposes and not for the purpose of the audit responsibilities of Deloitte. The mere possession of the documents did not carry the authority to waive the privilege. The fact that the Disputed Documents largely came into the possession of Staff via an unauthorized disclosure by Deloitte undermines their usefulness in the hands of Staff.

Disclosure in the Course of This Litigation: Implied Waiver

[69] I have already observed that the Statement of Allegations in this present Proceeding contains extracts from some of the Legal Opinions. Presumably, Staff put these extracts in the Statement because Staff believed that the documents were no longer privileged. But whatever the reasoning, if the documents were still privileged, this unauthorized publication cannot be permitted to alter that status. That would be entirely contrary to the authority of the Supreme Court discussed above that solicitor-client privilege is of central importance to the administration of justice and is to be protected from impairment.

[70] Privilege can be lost in the course of litigation where the party with the privilege seeks to take an unfair advantage by, in effect, using the existence of legal advice as a shield against the opposite party, but resisting the disclosure of that advice. As usual, one cannot have it both ways. But the party having the privilege is the one who can, in this fashion, lose it. Such a waiver can occur even in the absence of any actual intention to waive. A party may act in such a fashion as to make it unfair for that party to continue to maintain the privilege. But the opposite party may not, by referring to the legal advice given to the party with the privilege, thereby put the privileged advice in issue.

[71] In *Lloyds Bank v Canada Life,* the motion judge reviewed a number of cases on the effect of putting a party's state of mind in issue, and concluded that the privilege is not always waived where the state of mind is in issue. She commented at page 168:

> Certainly, it will not be waived where it is the person who seeks the information that has raised the question of reliance.

[72] She continued by referring to Wigmore:

> A privileged person would seldom be found to waive, if his intention not to abandon could alone control the situation. There is always also the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. He may elect to withhold or to disclose, but after a certain point his election must remain final.

[73] As the Bank had pleaded that, in making certain loans to a subsidiary of the defendant, it had relied upon comfort letters received from the defendant on which it sought to make the defendant liable for the default of the subsidiary, the motion judge required the Bank to answer whether it had received legal advice on the security offered by the comfort letters. The Bank had put in issue its reliance and the reasonableness of this reliance was an issue as to which the advice was highly pertinent.

[74] In the present case, there is no document equivalent to a pleading by any of the respondents in which reliance on the Legal Opinions might formally be put in issue, but some persons have been cross-examined. In its reasons the Commission acknowledges the absence of any certainty as to what defence will be mounted by the respondents. It suggests that it therefore is legitimate to consider what has been said by the officers and directors at the time of the prospectus in their depositions before the regulators here and in the U.S. On the same point, Staff submits that "all of the directors and officers, including the respondents, justify their actions by asserting either that they relied on the Legal Opinions, or they relied on what they had been told about the Legal Opinions." Their factum contains several paragraphs outlining the evidence of various former officers and directors as to discussions involving the Legal Opinions prior to the finalizing of the prospectus. Of the several persons examined, only Mr. Soule, Mr. Hoey and Mr. Allan Fracassi are actually parties to the Proceeding. In my view, the non-parties examined cannot, by anything they may say, put the Opinions in issue in the case against any respondent.

[75] Much of the evidence to which Staff refers us and which the Commission reasons cite, was evidence that the officers and directors of Philip in the pre-prospectus period were interested to learn about the Opinions and discussed them with each other, although very few actually read them; perhaps only Mr. Soule on whom the others relied to explain the situation to them. Mr. Beck said he did not even know they had been obtained until after the prospectus was filed. This evidence has nothing to do with possible waiver by implication. That would arise when the respondent(s) take the position in these proceedings that their decision not to disclose the Waxman Issue was justified by the Legal Opinions.

[76] Philip submits that the question of waiver by implication depends upon how the respondents answer the allegations in the Statement that the Waxman Issue should have been disclosed in the prospectus. The issue is "whether Philip has put the content of the Legal Opinions into issue by asserting in this proceeding that it relied on the Legal Opinions to justify a course of action taken by it prior to the issuance of the prospectus." [emphasis in original]

[77] Put another way, the waiver of privilege is implied if and when Philip or an individual respondent submits that it or he was justified in not disclosing the Waxman Issue because it or he had received legal advice that it was not necessary to do so. By relying on the opinion, the client waives the privilege. But if Philip defends the allegations on some other basis, such as that the thefts were not of material amount or the resignation of Robert Waxman was not a material change, without reliance on the Legal Opinions, the opinions may well not be in issue and the privilege might be maintained. That is a matter for the Commission when the defence is put forward and the evidence as to the decision not to disclose is heard.

[78] Staff are not entitled to use the Opinions to attempt to prove the state of mind of a respondent unless that respondent has put the Opinions in issue by relying on them or has put his state of mind in issue in circumstances creating an implied waiver of the privilege. None of the former officers and directors cross-examined answered questions about the content of the Legal Opinions; all claimed privilege, a position inconsistent with waiver.

[79] At paragraph 105 of its reasons, the Commission states that some former officers and directors "stated they relied on" the Legal Opinions, but counsel for Philip submitted that no such statements were made. The only example in the reasons is a statement quoted from the transcript of Mr. Hoey that Mr. Soule had indicated that whoever he was seeking counsel from had concurred with Deloitte's view as to reporting obligations. It seems clear that there was no "Deloitte's view" until January 1998, which makes it clear that this cannot be a report of a conversation prior to the filing of the prospectus. Counsel for Philip asserted that no evidence existed of any reliance on the Legal Opinions by way of defence to the allegations in this proceeding, and we were not taken to any.

[80] In one passage of his transcript, Mr. Fracassi said that he asked Colin Soule to seek advice; that Mr. Soule got advice and "gave me what the conclusion was or what his opinion and advice was to me. I then made a decision with all of that information and we moved on." What Mr. Fracassi did not say was that he acted in accordance with the Legal Opinions or in accordance with Mr. Soule's advice or on neither. Nor was he pressed in the examination to state if he did or did not rely on the Legal Opinions and act accordingly. Yet that is what he must say to defend himself on the basis of reliance on them.

[81] Staff submitted that Philip "cannot assert good faith reliance on the Legal Opinions, and at the same time fail to disclose the Legal Opinions upon which they relied. It would be demonstrably unfair and inconsistent to allow Philip to prevent the Commission and all other parties from exploring the issue and the Legal Opinions." I agree entirely with that statement of the law, but in my opinion the Commission acted prematurely in applying that reasoning when there is no actual claim in the depositions by any respondent that he acted in reliance upon the Legal Opinions.

[82] Staff relied on the decision of Winkler J. in *Toronto Dominion Bank v. Leigh Instruments Ltd.*, where he found that,

> The combined effect **of the pleadings, the opening statement of the plaintiff and the evidence is,** according to the defendants, that the Bank has placed in issue its state of mind regarding the strength and enforceability of comfort letters. The plaintiff, they assert, has pleaded reliance on the conduct of the defendants, when they knew, or ought reasonably to have known, through the advice of their legal department, that comfort letters were not binding. The consequence, they assert, is that the plaintiff has waived by implication any solicitor-client privilege it may have held over the legal advice or knowledge which gave rise to that state of mind. I agree with those submissions. [emphasis added]

[83] The difficulty with applying that case to the present one is that there is as yet in this case no pleading by the party with the privilege, no opening statement by that party and no evidence on behalf of Philip and several respondents. The Commission, in its reasons, acknowledges that the defence to be submitted by the respondents is as yet unknown. In the light of the importance of the solicitor-client privilege, it is surely premature and unfair to declare the privilege lost by inference from the statements of non-parties and the fact that some respondents have admitted discussions at the time of the prospectus about the Opinions having been received and what was said in second-hand conversations about their content. The *Toronto-Dominion Bank* case illustrates what is needed to place the Opinions in issue in the proceeding and the material before us falls short of that.

[84] When the hearing on the merits of these allegations takes place, it may be that there will be persons who will seek to defend themselves on the basis of reliance on the Legal Opinions or on a particular view of the law, as to which knowledge of the content of the Legal Opinions would be relevant. If so, the Commissioners hearing the case will need to rule on the waiver issue. At the present, I cannot see any basis in the evidence for finding that any respondent has, as yet, defended himself on the basis that he relied on the Legal Opinions in making the decision not to disclose. Accordingly there has not yet been any implied waiver of the privilege.

Disclosure in the Course of this Litigation: Unscrambling the Egg

[85] In paragraph 64 of their factum, Staff submit:

> 64. In this case, the Legal Opinions have already been published in Staff's Statement of Allegations and in the civil litigation between Philip and Deloitte. In addition, the content of the Legal Opinions has been put in evidence through the introduction of the Caisse and Soule Notes into evidence. The Commission properly concluded that Philip has waived privilege to such an extent it would be impossible to "undo what has been done." As stated by the Commission,
>
> Philip failed to take reasonable steps to preserve privilege and, as a consequence of Philip's action and inaction, knowledge of the Legal Opinions and their contents has become widespread. Therefore, any privilege not otherwise lost would have been lost as a consequence of the failure of Philip to take reasonable steps to prevent such knowledge from becoming widespread.

[86] The above finding of the Commission that Philip failed to take reasonable steps to preserve its privilege must, in large measure, be based on the erroneous finding that by giving the Legal Opinions to Deloitte, or perhaps by omitting to state on that occasion that the privilege was still applicable, Philip had lost the privilege in all events. Philip cannot be blamed for the unauthorized disclosures made by Deloitte, although Philip did produce the Caisse Notes itself. Nor can Philip be saddled with the responsibility for the action of the Staff in putting the text of two of the Opinions into the Statement of Allegations when they had received the documents from someone with no authority to waive the privilege. In these circumstances, the finding of fact as to reasonable steps is suspect, to say the least, and seems to arise in large measure from an error in law. Accordingly, the court is not bound to accept the Commission's finding of these facts.

[87] Is it, as Staff allege, too late for Philip to claim privilege because it is impossible to undo what has been done? Obviously, those who have read the Opinions are not going to forget what they have read, so Philip's position has been damaged. But there is no reason to permit the damage to escalate by permitting those documents to be used by those who have them as if Philip had actually or impliedly waived the privilege when no waiver has occurred. When Staff obtained the Legal Opinions from Deloitte, Staff should have sought direction on notice to Philip as to how to treat these documents. Use of them by Staff prior to the final disposition of proceedings to determine the issue of privilege, (that is, these proceedings) cannot be used as evidence that the privilege has been lost. In *Tilley v. Hails*, the court said:

> [W]here [privileged] communications are disclosed either inadvertently or through improper conduct by a party, that party's solicitors are not entitled to make use of the documents in the litigation. […] The surreptitious delivery of confidential material cannot be sanctioned. […]
>
> As noted in the Royal Bank of Canada case, supra, the ethical and proper course of action where lawyers come into possession of privileged documents which privilege may not have been waived, is to enquire whether the documents were intended to be disclosed and if necessary, to test the issue of privilege in court.
>
> It is clear that mere loss of physical custody does not terminate the privilege.

[88] The submission of Staff that their own publication of the Opinions, in the face of the principles enunciated in *Tilley*, can affect the privileged nature of the documents is contrary to reason and principle. That the Opinions have been put in issue by Deloitte in its litigation with Philip is also not a matter that can create a waiver of the privilege by Philip in this litigation.

Fairness of the Trial: Full Answer and Defence

[89] Counsel for Staff submits that:

> . . . fairness dictates that for the purposes of the hearing into this matter, the parties must be permitted to explore whether the Respondents and representatives of Philip acted in good faith upon the advice of legal counsel. Philip, at paragraph 74 of its factum, quotes Wigmore on the issue of implied waiver, who stated that "regard must be had to the double elements that are predicated in every waiver, i.e., not only the element of implied intention, but also the element of fairness and consistency. " This is consistent with Mr. Justice Ground's decision in *Bank Leu Ag v. Gaming Lottery Corp.* The Commission relied on the following quote from Mr. Justice Ground's decision:
>
> > When determining whether privilege should be deemed to have been waived, the court must balance the interests of full disclosure for the purposes of a fair trial against the preservation of solicitor client and litigation privilege. Fairness to a party facing a trial has become a guiding principle in Canadian law. Privilege will be deemed to have been waived where the interests of fairness and consistency so dictate or when a communication between a solicitor and client is legitimately brought into issue in an action. When a party places its state of mind in issue and has received legal advice to help form that state of mind, privilege will be deemed to be waived with respect to such legal advice.

Bank Leu Ag v. Gaming Lottery Corp., (1999), 43 C.P.C. (4th) 73 (Ont. Sup. Crt.) at p. 77

[90] *Bank Leu* was a motion regarding the production of privileged documents. One issue was whether the privilege had been impliedly waived by the client when it had asserted breach of duty on the part of its solicitors in failing to warn it of certain risks in a transaction. Ground J. held that such an assertion was a deemed waiver of the privilege that otherwise protected all documents relating to advice given to the client as to the risks involved in the transaction. The statement that "privilege will be deemed to have been waived when the interests of fairness and consistency so dictate" must be taken in context: the client had asserted a breach of duty by the lawyers and could not complain if their communications with him were thereby rendered no longer privileged. Ground J. was not asserting, as I read the case, any general principle that fairness over-rides the privilege where it is the opposite party and not the client who wishes to put the legal advice into issue.

[91] Staff also submitted that permitting Philip to maintain the privilege would hamper the search for truth for two reasons. The first was the importance of the Opinions in assessing the credibility of the Deloitte witnesses. The second was the impact of non-disclosure on the right of the respondents to make full answer and defence. The short answer to the first is that privilege often hampers the search for truth, as Wigmore acknowledges, but it is nevertheless an important principle in the administration of justice that persons consulting lawyers have total confidence in the privacy of their disclosures, so long as they do not themselves put the advice in issue. As to the second, the respondents will no doubt be better judges of that than Staff or this court.

Conclusions

[92] In summary, I conclude that all of the Disputed Documents were prima facie privileged; that the provision of copies to Deloitte in its capacity as auditor did not waive the privilege for all purposes, but only to the extent necessary to enable Deloitte to carry out its audit functions; that delivery by Deloitte to Staff of those documents received from Philip was unauthorized and incapable of defeating the privilege; that Staff has not established any implied waiver by Philip by reason of the evidence given in this proceeding by the respondents or by other former officers and directors of Philip as no one has asserted as yet that the Legal Opinions were relied on by him in deciding not to disclose the Waxman Issue; that the use of the Opinions by Staff in this proceeding and by Deloitte in other actions cannot be a waiver by Philip of its privilege or otherwise affect that privilege; and that, except for the Caisse Notes, all the Disputed Documents remain privileged and may not be used or relied on by Staff as matters stand at this time. The caveat just expressed is meant to make it clear that developments during the hearing may alter the situation and may require rulings based on fresh developments.

[93] For these reasons, I would allow the appeal, set aside the order of the Commission and, pursuant to section 9(5) of the Act, direct the Commission to decide the motion in accordance with these reasons. It would follow that the references to the content of and quotations from the Legal Opinions in the Allegations should be removed. Costs should follow the event and may be the subject of written submissions.

"Lane J."

"O'Driscoll J."

"Linhares de Sousa J."

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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
Teleglobe Inc.	15 Nov 05	25 Nov 05	28 Nov 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

No updates for this week

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		
Canadex Resources Limited	04 Oct 05	17 Oct 05	17 Oct 05		
Fareport Capital Inc.	13 Sept 05	26 Sept 05	26 Sept 05		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
Hollinger Canadian Newspapers, Limited Partnership	21 May 04	01 Jun 04	01 Jun 04		
Hollinger Inc.	18 May 04	01 Jun 04	01 Jun 04		
Hollinger International	18 May 04	01 Jun 04	01 Jun 04		
Kinross Gold Corporation	01 Apr 05	14 Apr 05	14 Apr 05		
Novelis Inc.	18 Nov 05	01 Dec 05			
Straight Forward Marketing Corporation	02 Nov 05	15 Nov 05	15 Nov 05		
Toxin Alert Inc.	07 Nov 05	18 Nov 05	18 Nov 05		

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Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
11/17/2005	2	4201698 Canada Inc. - Common Shares	250,000.00	88.00
10/31/2005	2	ABC Fully-Managed Fund - Units	303,771.70	28,468.00
10/31/2005	17	ABC Fundamental - Value Fund - Units	3,259,707.00	171,563.00
10/31/2005	128	ABC North American Deep Value Fund - Units	23,336,096.00	23,336,096.00
10/12/2005	1	Acadian Gold Corporation - Common Shares	499,500.00	1,905,000.00
09/14/2005	17	American Insulock Inc. - Units	142,190.00	2,410,000.00
11/14/2005	2	Associated Brands Holdings Limited Partnership - Debentures	10,000,000.00	10,000,000.00
10/27/2005	28	Avcorp Industries Inc. - Units	3,375,030.00	3,750,034.00
11/16/2005 to 11/25/2005	14	A.J. Resources Inc. - Common Shares	473,400.00	473,400.00
11/16/2005	12	Birch Hill Equity Partners (Entrepreneurs) III, L.P. - L.P. Interest	5,600,000.00	5,600,000.00
11/16/2005	3	Birch Hill Equity Partners III, L.P. - L.P. Interest	1,850,000.00	1,850,000.00
11/16/2005	1	Bishop Gold Inc. - Units	7,000.00	100,000.00
11/01/2005	7	Blue Power Energy Corporation - Common Shares	171,119.13	28,519,855.00
11/04/2005	5	Blue Tree Wireless Data Inc. - Common Shares	702,000.00	4,680,000.00
11/15/2005 to 11/16/2005	36	Brainhunter Inc. - Notes	4,793,001.00	N/A
11/16/2005	13	Bullfrog Power Inc. - Common Shares	2,800,000.00	2,800,000.00
11/14/2005	25	Canada Safeway Limited - Notes	299,649,000.00	300,000.00
11/15/2005	1	Cando Contracting Ltd. - Common Shares	5,909,992.20	364,140.00
11/15/2005	16	Card One Plus Ltd. - Common Shares	14,984,500.00	556,125.00
11/02/2005	13	CareVest Blended Mortgage Investment Corporation - Preferred Shares	175,541.00	175,541.00
11/15/2005	32	CareVest First Mortgage Investment Corporation - Preferred Shares	1,606,204.00	1,606,204.00
11/15/2005	3	CareVest First Mortgage Investment Fund - Units	41,450.00	N/A
11/08/2005	4	CencoTech Inc. - Common Shares	600,000.00	6,000,000.00
11/16/2005	12	Clayton, Dubilier & Rice Fund VII, L.P. - L.P. Interest	235,853,400.00	N/A
11/14/2005	1	CNH Capital Canada Receivables Trust - Notes	94,786,454.99	1.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
10/31/2005	1	Creststreet Energy Hedge Fund L.P. - L.P. Units	150,000.00	11,460.00
11/17/2005	1	DB Mortgage Investment Corporation #1 - Common Shares	250,000.00	250.00
11/17/2005	18	Derek Oil & Gas Corporation - Common Shares	1,435,000.00	2,870,000.00
11/07/2005	41	Diamond Fields International Ltd. - Common Shares	6,082,735.00	30,413,676.00
08/06/2003 to 04/11/2005	22	Energy Conversion Technologies Inc. - Units	461,941.00	537,982.00
11/15/2005	3	Enerworks Inc. - Debentures	350,000.00	3.00
11/10/2005	6	Epsilon Energy Ltd. - Common Shares	813,000.00	813,000.00
11/18/2005	1	Eurasian Minerals Inc. - Common Shares	295,891.00	224,500.00
11/10/2005	5	Exploration Tom Inc. - Common Shares	750,000.00	1,875,000.00
11/16/2005	92	Fairmount Energy Inc. - Common Shares	5,004,000.00	N/A
10/20/2005	31	First Majestic Resources Corp. - Common Shares	5,691,291.90	3,076,374.00
11/21/2005	1	Fisgard Capital Corporation - Common Shares	25,000.00	25,000.00
11/10/2005	2	Fortune Minerals Limited - Common Shares	3,000,002.40	833,334.00
11/07/2005 to 11/10/2005	15	General Motors Acceptance Corporation of Canada, Limited - Notes	5,010,986.54	5,010,986.54
10/17/2005 to 10/21/2005	33	General Motors Acceptance Corporation of Canada, Limited - Notes	16,150,097.96	N/A
09/22/2005 to 09/30/2005	35	General Motors Acceptance Corporation of Canada, Limited - Notes	10,554,685.79	N/A
11/10/2005	1	Globel Direct, Inc. - Debentures	1,500,000.00	1,500,000.00
11/10/2005	1	Globel Direct, Inc. - Debentures	1,500,000.00	1,500,000.00
09/30/2005 to 11/15/2005	17	Goldentech Entertainment Software Inc. - Units	171,600.00	156,000.00
11/07/2005	1	Helix BioPharma Corp. - Units	262,500.00	150,000.00
10/24/2005	1	International Wayside Gold Mines Ltd. - Units	100,000.00	200,000.00
11/04/2005	2	IPC Holdings, Ltd. - Preferred Shares	3,116,925.00	100,000.00
11/18/2005	6	Island Mountain Gold Mines Ltd. - Units	225,000.00	1,125,000.00
11/04/2005 to 11/14/2005	4	Ivanhoe Energy Inc. - Warrants	21,900,021.00	11,196,330.00
11/01/2005	1	J.P. Morgan U.S. Real Estate Income and Growth Domestic, LP - L.P. Interest	1,192,828.00	1,175,200.00
11/09/2005 to 11/14/2005	113	Kaminak Gold Corporation - Common Shares	1,810,954.75	5,476,385.00
10/12/2005 to 11/02/2005	1	Lafayette Square CDO Ltd. - Common Shares	2,700,000.00	2,700.00
11/15/2005	6	Lakehead University - Debentures	100,000,000.00	100,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
11/15/2005	1	Lease-Rite Corporation Inc. - Debentures	2,500.00	2,500.00
09/20/2005	19	Lingo Media Inc. - Units	608,000.00	3,040,000.00
11/21/2005	15	Longford Corporation - Units	605,000.00	2,420,000.00
11/08/2005 to 11/11/2005	15	Luzon Minerals Ltd. - Common Share Purchase Warrant	600,000.00	7,269,840.00
11/07/2005	9	Max Resource Corp. - Units	289,105.00	615,116.00
11/09/2005	13	Maxim Power Corp. - Common Shares	35,070,930.00	55,668,143.00
10/03/2005	5	MCAN Performance Strategies - L.P. Units	1,550,000.00	13,632.00
11/01/2005	4	MCAN Performance Strategies - L.P. Units	2,995,000.00	25,782.00
11/15/2005	15	Member Partners' Consolidated Properties Limited Partnership - L.P. Units	200,000.00	200,000.00
11/21/2005	4	Metals USA - Notes	17,749,500.00	4.00
11/22/2005	1	Monroe Minerals Inc. - Units	6,500.00	50,000.00
11/15/2005	45	MPAC Industries Corp. - Units	660,440.00	6,004,000.00
11/15/2005 to 11/23/2005	7	Natural Convergence Inc. - Common Shares	980,173.55	834,971.00
11/22/2005	2	Network Communications, Inc. - Notes	10,433,908.00	2.00
11/14/2005	33	Nordic Diamonds Ltd. - Flow-Through Shares	500,000.00	2,000,000.00
11/14/2005	35	Nordic Diamonds Ltd. - Non Flow-Through Shares	200,000.00	1,000,000.00
11/15/2005	54	Northland Resources Inc. - Units	2,497,249.70	4,540,454.00
11/14/2005	4	Opalis Software Inc. - Preferred Shares	1,781,454.00	6,220,056.00
11/03/2005	3	Ophir Ventures Inc. - Common Shares	15,000.00	7,500,000.00
10/13/2005 to 10/20/2005	50	Paladin Resources Ltd. - Common Shares	68,950,000.00	35,000,000.00
11/09/2005	125	Peerless Energy Inc. - Common Shares	36,260,000.00	9,800,000.00
11/16/2005	3	Performance Plants Inc. - Notes	333,334.00	3.00
11/14/2005	15	Pinpoint Selling Inc. - Units	401,936.87	1,404,234.00
11/24/2005	1	Planet Trust - Bonds	287,346.00	287,346.00
08/01/2005	1	Polar Enterprise Partners II - L.P. Units	250,000.00	2,500.00
11/15/2005	1	Polymet Mining Corp. - Common Shares	5,580,492.30	6,200,547.00
09/21/2005	1	POPLAR RESOURCES LTD. - Common Shares	20,000.00	400,000.00
11/17/2005	28	Protox Therapeutics Inc. - Units	1,326,000.00	2,652,000.00
11/07/2005	156	Purepoint Uranium Corporation - Units	5,500,000.00	13,750,000.00
11/14/2005	77	Qualia Real Estate Investment Fund IV LP - Units	4,800,000.00	96.00
11/15/2005	345	Redstar Oil and Gas Inc. - Special Warrants	45,101,370.00	N/A
11/23/2005	1	Rocket Trust - Bonds	5,500,000.00	5,500,000.00
11/23/2005	1	Rocket Trust - Bonds	4,500,000.00	4,500,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
11/05/2005	14	Sinclair Cockburn Mortgage Investment Corporation - Preferred Shares	2,007,270.00	2,007,270.00
11/16/2005	4	Stinson Hospitality Inc. - Notes	165,000.00	4.00
11/04/2005	11	Stone Mountain Precious Metals Depository Corp. - Units	500,000.00	1,250,000.00
11/19/2005	1	Tangarine Concepts Corporation - Warrants	0.00	30,000.00
10/31/2005	4	The McElvaine Investment Trust - Trust Units	63,334.40	2,744.00
11/14/2005	1	Timbercreek Real Estate Investment Trust - Trust Units	4,699,998.04	482,546.00
10/12/2005	8	Tri Origin Exploration Ltd. - Common Shares	136,000.00	812,500.00
11/10/2005	21	True North Gems Inc. - Units	1,033,449.70	2,924,142.00
10/26/2004 to 09/28/2005	28	UBS (CH) Equity Fund Switzerland - Units	186,061.96	292.00
12/24/2004	1	UBS (CH) Funds UBS 100 Advanced - Units	25,633.48	2,200.00
11/22/2005	15	Vanquish Oil & Gas Corporation - Flow-Through Shares	1,364,443.75	N/A
11/14/2005	8	West Hawk Development Corp. - Units	2,052,500.00	5,061,112.00
11/09/2005	13	Westfield Real Estate Investment Trust - Debentures	10,862,000.00	10,862.00
11/09/2005	58	Westfield Real Estate Investment Trust - Units	25,000,000.50	33,333,334.00
06/24/2005	42	Worldwide Promotional Products Corporation - Common Shares	413,921.00	6,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
407 International Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Shelf Prospectus dated November 23, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
$1,800,000,000.00
Medium-Term Notes (Secured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Casgrain & Company Limited
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
Promoter(s):
-
Project #859190

Issuer Name:
AnorMED Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 24, 2005
Mutual Reliance Review System Receipt dated November 24, 2005
Offering Price and Description:
$25,000,000.00 - 6,250,000 Common Shares
Price: $4.00 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Canaccord Capital Corp.
Promoter(s):
-
Project #860083

Issuer Name:
Canadian Hydro Developers, Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 29, 2005
Mutual Reliance Review System Receipt dated November 29, 2005
Offering Price and Description:
$150,000,000.00 Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
FirstEnergy Capital Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
TD Securities Inc.
Promoter(s):
-
Project #862695

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 29, 2005
Mutual Reliance Review System Receipt dated November 29, 2005
Offering Price and Description:
$65,000,000.00 - 2,600,000 REIT Units, Series A
Price: $25.00 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
RBC Dominion Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Trilon Securities Corporation
Promoter(s):
-
Project #862841

Issuer Name:
Enbridge Pipelines Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Shelf Prospectus dated November 24, 2005
Mutual Reliance Review System Receipt dated November 25, 2005
Offering Price and Description:
600,000,000 MEDIUM TERM NOTES (UNSECURED)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #860099

Issuer Name:
Futuremed HealthCare Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 28, 2005
Mutual Reliance Review System Receipt dated November 29, 2005
Offering Price and Description:
$ * - * Units
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
Futuremed Health Care Products Limited Partnership
ONCAP L.P.
R & FS Holdings Limited
Project #862196

Issuer Name:
HSBC LifeMap Aggressive Growth Portfolio
HSBC LifeMap Balanced Portfolio
HSBC LifeMap Conservative Portfolio
HSBC LifeMap Growth Portfolio
HSBC LifeMap MM Agressive Growth Portfolio
HSBC LifeMap MM Balanced Portfolio
HSBC Lifemap MM Conservative Portfolio
HSBC LifeMap MM Growth Portfolio
HSBC LifeMap MM Moderate Conservative Portfolio
HSBC LifeMap Moderate Conservative Portfolio
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Simplified Prospectuses dated November 23, 2005 Combined Prelim
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
Institutional Series Units
Underwriter(s) or Distributor(s):
HSBC Investment Funds (Canada) Inc.
HSBC Investment Funds (Canada) Inc.
Promoter(s):
HSBC Investment Funds (Canada) Inc.
Project #851266

Issuer Name:
Investors Global Dividend Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectus dated November 25, 2005
Mutual Reliance Review System Receipt dated November 28, 2005
Offering Price and Description:
Mutual Fund Units
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Investors Group Financial Services Inc.
Promoter(s):
Investors Group Financial Services Inc.
Project #860491

Issuer Name:
Jazz Air Income Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Prospectus dated November 28, 2005
Mutual Reliance Review System Receipt dated November 28, 2005
Offering Price and Description:
$ * - * Units
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Promoter(s):
Jazz Air LP
Project #861007

Issuer Name:
NeuroMedix Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 22, 2005
Mutual Reliance Review System Receipt dated November 24, 2005
Offering Price and Description:
Minimum Offering: $2,500,000.00 or * Common Shares
Maximum Offering: $3,000,000.00 or * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Promoter(s):
Calvin Stiller
Project #859653

Issuer Name:
Solara Exploration Ltd
Principal Regulator – Alberta
Type and Date:
Preliminary Prospectus dated November 18, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
$5,000,000.00 to $10,000,000.00 - 5,000 to 10,000 Units
Price: $1,000.00 per Unit Minimum Subscription: 5 Units
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
Donald R. Holding
Project #857913

Issuer Name:
TD Income Trust Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 25, 2005
Mutual Reliance Review System Receipt dated November 25, 2005
Offering Price and Description:
O-Series Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Mangement Inc.
Project #860635

Issuer Name:
Ur-Energy Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 22, 2005 to Final Prospectus dated November 17, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Canaccord Capital Corporation
Haywood Securities Inc.
Promoter(s):
Robin B. Dow
Project #838365

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 22, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
(1) $344,925,000.00 - 4.187% Asset-Backed Senior Notes, Series 2005-1 Expected Repayment Date November 19, 2010; (2) $20,075,000.00 - 4.507% Asset-Backed Subordinated Notes, Series 2005-1 Expected Repayment Date November 19, 2010
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Promoter(s):
-
Project #854089

Issuer Name:
High Plains Uranium, Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 28, 2005
Mutual Reliance Review System Receipt dated November 29, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Research Capital Corporation
Dundee Securities Corporation
Canaccord Capital Corporation
Promoter(s):
John Ryan
Howard Crosby
Project #838222

Issuer Name:
Merrill Lynch Financial Assets Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Base PREP Prospectus dated November 23, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
$471,385,000.00 (Approximate) Commercial Mortgage Pass-Through Certificates, Series 2005-Canada 17
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Promoter(s):
-
Project #856527

Issuer Name:
Pathway Mining 2005 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 25, 2005
Mutual Reliance Review System Receipt dated November 29, 2005
Offering Price and Description:
Minimum: 150,000 Limited Partnership Units @ $10 per Unit = $1,500,000.00
Maximum: 1,000,000 Limited Partnership Units @ $10 per Unit = $10,000,000.00
Underwriter(s) or Distributor(s):
Argosy Securities Inc.
Wellington West Capital Inc.
Burgeonvest Securities Limited
Promoter(s):
Joe C. Dwek
Project #852621

Issuer Name:
Primerica Canadian Aggressive Growth Portfolio Fund
Primerica Canadian Balanced Portfolio Fund
Primerica Canadian Conservative Portfolio Fund
Primerica Canadian Growth Portfolio Fund
Primerica Canadian High Growth Portfolio Fund
Primerica Canadian Income Portfolio Fund
Primerica Canadian Money Market Portfolio Fund
Primerica Global Aggressive Growth Portfolio Fund
Primerica International Aggressive Growth Portfolio Fund
Primerica International Growth Portfolio Fund
Primerica International High Growth Portfolio Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated November 22, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
Mutual Fund Trust Units at net asset value
Underwriter(s) or Distributor(s):
PFSL Investments Canada Ltd.
PFSL Investments Canada Ltd.
Promoter(s):
PFSL Investments Canada Ltd.
Project #843504

Issuer Name:
QGX Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 23, 2005
Mutual Reliance Review System Receipt dated November 24, 2005
Offering Price and Description:
$35,006,000.00 - 7,610,000 Common Shares Price: $4.60 per Common Share
Underwriter(s) or Distributor(s):
CIBC Work Markets Inc.
Sprott Securities Inc.
GMP Securities Ltd.
Promoter(s):
-
Project #850108

Issuer Name:
RCGT Balanced Fund for Employees
RCGT Short Term Yield Fund for Employees
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectus and Annual Information Form dated November 18, 2005
Mutual Reliance Review System Receipt dated November 25, 2005
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Raymond Chabot Grant Thornton, Limited Liability Partnership
Project #841678

Issuer Name:
Saxon Balanced Fund
Saxon Bond Fund
Saxon High Income Fund
Saxon International Equity Fund
Saxon Money Market Fund
Saxon Small Cap
Saxon Stock Fund
Saxon US Equity Fund
Saxon World Growth
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 22, 2005
Mutual Reliance Review System Receipt dated November 25, 2005
Offering Price and Description:
Trust units at net asset value
Underwriter(s) or Distributor(s):
MD Management Limited
MD Management Limited
Promoter(s):
Saxon Funds Management Limited
Project #841187

Issuer Name:
Ur-Energy Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 22, 2005 to Final Prospectus dated November 17, 2005
Mutual Reliance Review System Receipt dated November 23, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Canaccord Capital Corporation
Haywood Securities Inc.
Promoter(s):
Robin B. Dow
Project #838365

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Funds Direct Canada Inc.	Mutual Fund Dealer	November 25, 2005
New Registration	BNP Paribas Peregrine Securities Limited	International Dealer	November 28, 2005
Change in Category	Goodman & Company, Investment Counsel Ltd.	From: Investment Counsel & Portfolio Manager To: Investment Counsel & Portfolio Manager Commodity Trading Manager	November 30, 2005
Change of Name	From: Cathay Financial LLC To: Cathay Financial Inc.	International Dealer	November 29, 2005
Change of Name	From: Covington Capital Inc. To: Covington Capital Corporation	Limited Market Dealer and Investment Counsel & Portfolio Manager	November 29, 2005
Change in Category	AGF Private Investment Management Limited	From: Investment Counsel & Portfolio Management To: Limited Market Dealer	November 28, 2005
Surrender of Registration	WJ Smith Capital Management Inc.	Investment Counsel	November 17, 2005
Change in Category	Faircourt Asset Management Inc.	From: Investment Counsel & Portfolio Manager To: Investment Counsel & Portfolio Manager Limited Market Dealer	November 22, 2005

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA News Release - MFDA Prairie Hearing in the Matter of Robin Andersen

FOR IMMEDIATE RELEASE

MFDA PRAIRIE HEARING
IN THE MATTER OF ROBIN ANDERSEN

November 25, 2005 (Toronto, Ontario) – A disciplinary hearing in the Matter of Robin Andersen was held on November 23, 2005 before a Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in Edmonton, Alberta. An Agreed Statement of Facts was presented to the Hearing Panel during the Hearing. In the Agreed Statement of Facts and in oral submissions made during the Hearing, the Respondent admitted the allegations set out by MFDA staff in the Notice of Hearing dated June 21, 2005, summarized below:

Allegation #1: Between July 1998 and November 2003, Andersen failed to deal fairly, honestly and in good faith with certain of his clients by misappropriating from them the total amount of approximately $362,000 and failing to repay or otherwise account for the funds, contrary to MFDA Rule 2.1.1.

Allegation #2: Between July and November 2003, Andersen processed four redemptions for clients without obtaining instructions or authorization from the clients, contrary to MFDA Rules 2.1.1 and 2.3.4 and his registration as a mutual fund salesperson.

The Hearing Panel indicated that its Decision and Reasons would be issued in due course.

A copy of the Notice of Hearing is available on the MFDA web site at **www.mfda.ca**.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 178 Members and their approximately 75,000 representatives with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
(416) 943-4672 or sdevlin@mfda.ca

13.1.2 CDS Notice of Request for Comments – Material Amendments to CDS Rules Relating to CCP Capping

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

MATERIAL AMENDMENTS TO CDS RULES
CCP CAPPING

REQUEST FOR COMMENTS

DESCRIPTION OF THE PROPOSED AMENDMENTS

On November 23, 2005 the Board of Directors of The Canadian Depository for Securities Limited ("CDS") approved amendments to Participant Rules which concern the central counterparty cap on total obligations incurred by Participants (the "CCP Cap") using certain methods of processing trades within CDSX, such as continuous net settlement ("CNS"), DetNet, and ACCESS ("Functions"). The proposed amendments involve replacing the existing "hard" CCP Cap (which prevents the use of the Functions for new trades once certain thresholds are exceeded and defaults all of the Participant's trades to settle on a trade-for-trade basis) with a "soft" CCP Cap (which permits a continued use of the Functions for new trades but requires additional collateral to be provided).

The proposed amendments involve replacing the existing "hard" CCP Cap on obligations with a "soft cap". Under the existing Rules, once the threshold has been exceeded, a Participant will no longer be able to utilize any of the Functions and will default all subsequent trades which were supposed to settle on a trade-for-trade basis. The creation of this "soft cap" will allow Participants to continue to trade after the threshold has been reached as long as the Participant in question deposits additional collateral in their CDS collateral account. The "soft cap" will permit Participants to continue to use the Functions while also providing each Participant with an incentive to reduce outstanding positions. A reduction of outstanding positions will reduce the additional collateral that a Participant would need to provide.

NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

Background

In the process of implementing the CDS Internal Risk Management System in 2004, the extenders of credit Participants requested the implementation of a cap on the amount of risk that any central counterparty ("CCP") Participant could create related to outstanding positions. As members of the Participant funds associated with the CCP services, the extenders of credit Participants required that there be a measurable limit on the losses they might have to share as survivors, in the event that a defaulter's collateral contribution to the fund was insufficient. The Cap that was developed, with input from Participants, entailed the application of additional collateral and the restriction of netting of further trades in the CCP service following a breach of the Cap, which was set at CAD 80 million. In September of 2004, the Ontario Securities Commission ("OSC") provided a temporary non-disapproval of the amendments establishing the "hard cap" but included an eighteen month sunset clause in relation to the non-disapproval, expiring on March 27, 2006. The OSC expressed a concern that the existing provisions result in a shifting of risk from CDS to the capital markets generally. This sunset clause was included to allow CDS staff to submit additional rule amendments for non-disapproval that does not increase the potential risk to the overall marketplace while also addressing the concerns of Participants.

Description of Proposed Amendments

Through the CCP Cap Working Group, the Risk Advisory Committee, and the Legal Drafting Group, an alternative "soft" CCP Capping methodology has been developed.

The proposed "soft" Cap approach imposes specific obligations upon Participants when that Participant's CCP Contributions Total exceeds specific, defined thresholds. The proposed amendments provide that CDS will provide specific notice where the Participant's CCP Contribution Total (as this term is defined in the CDS Participant Rules) exceeds the prescribed thresholds. In particular where a Participant's CCP Contribution Total exceeds (1) 75% of the CCP Cap CDS shall notify the Participant, and the Appropriate Authority; and (2) 100% of the CCP Cap CDS shall notify the Participant, the Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant. The term Appropriate Authority is defined in Rule 5.14.4 of the CDS Participant Rules. The proposed amendments also include a provision requiring CDS to notify the same persons when a Participant's CCP Contributions Total is reduced below a specified threshold.

In addition the proposed amendments require Participants to take appropriate action to reduce their outstanding positions, subject to facing additional collateralization on the added risk on an escalating basis. At the 75% threshold, the Participant is required to advise CDS of the steps it will take to reduce its exposure. At the 100% and 150% thresholds, the Participant is required to provide additional collateral to secure its obligations to CDS. In the event that a Participant is suspended and does not meet its obligations under a central counterparty Function, the additional collateral will be applied to meet the shortfall in

each Function. In determining the collateral requirements measured against the CCP Cap, only the portion relating to outstanding positions in a CCP Function is considered (mark-to-market contributions, for example, are excluded).

Purpose of the Proposed Amendments

The proposed "soft" Cap will address the concerns of some Participants by permitting Participants to continue to use the Functions while also providing each Participant with an incentive to reduce outstanding positions. A reduction of outstanding positions will reduce the additional collateral that a Participant would need to provide. These specific obligations would address concerns expressed by the OSC by no longer requiring subsequent trades of a Participant that has breached the Cap to be cleared on a trade-for-trade basis.

After considering alternatives, it was determined that it was appropriate to set a single CCP Cap amount for all Participants, and to leave the CCP Cap at its current level. The actual amount of the CCP Cap is set out in the procedures and will be subject to amendment from time to time. The alternative of applying a different cap level for each Participant, based on a measure of each Participant's capital, was investigated and rejected due to the variations in the calculation of capital for different types of Participants. The CCP Cap amount is regularly reviewed in relation to levels of activity in the CCP Functions. The outstanding contributions made by each Participant to all funds for the Functions will be compared to the Cap. Action will be taken when certain thresholds are exceeded. Notice will be given to the Participant and its regulator. At certain thresholds, notice will also be given to other Participants using the Functions.

Application of Proposed Amendments

In CDSX, eligible trades may be processed before settlement through a CCP Function. This processing affects the novation and netting of the payment and delivery obligations pursuant to a securities transaction between Participants to create CCP obligations to be settled between each Participant and CDS. CDS must ensure that it can close out the outstanding CCP positions of any Participant who may default, as CDS has a continuing obligation to settle CCP obligations with all Participants notwithstanding the default of one Participant with an offsetting CCP obligation. In order to control the risks of CCP Functions, CCP obligations are marked-to-market, each Participant using a CCP Function contributes collateral to a fund for that Function, and all the Participants using a CCP Function provide a joint and several credit ring guarantee to CDS. Participants using a CCP Function may limit their exposure by withdrawing from that Function following the suspension of another Participant.

The procedures for providing collateral to CDS are well established. Participants who provide the required additional collateral will be permitted to continue to use the CCP Functions. A Participant who does not provide the required collateral for the CCP Function (like any other Participant who does not meet its collateral requirements in a timely fashion) will be suspended from CDSX.

If a Participant defaults in its obligations to CDS and is suspended, then its collateral is used to meet its obligations to CDS. The additional collateral contributed under the proposed CCP soft Cap model is used first to meet the shortfall in all CCP Functions between the Participant's obligations in each Function and its contributions to the fund for that Function (Rule 9.3.12). The special CCP collateral is distributed among the Functions in proportion to the amount of the shortfall in each Function. If the CCP collateral is more than is required to meet all of the shortfalls in all of the CCP Functions, the excess is applied to other obligations owed by the suspended Participant to CDS (Rule 9.3.13).

The principal Rule amendments are those to Rule 5.14 - CCP Cap for CCP Functions, and Rule 9.3 - Collateral. As the soft Cap model creates a new type of collateral in CDSX, a new defined term has been added (CCP Collateral), and a large number of minor Rule amendments are proposed to integrate the CCP Collateral into the CDSX Rules governing the granting of a security interest, the holding of collateral by CDS and the realization and application of the collateral upon the suspension of the Participant.

IMPACT OF THE PROPOSED AMENDMENTS

The proposed amendments represent an effort on the part of CDS to balance the concerns of certain Participants relating to potential unlimited liability faced by such Participants where other Participants utilize CCP Functions and concerns that the current "hard" cap would result in a shifting of risk from CDS Participants to the capital markets generally. Critics of the "hard" cap have expressed a concern that the inability to settle trades utilizing CCP Functions will create situations where the parties to a trade will be forced to settle in trade-for-trade where parties will be unable to manage their risk exposure effectively. As previously indicated, the proposed amendments permit Participants to continue to use the Functions while also providing each Participant whose CCP Contributions Total exceeds specific, defined thresholds with an incentive to reduce outstanding positions and providing other Participants utilizing CCP Function with notice of potential problems. A reduction of outstanding positions will reduce the additional collateral that a Participant would need to provide. These specific obligations would address concerns expressed by the OSC by no longer requiring subsequent trades of a Participant that has breached the Cap to be cleared on a trade-for-trade basis. As a result, the risk mitigants employed by CDS for the CCP Functions (daily mark-to-market

and collateralization) would continue to protect surviving CCP service members for trades reaching settlement after reaching the CCP Cap.

Participants will be able to utilize CCP Functions even where the CCP Cap has been exceeded. Upon reaching specified thresholds Participants will be required to provide additional prescribed collateral, CCP Collateral. The obligation of a Participant to provide CCP Collateral is separate and distinct from an obligation to provide collateral for other purposes within CDSX. Thus a Participant's collateral contribution to a fund for a CCP Function is not reduced because the Participant is also required to provide CCP collateral. Nor does CCP Collateral affect the calculation of the amount of collateral that a Participant must provide if it exercises its option to withdraw from a CCP Function after the suspension of another Participant. In addition, a Participant's proportionate share of a defaulting Participant's shortfall under a credit ring obligation is not affected when the Participant or another Participant provides CCP Collateral. In CNS, for instance, the proportionate share of each credit ring survivor is calculated based on the contributions to the fund for CNS, which do not include the CCP Collateral. CCP Collateral that was provided by a defaulting Participant will reduce the shortfall to be covered by the surviving Participants' credit ring.

In determining the level of the CCP Cap, historical risk levels were reviewed. In no case did any Participant exceed 50% of the CCP Cap and in the vast majority of daily measurements, the utilisation of the cap was a very small fraction of the $80 million cap. This indicates that the CCP Cap should not negatively impact Participants use of CDS's CCP services.

DESCRIPTION OF THE RULE DRAFTING PROCESS

CDS is recognized as a clearing agency by the Ontario Securities Commission and pursuant to Section 21.1 of the Ontario *Securities Act* and as a self-regulatory organization by the Autorité des marchés financiers pursuant to Section 169 of the Québec *Securities Act*. In addition CDS has deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to Section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee which includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

COMMENTS

Comments on the proposed amendments should be in writing and delivered by January 3, 2006 to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: cpetlock@osc.gov.on.ca

CDS will make available to the public, upon request, copies of comments received during the comment period.

COMPARATIVE ANALYSIS

In the course of preparing the proposed rule amendments CDS staff conducted a review of comparable regulatory regimes in other jurisdictions, including the United States model. In conducting the review, CDS staff did not find that other clearing agencies had a CCP Cap or similar protection for their participants.

The international standards most applicable to the amendment are those described in the BIS/IOSCO Recommendations for Central Counterparties. While those recommendations describe the need to facilitate the obligations of the largest single defaulter, among other recommendations, there is no specific requirement for a predetermined limit on the risk created by Participants. The recommendations do require that a CCP rigorously control risks, specifically with respect to the daily measurement and management of credit exposures and the application of risk-based collateral requirements. The use of a CCP Cap requiring additional collateral above established thresholds is consistent with these international standards.

PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the Participant rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest.

PROPOSED RULE AMENDMENTS

Appendix “A” contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

QUESTIONS

Questions regarding this notice may be directed to:

Michael Brady
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY
VICE-PRESIDENT, LEGAL AND CORPORATE SECRETARY

APPENDIX "A"
PROPOSED RULE AMENDMENT

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
1.2.1 Definitions For the purposes of the Legal Documents, unless otherwise specified: … "CCP Cap" means ~~a~~the threshold amount with respect to ~~limit on a Participant's use of~~ the CCP Functions that if exceeded requires the pledging of CCP Collateral, which threshold amount ~~limit~~ is established in accordance with Rule 5.14. (plafond de la contrepartie centrale) "CCP Collateral" means CCP Collateral as the term is defined in Rule 5.2.4. (garantie de la contrepartie centrale) "Collateral" means, with respect to a suspended Participant: (i) its Contributions to a Collateral Pool; (ii) its Contributions to a Fund; (iii) its Settlement Service Collateral; ~~and~~ (iv) its Specific Collateral; and (v) its CCP Collateral. (garantie) "Defaulter's Collateral" means a Defaulter's Fund Contributions, Collateral Pool Contributions, Specific Collateral, CCP Collateral, Settlement Service Collateral, and Category Credit Ring Collateral (including Settlement Service Collateral and Collateral Pool Contributions). (garantie d'un adhérent défaillant)	**1.2.1 Definitions** For the purposes of the Legal Documents, unless otherwise specified: … CCP Cap" means the threshold amount with respect to the CCP Functions that if exceeded requires the pledging of CCP Collateral, which threshold amount is established in accordance with Rule 5.14. (plafond de la contrepartie centrale) "CCP Collateral" means CCP Collateral as the term is defined in Rule 5.2.4. (garantie de la contrepartie centrale) "Collateral" means, with respect to a suspended Participant: (i) its Contributions to a Collateral Pool; (ii) its Contributions to a Fund; (iii) its Settlement Service Collateral; (iv) its Specific Collateral; and (v) its CCP Collateral. (garantie) "Defaulter's Collateral" means a Defaulter's Fund Contributions, Collateral Pool Contributions, Specific Collateral, CCP Collateral, Settlement Service Collateral, and Category Credit Ring Collateral (including Settlement Service Collateral and Collateral Pool Contributions). (garantie d'un adhérent défaillant)
1.3.10 CDS Accounts at Bank of Canada Bank of Canada has designated CDSX as a clearing and settlement system under Part I of the *Payment Clearing and Settlement Act* of Canada, pursuant to section 4(1) of the Act. The Rules shall be interpreted so as to ensure that CDSX is accorded the protections afforded to a designated clearing and settlement system under the Act, including sections 8(1)c and 8(2). To that end, CDS shall establish and operate one or more accounts at Bank of Canada for the exclusive purpose of receiving and disbursing payments to or from CDS, which arise from the operations of CDSX and which are denominated in Dollars. CDS may also establish and operate one or more accounts at Bank of Canada for the purpose of holding payments made to CDS by Participants, which are held by CDS as Fund Contributions, Collateral Pool Contributions, CCP Collateral, or Specific Collateral and which are denominated in Dollars. Fees and charges owing to CDS shall not be deposited to any account of CDS at Bank of Canada, and banking fees	**1.3.10 CDS Accounts at Bank of Canada** Bank of Canada has designated CDSX as a clearing and settlement system under Part I of the *Payment Clearing and Settlement Act* of Canada, pursuant to section 4(1) of the Act. The Rules shall be interpreted so as to ensure that CDSX is accorded the protections afforded to a designated clearing and settlement system under the Act, including sections 8(1)c and 8(2). To that end, CDS shall establish and operate one or more accounts at Bank of Canada for the exclusive purpose of receiving and disbursing payments to or from CDS, which arise from the operations of CDSX and which are denominated in Dollars. CDS may also establish and operate one or more accounts at Bank of Canada for the purpose of holding payments made to CDS by Participants, which are held by CDS as Fund Contributions, Collateral Pool Contributions, CCP Collateral, or Specific Collateral and which are denominated in Dollars. Fees and charges owing to CDS shall not be deposited to any account of CDS at Bank of Canada, and banking fees

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and charges owing to Bank of Canada shall not be deducted or paid from any such account.	and charges owing to Bank of Canada shall not be deducted or paid from any such account.
5.1.1 General Description CDS employs a variety of mechanisms to manage the risk of a default by a Participant in the Services. Such mechanisms include: ... (c) the taking of a security interest in collateral charged by Participants, including Specific Collateral, CCP Collateral, Cross-Border Specific Collateral, Settlement Service Collateral, Fund Contributions, Link Fund Contributions and Collateral Pool Contributions; ...	**5.1.1 General Description** CDS employs a variety of mechanisms to manage the risk of a default by a Participant in the Services. Such mechanisms include: ... (c) the taking of a security interest in collateral charged by Participants, including Specific Collateral, CCP Collateral, Cross-Border Specific Collateral, Settlement Service Collateral, Fund Contributions, Link Fund Contributions and Collateral Pool Contributions; ...
5.1.3 Monitoring of Participants In order to measure potential risks to CDS and the Services, CDS shall monitor the Transactions, Settlement obligations and activity in the system of that Participant. Acting in good faith and in accordance with the Rules, CDS shall take steps to ensure the due performance by the Participant of its obligations to CDS ... The steps CDS may take include: ... (b) requiring the Participant to grant to CDS a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral pursuant to Rules 5.2.3, 5.14.3, or 10.6.3; ...	**5.1.3 Monitoring of Participants** In order to measure potential risks to CDS and the Services, CDS shall monitor the Transactions, Settlement obligations and activity in the system of that Participant. Acting in good faith and in accordance with the Rules, CDS shall take steps to ensure the due performance by the Participant of its obligations to CDS ... The steps CDS may take include: ... (b) requiring the Participant to grant to CDS a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral pursuant to Rules 5.2.3, 5.14.3, or 10.6.3; ...
5.1.4 Right of Retention and Right of Set Off CDS has the right to retain money standing to the credit of any Participant with CDS (including any amounts contributed as Funds Contributions, Collateral Pool Contributions, CCP Collateral, or Specific Collateral) or payable by CDS to the Participant or in any Account maintained by CDS for the Participant (including any funds credited to its Funds Accounts, any funds credited to its Restricted Collateral Accounts, (subject to the right of the Pledgor to redeem such funds), and any funds reflected in its Pledge Accounts that were Pledged by it (to the extent of the Participant's beneficial interest therein)), in full or part payment of all obligations arising under the Rules that are due and payable by the Participant to CDS, whether such obligations arise from the Service in respect of which the money is held or for which the Account is maintained, or otherwise. CDS has the right to set off a positive Funds Account balance in any Ledger maintained by CDS for a Participant against a negative Funds Account balance in any Ledger maintained by CDS for that Participant or against any obligations arising under the Rules that are due and payable by the Participant to CDS. CDS may exercise its rights of retention and set off regardless of the currencies in which any money, obligation or Funds Account balance may be denominated.	**5.1.4 Right of Retention and Right of Set Off** CDS has the right to retain money standing to the credit of any Participant with CDS (including any amounts contributed as Funds Contributions, Collateral Pool Contributions, CCP Collateral, or Specific Collateral) or payable by CDS to the Participant or in any Account maintained by CDS for the Participant (including any funds credited to its Funds Accounts, any funds credited to its Restricted Collateral Accounts, (subject to the right of the Pledgor to redeem such funds), and any funds reflected in its Pledge Accounts that were Pledged by it (to the extent of the Participant's beneficial interest therein)), in full or part payment of all obligations arising under the Rules that are due and payable by the Participant to CDS, whether such obligations arise from the Service in respect of which the money is held or for which the Account is maintained, or otherwise. CDS has the right to set off a positive Funds Account balance in any Ledger maintained by CDS for a Participant against a negative Funds Account balance in any Ledger maintained by CDS for that Participant or against any obligations arising under the Rules that are due and payable by the Participant to CDS. CDS may exercise its rights of retention and set off regardless of the currencies in which any money, obligation or Funds Account balance may be denominated.
5.2.1 Description of Security Interests As more particularly described in this Rule 5 and in Rule 10, each Participant creates security interests in a variety of collateral: ...	**5.2.1 Description of Security Interests** As more particularly described in this Rule 5 and in Rule 10, each Participant creates security interests in a variety of collateral: ...

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(d) Specific Collateral, CCP Collateral, and Cross-Border Specific Collateral Each Participant may from time to time create a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral in favour of CDS.	(d) Specific Collateral, CCP Collateral, and Cross-Border Specific Collateral Each Participant may from time to time create a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral in favour of CDS.
5.2.2 CDS's Security Interests Pursuant to Rules 5.2.2, 5.2.3, 5.8.5, 5.11.2, and 10.6.1, each Participant grants a security interest (the "CDS Security Interests") to CDS in, and pledges, charges and assigns to CDS, its Specific Collateral, CCP Collateral, Settlement Service Collateral, Fund Contributions, Collateral Pool Contributions, Category Credit Ring Collateral and Cross-Border Collateral, and all dividends, interest, amounts due on maturity, principal repayments and all other entitlements and proceeds arising with respect to such collateral. While the grant of the security interest in the particular collateral is described under different Rules, each security interest in favour of CDS secures the due payment of all amounts due under the Rules from time to time to CDS from the Participant and the performance of all obligations of the Participant to CDS arising from time to time under the Rules. In addition, pursuant to Rule 5.11.2, to secure the due payment of all amounts due under Rule 5.11.1 to the Survivors of its Category Credit Ring in the event that it becomes a Defaulter, each Extender grants a security interest (the "Extenders' Security Interest) to CDS as the bare nominee of the other Extenders in, and pledges, charges and assigns to CDS as the bare nominee of the other Extenders, its Category Credit Ring Collateral. In addition, pursuant to Rule 5.6.2, to secure payment of its obligations pursuant to Rule 5.6.1, each Debtor grants a Surety Security Interest in all of its Settlement Service Collateral to each Surety who establishes a Line of Credit for it and to the other Members of that Surety's Category Credit Ring. Each Participant represents and warrants to CDS, to the other Members of each Fund of which it is a Member, and to the other Members of its Category Credit Ring or Rings, that it has full authority and power to grant such security interests to CDS, including any exemption or authorization that may be required pursuant to any statute or regulation binding on the Participant. Such security interests shall survive the suspension, termination or withdrawal of the Participant. Upon suspension of the Participant in the payment or performance of any obligation to CDS, CDS may realize upon the collateral charged pursuant to such security interests for such price and upon such terms as it deems best, without notice or other prior indication to the Participant. Collateral delivered to CDS by the Participant under all of the security interests is administered through the Collateral Administration Ledger of CDS used for that Participant. Other Participants may also have an interest in the collateral charged to CDS; the relative priorities in the collateral are defined in Rule 5.6.7, Rule 5.11.2 and Rule 5.11.4. The	**5.2.2 CDS's Security Interests** Pursuant to Rules 5.2.2, 5.2.3, 5.8.5, 5.11.2, and 10.6.1, each Participant grants a security interest (the "CDS Security Interests") to CDS in, and pledges, charges and assigns to CDS, its Specific Collateral, CCP Collateral, Settlement Service Collateral, Fund Contributions, Collateral Pool Contributions, Category Credit Ring Collateral and Cross-Border Collateral, and all dividends, interest, amounts due on maturity, principal repayments and all other entitlements and proceeds arising with respect to such collateral. While the grant of the security interest in the particular collateral is described under different Rules, each security interest in favour of CDS secures the due payment of all amounts due under the Rules from time to time to CDS from the Participant and the performance of all obligations of the Participant to CDS arising from time to time under the Rules. In addition, pursuant to Rule 5.11.2, to secure the due payment of all amounts due under Rule 5.11.1 to the Survivors of its Category Credit Ring in the event that it becomes a Defaulter, each Extender grants a security interest (the "Extenders' Security Interest) to CDS as the bare nominee of the other Extenders in, and pledges, charges and assigns to CDS as the bare nominee of the other Extenders, its Category Credit Ring Collateral. In addition, pursuant to Rule 5.6.2, to secure payment of its obligations pursuant to Rule 5.6.1, each Debtor grants a Surety Security Interest in all of its Settlement Service Collateral to each Surety who establishes a Line of Credit for it and to the other Members of that Surety's Category Credit Ring. Each Participant represents and warrants to CDS, to the other Members of each Fund of which it is a Member, and to the other Members of its Category Credit Ring or Rings, that it has full authority and power to grant such security interests to CDS, including any exemption or authorization that may be required pursuant to any statute or regulation binding on the Participant. Such security interests shall survive the suspension, termination or withdrawal of the Participant. Upon suspension of the Participant in the payment or performance of any obligation to CDS, CDS may realize upon the collateral charged pursuant to such security interests for such price and upon such terms as it deems best, without notice or other prior indication to the Participant. Collateral delivered to CDS by the Participant under all of the security interests is administered through the Collateral Administration Ledger of CDS used for that Participant. Other Participants may also have an interest in the collateral charged to CDS; the relative priorities in the collateral are defined in Rule 5.6.7, Rule 5.11.2 and Rule 5.11.4. The

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distribution of the collateral upon suspension of the Participant is set out in Rule 9.	distribution of the collateral upon suspension of the Participant is set out in Rule 9.
5.2.3 Security Interest in Specific Collateral and CCP Collateral From time to time, CDS may request a Participant to grant to CDS a security interest in Specific Collateral or CCP Collateral of a specified value. CDS may make such request with respect to Specific Collateral when it determines, in its absolute discretion, that such security interest is prudent to ensure the due discharge of the Participant's obligations to CDS, including an obligation arising from the Participant's acting as an Entitlements Processor or otherwise arising from payments made on or drawn on the Participant, the obligation of the Participant to correct a Short Position and the obligations of the Participant monitored pursuant to Rule 5.1.3. CDS may make such request with respect to CCP Collateral pursuant to Rule 5.14. By delivering Specific Collateral or CCP Collateral to CDS or authorizing CDS to take possession or control of Specific Collateral or CCP Collateral, each Participant grants to CDS a security interest in, and pledges, charges and assigns to CDS, all such Specific Collateral or CCP Collateral together with all dividends, interest, amounts due on maturity, principal repayments and all other entitlements and proceeds arising with respect to such Specific Collateral or CCP Collateral to secure the due payment of all amounts due under the Rules from time to time to CDS from the Participant and the performance of all obligations of the Participant to CDS arising from time to time under the Rules. The security interest, pledge, charge and assignment created by this Rule 5.2.2 shall survive the suspension, termination or withdrawal of the Participant.	**5.2.3 Security Interest in Specific Collateral and CCP Collateral** From time to time, CDS may request a Participant to grant to CDS a security interest in Specific Collateral or CCP Collateral of a specified value. CDS may make such request with respect to Specific Collateral when it determines, in its absolute discretion, that such security interest is prudent to ensure the due discharge of the Participant's obligations to CDS, including an obligation arising from the Participant's acting as an Entitlements Processor or otherwise arising from payments made on or drawn on the Participant, the obligation of the Participant to correct a Short Position and the obligations of the Participant monitored pursuant to Rule 5.1.3. CDS may make such request with respect to CCP Collateral pursuant to Rule 5.14. By delivering Specific Collateral or CCP Collateral to CDS or authorizing CDS to take possession or control of Specific Collateral or CCP Collateral, each Participant grants to CDS a security interest in, and pledges, charges and assigns to CDS, all such Specific Collateral or CCP Collateral together with all dividends, interest, amounts due on maturity, principal repayments and all other entitlements and proceeds arising with respect to such Specific Collateral or CCP Collateral to secure the due payment of all amounts due under the Rules from time to time to CDS from the Participant and the performance of all obligations of the Participant to CDS arising from time to time under the Rules. The security interest, pledge, charge and assignment created by this Rule 5.2.2 shall survive the suspension, termination or withdrawal of the Participant.
5.2.4 Definition of Specific Collateral and CCP Collateral The term "Specific Collateral" means the property and assets, which a Participant delivers to CDS, or of which a Participant authorizes CDS to take possession or control, pursuant to Rule 5.2.3, and does not include Settlement Service Collateral, Fund Contributions, ~~or~~ Collateral Pool Contributions or CCP Collateral. The term "CCP Collateral" means the property and assets, which a Participant delivers to CDS, or of which a Participant authorizes CDS to take possession or control, for the purpose of granting a security interest to CDS, pursuant to Rule 5.14.3, and does not include Settlement Service Collateral, Fund Contributions, Collateral Pool Contributions or Specific Collateral.	**5.2.4 Definition of Specific Collateral and CCP Collateral** The term "Specific Collateral" means the property and assets, which a Participant delivers to CDS, or of which a Participant authorizes CDS to take possession or control, pursuant to Rule 5.2.3, and does not include Settlement Service Collateral, Fund Contributions, Collateral Pool Contributions or CCP Collateral. The term "CCP Collateral" means the property and assets, which a Participant delivers to CDS, or of which a Participant authorizes CDS to take possession or control, for the purpose of granting a security interest to CDS, pursuant to Rule 5.14.3, and does not include Settlement Service Collateral, Fund Contributions, Collateral Pool Contributions or Specific Collateral.
5.3.1 Form and Value of Collateral The collateral pledged by a Participant as Specific Collateral, CCP Collateral, Fund Contributions and Collateral Pool Contributions shall be: ... The recognized value of collateral charged by a Participant as Specific Collateral, CCP Collateral, a Fund Contribution or a Collateral Pool Contribution shall be the fair market value of the collateral as determined in accordance with the Procedures and User Guides, which shall set out any	**5.3.1 Form and Value of Collateral** The collateral pledged by a Participant as Specific Collateral, CCP Collateral, Fund Contributions and Collateral Pool Contributions shall be: ... The recognized value of collateral charged by a Participant as Specific Collateral, CCP Collateral, a Fund Contribution or a Collateral Pool Contribution shall be the fair market value of the collateral as determined in accordance with the Procedures and User Guides, which shall set out any

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margin requirements that apply to a particular type of collateral. ...	margin requirements that apply to a particular type of collateral. ...
5.3.2 Collateral Administration Ledgers CDS maintains Collateral Administration Ledgers for the management and control of collateral held by it for the purposes of this Rule 5, including Specific Collateral, CCP Collateral, Fund Contributions and Collateral Pool Contributions, and, after suspension, Settlement Service Collateral. The Collateral Administration Ledgers shall be Ledgers maintained by CDS in its own name. A separate Collateral Administration Ledger is designated by CDS to be used for each Participant. Specific Collateral and CCP Collateral pledged by a Participant, and Fund Contributions and Collateral Pool Contributions made by a Participant, shall be credited to the Collateral Administration Ledger used for that Participant. ...	**5.3.2 Collateral Administration Ledgers** CDS maintains Collateral Administration Ledgers for the management and control of collateral held by it for the purposes of this Rule 5, including Specific Collateral, CCP Collateral, Fund Contributions and Collateral Pool Contributions, and, after suspension, Settlement Service Collateral. The Collateral Administration Ledgers shall be Ledgers maintained by CDS in its own name. A separate Collateral Administration Ledger is designated by CDS to be used for each Participant. Specific Collateral and CCP Collateral pledged by a Participant, and Fund Contributions and Collateral Pool Contributions made by a Participant, shall be credited to the Collateral Administration Ledger used for that Participant. ...
5.3.3 Centralized Administration of Collateral A Participant grants a security interest in its Specific Collateral, in its CCP Collateral, in its Settlement Service Collateral, in its Contributions to each Fund of which it is a Member and in its Contributions to each Collateral Pool for each Category Credit Ring of which it is a Member (other than the Non-Contributing Receivers Credit Ring). Each security interest is separately defined in individual Rules, including matters such as the calculation of the Contribution to be made, the obligation secured by the security interest, the attachment and release of the security interest, the persons to whom the security interest is granted, and the relative priority of the security interest in particular collateral. For convenience and efficient management, in the circumstances set out in the Procedures and User Guides, a Participant may make a single delivery of collateral to fulfill in whole or in part one or more of its obligations with respect to Specific Collateral, CCP Collateral, or Contributions to a Fund or Collateral Pool. CDS may hold all such collateral in its Collateral Administration Ledger, as set out below, and may mingle in a single account the collateral charged by a Participant in respect of one security interest with any other collateral charged at any time by that Participant in respect of other security interests. CDS determines from time to time how the collateral charged by a Participant shall be attributed to any specific security interest. In the event that any collateral charged by a Participant is discovered to be a Defective Security or otherwise to have less market value than anticipated, such diminution in value of the collateral shall be attributed pro rata to any Specific Collateral charged by the Participant, to any CCP Collateral charged by the Participant, and to each Fund and Collateral Pool to which the Participant was required to contribute, in the proportion which the amount of the collateral required for that purpose is of all required collateral. Upon suspension of a Participant, the collateral charged by it is dealt with in accordance with Rule 9. All collateral is held by CDS on the following basis: (a) Specific Collateral and CCP Collateral	**5.3.3 Centralized Administration of Collateral** A Participant grants a security interest in its Specific Collateral, in its CCP Collateral, in its Settlement Service Collateral, in its Contributions to each Fund of which it is a Member and in its Contributions to each Collateral Pool for each Category Credit Ring of which it is a Member (other than the Non-Contributing Receivers Credit Ring). Each security interest is separately defined in individual Rules, including matters such as the calculation of the Contribution to be made, the obligation secured by the security interest, the attachment and release of the security interest, the persons to whom the security interest is granted, and the relative priority of the security interest in particular collateral. For convenience and efficient management, in the circumstances set out in the Procedures and User Guides, a Participant may make a single delivery of collateral to fulfill in whole or in part one or more of its obligations with respect to Specific Collateral, CCP Collateral, or Contributions to a Fund or Collateral Pool. CDS may hold all such collateral in its Collateral Administration Ledger, as set out below, and may mingle in a single account the collateral charged by a Participant in respect of one security interest with any other collateral charged at any time by that Participant in respect of other security interests. CDS determines from time to time how the collateral charged by a Participant shall be attributed to any specific security interest. In the event that any collateral charged by a Participant is discovered to be a Defective Security or otherwise to have less market value than anticipated, such diminution in value of the collateral shall be attributed pro rata to any Specific Collateral charged by the Participant, to any CCP Collateral charged by the Participant, and to each Fund and Collateral Pool to which the Participant was required to contribute, in the proportion which the amount of the collateral required for that purpose is of all required collateral. Upon suspension of a Participant, the collateral charged by it is dealt with in accordance with Rule 9. All collateral is held by CDS on the following basis: (a) Specific Collateral and CCP Collateral

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Specific Collateral and CCP Collateral shall be credited to CDS's Collateral Administration Ledgers to be held by CDS for its own benefit exclusively. ...	Specific Collateral and CCP Collateral shall be credited to CDS's Collateral Administration Ledgers to be held by CDS for its own benefit exclusively. ...
5.3.6 Custody of Collateral In exercising any of the powers conferred by this Rule 5.3, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants other than a Defaulter. CDS shall not be the agent, trustee or fiduciary (i) for a Participant in respect of its own Specific Collateral, CCP Collateral, Fund Contributions, Collateral Pool Contributions or Settlement Service Collateral, nor (ii) for any other Category Credit Ring Member (except to the extent that it acts as the bare nominee of the Survivors of a suspended Extender) in respect of its interest in the Category Credit Ring Collateral of a Defaulter. Collateral in the form of money shall be held by CDS in accordance with this Rule 5.3 and need not be applied to reduce any obligation of the Participant to CDS. CDS may invest Specific Collateral, CCP Collateral, Fund Contributions or Collateral Pool Contributions in a reasonable and prudent manner, acting in the best interests of all Participants. CDS shall segregate any such collateral from its own money and shall make use of such collateral only for the purposes of this Rule 5. The net amount of any interest, dividend or income received by CDS on the collateral of a Participant (other than minimum cash contributions) shall be distributed to the Participant in accordance with the Procedures, provided the Participant's obligations to CDS have been fulfilled. In exercising any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants making use of the Services.	**5.3.6 Custody of Collateral** In exercising any of the powers conferred by this Rule 5.3, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants other than a Defaulter. CDS shall not be the agent, trustee or fiduciary (i) for a Participant in respect of its own Specific Collateral, CCP Collateral, Fund Contributions, Collateral Pool Contributions or Settlement Service Collateral, nor (ii) for any other Category Credit Ring Member (except to the extent that it acts as the bare nominee of the Survivors of a suspended Extender) in respect of its interest in the Category Credit Ring Collateral of a Defaulter. Collateral in the form of money shall be held by CDS in accordance with this Rule 5.3 and need not be applied to reduce any obligation of the Participant to CDS. CDS may invest Specific Collateral, CCP Collateral, Fund Contributions or Collateral Pool Contributions in a reasonable and prudent manner, acting in the best interests of all Participants. CDS shall segregate any such collateral from its own money and shall make use of such collateral only for the purposes of this Rule 5. The net amount of any interest, dividend or income received by CDS on the collateral of a Participant (other than minimum cash contributions) shall be distributed to the Participant in accordance with the Procedures, provided the Participant's obligations to CDS have been fulfilled. In exercising any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants making use of the Services.
5.3.7 Assignment of Collateral by CDS CDS may, in favour of any Person, assign, transfer, pledge, charge or otherwise create a security interest in: (a) any Specific Collateral, CCP Collateral, Settlement Service Collateral, Fund Contribution, Collateral Pool Contribution or Category Credit Ring Collateral, ...	**5.3.7 Assignment of Collateral by CDS** CDS may, in favour of any Person, assign, transfer, pledge, charge or otherwise create a security interest in: (a) any Specific Collateral, CCP Collateral, Settlement Service Collateral, Fund Contribution, Collateral Pool Contribution or Category Credit Ring Collateral, ...
5.14 CCP CAP FOR CCP FUNCTIONS **5.14.1 Calculation of CCP Cap** The "CCP Cap" ~~is a limit on a Participant's~~ means a threshold amount with respect to ~~use of~~ the CCP Functions that if exceeded requires the pledging of CCP Collateral, which threshold amount is established in accordance with this Rule 5.14. The amount of the CCP Cap shall be the same for all Participants, regardless of the category in which the Participant is classified and regardless of the number of CCP Functions used by the Participant. The amount of the CCP Cap shall be set out in the Procedures. The CCP Cap shall be reviewed on the schedule and in accordance with the process set out in the Procedures.	**5.14 CCP CAP FOR CCP FUNCTIONS** **5.14.1 Calculation of CCP Cap** The "CCP Cap" means a threshold amount with respect to the CCP Functions that if exceeded requires the pledging of CCP Collateral, which threshold amount is established in accordance with this Rule 5.14. The amount of the CCP Cap shall be the same for all Participants, regardless of the category in which the Participant is classified and regardless of the number of CCP Functions used by the Participant. The amount of the CCP Cap shall be set out in the Procedures. The CCP Cap shall be reviewed on the schedule and in accordance with the process set out in the Procedures.

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5.14.2 Calculation of Participant's CCP Contributions Total For each Participant using a CCP Function, CDS calculates the Participant's "CCP Contributions Total", which is an amount determined in accordance with the Procedures taking into account the Contributions required to be made by the Participant to the Funds for all of the CCP Functions used by it. CDS compares the CCP Contributions Total of each Participant to the CCP Cap.	**5.14.2 Calculation of Participant's CCP Contributions Total** For each Participant using a CCP Function, CDS calculates the Participant's "CCP Contributions Total", which is an amount determined in accordance with the Procedures taking into account the Contributions required to be made by the Participant to the Funds for all of the CCP Functions used by it. CDS compares the CCP Contributions Total of each Participant to the CCP Cap.
5.14.3 CCP Contributions ~~Total Exceeds~~ Compared to CCP Cap (a) ~~First Occurrence of Excess~~ Exceeds 75% of CCP Cap In the event that the Participant's CCP Contributions Total ~~for a Business Day~~ exceeds 75% of the CCP Cap, ~~and provided that the Participant's CCP Contributions Total for the previous Business Day had not exceeded the CCP Cap,~~ then upon receiving such information from CDS pursuant to Rule 5.14.4, the Participant shall advise CDS of the reasons for that situation, the steps it will take to reduce its CCP Contributions Total, and the time when it expects its CCP Contributions Total to be reduced to less than 75% of the CCP Cap. ~~be required to make an additional Contribution to each of the Funds established for all CCP Functions used by that Participant. The total additional Contributions shall equal the amount by which its CCP Contributions Total exceeds the CCP Cap. The additional Contribution to each CCP Fund shall be in the same proportion to its total additional Contributions that its Contribution to such Fund prior to the making of the additional Contribution was to its Contributions to all CCP Funds at that time.~~ (b) ~~Excess Not Cured~~ Exceeds 100% but does not exceed 150% of CCP Cap In the event that the Participant's CCP Contributions Total exceeds the CCP Cap and does not exceed 150% of the CCP Cap ~~for two consecutive Business Days~~, then the Participant shall grant to CDS a security interest in CCP Collateral in an amount equal to the amount by which its CCP Contributions Total exceeds the CCP Cap. ~~CDS shall restrict the right to use system functionality to enter new Transactions into the ACCESS Service and to use the CNS Function and the DetNet Function. Such restrictions shall continue until the Participant's CCP Contributions Total is less than 75% of the CCP Cap.~~ (c) ~~Effect of Restriction of Functionality~~ Exceeds 150% of CCP Cap ~~Notwithstanding the restriction of a Participant's right to use a CCP Function or the ACCESS Service, its outstanding Central Counterparty Obligations shall continue to be Settled and its outstanding ACCESS Trades shall continue to be processed through the ACCESS Function. The restriction of a Participant's right to use system functionality does not affect its obligations with respect to the CCP Functions it uses and the ACCESS Service, including its~~	**5.14.3 CCP Contributions Compared to CCP Cap** (a) Exceeds 75% of CCP Cap In the event that the Participant's CCP Contributions Total exceeds 75% of the CCP Cap, then upon receiving such information from CDS pursuant to Rule 5.14.4, the Participant shall advise CDS of the reasons for that situation, the steps it will take to reduce its CCP Contributions Total, and the time when it expects its CCP Contributions Total to be reduced to less than 75% of the CCP Cap. (b) Exceeds 100% but does not exceed 150% of CCP Cap In the event that the Participant's CCP Contributions Total exceeds the CCP Cap and does not exceed 150% of the CCP Cap, then the Participant shall grant to CDS a security interest in CCP Collateral in an amount equal to the amount by which its CCP Contributions Total exceeds the CCP Cap. (c) Exceeds 150% of CCP Cap In the event that the Participant's CCP Contributions Total exceeds 150% of the CCP Cap, then the Participant shall grant to CDS a security interest in CCP Collateral in an amount equal to (i) the amount by which its CCP Contributions Total exceeds the CCP Cap plus (ii) the amount by which its CCP Contributions Total exceeds 150% of the CCP Cap. (d) Release of Excess CCP Collateral When the CCP Contributions Total of a Participant is reduced, any excess CCP Collateral delivered by it shall be released at the request of the Participant.

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
~~obligation to make Contributions to the Fund for a CCP Function, its obligation to pay Marks, and its obligations as a Member of the Credit Ring for a CCP Function. If CDS has restricted the right of either Participant to a Trade to use the CNS Function or the DetNet Function before such Trade has been processed through such Function, then such Trade shall no longer be eligible for that Function. As a result, the outstanding Trade shall be Settled between the Participants who were the parties to the original Trade.~~ In the event that the Participant's CCP Contributions Total exceeds 150% of the CCP Cap, then the Participant shall grant to CDS a security interest in CCP Collateral in an amount equal to (i) the amount by which its CCP Contributions Total exceeds the CCP Cap plus (ii) the amount by which its CCP Contributions Total exceeds 150% of the CCP Cap. (d) Release of Excess CCP Collateral When the CCP Contributions Total of a Participant is reduced, any excess CCP Collateral delivered by it shall be released at the request of the Participant.	
~~5.14.4 CDS Discretion re Excess CCP Contributions Total~~ ~~(a) Discretion re Selective Processing in CNS and DetNet~~ ~~Notwithstanding the restriction of a Participant's right to use a CCP Function, at the request of the Participant CDS may select particular eligible Transactions of that Participant for processing through CNS or DetNet, provided that CDS determines such processing is likely to reduce the Participant's CCP Contributions Total. The selection of Transactions to be so processed shall be made on the basis of criteria set out in the Procedures.~~ ~~(b) Discretion re Restriction of Functionality~~ ~~At the request of a Participant whose CCP Contributions Total exceeds the CCP Cap for two consecutive Business Days, CDS may determine in its discretion that it will not restrict the Participant's right to use system functionality in accordance with Rule 5.14.3, provided that (i) the Participant's CCP Contributions Total does not exceed 110% of the CCP Cap and (ii) CDS determines, based on the information reasonably available to it, that such action is warranted under the specific circumstances.~~ ~~(c) Exercise of Discretion~~ ~~In exercising its discretion under this Rule 5.14.4, CDS shall take reasonable care in what it, in good faith, considers to be in the best interests of CDS and of all Participants. CDS shall not be liable to any Participant for any loss, damage, cost, expense, liability or claim arising from the restriction of the right of that Participant or of any other Participant to use system functionality or from the exercise of its discretion to postpone such restriction or to selectively lift such restriction.~~	

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
5.14.~~45 Information~~Notice re CCP Cap ~~If a Participant's CCP Contributions Total reaches 75% or more of the CCP Cap,~~ CDS shall give notice to~~inform~~ the following persons when a Participant's ~~and its Appropriate Authority of this fact, indicating the percentage of the CCP Cap represented by the Participant's~~ CCP Contributions Total exceeds the specified percentage of the CCP Cap:~~. If CDS imposes a restriction on a Participant's right to use system functionality in accordance with this Rule 5.14, CDS shall inform the Participant, its Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant when such restriction has been imposed and when such restriction has been lifted.~~ (i) 75% of CCP Cap: the Participant and a Signing Officer of the Participant, and the Appropriate Authority; (ii) 100% of CCP Cap: the Participant and a Signing Officer of the Participant, the Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant; and (iii) 150% of CCP Cap: the Participant and a Signing Officer of the Participant, and the Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant. CDS shall also give notice to the same persons when the Participant's CCP Contributions Total is reduced to the specified percentage of the CCP Cap. Each notice shall identify the Participant and the specified percentage of the CCP Cap which has been exceeded or to which the Participant's CCP Contributions Total has been reduced. The Appropriate Authority is: (a) the principal Canadian self-regulatory organization of which the Participant is a member; (b) failing which, the principal Canadian Regulatory Body having jurisdiction over the Participant; or (c) failing which, the principal foreign Regulatory Body having jurisdiction over the Participant.	**5.14.4 Notice re CCP Cap** CDS shall give notice to the following persons when a Participant's CCP Contributions Total exceeds the specified percentage of the CCP Cap: (i) 75% of CCP Cap: the Participant and a Signing Officer of the Participant, and the Appropriate Authority; (ii) 100% of CCP Cap: the Participant, and a Signing Officer of the Participant, the Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant; and (iii) 150% of CCP Cap: the Participant and a Signing Officer of the Participant, and the Appropriate Authority and all other Participants using any of the CCP Functions used by the Participant. CDS shall also give notice to the same persons when the Participant's CCP Contributions Total is reduced to the specified percentage of the CCP Cap. Each notice shall identify the Participant and the specified percentage of the CCP Cap which has been exceeded or to which the Participant's CCP Contributions Total has been reduced. The Appropriate Authority is: (a) the principal Canadian self-regulatory organization of which the Participant is a member; (b) failing which, the principal Canadian Regulatory Body having jurisdiction over the Participant; or (c) failing which, the principal foreign Regulatory Body having jurisdiction over the Participant.
9.1.1 Automatic Suspension CDS shall suspend a Participant if the Participant fails, by the time required in accordance with the Rules, Procedures and User Guides: (i) to make a required payment in full at CDSX Payment Exchange or Link Payment Exchange; (ii) to provide Specific Collateral, CCP Collateral or Cross-Border Specific Collateral; (iii) to make its required Contribution to a Fund, a Collateral Pool or a Link Fund;	**9.1.1 Automatic Suspension** CDS shall suspend a Participant if the Participant fails, by the time required in accordance with the Rules, Procedures and User Guides: (i) to make a required payment in full at CDSX Payment Exchange or Link Payment Exchange; (ii) to provide Specific Collateral, CCP Collateral or Cross-Border Specific Collateral; (iii) to make its required Contribution to a Fund, a Collateral Pool or a Link Fund;

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
(iv) to pay its obligation to CDS as a Surety pursuant to a Line of Credit; or (v) to pay its proportionate share, as a Member of a Fund Credit Ring, Category Credit Ring or Link Fund Credit Ring, of the obligation of another Member of that Credit Ring.	(iv) to pay its obligation to CDS as a Surety pursuant to a Line of Credit; or (v) to pay its proportionate share, as a Member of a Fund Credit Ring, Category Credit Ring or Link Fund Credit Ring, of the obligation of another Member of that Credit Ring.
9.3.1 Collateral of Suspended Participant ... (b) Specific Collateral The suspended Participant's Specific Collateral and CCP Collateral shall be realized by CDS and the net proceeds applied in accordance with Rule 9.3.13. ... (d) Fund Contributions With respect to any obligation of the suspended Participant that is guaranteed by a Fund Credit Ring, CDS will provide for immediate payment of the amount owing by means of an advance to CDS and may use the Contribution of the suspended Participant to that Fund, the CCP Collateral of the suspended Participant, and, if required, the Contributions of the Other Members of the Fund Credit Ring to secure such advance. ...	**9.3.1 Collateral of Suspended Participant** ... (b) Specific Collateral The suspended Participant's Specific Collateral and CCP Collateral shall be realized by CDS and the net proceeds applied in accordance with Rule 9.3.13. ... (d) Fund Contributions With respect to any obligation of the suspended Participant that is guaranteed by a Fund Credit Ring, CDS will provide for immediate payment of the amount owing by means of an advance to CDS and may use the Contribution of the suspended Participant to that Fund, the CCP Collateral of the suspended Participant, and, if required, the Contributions of the Other Members of the Fund Credit Ring to secure such advance. ...
9.3.12 Application of Fund Contributions and CCP Contributions (a) Fund Contributions If a Participant who is a Member of a Fund Credit Ring is suspended, CDS shall apply the net proceeds of realization of its Fund Contributions as set out below. (i) (a) The net proceeds of realization of its Fund Contributions shall be applied to pay (A) (i) any Marks owing by it in respect of the Function for which the Fund was established, (B) (ii) any negative net termination value arising from the close–out of its Central Counterparty Obligations arising from such Function and, (C) (iii) for the ACCESS Fund only, any obligations arising from a Short Position or Short Position Charge, a guaranty on deposit or an indemnity or Cross-Border Claim. (ii) (b) Any excess remaining shall be applied by CDS pursuant to Rule 9.3.13. (b) CCP Collateral If a Participant using a CCP Function is suspended, and the Participant has delivered CCP Collateral to CDS, CDS shall apply the net proceeds of realization of its CCP Collateral as set out below. (i) For each CCP Function used by the Participant, CDS shall determine the amount (the "Shortfall") by which the total of the net proceeds of realization of its Fund	**9.3.12 Application of Fund Contributions and CCP Contributions** (a) Fund Contributions If a Participant who is a Member of a Fund Credit Ring is suspended, CDS shall apply the net proceeds of realization of its Fund Contributions as set out below. (i) The net proceeds of realization of its Fund Contributions shall be applied to pay (A) any Marks owing by it in respect of the Function for which the Fund was established, (B) any negative net termination value arising from the close–out of its Central Counterparty Obligations arising from such Function and, (C) for the ACCESS Fund only, any obligations arising from a Short Position or Short Position Charge, a guaranty on deposit or an indemnity or Cross-Border Claim. (ii) Any excess remaining shall be applied by CDS pursuant to Rule 9.3.13. (b) CCP Collateral If a Participant using a CCP Function is suspended, and the Participant has delivered CCP Collateral to CDS, CDS shall apply the net proceeds of realization of its CCP Collateral as set out below. (i) For each CCP Function used by the Participant, CDS shall determine the amount (the "Shortfall") by which the total of the net proceeds of realization of its Fund

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
Contributions for that Function were less than (A) any Marks owing by it in respect of the Function for which the Fund was established, (B) any negative net termination value arising from the close–out of its Central Counterparty Obligations arising from such Function and, (C) for the ACCESS Fund only, any obligations arising from a Short Position or Short Position Charge, a guaranty on deposit or an indemnity or Cross-Border Claim. The net proceeds of realization of its CCP Collateral shall be applied to pay the Shortfall in each Function. If the total of all of the Shortfalls exceeds the net proceeds of realization of its CCP Collateral, then such proceeds shall be allocated to pay the Shortfall for each CCP Function in the same proportion that such Shortfall is of the total of all Shortfalls.	Contributions for that Function were less than (A) any Marks owing by it in respect of the Function for which the Fund was established, (B) any negative net termination value arising from the close–out of its Central Counterparty Obligations arising from such Function and, (C) for the ACCESS Fund only, any obligations arising from a Short Position or Short Position Charge, a guaranty on deposit or an indemnity or Cross-Border Claim. The net proceeds of realization of its CCP Collateral shall be applied to pay the Shortfall in each Function. If the total of all of the Shortfalls exceeds the net proceeds of realization of its CCP Collateral, then such proceeds shall be allocated to pay the Shortfall for each CCP Function in the same proportion that such Shortfall is of the total of all Shortfalls.
(ii) Any excess remaining shall be applied by CDS pursuant to Rule 9.3.13.	(ii) Any excess remaining shall be applied by CDS pursuant to Rule 9.3.13.
9.3.13 Application of Excess Proceeds	**9.3.13 Application of Excess Proceeds**
The following amounts calculated in respect of a suspended Participant shall be considered to be excess proceeds of realization, to be applied by CDS in accordance with this Rule:	The following amounts calculated in respect of a suspended Participant shall be considered to be excess proceeds of realization, to be applied by CDS in accordance with this Rule:
(a) any positive Funds Account balances,	(a) any positive Funds Account balances,
(b) any funds credited to its Restricted Collateral Accounts, subject to the right of the Pledgor to redeem such funds, and any funds reflected in its Pledge Accounts that were Pledged by it, to the extent of the suspended Participant's beneficial interest therein,	(b) any funds credited to its Restricted Collateral Accounts, subject to the right of the Pledgor to redeem such funds, and any funds reflected in its Pledge Accounts that were Pledged by it, to the extent of the suspended Participant's beneficial interest therein,
(c) the net proceeds of realization of its Specific Collateral,	(c) the net proceeds of realization of its Specific Collateral,
(d) the net proceeds of realization of its Collateral Pool Contributions remaining after such proceeds are applied pursuant to Rule 9.3.10,	(d) the net proceeds of realization of its Collateral Pool Contributions remaining after such proceeds are applied pursuant to Rule 9.3.10,
(e) the net proceeds of realization of its Settlement Service Collateral remaining after such proceeds are applied pursuant to Rule 9.3.11, ~~and~~	(e) the net proceeds of realization of its Settlement Service Collateral remaining after such proceeds are applied pursuant to Rule 9.3.11,
(f) any net positive balance owing by CDS to the suspended Participant in respect of a CCP Function after setting off the net proceeds of realization of its Contributions to the Fund for that CCP Function pursuant to Rule 9.3.12, all Marks payable by or to the Participant arising from that CCP Function and the net termination value of all Central Counterparty Obligations of the suspended Participant arising from that CCP Function, and	(f) any net positive balance owing by CDS to the suspended Participant in respect of a CCP Function after setting off the net proceeds of realization of its Contributions to the Fund for that CCP Function pursuant to Rule 9.3.12, all Marks payable by or to the Participant arising from that CCP Function and the net termination value of all Central Counterparty Obligations of the suspended Participant arising from that CCP Function, and
(g) the net proceeds of realization of its CCP Collateral remaining after such proceeds are applied pursuant to Rule 9.3.12.	(g) the net proceeds of realization of its CCP Collateral remaining after such proceeds are applied pursuant to Rule 9.3.12.
Such excess proceeds of realization shall be applied by CDS to reduce the obligations of the suspended Participant	Such excess proceeds of realization shall be applied by CDS to reduce the obligations of the suspended Participant

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
to CDS. If the obligations of the suspended Participant are greater than such excess proceeds, the excess proceeds shall be applied to reduce the obligations of the suspended Participant that are guaranteed by its Sureties, by the Other Members of its Category Credit Ring and by the Other Members of each of its Fund Credit Rings, pro rata in proportion to the shortfall if any between the amount paid to CDS by each such guarantor and its share of the net proceeds of realization of the Collateral of the suspended Participant when such proceeds are applied in accordance with the foregoing provisions of this Rule 9. If, after payment of all of the obligations of the suspended Participant to CDS, there is any amount remaining, CDS shall pay such amount to the suspended Participant.	to CDS. If the obligations of the suspended Participant are greater than such excess proceeds, the excess proceeds shall be applied to reduce the obligations of the suspended Participant that are guaranteed by its Sureties, by the Other Members of its Category Credit Ring and by the Other Members of each of its Fund Credit Rings, pro rata in proportion to the shortfall if any between the amount paid to CDS by each such guarantor and its share of the net proceeds of realization of the Collateral of the suspended Participant when such proceeds are applied in accordance with the foregoing provisions of this Rule 9. If, after payment of all of the obligations of the suspended Participant to CDS, there is any amount remaining, CDS shall pay such amount to the suspended Participant.

13.1.3 Notice of Commission Approval – Housekeeping Amendments to MFDA By-Law No. 1, Section 23 – Co-operation with Other Authorities

MUTUAL FUND DEALERS ASSOCIATION (MFDA) NOTICE –

HOUSEKEEPING AMENDMENTS TO MFDA BY-LAW NO. 1, SECTION 23

CO-OPERATION WITH OTHER AUTHORITIES

Current Rule

Section 23 of MFDA By-law No.1 currently provides that the MFDA may enter into agreements or arrangements with any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market**,** customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country for the exchange of any information and may provide the information to such authorities.

Reasons for Amendment

MFDA staff consistently receives requests for information from regulators governing insurance, deposit instruments and other financial matters regarding the conduct of Approved Persons where an investigation has been commenced by these authorities. In addition, MFDA staff have on occasion become aware of non-securities related activity between Approved Persons and clients involving conduct that would constitute a breach of other applicable regulatory requirements. However, the current wording of section 23 of MFDA By-law No.1 suggests that the type of information that may be provided to other regulators is limited to securities related matters.

The Terms and Conditions of Recognition of the MFDA as a self regulatory organization direct that "the MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation, those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters." The Terms and Conditions of Recognition do not limit the type of information to be shared to securities related matters.

Amendments to section 23 of By-law No. 1 are required to be consistent with the Terms and Conditions of Recognition and to clarify that the MFDA has the authority to comply with the recognition orders.

Description of Amendment

The phrase "relating to trading in securities in Canada or elsewhere" will be deleted from the last sentence in section 23.2 and section 23.3 of By-law No. 1.

The amendments are housekeeping in nature in that they reflect changes in administrative practices of the MFDA that are necessary to fulfill the Terms and Conditions of Recognition of the MFDA and do not impose any significant burden or any barrier to competition that is not appropriate.

Comparison with Similar Provisions

The Terms and Conditions of Recognition of the MFDA contemplate a broad requirement to share information with various regulatory authorities where MFDA staff become aware of relevant information. The proposed amendments will make the provisions of section 23 of By-law No.1 more consistent with the Terms and Conditions of Recognition.

Effective Date

The amended By-law will be effective on a date to be subsequently determined by the MFDA.

MFDA NOTICE – HOUSEKEEPING AMENDMENT TO
MFDA BY-LAW NO.1, SECTION 23 –
CO-OPERATION WITH OTHER AUTHORITIES

ATTACHMENT

On September 14, 2005, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted the following housekeeping amendments to section 23 of MFDA By-law No.1:

23. CO-OPERATION WITH OTHER AUTHORITIES

23.2 Agreements

The Corporation may enter into in its own name agreements or arrangements with any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market, customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country for the exchange of any information (including information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession) and for other forms of mutual assistance for market surveillance, investigation, enforcement and other regulatory purposes. ~~relating to trading in securities in Canada or elsewhere.~~

23.3 Assistance

The Corporation may provide to any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market, customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country any information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession and may provide other forms of assistance for surveillance, investigation, enforcement and other regulatory purposes. ~~relating to trading in securities in Canada or elsewhere.~~

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